

## **Briefing Note for Economics and Governance Committee**

### **Inquiry into the Revenue and Other Legislation Amendment Bill 2018**

**Queensland Treasury**  
**Department of Aboriginal and Torres Strait Islander Partnerships**

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#### **Issues**

##### *Amendments to revenue legislation*

1. Amendments to the *Duties Act 2001* (Duties Act), *Duties Regulation 2013* (Duties Regulation) and *Taxation Administration Act 2001* (Taxation Administration Act) to expand electronic conveyancing (e-conveyancing) will extend the operation of existing offences for e-conveyancing, and for self assessors more generally, to all permissible e-conveyancing transactions. They will also extend existing revenue protection measures, such as the Commissioner of State Revenue's (Commissioner) benefit of a first charge over defined land in particular circumstances. They could therefore be seen to breach fundamental legislative principles (FLPs) which require that sufficient regard be had to the rights and liberties of individuals. However, when considered as a package, the amendments are beneficial overall. They extend existing requirements for consistency and will only apply to parties who elect to use e-conveyancing.
2. To ensure functionality and to develop the systems necessary to facilitate the expansion of e-conveyancing, the Office of State Revenue (OSR) is consulting with the Department of Natural Resources, Mines and Energy (DNRME) and the Queensland Law Society. OSR has also liaised with Property Exchange Australia Limited, currently the sole authorised electronic lodgement network provider in Queensland, to ensure necessary system design changes can be made to align with the proposed amendments.
3. As a consequence of the amendments to the Taxation Administration Act to ensure that the charitable institution requirements operate as intended, some currently registered institutions will need to amend their constitutions to continue to qualify as charitable institutions. To minimise the impact on these institutions, transitional provisions will ensure they are given a reasonable amount of time to amend. Additionally, OSR will notify currently registered institutions impacted by the proposed amendments along with charities at a sector-wide level subject to the Bill being enacted.
4. The amendments to the Duties Act to allow certain deregistered managed investment schemes to be treated as exempt managed investment schemes give the Commissioner the power to determine whether certain duty exemptions are available. Therefore, they could be seen to breach FLPs that legislation should make rights and liberties, or obligations dependent on administrative power only if it is sufficiently defined and subject to appropriate review. However, the Commissioner is required to consider an exhaustive list of factors in each case to ensure the power is exercised consistently. Where assessments of tax are made on the basis of a determination by the Commissioner, existing objection, review and appeal rights under the Taxation Administration Act will be available.

5. Amendments to the Duties Act, *Land Tax Act 2010* (Land Tax Act) and *Payroll Tax Act 1971* (Payroll Tax Act) which give effect to administrative arrangements will have retrospective effect. They could therefore be seen to breach FLPs. However, the amendments are beneficial in that they extend or ensure the intended availability of existing tax exemptions and concessions, and ensure that tax is properly assessed. The administrative arrangements have been made publicly available as necessary.
6. Amendments to the *State Penalties Enforcement Act 1999* (SPE Act), the *State Penalties Enforcement Amendment Act 2017* (SPE Amendment Act) and the *Victims of Crime Assistance Act 2009* will address minor technical issues relating to implementation of the new service delivery model for the State Penalties Enforcement Registry (SPER).
7. The issues have primarily arisen as the result of changes made by the SPE Amendment Act to support the new SPER model, including amendments to the SPE Act to introduce work and development orders (WDOs) to provide improved non-monetary debt finalisation options for debtors experiencing hardship, support the case management of debtors and provide consistent arrangements for the registration of different debt types with SPER.
8. The amendments will ensure that the relevant Acts accurately and precisely reflect the objectives of the SPE Amendment Act.

***Amendments to the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 (JLOM Act), and Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003 (Cultural Heritage Acts)***

9. Part 10 of the Bill includes amendments to the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOM Act), the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* (Cultural Heritage Acts). The objectives of these amendments are:
  - JLOM Act – to better capture and prohibit substances (such as turbo yeast) used to make homemade alcohol in nine discrete Indigenous communities; and
  - Cultural Heritage Acts – to reinstate the ‘last claim standing’ provision as previously understood by the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) prior to the Supreme Court decision in *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321 (Nuga Nuga decision); and validate decisions made or actions taken and transition actions taken prior to the commencement of these amendments.

***Fundamental Legislative Principles - Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984***

10. The amendments to prohibit homemade alcohol being made with a substance or combination of substances in the nine discrete Indigenous communities may be considered to impinge on a person’s rights and liberties (section 4(2)(a) of the *Legislative Standards Act 1992*).
11. However in 2013, the High Court of Australia determined that alcohol restrictions were a ‘special measure’ under the *Racial Discrimination Act 1975* (Cth) as they impose constraints on individual liberties which are considered necessary for promoting safety for the community (*Maloney v the Queen* [2013] HCA 28).
12. Given that the High Court considered alcohol restrictions a special measure in restricted communities, the proposed new offence provision is consistent with the measures taken to ensure the alcohol restrictions are not undermined by the effect of homemade alcohol.

