



Queensland

# **Natural Resources and Other Legislation Amendment Act 2010**

**Act No. 12 of 2010**





Queensland

# Natural Resources and Other Legislation Amendment Act 2010

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## Queensland

### **Natural Resources and Other Legislation Amendment Act 2010**

#### **Act No. 12 of 2010**

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**An Act to amend the Aboriginal Cultural Heritage Act 2003, the Aboriginal Land Act 1991, the Coastal Protection and Management Act 1995, the Dividing Fences Act 1953, the Fire and Rescue Service Act 1990, the Forestry Act 1959, the Forestry Regulation 1998, the Forestry Plantations Queensland Act 2006, the Forestry (State Forests) Regulation 1987, the Land Act 1994, the Land Title Act 1994, the Mineral Resources Act 1989, the State Development and Public Works Organisation Act 1971, the Survey and Mapping Infrastructure Act 2003, the Surveyors Act 2003, the Torres Strait Islander Cultural Heritage Act 2003, the Torres Strait Islander Land Act 1991, the Vegetation Management Act 1999 and the Water Act 2000 for particular purposes, and to make minor amendments of Acts as stated in the schedule for particular purposes**

**[Assented to 26 March 2010]**

[s 1]

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## The Parliament of Queensland enacts—

# Part 1 Preliminary

## 1 Short title

This Act may be cited as the *Natural Resources and Other Legislation Amendment Act 2010*.

## 2 Commencement

- (1) The following provisions commence on a day to be fixed by proclamation—
  - parts 3, 4, 12, 15 to 17, 19 and 21 (other than sections 237 and 243)
  - section 72, to the extent it inserts section 131
  - sections 199 to 202
  - section 249
  - schedule, amendments of the *Public Service Act 2008* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The following provisions commence on the day an agreement is first entered into between the Minister and a corporation under the *Forestry Act 1959*, section 61QA—
  - sections 19(5), 25, 32, 33, 44, 55, 66, 72 (other than to the extent it inserts sections 118, 121, 131 and 132), 73, 74(1), 88 to 93 and 95
  - schedule, amendment of the *Biodiscovery Act 2004*.
- (3) The Minister must notify the day the Minister first enters into an agreement with a corporation under the *Forestry Act 1959*, section 61QA by gazette notice.



[s 7]

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**‘Watercourses’.**

- (2) Section 20, ‘the bed and banks of a watercourse or lake only if the bed and banks are’—

*omit, insert—*

‘a watercourse or lake only to the extent the watercourse or lake is’.

**7 Amendment of schedule (Dictionary)**

Schedule, definition *bed and banks*—

*omit.*

## **Part 4 Amendment of Coastal Protection and Management Act 1995**

**8 Act amended**

This part amends the *Coastal Protection and Management Act 1995*.

**9 Amendment of s 123 (Development permits—right to use and occupy)**

Section 123(2), after ‘situated’—

*insert—*

‘, other than land on the landward side of a tidal boundary or right line tidal boundary’.

**10 Amendment of schedule (Dictionary)**

- (1) Schedule—





(ii) otherwise—the plantation licensee.

*plantation licensee* see the *Forestry Act 1959*, schedule 3.

*plantation officer* see the *Forestry Act 1959*, schedule 3.

*plantation operator* see the *Forestry Act 1959*, schedule 3.

*plantation sublicensee* see the *Forestry Act 1959*, schedule 3.’.

## 15 Amendment of s 66 (Fires in State forests etc.)

(1) Section 66(2)(b), after ‘State forest’—

*insert—*

‘(other than a licence area)’.

(2) Section 66—

*insert—*

‘(3) For subsection (1)(b), a person acting in the performance of duties under the *Forestry Act 1959* does not include—

(a) a plantation operator; or

(b) a plantation officer.’.

## 16 Amendment of s 68 (Powers of occupier of entry etc.)

(1) Section 68(4)—

*renumber* as section 68(5).

(2) Section 68—

*insert—*

‘(4) If the occupier of land, or an employee, agent or contractor of the occupier of land, is also a prescribed person, the references to a prescribed person in subsections (2) and (3) do not include the occupier of land, or an employee, agent or contractor of the occupier of land.’.



---

**19 Amendment of s 17 (Appointment of officers)**

- (1) Section 17(1), after ‘Forest officers’—  
*insert—*  
‘, plantation officers’.
- (2) Section 17—  
*insert—*  
‘(1A) The chief executive may make an appointment under subsection (1) only if the chief executive is satisfied that the person is appropriately qualified to perform the functions and exercise the powers of a forest officer, plantation officer or other officer.’.
- (3) Section 17(2) and (3), after ‘forest officer’—  
*insert—*  
‘or plantation officer’.
- (4) Section 17—  
*insert—*  
‘(2A) However, a person appointed as a plantation officer must be—  
(a) an employee of a plantation operator; and  
(b) appointed for a specified licence area.’.
- (5) Section 17, note—  
*omit.*
- (6) Section 17—  
*insert—*  
‘(4) A person appointed as a plantation officer stops being a plantation officer if—  
(a) the person stops being an employee of a plantation operator; or  
(b) the delegation of power under section 96B to the plantation operator who employs the plantation officer

[s 20]

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is ended by the chief executive by written notice given to the plantation operator.

- ‘(5) Nothing in subsection (4)(b) stops the person being reappointed as a plantation officer by the chief executive or someone other than the plantation operator exercising delegated power.
- ‘(6) The appointment of a person as a plantation officer is an appointment under this Act and not under the *Public Service Act 2008*.
- ‘(7) In this section—  
*appropriately qualified* includes having appropriate training or experience.’.

## **20 Insertion of new ss 18A–18C**

After section 18—

*insert—*

### **‘18A General powers of plantation officers**

- ‘(1) A plantation officer may exercise power under this Act, including under a delegation, only for the licence area for which the plantation officer is appointed.
- ‘(2) A plantation officer may—
  - (a) take away and dispose of a notice in the licence area that has not been authorised by the chief executive for the licence area; and
  - (b) require the production of any licence, permit, or other authorisation under which a person claims to be entitled to conduct an activity in the licence area that the person is conducting and inspect, examine, and take copies of the authorisation; and
  - (c) require the name and address of a person the plantation officer finds committing, or whom the plantation officer reasonably suspects of having committed, an offence against this Act in the licence area; and

- 
- (d) direct a person the plantation officer finds committing an offence against this Act in the licence area to stop committing the offence; and
  - (e) direct a person mentioned in paragraph (d) to leave the licence area; and
  - (f) if the plantation officer reasonably believes, having regard to particular circumstances or prevailing conditions, that a person's presence in or near the licence area involves a risk to the person's health or safety or the health or safety of someone else, direct the person to leave the licence area or the State forest.

*Examples of particular circumstances or prevailing conditions for paragraph (f)—*

- tree felling
- fire
- storm

- '(3) A person who fails to comply with a direction or requirement lawfully given or made by a plantation officer under subsection (2) without a reasonable excuse commits an offence.

Maximum penalty—100 penalty units.

- '(4) A person who is required under subsection (2)(c) to state the person's name or address must not, without a reasonable excuse, state a false name or address.

Maximum penalty—100 penalty units.

- '(5) A person does not commit an offence against subsection (4) if the person is not proved to have committed the offence he or she was allegedly found committing or suspected of having committed.

- '(6) Subsections (1) and (2) do not limit the powers of a forest officer under this Act.

- '(7) In this section—

***commit***, an offence, includes attempt to commit an offence.

[s 20]

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*licence area* includes part of the licence area.

*State forest* includes part of the State forest.

### **‘18B Powers of plantation officers in relation to fire**

- ‘(1) If a plantation officer reasonably believes that a fire lit on a licence area is, or is likely to be, a hazard to the licence area or to a person or property in the licence area, the plantation officer may—
- (a) put out the fire; or
  - (b) direct the person appearing to the plantation officer to be in charge of the fire—
    - (i) to put out the fire; or
    - (ii) to reduce the intensity of the fire in the way reasonably required by the plantation officer.
- ‘(2) If the plantation officer puts out a fire or directs a fire to be put out, the plantation officer may also give a direction that another fire must not be lit to replace the fire that is put out.
- ‘(3) A person must not contravene a direction given under subsection (1) or (2) without a reasonable excuse.
- Maximum penalty—10 penalty units.
- ‘(4) Subsections (1) and (2) do not limit the powers of a forest officer under this Act.
- ‘(5) In this section—
- licence area* includes part of the licence area.

### **‘18C Plantation operator and plantation officer are persons performing duties under this Act only for particular provisions**

‘In this Act, a reference to a person performing duties under this Act includes a reference to a plantation operator or plantation officer when performing duties under this Act only in the following provisions—

- (a) section 39(2)(a);
- (b) section 84(4);
- (c) section 86(1)(a) or (h);
- (d) section 95(a) or (b);
- (e) section 96.’.

## **21 Insertion of new s 20**

After section 19—

*insert—*

### **‘20 Retention of document produced to plantation officer**

- ‘(1) This section applies if a plantation officer makes a requirement under section 18A(2)(b) (the *requirement*) for the production of a document.
- ‘(2) The document must be produced at the place and time stated in the requirement.
- ‘(3) The place stated in the requirement—
  - (a) may be other than the place where the document is ordinarily kept; but
  - (b) must be reasonable in the circumstances of the making of the requirement.
- ‘(4) The time stated in the requirement must be reasonable in the circumstances of the making of the requirement.
- ‘(5) To avoid any doubt, it is declared that—
  - (a) the document must be produced in its original form; and
  - (b) the plantation officer may keep possession of the document for the time the plantation officer reasonably requires to exercise the plantation officer’s powers under section 18A(2)(b).
- ‘(6) Until the document is returned, the plantation officer must allow a person who would be entitled to possession of it, if it

[s 22]

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had not been retained by the plantation officer, to inspect it and make copies of it.’.

**22 Amendment of s 21 (Officers not to trade in timber etc.)**

Section 21—

*insert—*

‘(3) In this section—

*officer* includes plantation officer.’.

**23 Insertion of new s 32AA**

Part 3, after section 32—

*insert—*

**‘32AA Chief executive to notify chief executive (lands) of change to State forest**

‘The chief executive must notify the chief executive (lands) of any change to the State forest under section 25, 27 or 32.’.

**24 Insertion of new pt 3A**

After part 3—

*insert—*

**‘Part 3A State plantation forest**

**‘32A Declaration of land as State plantation forest**

‘(1) A regulation may declare a stated area of land that is a State forest to be a State plantation forest.

‘(2) If land that is State plantation forest stops being a State forest or part of a State forest, the declaration of the land as a State plantation forest is taken to have been revoked.

‘(3) To remove any doubt, it is declared that the declaration of land as a State plantation forest does not affect the status of the land as State forest.’

**‘32B Particular areas of conservation value to be removed from State plantation forest**

‘Each area of land in the State plantation forest specified for a locality mentioned in column 1 of the following table in a plan mentioned in column 2 of the table stops being State plantation forest on the day specified for the area in column 3 of the table.

<b>Column 1 Locality</b>	<b>Column 2 Plan</b>	<b>Column 3 Day area stops being State plantation forest</b>
Palen Creek	Lots A,B,C,D & E on PLP0200	1 July 2030
Palen Creek	Lot A & B on PLP0359	1 July 2030
Mount Mee	Lot J on PLP0893	1 July 2040
Yurol	Lots D,E & I on PLP0952	1 July 2030
Oakview	Lots B & C on PLP0220	1 July 2020
Brooweena	Lot N on PLP1924	1 July 2030
Watalgan	Lot A on PLP0898	1 July 2020
Bulburin	Lot A on PLP0391	1 July 2030
Wongabel	Lots A,B,C & D on PLP0191	1 July 2050
Goodnight Scrub	Lots A,B,C,D,E,F,G & H on PLP0169	1 July 2030

*Editor’s note—*

Copies of plans mentioned in this table may be obtained for a fee at the head office of the department in Brisbane when it is open for business.

[s 25]

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**‘32C Quarrying in State plantation forest**

‘The chief executive may not get or authorise a person (other than a plantation licensee or plantation sublicensee) to get a total of 5000t or more of quarry material, in a year, from an area within a State plantation forest.’

**25 Omission of s 33AA (Application of pt 4 to a State plantation forest)**

Section 33AA—

*omit.*

**26 Amendment of s 34 (Use of State forests)**

(1) Section 34—

*insert—*

‘(2B) Subsections (1)(a) and (c), (2) and (2A) do not apply to natural resource product in a licence area.’

(2) Section 34(3), after ‘or authority’—

*insert—*

‘(other than a plantation licence)’.

**27 Amendment of s 34A (Specialised management within State forests)**

(1) Section 34A(a), after ‘a State forest’, first mention—

*insert—*

‘, other than a State plantation forest.’

(2) Section 34A(b), after ‘a State forest’—

*insert—*

‘, other than a State plantation forest.’

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**28 Amendment of s 34H (Self-registration camping areas)**

Section 34H—

*insert—*

- ‘(1A) A State plantation forest, or part of a State plantation forest, can not be a self-registration camping area.’.

**29 Amendment of s 35 (Granting of permit for land within State forest)**

Section 35—

*insert—*

- ‘(2A) If a plantation licensee, plantation sublicensee, plantation manager or plantation officer (the *decision maker*) exercising power delegated to the decision maker under section 96B makes a decision under subsection (1) or (2), the decision maker must advise the applicant for the permit or the extension of the permit that the applicant may apply for a review of the decision under section 83A within 28 days if the applicant is dissatisfied with the decision.’.

**30 Amendment of s 37 (Particular authorities over State forest, timber reserve or forest entitlement area)**

Section 37—

*insert—*

- ‘(5) Subsections (2B) and (3) do not limit—
- (a) the matters for which compensation is payable; or
  - (b) the amount of compensation payable; or
  - (c) the persons to whom compensation is payable;
- under the Mining Acts and the GHG Storage Act.’.

**31 Amendment of s 39 (Interfering with forest products on State forests etc.)**

- (1) Section 39(1), from ‘a lease’ to ‘Storage Act.’—

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*omit, insert—*

‘—

- (a) a lease, licence, permit, agreement or contract granted or made under this Act, the *Land Act 1994*, the Mining Acts or the GHG Storage Act; or
- (b) a permit to light a fire on a licence area under the *Fire and Rescue Service Act 1990*, section 65.’.

(2) Section 39(2)—

*omit, insert—*

‘(2) This section does not apply to—

- (a) a person performing duties under this Act acting in the administration of this Act; or
- (b) a person acting under a plantation licence, plantation sublicense or related agreement or in accordance with an agreement entered into with a plantation licensee or plantation sublicensee.’.

### **32 Replacement of s 43 (Application of pt 6 to forest products from a State plantation forest)**

Section 43—

*omit, insert—*

### **‘43 Application of pt 6 to forest products from a licence area**

‘This part does not affect the rights of a plantation licensee or plantation sublicensee to deal with natural resource product, or to get and use quarry material, under part 6D or a plantation licence or plantation sublicense.’.

### **33 Amendment of s 46 (Sale of forest products or quarry material)**

Section 46(1AA)—

*omit.*

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**34 Amendment of s 55 (Licences to get forest products etc.)**

Section 55—

*insert—*

- ‘(2) If a plantation licensee, plantation sublicensee, plantation manager or plantation officer (the *decision maker*) exercising power delegated to the decision maker under section 96B makes a decision under subsection (1), the decision maker must advise the applicant for the licence that the applicant may apply for a review of the decision under section 83A within 28 days if the applicant is dissatisfied with the decision.’.

**35 Amendment of s 56 (Permits etc.)**

Section 56—

*insert—*

- ‘(4) Subsection (5) applies if a plantation licensee, plantation sublicensee, plantation manager or plantation officer (the *decision maker*) exercising power delegated to the decision maker under section 96B makes a decision under this section.
- ‘(5) The decision maker must advise the applicant for the permit, licence, lease, or other authority, or agreement or contract (each an *authorisation*) or the extension of the authorisation that the applicant may apply for a review of the decision under section 83A within 28 days if the applicant is dissatisfied with the decision.
- ‘(6) In this section, a reference to an authority, agreement or contract does not include a plantation licence or plantation sublicensee.’.

**37 Amendment of s 58 (Power to cancel, suspend, permit, licence etc.)**

Section 58—

*insert—*

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‘(9) In this section, a reference to an authority, agreement or contract does not include a plantation licence or plantation sublicence.’.