13. The restriction is justified as a primary objective of the JLOM Act is to minimise the harm caused by alcohol misuse, and associated violence and health concerns in discrete Indigenous communities. Using unregulated substances (including those not for general consumption) to make homemade alcohol has the potential to cause significant harm, due to the dangerous level of alcohol and toxicity. This similarly applies to using uncontrolled fermentation methods.
14. Therefore, the proposed offence provision is justified to contend with community specific problems and to reduce the harm caused by alcohol misuse.

*Fundamental Legislative Principles - Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003*

15. The validating and transitional provisions potentially could be interpreted as a breach of fundamental legislative principles under section 4(3)(g) of the *Legislative Standards Act 1992*, given their retrospective effect. The policy intent is that stakeholders who have commenced a process in order to comply with the Cultural Heritage Acts before and after the Nuga Nuga decision should not be disadvantaged.
16. The amendments are minimal and deal specifically with the Nuga Nuga decision and require amendment in order to provide certainty to stakeholders required to comply with the Cultural Heritage Acts.

*Consultation - Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*

17. The Mayors of the nine discrete Indigenous communities have been consulted (Aurukun, Doomadgee, Kowanyama, Lockhart River, Mornington Island, Napranum, Pormpuraaw, Woorabinda and Wujal Wujal), and the amendments respond to clear community feedback, in particular from Mornington Island.

*Cross River Rail Delivery Authority Act 2016 and Acquisition of Land Act 1967*

18. The Bill will make amendments to the:
  - *Cross River Rail Delivery Authority Act 2016* (CRRDA Act) to make minor administrative changes and amendments to expressly allow for the Board to appoint an interim chief executive officer should the position become vacant for any reason; and
  - *Acquisition of Land Act 1967* (ALA) to expressly confirm that compulsory land acquisition applications may be considered by the Minister administering the CRRDA Act.
19. The Bill will achieve its objective of clarifying Board membership by updating section 33(1)(c) of the CRRDA Act to replace the reference to repealed legislation with a reference to current legislation. This will remove the potential confusion relating to the existing reference to the *Transport (Rail Safety) Act 2010*, which was repealed and replaced in 2017.
20. The Bill will amend the CRRDA Act to expressly confirm the Board may appoint a short-term interim chief executive officer in instances where the position becomes vacant for any reason.
21. The Bill will achieve the objective of enhancing administrative efficiency by:
  - removing the existing requirement to have the CRRDA's budget completed by 31 March each year due to practical implications. This will also allow the CRRDA to align its budget preparations to the broader Queensland Government budget processes;

- confirming the Board may appoint an interim chief executive officer, should the position of chief executive officer be vacated for any reason; and
- expressly confirming the Minister administering the CRRDA Act is a “relevant Minister” for the purposes of compulsory acquisitions under the ALA.

## **Background**

### ***Amendments to revenue legislation***

22. The Bill will amend Queensland’s revenue legislation to support expansion of e-conveyancing and to maintain their currency and ensure their proper operation. Specifically, the Bill makes the following amendments -

- The Duties Act, Duties Regulation and Taxation Administration Act will be amended to support DNRME’s phased expansion of e-conveyancing and to support an expanded range of e-conveyancing transactions more generally by allowing most land-based dutiable transactions which can be assessed by self assessors to be lodged and settled through e-conveyancing.
- The Taxation Administration Act will be amended to ensure the charitable institution registration requirements operate as intended by requiring that entities seeking registration as charitable institutions, must expressly include in their constitutions particular clauses which govern the use of the entity’s income and property and clarifying that a constitution may include a statute, deed or other instrument constituting an institution and governing its activities or members. This restores the intended position following a decision by the Supreme Court of Queensland in *Queensland Chamber of Commerce and Industry Limited v Commissioner of State Revenue* [2015] QSC 77 which held that an institution’s constitution need not expressly provide for the restrictions relating to use of the entity’s income and property, and that it was sufficient that the practical effect of the entity’s constitution (within the framework of the relevant statutory and common law rules) is that the restrictions are satisfied.
- Retrospective legislative effect will be given to three beneficial administrative arrangements by amending the Duties Act to extend the transfer duty concession for family businesses of primary production to all types of dutiable property used to conduct the primary production business and not just land and personal property; to ensure that certain deregistered managed investment schemes can be treated as exempt managed investment schemes in particular circumstances and subject to certain conditions; and to ensure that landholder duty is properly calculated by correcting a cross-reference.
- The Land Tax Act will be amended to ensure that deceased estate land is assessed as intended, giving retrospective legislative effect to a beneficial administrative arrangement. The amendments ensure that the deceased is generally taken to be the owner of the land until administration of the estate is complete, instead of the administrator or executor being liable for land tax. Additionally, they ensure the benefit of land tax exemptions that the deceased was eligible for can continue to apply for the financial year immediately following death unless the land starts to be used in a manner inconsistent with the policy of the exemption.