**38 Amendment of s 59 (Transfer of permits etc.)**

Section 59—

*insert—*

‘(3) In this section, a reference to an agreement, contract or other authority does not include a plantation licence or plantation sublicence.’.

**39 Amendment of s 60 (Failure to comply with provisions of lease etc.)**

Section 60—

*insert—*

‘(3) In this section, a reference to an agreement, contract or other authority does not include a plantation licence or plantation sublicence.’.

**40 Amendment of s 61H (Appeal to Land Court)**

Section 61H(1), ‘this division’—

*omit, insert—*

‘this part’.

**41 Amendment of s 61J (Agreement about natural resource products)**

Section 61J(4)—

*omit.*

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**42 Amendment of s 61L (Definitions)**

Section 61L, definition *relevant provisions*, paragraph (d), after ‘65’—

*insert—*

‘, 65A’.

**43 Amendment of s 61N (Application of relevant provisions)**

Section 61N(d), ‘and 65(2) and (3)’—

*omit, insert—*

‘, 65(2) and 65A’.

**44 Omission of pt 6C and s 61TW**

Part 6C and section 61TW—

*omit.*

**45 Insertion of new pts 6D and 6E**

Before part 7—

*insert—*

**‘Part 6D Plantation forestry**

**‘Division 1 Preliminary**

**‘61Q Definitions for pt 6D**

‘In this part—

*compensation event* see section 61RH(1).

*plantation forestry*, in relation to a licence area, means—

- (a) the production, on the licence area on an ongoing basis, of natural resource product in the form of plantation timber for commercial purposes; and

[s 45]

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*Examples—*

- planting, maintaining and felling trees for sale
  - selling carbon storage or carbon sequestration rights in plantation timber
  - selling rights to harvest timber
- (b) the management of the licence area in a way consistent with sustainable management practices for plantation forests that are generally accepted in the Australian plantation forestry industry at the relevant time.

*relevant State land* means all land (including roads and reserves), other than freehold land or land contracted to be granted in fee simple by the State.

## **‘Division 2                      Plantation licences**

### **‘61QA Agreements to deal with natural resource product etc.**

- ‘(1) The Minister may grant a corporation the right to deal with natural resource product on specified State plantation forests or specified parts of State plantation forests for the purpose of plantation forestry and for incidental purposes under this Act by entering into an agreement (*plantation licence*) with the corporation (*plantation licensee*).
- ‘(2) Without limiting subsection (1), a plantation licence may contain terms dealing with the following matters—
- (a) the grant to the plantation licensee of an exclusive right to deal with, including get and sell, natural resource product in the licence area;
  - (b) the grant to the plantation licensee of a right to get and use quarry material from the licence area;
  - (c) the plantation licensee’s right to enter and remain in, and use, the licence area;
  - (d) the plantation licensee’s right to make roads and tracks in the licence area;

- (e) the management of particular areas in the licence area, including by restricting or excluding the exercise of rights mentioned in paragraphs (a) and (b) in the areas;

*Examples of particular areas—*

- native forest areas that border plantation areas and protect them against fire
- native forest areas and grassed areas that border and protect watercourses
- unformed plantation forest roads

- (f) the rehabilitation of land that is, or is to be, removed from the licence area.

- ‘(3) The plantation licence is valid, binding and enforceable according to its terms despite not having been registered.
- ‘(4) The Minister can not enter into more than 1 plantation licence over the same area.
- ‘(5) No fee is payable under this Act in relation to a plantation licensee’s right to get and use quarry material under its plantation licence.
- ‘(6) If, after a plantation licence is entered into, land forming part, or all, of the licence area for the plantation licence stops being State plantation forest, the land also stops being licence area.
- ‘(7) To remove any doubt, it is declared that a right of a plantation licensee to enter and remain in, and use, the licence area under a plantation licence is not a right of exclusive possession and, subject to this Act, is coextensive with the lawful rights of members of the public and others to enter and remain in, and use, the licence area.

### ‘61QB Related agreements

- ‘(1) The chief executive, the chief executive (fire) or the fire commissioner (individually or in any combination) may enter into 1 or more agreements (*related agreements*) with a plantation licensee or a plantation sublicensee about operational and other matters relevant to the use, maintenance and management of the licence area.

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- ‘(2) Without limiting subsection (1), a related agreement may contain terms dealing with the following matters—
- (a) fire control;
  - (b) pest control;
  - (c) constructing and maintaining roads and tracks in the licence area and other access roads;
  - (d) getting and using quarry material from the licence area;
  - (e) arrangements relating to access over relevant State land as mentioned in section 61QL.

#### **‘61QC Plantation licence is an interest in land**

‘It is declared that a plantation licence is in the nature of a profit a prendre and it and a plantation sublicense confer an interest in land.

#### **‘61QD Sale of natural resource product**

‘A plantation licence or plantation sublicense may confer on a plantation licensee or plantation sublicensee a right to contract with other persons for the sale of natural resource product from the licence area.

#### **‘61QE Statutory obligations**

- ‘(1) Without limiting any other obligations of a plantation licensee under this Act, the plantation licence or a related agreement, the plantation licensee has the following obligations—
- (a) to use the licence area for the purpose of plantation forestry;
  - (b) to not interfere with the lawful use of the licence area by members of the public and others unless it is reasonably required for the plantation licensee’s use of the licence area for the purpose of plantation forestry or an incidental purpose.

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*Examples of when interfering with use of the licence area might be reasonably required—*

- to protect persons from injury when tree felling in the licence area
  - to protect an area of young trees at risk of damage because of careless behaviour or general use of the area
  - to protect unformed roads and tracks from traffic damage after heavy rain
- ‘(2) The chief executive may require a plantation licensee to report to the chief executive at any time about the plantation licensee’s obligations, or a particular aspect of the plantation licensee’s obligations, under subsection (1).
- ‘(3) Nothing in this section requires a plantation licensee to plant trees on an area shown in a plan mentioned in section 32B or on an unformed plantation forest road.

#### **‘61QF Rights under a plantation licence**

- ‘(1) A right conferred on a plantation licensee under this Act, the plantation licence or a related agreement may be exercised by the plantation licensee’s employees, agents, contractors, customers and invitees.
- ‘(2) Subsection (1) is subject to a contrary intention expressed or implied in this Act, the plantation licence or related agreement.
- ‘(3) In this section—  
*right* does not include the performance of a function delegated under section 96B.

#### **‘61QG Appointment of plantation manager**

‘A plantation licensee may, with the Minister’s written approval, appoint a person as the plantation manager for the licence area or a part of the licence area.

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**‘61QH Acts and omissions of plantation sublicensee or plantation manager etc.**

- ‘(1) Subsection (2) applies if any of the following persons does an act or makes an omission that if done or omitted to be done by a plantation licensee would be a contravention of an obligation of the plantation licensee under this Act, the plantation licence or a related agreement—
- (a) a plantation sublicensee;
  - (b) a plantation manager;
  - (c) an employee, agent, contractor, customer or invitee of a plantation licensee, plantation sublicensee or plantation manager.
- ‘(2) The act or omission is taken also to be the act or omission of the plantation licensee.

**‘61QI Plantation licence may be transferred**

- ‘(1) A plantation licensee may transfer its rights and obligations under a plantation licence to another corporation (*new licensee*) only with the Minister’s written approval.
- ‘(2) A transfer of a plantation licence is effective, on its registration, to transfer the obligations of the plantation licensee under the plantation licence to the new licensee despite any rule of law to the contrary.
- ‘(3) To remove any doubt, it is declared that part of a plantation licence can not be transferred.
- Note—*
- See division 7 for provisions about the division of a plantation licence.
- ‘(4) If the Minister decides to refuse to approve the transfer, the plantation licensee must be given a written notice of the decision and the reasons for it.

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### **‘61QJ Related agreements may be transferred**

- ‘(1) A plantation licensee that transfers its rights and obligations under a plantation licence to another corporation (*new licensee*) as provided under section 61QI may also transfer a related agreement to the new licensee—
  - (a) with the chief executive’s approval; and
  - (b) if permitted under the plantation licence and the related agreement.
- ‘(2) A transfer of a related agreement in accordance with subsection (1) is effective to transfer the obligations of the plantation licensee under the related agreement to the new licensee despite any rule of law to the contrary.
- ‘(3) If the chief executive decides to refuse to approve the transfer of a related agreement, the plantation licensee must be given a written notice of the decision and the reasons for it.

### **‘61QK Amending a plantation licence**

- ‘(1) A plantation licence may be amended only with the Minister’s written approval.
- ‘(2) However, the amendment must not add a party to or remove a party from the plantation licence.
- ‘(3) The Minister may—
  - (a) refuse to approve the amendment; or
  - (b) approve the amendment on the conditions the Minister considers appropriate; or
  - (c) approve the amendment unconditionally.
- ‘(4) If the Minister decides not to approve the amendment, the Minister must—
  - (a) give the plantation licensee written notice of the decision and the reasons for the decision; and
  - (b) give any plantation sublicensee written notice of the decision.

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- ‘(5) An amendment of a plantation licence approved by the Minister must be registered.

**‘61QL Plantation licensee’s rights of access over relevant State land**

- ‘(1) The chief executive may grant to a plantation licensee the rights of access over relevant State land, and to State-owned infrastructure on relevant State land, that are necessary for the exercise of the plantation licensee’s rights or to meet the plantation licensee’s obligations under this Act, the plantation licence or a related agreement.

*Note—*

Access rights are also exercisable by a plantation sublicensee and employees, agents, contractors, customers and invitees of a plantation licensee or plantation sublicensee. See sections 61QF and 61QP.

- ‘(2) The access right may be granted by licence or permit, or under a related agreement, or in any other way agreed by the chief executive and the plantation licensee.
- ‘(3) In deciding the nature and extent of an access right over relevant State land, the chief executive must consider the following matters—
- (a) whether there is a usable road giving practical access;
  - (b) the means of access before the land became a licence area;
  - (c) the use or proposed use of the relevant State land over which access is proposed;
  - (d) whether the licence area is completely or partly surrounded by the relevant State land through which access is to be given.
- ‘(4) If the chief executive and the plantation licensee do not agree on the grant of reasonable access rights under this section, the plantation licensee’s access rights are to be decided by the Minister.
- ‘(5) An access right given to a plantation licensee under this section is binding on, and must be given effect by, all persons

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having an interest in the relevant State land over which the right is given.

- ‘(6) Nothing in this section requires the chief executive or the Minister to grant rights of access over land that is part of relevant State land if the grant of the right would be inconsistent with the rights of the holder of an interest in the land previously granted by or for the State.

### ‘61QM Unformed plantation forest roads

- ‘(1) An unformed plantation forest road is taken to be part of the State forest, State plantation forest and the licence area for this Act and the plantation licence until the road construction date for the unformed plantation forest road.
- ‘(2) The relevant road authority must give the chief executive at least 6 months written notice of its intention to use an unformed plantation forest road for road purposes and specify the date on which the construction of the road is to begin.
- ‘(3) As soon as practicable after receiving notice under subsection (2), the chief executive must give written notice to the plantation licensee and any plantation sublicensee for the licence area of—
- (a) the road authority’s intention to construct a road; and
  - (b) the date specified by the road authority as the date on which the construction of the road is to begin.
- ‘(4) An unformed plantation forest road stops being part of the State forest, State plantation forest and the licence area for this Act on the road construction date.
- ‘(5) For the definition *unformed plantation forest road*, a dedicated road is to be taken to be within the outer boundaries of a licence area if the dedicated road—
- (a) separates lands forming the licence area, or part of the licence area; or
  - (b) is surrounded by the licence area.

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‘(6) However, if a dedicated road continues beyond the licence area, the dedicated road is taken to be within the outer boundaries of the licence area only to the extent that it is within a notional boundary formed by a line drawn directly across the dedicated road at the extremities of the outer boundaries of the lands it separates.

‘(7) In this section—

***dedicated road*** means land dedicated as a road under the *Land Act 1994*.

***road authority***, for an unformed plantation forest road, means—

- (a) if the unformed plantation forest road is a State-controlled road—the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered; or
- (b) otherwise—the local government for the local government area in which the unformed plantation forest road is situated.

***road construction date***, for an unformed plantation forest road, is the date specified in the written notice given to a plantation licensee and any plantation sublicensee under subsection (3)(b).

***unformed plantation forest road*** means a dedicated road taken to be within the outer boundaries of a licence area that, immediately before the grant of a plantation licence for the licence area—

- (a) is not used by the public as a road; and
- (b) is planted with plantation timber or is otherwise used for plantation forestry.

### ‘61QN Chief executive to identify unformed plantation forest roads for s 61QM

‘(1) The chief executive may, after a plantation licence is entered into, identify and record the boundaries of unformed

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plantation forest roads within the licence area for section 61QM.

- ‘(2) The identification may be done in any way that is sufficient to identify the unformed plantation forest roads.
- ‘(3) If an unformed plantation forest road is identified in a way that allows it to be included in the State digital cadastral dataset under the *Survey and Mapping Infrastructure Act 2003*, a digital graphic representation of the road and the other information required under section 46(1)(c) and (d) of that Act must be included in the dataset.
- ‘(4) Until a digital graphic representation of the road and the other information is recorded in the State digital cadastral dataset, a declaration by the chief executive that land is or is not an unformed plantation forest road for section 61QM is evidence of the matter.

## ‘Division 3                      Plantation sublicences

### ‘61QO Approval

- ‘(1) A plantation licensee may grant a corporation (*plantation sublicensee*) a sublicense of its plantation licence only under this Act.
- ‘(2) The plantation licensee grants a sublicense under this Act by entering into an agreement (*plantation sublicense*) under which all of the plantation licensee’s rights under its plantation licence in relation to all or part of the licence area are granted to the plantation sublicensee for a term of years that is less than the unexpired term of the plantation licence.
- ‘(3) However, a plantation licensee may enter into a plantation sublicense only with the Minister’s written approval.
- ‘(4) The Minister may—
  - (a) refuse to approve a proposed plantation sublicense; or

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- (b) approve the entering into of the proposed plantation sublicense on the conditions the Minister considers appropriate; or

*Example of a condition—*

- that the plantation sublicensee enter into a related agreement

- (c) approve the entering into of the proposed plantation sublicense unconditionally.

- ‘(5) If the Minister decides not to approve the entering into of the proposed plantation sublicense, the plantation licensee must be given written notice of the decision and the reasons for the decision.

### ‘61QP Rights under the plantation sublicense

- ‘(1) If a plantation sublicense is entered into with the Minister’s approval, a right conferred on the plantation licensee under this Act, the plantation licence or a related agreement is also taken to have been conferred on, and may be exercised by, the plantation sublicensee.
- ‘(2) Without limiting subsection (1), a right conferred on a plantation sublicensee under this Act, the plantation licence, the plantation sublicense or a related agreement may be exercised by the plantation sublicensee’s employees, agents, contractors, customers and invitees.
- ‘(3) Subsection (2) is subject to a contrary intention expressed or implied in the plantation licence, plantation sublicense or related agreement.
- ‘(4) In this section—  
***right*** does not include the performance of a function delegated under section 96B.

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### **‘61QQ Appointment of plantation manager**

‘A plantation sublicensee may, with the Minister’s written approval, appoint a person as the plantation manager for the licence area or part of the licence area.

### **‘61QR Plantation sublicense may be transferred**

- ‘(1) A plantation sublicensee may transfer its rights and obligations under a plantation sublicense to another corporation (*new sublicensee*) only with the Minister’s written approval.
- ‘(2) A transfer of a plantation sublicense approved by the Minister must be registered.
- ‘(3) A transfer of a plantation sublicense has effect, on its registration, to transfer the obligations of the plantation sublicensee under the plantation sublicense to the new sublicensee despite any rule of law to the contrary.
- ‘(4) If the Minister decides to refuse to approve the transfer, the plantation sublicensee must be given a written notice of the decision and the reasons for it.

### **‘61QS Related agreements may be transferred**

- ‘(1) A plantation sublicensee that transfers its rights and obligations under a plantation sublicense to another corporation (*new sublicensee*) as provided under section 61QR may also transfer a related agreement to the new sublicensee—
  - (a) with the chief executive’s approval; and
  - (b) if permitted under the plantation licence, the plantation sublicense and the related agreement.
- ‘(2) A transfer of a related agreement in accordance with subsection (1) is effective to transfer the obligations of the plantation sublicensee under the agreement to the new sublicensee despite any rule of law to the contrary.

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- ‘(3) If the chief executive decides to refuse to approve the transfer of a related agreement, the plantation sublicensee must be given a written notice of the decision and the reasons for it.