- Retrospective legislative effect will be given to a taxpayer beneficial administrative arrangement by amending the Payroll Tax Act to update the reference to the rate in the *Income Tax Assessment Act 1997* (Cth) used to calculate the exempt component of a motor vehicle allowance. The amendment ensures employers can continue to claim a payroll tax exemption in Queensland for motor vehicle allowances paid or payable, following amendments to the *Income Tax Assessment Act 1997* (Cth) which changed the rates for calculating income tax deductions for car expenses.
23. The Bill will amend the SPE Act, SPE Amendment Act and *Victims of Crime Assistance Act 2009* to:
- address inconsistencies between SPE Act sections relating to the operation of WDOs by clarifying the SPER debt amounts that can be satisfied by a WDO and confirming the circumstances in which an appeal against decisions of the SPER registrar may be lodged with the Queensland Civil and Administrative Tribunal;
  - simplify the arrangements for the order in which the SPE Act requires payments to be allocated to SPER debts, by providing a single payment priority which accommodates SPER applying fees at a case level, in line with SPER’s case management approach;
  - ensure consistency in the arrangements for registering debts with SPER by providing for debts referred to SPER by Victims Assist Queensland (VAQ) to be treated as defaulted court debts on registration, leading to the issue of an enforcement order without the need to first issue a court debt payment notice; and
  - correct minor drafting issues and outdated references.
24. The SPE Act amendments correct technical errors and make consequential amendments. These amendments are required to enable implementation of the new SPER model. The amendments will commence on assent, other than the provisions relating to the order of satisfaction and VAQ debt registration, which will commence when section 25 of the SPE Amendment Act is proclaimed to commence.

***Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984***

25. Measures to reduce the supply of alcohol in Alcohol Management Plans are regulated under the JLOM Act and *Liquor Act 1992*, which includes prohibiting the possession and supply of home-brew concentrate in communities with a zero alcohol limit. These communities are: Aurukun, Doomadgee, Kowanyama, Lockhart River, Mornington Island, Napranum, Pormpuraaw, Woorabinda and Wujal Wujal.
26. A 2013 Court of Appeal decision interpreted ‘home-brew concentrate’ to mean that malt and hops must be in the substance before it is regarded as home-brew concentrate. Based on this interpretation, yeast (such as turbo yeast) would not fall within the definition of home-brew concentrate, and it is not an offence to possess turbo yeast for the purposes of making homemade alcohol.
27. Homemade alcohol is a particularly significant issue in the Mornington Island community resulting in serious health and fatal consequences, and is an issue in other communities during the wet season (as noted by hospitals and mental health services). Mornington Shire Council has specifically identified the use of turbo yeast in the production of homemade alcohol as a significant concern for the community.

### ***Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003***

28. Section 34(1)(b)(i) sets out the ‘last claim standing’ provision, which provides that a native title party for an area is a registered native title claimant whose claim has failed, and: (A) their claim was the last claim registered under the Register of Native Title Claims for the area; and (B) there is no other registered native title claimant for the area; and (C) there is not, and never has been, a native title holder for the area.
29. DATSIP and other stakeholders understood ‘native title holder’ in (C) to mean that there never has been a person who has been determined by the Federal Court to hold native title under the *Native Title Act 1993* (Cth). In December 2017, the Supreme Court handed down the Nuga Nuga decision, which determined that native title holder can also refer to a common law holder of native title.
30. This interpretation of the last claim standing provision presents significant practical difficulties because it is not appropriate for DATSIP to decide whether there is, or has ever been, a holder of native title at common law. Such a determination would need consideration of the evidence required to prove native title in court, and pre-empt the State’s position on the existence of native title.
31. The decision has created uncertainty for land users in determining who should be consulted to assist in managing the impacts of cultural heritage arising from their activities. This includes 82 previously approved cultural heritage management plans based on the previous understanding of the last claim standing provision, and rendered invalid by the Nuga Nuga decision.

### ***Cross River Rail Delivery Authority Act 2016 and Acquisition of Land Act 1967***

32. On 14 April 2017, the Cross River Rail Delivery Authority (CRRDA) commenced as an independent statutory body under the CRRDA Act.
33. The Delivery Authority’s primary role is to plan, carry out, promote or coordinate activities to facilitate economic development and development for community purposes, in a Cross River Rail (CRR) Priority Development Area (PDA), and to facilitate the efficient delivery of the CRR Project and related projects.
34. The CRRDA works closely with state government partners to deliver value for money and best practice expenditure and acquittal of government resources.
35. The CRRDA also has functions to:
  - Identify opportunities and options for facilitating economic development, and development for community purposes, in a CRR PDA;
  - Identify and consult with relevant entities about options for funding development;
  - Give advice and recommendations on its roles to the Minister and relevant entities; and
  - All the functions and powers of the Delivery Authority are set out in the CRRDA Act.
36. The amendments under the Bill are required to streamline and enhance the administration of the CRRDA.