### **‘61QT Amending a plantation sublicense**

- ‘(1) A plantation sublicense may be amended only with the Minister’s written approval.
- ‘(2) However, the amendment must not add a party to or remove a party from the plantation sublicense.
- ‘(3) The Minister may—
- (a) refuse to approve the amendment; or
  - (b) approve the amendment on the conditions the Minister considers appropriate; or
  - (c) approve the amendment unconditionally.
- ‘(4) If the Minister decides not to approve the amendment, the Minister must give the plantation licensee and plantation sublicensee written notice of the decision and the reasons for the decision.
- ‘(5) An amendment of a plantation sublicense approved by the Minister must be registered.

## **‘Division 4                    Mortgages**

### **‘61QV Mortgages require Ministerial approval**

- ‘(1) A plantation licensee or plantation sublicensee may grant a mortgage over its rights under a plantation licence or plantation sublicense only with the Minister’s written approval.
- ‘(2) A plantation licensee or plantation sublicensee that grants a mortgage over its rights in a plantation licence or plantation sublicense with the Minister’s approval may also grant a mortgage over its rights in a related agreement to the mortgagee—

- 
- (a) with the chief executive's written approval; and
  - (b) if not prohibited by the related agreement.
- '(3) If the Minister decides to refuse to approve the grant of a mortgage over the rights of a plantation licensee or plantation sublicensee under a plantation licence or plantation sublicence, the plantation licensee or plantation sublicensee must be given a written notice of the decision and the reasons for it.
- '(4) If the chief executive decides to refuse to approve the grant of a mortgage over the rights of a plantation licensee or plantation sublicensee in a related agreement, the plantation licensee or plantation sublicensee must be given a written notice of the decision and the reasons for it.

## **'Division 5                    Ownership of improvements**

### **'61QW Application of division**

- '(1) This division applies if—
- (a) equipment or improvements are taken, constructed or placed on a licence area by the plantation licensee or plantation sublicensee; and
  - (b) the equipment or improvements were taken, constructed or placed on the land for the purpose of plantation forestry or an incidental purpose.
- '(2) In this section—  
*equipment* includes machinery and plant.

### **'61QX Ownership of equipment and improvements**

- '(1) While the equipment or improvements are on the land, they are the property of the person who took, constructed or placed them on the land, unless that person otherwise agrees.
- '(2) Subsection (1) applies despite—

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- (a) the equipment or improvements having become part of the land; or
  - (b) the sale or other disposal of the land.
- ‘(3) This section applies despite—
- (a) an Act or law of a State; or
  - (b) a contract, covenant or claim of right under a law of a State.

## ‘Division 6                      Cancellation

### ‘61QY Show cause notice for cancellation of plantation licence

- ‘(1) This section applies if the Minister reasonably believes that a plantation licensee is contravening its obligations under section 61QE(1) in relation to the licence area or a part of the licence area.
- ‘(2) The Minister may give the plantation licensee a notice (*show cause notice*)—
- (a) stating—
    - (i) the Minister proposes to cancel the plantation licence for the licence area or part of the licence area; and
    - (ii) that no compensation will be payable in relation to the cancellation; and
  - (b) stating the reasons for the proposed cancellation; and
  - (c) if the Minister proposes to cancel the plantation licence for part of the licence area, identifying the part; and
  - (d) inviting the plantation licensee to show within a stated period of at least 90 days (*show cause period*) why the plantation licence for the licence area or part should not be cancelled.

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**‘61QZ Representations about show cause notice**

- ‘(1) The plantation licensee may make written representations to the Minister about the show cause notice within the show cause period.
- ‘(2) The Minister must consider all written representations (the *accepted representations*) made under subsection (1).

**‘61R Ending show cause process without further action**

- ‘(1) This section applies if, after considering the accepted representations for the show cause notice, the Minister believes that the plantation licensee is complying with its obligations under section 61QE(1).
- ‘(2) The Minister must not take any further action about the show cause notice.
- ‘(3) The Minister must also, as soon as practicable after coming to the belief, give notice to the plantation licensee that no further action is to be taken about the show cause notice.

**‘61RA Cancellation of plantation licence for licence area or part**

- ‘(1) This section applies if, after considering the accepted representations for the show cause notice, the Minister—
  - (a) still believes that the plantation licensee is contravening its obligations under section 61QE(1); and
  - (b) believes cancellation of the plantation licence for the licence area or part of the licence area is warranted.
- ‘(2) This section also applies if there are no accepted representations for the show cause notice.
- ‘(3) The Minister may decide to cancel the plantation licence for the licence area or part.
- ‘(4) If the Minister decides to cancel the plantation licence for the licence area or part, the Minister must advise the plantation licensee of the decision as soon as practicable after making it.

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‘(5) The Minister must lodge with the chief executive (lands) a cancellation of a plantation licence for the licence area or part.

*Note—*

The chief executive (lands) may require the lodgement of a sketch plan for the cancellation. See section 61RO(5).

‘(6) The chief executive (lands) must register the cancellation on the register.

‘(7) To remove any doubt, it is declared that if the plantation licence for a licence area or part of a licence area is cancelled, the area or part stops being licence area.

## **‘Division 7                      Surrender or division of plantation licence**

### **‘61RB Surrender of plantation licence or part of a plantation licence**

‘(1) A plantation licensee may apply to the Minister to surrender a plantation licence or part of a plantation licence.

‘(2) An application for surrender of a plantation licence or part of a plantation licence must be accompanied by the written consent of—

(a) each registered mortgagee of the plantation licence and any plantation sublicense of the affected area; and

(b) any plantation sublicensee of the affected area.

‘(3) The Minister may approve, or refuse, the application at the Minister’s discretion.

‘(4) Without limiting the Minister’s discretion, the Minister may refuse the application until the affected area is rehabilitated to the Minister’s satisfaction.

‘(5) If the Minister approves the application, the plantation licensee must lodge with the chief executive (lands)—

(a) a surrender of a plantation licence; and

- 
- (b) the written consent of all persons with a registered interest in the plantation licence.

*Note—*

The chief executive (lands) may require the lodgement of a sketch plan for the surrender of part of a plantation licence. See section 61RO(5).

‘(6) In this section—

*affected area* means—

- (a) if the application relates to the surrender of a plantation licence—the licence area for the plantation licence; or
- (b) if the application relates to the surrender of part of a plantation licence—the part of the licence area for the plantation licence that will be removed from the licence area if the application is approved.

### ‘61RC Application for division

‘(1) A plantation licensee may apply (*application for division*) to the Minister for approval—

- (a) to surrender part of its plantation licence (*original plantation licence*); and
- (b) to be granted a right to deal with natural resource product, on the affected area, for the purpose of plantation forestry and for incidental purposes under this Act.

*Note for paragraph (b)—*

This right is granted by entering into an agreement with the Minister under section 61QA(1).

‘(2) The application must be made in the approved form and be accompanied by—

- (a) a statement of the plantation licensee’s reasons for seeking the division; and

*Example of a reason—*

The plantation licensee wishes to be granted a new plantation licence for the affected area and to seek approval to transfer the new plantation licence for the affected area.

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- (b) evidence that the affected area is sustainable as a commercially viable forestry plantation; and
- (c) information identifying the affected area; and
- (d) the written consent of all persons with a registered interest in the plantation licence.

‘(3) In this section—

*affected area*, in relation to an application for division, means the part of the licence area for the plantation licence that will be removed from the licence area if the application is approved.

#### **‘61RD Deciding the application**

- ‘(1) The Minister must decide whether to approve the application for division.
- ‘(2) In deciding the application, the Minister must be satisfied that—
  - (a) the affected area is sustainable as a commercially viable forestry plantation; and
  - (b) consents have been given by—
    - (i) each registered mortgagee of the plantation licence and any plantation sublicense of the affected area; and
    - (ii) any plantation sublicensee of the affected area.
- ‘(3) The Minister must also consider—
  - (a) the public interest; and
  - (b) the extent to which the plantation licensee has complied with the original plantation licence.
- ‘(4) The Minister can not approve the surrender under the application and refuse to grant the right under this Act as mentioned in section 61RC(1)(b).

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**‘61RE Approving the application**

- ‘(1) If the Minister approves the application for division, the agreement to be entered into under section 61QA(1) for the affected area must be on the same terms as the original plantation licence (other than the description of the licence area) unless otherwise agreed by the parties.
- ‘(2) However, a proposed plantation licence for the affected area—
  - (a) must not be for a term of years longer than the unexpired term of the original plantation licence; and
  - (b) may include a provision linking it and the original plantation licence in the event of default or termination.
- ‘(3) Subsection (1) does not apply in relation to any obligation that has been fully performed by the plantation licensee under the original plantation licence.

**‘61RF Notice of decision**

- ‘(1) If the Minister decides to approve the application for division, the Minister must give the applicant written notice of the decision.
- ‘(2) If the Minister decides to refuse the application, the applicant must be given a written notice of the decision and the reasons for it.

**‘61RG Minister and the plantation licensee may enter into new plantation licence etc.**

- ‘(1) If the Minister approves the application for division, the Minister must, if requested by the applicant within 3 months after the approval is given, enter into an agreement as mentioned in section 61RC(1)(b) for the affected area (*new plantation licence*).
- ‘(2) On entering into the new plantation licence—
  - (a) the affected area stops being part of the licence area of the original plantation licence; and

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- (b) the Minister and the applicant must do everything necessary to lodge for registration a surrender of a plantation licence for the affected area.
- ‘(3) The Minister and the applicant may also amend a related agreement or enter into a new related agreement about operational and other matters relevant to the use and maintenance of the licence areas.
- ‘(4) The new plantation licence is subject to all relevant registered interests to which the affected area of the original plantation licence was subject with the same priorities.

## ‘Division 8                      Compensation

### ‘61RH Events that are compensation events

- ‘(1) A plantation licensee and any plantation sublicensee (each a *claimant*) may claim compensation under this division for any of the following events (each a *compensation event*) happening in relation to the licence area for the plantation licence or plantation sublicense—
  - (a) an unformed plantation forest road, taken to be part of the licence area for this Act under section 61QM, stops being part of the licence area on the road construction date nominated for the road by the chief executive under that section;
  - (b) the chief executive grants, makes or extends any of the following over the licence area or part of the licence area—
    - (i) a permit under section 35(1);
    - (ii) a licence under section 55(1);
    - (iii) a permit, licence, lease, or other authority, or an agreement or contract under section 56(1);
    - (iv) a permit under section 73(2);

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- (c) a term lease, as mentioned in section 35(5), is granted over the licence area or part of the licence area under the *Land Act 1994*;
  - (d) subject to section 61RI, land forming part, or all, of the licence area stops being a licence area under section 61QA(6);
  - (e) an easement is created under an Act over land in the licence area;
  - (f) a collection authority is issued under the *Biodiscovery Act 2004* authorising its holder to take native biological material for biodiscovery from the licence area.
- ‘(2) Compensation is payable under subsection (1)(b), (c), (e) and (f) only if the compensation event materially and adversely interferes with the claimant’s ability to use the licence area for the purpose of plantation forestry.
- ‘(3) Also, compensation is not payable for a compensation event if the compensation event results from the exercise by a claimant, a plantation manager appointed by the claimant or a plantation officer employed by the claimant or the plantation manager of power delegated to the claimant, plantation manager or plantation officer under section 96B.
- ‘(4) Compensation can not be claimed or paid more than once in relation to the same matter.

*Example—*

A plantation licensee can not claim compensation under this Act and another Act or under this Act and a Commonwealth Act in relation to the same matter.

- ‘(5) In this section—  
*create* includes grant, take and acquire.

### ‘61RI Events that are not compensation events

‘A plantation licensee or plantation sublicensee may not claim compensation under this division for any of the following events happening in relation to the licence area for the plantation licence or plantation sublicense—

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- (a) land forming part, or all, of the licence area stops being State plantation forest under section 32B;

*Note—*

See also section 61QA(6).

- (b) the plantation licence for the licence area or part of the licence area is cancelled under section 61RA;
- (c) the surrender of the plantation licence or part of the plantation licence under section 61RB.

#### **‘61RJ Chief executive to give notice of compensation events to the plantation licensee**

‘As soon as practicable after becoming aware of a proposed compensation event, or the happening of a compensation event, mentioned in section 61RH(1), the chief executive must give to the plantation licensee and any plantation sublicensee affected by the compensation event written notice of—

- (a) the proposed compensation event or compensation event; and
- (b) details of the extent to which the compensation event will affect, or affects, the licence area.

#### **‘61RK Compensation to be assessed under applied provisions of the Acquisition of Land Act 1967 in absence of agreement**

‘(1) If the chief executive and the plantation licensee and any plantation sublicensee can not agree on an amount payable as compensation for a compensation event, compensation is to be assessed and decided under the *Acquisition of Land Act 1967*, part 4 (the *compensation provisions*) as applied under this section.

‘(2) The compensation provisions apply as if—

- (a) the State were the constructing authority; and
- (b) a reference to land includes land in a licence area; and

- (c) the plantation licensee and any plantation sublicensee were persons who have a right to claim compensation; and
  - (d) a reference to land taken were a reference to—
    - (i) if a licence area suffers a net reduction in size because of a compensation event—the land that stopped being part of the licence area because of the compensation event; or
    - (ii) otherwise—the land in the licence area directly affected by the compensation event; and
  - (e) a reference to the day the land was taken were a reference to the day the compensation event had effect in relation to the licence area; and
  - (f) a reference to the serving of a notice of intention to resume on the claimant were a reference to the giving of written notice under section 61RJ; and
  - (g) a reference to a gazette resumption notice were a reference to the document under which the licence area is, or is to be, reduced or affected by the compensation event.
- ‘(3) In applying the compensation provisions, the compensation provisions must be read with any other necessary or convenient changes.
- ‘(4) For the compensation provisions, an extract from the register is proof of the plantation licensee’s or plantation sublicensee’s interest in the land.
- ‘(5) If the compensation event is an event mentioned in section 61RH(1)(a), compensation must be assessed and decided under the compensation provisions having regard only to the market value of the natural resource product on the unformed plantation forest road on the nominated road construction date.

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## **‘Part 6E                      Registration of interests in State plantation forests**

### **‘Division 1                      Preliminary**

#### **‘61RL Definitions for pt 6E**

‘In this part—

*plantation licence sketch plan* means a plan prepared in accordance with directions under section 61RU(2)(b) identifying a licence area or part of a licence area.

*sketch plan* means a plantation licence sketch plan.

### **‘Division 2                      Register**

#### **‘61RM Register of plantation licences**

‘The chief executive (lands) must keep a register of plantation licences.

#### **‘61RN Form of register**

- ‘(1) The chief executive (lands) may keep the register in the form (including in digital form) the chief executive (lands) considers appropriate.
- ‘(2) Without limiting subsection (1), the chief executive (lands) may change the form in which the register or part of the register is kept.

#### **‘61RO Registration of documents**

- ‘(1) A plantation licence must be registered in—
  - (a) the register; and

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- (b) the register of State forests kept under the *Land Act 1994*.
- ‘(2) If a plantation licence is affected by any of the following dealings, a document must be registered in the register to record the dealing—
- (a) an amendment of the plantation licence;
  - (b) a sublicence of the plantation licence;
  - (c) an amendment of the plantation sublicence;
  - (d) a transfer of the plantation licence;
  - (e) a transfer of a plantation sublicence;
  - (f) a transfer of a registered mortgage;
  - (g) a release of a registered mortgage;
  - (h) an amendment of a registered mortgage;
  - (i) a change in the priority of registered mortgages;
  - (j) a caveat in relation to the plantation licence;
  - (k) a surrender of a plantation licence;
  - (l) a cancellation of a plantation licence;
  - (m) a termination of a plantation licence;
  - (n) a termination of a plantation sublicence;
  - (o) an enforcement warrant.

*Note—*

A dealing may be lodged for registration under this Act at any office where a dealing may be lodged for registration under the *Land Title Act 1994* when the office is open for business.

- ‘(3) Also, if a plantation licence is affected by any of the following documents, the document may be registered in the register—
- (a) a mortgage of a plantation licence;
  - (b) a mortgage of a plantation sublicence;
  - (c) another document required under an Act.

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- ‘(4) A document mentioned in subsection (2)(a), (b), (c), (d), (e), (f), (k), (l) or (m) or (3)(a) or (b) may be registered only if it is approved, or consented to, by the Minister.
- ‘(5) If a dealing mentioned in subsection (2) relates to part of a licence area that is not already identified on a sketch plan, the person lodging the dealing for registration must also lodge a sketch plan identifying the affected part.

### **‘61RP Particulars that must be recorded**

‘The chief executive (lands) must record in the register—

- (a) the particulars of each plantation licence lodged for registration; and
- (b) the particulars necessary to identify—
  - (i) each dealing affecting an interest in a plantation licence registered and when it was lodged and registered; and
  - (ii) the name of the person who holds, and the name of each person who has held, an interest in a plantation licence; and
  - (iii) all documents registered in the register and when they were lodged and registered; and
  - (iv) anything else required or permitted to be registered under this Act.

### **‘61RQ Particulars that may be recorded**

‘The chief executive (lands) may record in the register anything the chief executive (lands) considers should be recorded to ensure the register is an accurate, comprehensive and useable record of plantation licences, relevant interests and dealings.

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**‘61RR Procedures on lodgement and registration of document**

- ‘(1) When a document is lodged with the chief executive (lands), the chief executive (lands) must note on the document—
  - (a) the date and time of lodgement; and
  - (b) an identifying reference.
- ‘(2) When the document is registered, the chief executive (lands) must record the information mentioned in subsection (1)(a) and (b) in the register.

**‘61RS Chief executive (lands) may correct registers**

- ‘(1) The chief executive (lands) must correct the register if—
  - (a) the chief executive (lands) is satisfied—
    - (i) the register is incorrect because the chief executive (lands) has incorrectly recorded a particular or registered a dealing; and
    - (ii) the correction will not prejudice the rights of the holder of an interest recorded in the register; or
  - (b) a court has ordered the correction.
- ‘(2) The power of the chief executive (lands) to correct the register includes power to correct a particular in the register.
- ‘(3) If the register is corrected, the chief executive (lands) must record in the register—
  - (a) the state of the register before the correction; and
  - (b) the time, date and circumstances of the correction.
- ‘(4) The register as corrected by the chief executive (lands) under this section has the same effect as if the relevant error had not been made.
- ‘(5) For subsection (1)(a)(ii), the rights of the holder of an interest recorded in the register are not prejudiced if the holder acquired or has dealt with the interest with actual or

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constructive knowledge that the register was incorrect and how it was incorrect.

### **‘61RT Documents form part of the register**

‘On registration of a document in the register, the document forms part of the register.

## **‘Division 3                    General requirements for documents in the register**

### **‘61RU Form of documents**

- ‘(1) A document lodged by a person must be lodged with the approved form.
- ‘(2) The chief executive (lands) may—
  - (a) approve forms for use under this part; and
  - (b) give directions about particular requirements for sketch plans.

### **‘61RV Execution of documents**

- ‘(1) For a corporation, a document is validly executed if—
  - (a) it is executed in a way permitted by law; or
  - (b) the document is sealed with the corporation’s seal in accordance with the *Property Law Act 1974*, section 46.
- ‘(2) For an individual, a document is validly executed if—
  - (a) it is executed in a way permitted by law; and
  - (b) the execution is witnessed by a person mentioned in the *Land Title Act 1994*, schedule 1.
- ‘(3) However, the chief executive (lands) may, in exceptional circumstances, register a document executed by an individual even though the execution was not witnessed or was not

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witnessed by a person mentioned in the *Land Title Act 1994*, schedule 1.

- ‘(4) A document to transfer or create an interest in a plantation licence or plantation sublicence must be executed by—
  - (a) the transferor or the person creating the interest; and
  - (b) the transferee or the person in whose favour the interest is to be created or a lawyer authorised by the transferee or the person.
- ‘(5) A total or partial release of mortgage need only be signed by the mortgagee.
- ‘(6) The witnessing of a document may be proved in any way permitted by law.
- ‘(7) This section does not apply to a sketch plan.

#### **‘61RW Registered documents to comply with particular requirements**

- ‘(1) A document may be registered only if—
  - (a) the document is lodged with the approved form and correctly executed; and
  - (b) the document complies with the directions of the chief executive (lands) about—
    - (i) how the approved form must be filled in; and
    - (ii) how information to be included in or given with the document must be included or given; and
  - (c) for a document relating to a transaction for which the Minister’s approval or consent is needed—the Minister has given the approval or consent; and
  - (d) for a document relating to a plantation licence the subject of a registered mortgage—the mortgagee under the registered mortgage has given consent to the transaction to which the document relates; and
  - (e) for a document relating to a plantation sublicence the subject of a registered mortgage—

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- (i) the mortgagee under the registered mortgage has given consent to the transaction to which the document relates; and
  - (ii) if the plantation licence is also the subject of a registered mortgage—the mortgagee under that registered mortgage has given consent to the transaction to which the document relates.
- ‘(2) A document that does not comply with a direction mentioned in subsection (1)(b) may be registered if the chief executive (lands) is satisfied it is reasonable to not require compliance.
- ‘(3) Subsection (1)(d) or (e) does not apply to a caveat, a cancellation of a plantation licence, a termination of a plantation licence or plantation sublicense or an enforcement warrant.

#### **‘61RX Power of the chief executive (lands) when fraud suspected**

‘The chief executive (lands) may refuse to accept for lodgement, or refuse to register, a document the chief executive (lands) reasonably suspects to be affected by fraud.

### **‘Division 4 Registration of documents**

#### **‘61RY Right to have interest registered**

- ‘(1) If a person lodges a document mentioned in section 61RO, the chief executive (lands) must register the document if—
- (a) the document has been correctly executed; and
  - (b) the person lodges the document and all other documents needed by the chief executive (lands) to effect registration of the document; and
  - (c) the document appears on its face to be capable of registration; and

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- (d) the document contains, or is accompanied by, any written approval or consent required for its registration; and
  - (e) the person has otherwise complied with this part for the registration of the document; and
  - (f) the document is not inconsistent with another Act or law.
- ‘(2) However, subsection (1) does not prevent the person from withdrawing the document before it is registered.

#### **‘61RZ Registered document operates as a deed**

‘A registered document operates as a deed.

#### **‘61S Order of registration of documents**

- ‘(1) Documents relating to a plantation licence must be registered in the order they are lodged.
- ‘(2) Subsection (1) is subject to section 61TO.

#### **‘61SA Priority of registered documents**

- ‘(1) Registered documents have priority according to when each of them was lodged and not according to when each of them was executed.
- ‘(2) A document is taken to be lodged on the day and at the time endorsed on the document by the chief executive (lands) as the day and time of the lodgement unless the contrary is proved.
- ‘(3) Subsection (1) is not affected by actual, implied or constructive notice.
- ‘(4) Registered documents have priority over documents that are not registered and any interests claimed under documents that are not registered.

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### **‘61SB How a document is registered**

‘The chief executive (lands) registers a document in the register by recording in the register the particulars necessary to identify the document.

### **‘61SC When a document is registered**

- ‘(1) A document is registered when the particulars about the document are recorded in the register.
- ‘(2) This section applies subject to section 61SD.

### **‘61SD No registration in absence of required approval or consent of Minister**

- ‘(1) A document is not registered, even though the particulars about the document are recorded in the register, if—
  - (a) under this Act, the Minister’s approval or consent, however described, is required for the document, including any aspect of the document, but the approval or consent has not been obtained; or

*Example—*

  - A mortgage of a plantation licence requires the Minister’s consent to be registered. See section 61RO(4).
  - (b) the terms of the document are inconsistent with the terms of any approval or consent, however described, given by the Minister in relation to the document, including any aspect of the document.
- ‘(2) If under subsection (1) a document is not registered, the chief executive (lands) may correct the particulars included in the register in relation to the document.
- ‘(3) Subsection (1) applies to an approval or consent, however described, in relation to a document, whether or not the approval or consent is required to be endorsed on the document.
- ‘(4) If the Minister is a signatory to a document, the Minister is taken to have approved, or consented to, the document.

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## **‘Division 5                    Consequences of registration**

### **‘61SE Benefits of registration**

‘The benefits of this division apply to a document whether or not valuable consideration has been given.

### **‘61SF Effect of registration on interest**

- ‘(1) On registration of a document expressed to transfer or create an interest in a plantation licence or plantation sublicense—
- (a) the interest is created or transferred in accordance with the document; and
  - (b) the interest is registered; and
  - (c) the interest vests in the person identified in the document as the person entitled to the interest.
- ‘(2) A person who holds an interest in a plantation licence or plantation sublicense holds the interest subject to—
- (a) all other interests in the plantation licence or plantation sublicense previously registered; and
  - (b) all rights and interests registered in the register of State forests kept under the *Land Act 1994*.
- ‘(3) Subsection (1)(a) and (c) does not apply to a mortgage.

### **‘61SG Evidentiary effect of recording particulars in the register**

‘In all proceedings, the particulars of a registered document recorded in the register are conclusive evidence of—

- (a) the registration of the document; and
- (b) the contents of the document; and
- (c) all things stated or implied in it by this or another Act; and
- (d) when the document was lodged and registered.

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## **‘Division 6                    Transfers**

### **‘61SH Registering a transfer**

‘In order to be registered, a transfer of a plantation licence or plantation sublicence must—

- (a) be validly executed; and
- (b) include particulars sufficient to identify the plantation licence or plantation sublicence to be transferred; and
- (c) otherwise comply with the requirements of this Act.

## **‘Division 7                    Mortgages**

### **‘61SI Registering a mortgage**

‘(1) In order to be registered, a mortgage must—

- (a) be validly executed; and
- (b) include a description sufficient to identify the plantation licence or plantation sublicence to be mortgaged; and
- (c) include a description of the debt or liability secured by the mortgage; and
- (d) otherwise comply with the requirements of this Act.

‘(2) A notice to a registered mortgagee under this Act is sufficiently served if left at or sent to an address given for the registered mortgagee in the mortgage.

‘(3) If a mortgagee is registered as a trustee, a document stating the details of the trust, or the document creating the trust, must be deposited with the mortgage, unless—

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- (a) a document has already been produced for the trust under section 61ST(2); and
  - (b) the details of the trust have not since changed.

### **‘61SJ Original mortgagee to confirm identity of mortgagor**

- ‘(1) This section applies in relation to the grant of a mortgage of a plantation licence or plantation sublicense.
- ‘(2) Before the mortgage is lodged for registration, the mortgagee under the mortgage (the *original mortgagee*) must take reasonable steps to ensure the person who executed the mortgage as mortgagor is identical with the person who is, or who is about to become, the plantation licensee or plantation sublicensee.
- ‘(3) Without limiting subsection (2), the original mortgagee takes reasonable steps under the subsection if the original mortgagee complies with practices included in the manual of land title practice under the *Land Title Act 1994*, section 9A(2)(ba) for the verification of identification of mortgagors.
- ‘(4) The original mortgagee must, for 7 years after the mortgage is registered, and whether or not there is registered a transfer of the interest constituted by the mortgage—
  - (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
  - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the original mortgagee in complying with subsection (2).

Maximum penalty—20 penalty units.

- ‘(5) The chief executive (lands) may, whether before or after the registration of the mortgage, and whether or not there has been registered a transfer of the interest constituted by the mortgage, ask the original mortgagee—
  - (a) to advise the chief executive (lands) about the steps taken by the original mortgagee under subsection (2); and

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- (b) to produce for the inspection of the chief executive (lands) the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).
- ‘(6) The original mortgagee must comply with a request under subsection (5) unless the original mortgagee has a reasonable excuse.

Maximum penalty for subsection (6)—20 penalty units.

### **‘61SK Mortgagee transferee to confirm identity of mortgagor**

- ‘(1) This section applies to the transfer of the interest constituted by the mortgage of a plantation licence or plantation sublicense.
- ‘(2) Before the transfer is lodged for registration, the transferee under the transfer (the *mortgage transferee*) must take reasonable steps to ensure the person who executed the mortgage as mortgagor was identical with the person who, when the mortgage was executed, was, or was about to become, the plantation licensee or plantation sublicensee.
- ‘(3) Without limiting subsection (2), the mortgage transferee takes reasonable steps under the subsection if the mortgage transferee complies with practices included in the manual of land title practice under the *Land Title Act 1994*, section 9A(2)(c) for the verification of identification of mortgagors.
- ‘(4) The mortgage transferee must, for 7 years after the transfer of the mortgage is registered, and whether or not there is registered a further transfer of the interest constituted by the mortgage—
  - (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
  - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgage transferee in complying with subsection (2).

Maximum penalty—20 penalty units.

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- ‘(5) The chief executive (lands) may, whether before or after the registration of the transfer of the mortgage, and whether or not there has been registered a further transfer of the interest constituted by the mortgage, ask the mortgage transferee—
- (a) to advise the chief executive (lands) about the steps taken by the mortgage transferee under subsection (2); and
  - (b) to produce for the inspection of the chief executive (lands) the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).
- ‘(6) The mortgage transferee must comply with a request under subsection (5) unless the mortgage transferee has a reasonable excuse.

Maximum penalty for subsection (6)—20 penalty units.

### **‘61SL Releasing a mortgage**

- ‘(1) If a release of a registered mortgage is lodged, the chief executive (lands) may register the release to the extent shown in the release.
- ‘(2) On registration of a release of a registered mortgage, the mortgage is discharged, and the plantation licence or plantation sublicense is released from the mortgage, to the extent shown in the release.

### **‘61SM Amending or transferring a mortgage**

- ‘(1) A registered mortgage may be amended only by registering an amendment of the mortgage.
- ‘(2) However, an amendment must not add a party to or remove a party from the mortgage.
- ‘(3) A registered mortgage may be transferred only by registering a transfer of the registered mortgage.
- ‘(4) A mortgage may be transferred by the mortgagee only with the Minister’s written approval.

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### **‘61SN Amending priority of mortgages**

- ‘(1) The priority of registered mortgages may be amended by registering a document amending priority.
- ‘(2) The document amending priority must—
  - (a) state the order of priority of all affected registered mortgages; and
  - (b) be executed by all mortgagees affected by the amendment.
- ‘(3) On registration of the document amending priority, the mortgages have priority in the order stated in the document.

### **‘61SO Priority of advances**

‘A registered mortgage has the same priority in relation to all advances (including future advances), and the performance of all obligations, secured by the mortgage.

### **‘61SP Transfer of mortgage does not affect priority**

‘If a registered mortgage is transferred, the transferred mortgage has the same priority immediately after the transfer as it had immediately before the transfer.

### **‘61SQ Powers of registered mortgagee**

- ‘(1) A registered mortgagee of a plantation licence or plantation sublicence may exercise any right, power or authority validly conferred on it under the mortgage if the plantation licensee or plantation sublicensee defaults under the mortgage.

*Example of powers that might be validly conferred under a mortgage—*

- power to enter into possession, assume control of or exercise power of sale of the plantation licence or plantation sublicence
- power to appoint an enforcing party to enter into possession, assume control of or exercise power of sale of the plantation licence or plantation sublicence

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- power to engage, or permit the enforcing party to engage, 1 or more persons to perform some or all of the plantation licensee's or plantation sublicensee's obligations under the plantation licence or plantation sublicense
- '(2) If the registered mortgagee or an enforcing party enters into possession or assumes control of the plantation licence or plantation sublicense, the registered mortgagee or enforcing party—
- (a) is subject to, and must perform, the obligations of the plantation licensee or plantation sublicensee under this Act, the plantation licence or plantation sublicense, or any related agreement; and
  - (b) may enforce the rights of the plantation licensee or plantation sublicensee under this Act, the plantation licence or plantation sublicense, or any related agreement.

### **'61SR Mortgagee exercising power of sale**

- '(1) A registered mortgagee exercising power of sale over a plantation licence or plantation sublicense must obtain the Minister's approval to any transfer of the plantation licence or plantation sublicense.
- '(2) A registered mortgagee transferring a plantation licence or plantation sublicense with the Minister's approval obtained under subsection (1) may also transfer a related agreement—
- (a) with the chief executive's approval; and
  - (b) if permitted under the plantation licence and the related agreement.
- '(3) A transfer of a related agreement in accordance with subsection (2) has effect to transfer obligations of the plantation licensee or plantation sublicensee under the agreement to the transferee despite any rule of law to the contrary.

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### **‘61SS Effect of transfer after sale under mortgage**

- ‘(1) Subsection (2) applies if a transfer of a plantation licence or plantation sublicence executed by a registered mortgagee after the exercise of the power of sale under a registered mortgage is registered.
- ‘(2) Registration of the transfer vests in the transferee the mortgagor’s interest that is transferred, free from liability under the mortgage and any other mortgage registered after it and any other mortgage not registered under this Act.

## **‘Division 8            Trusts**

### **‘61ST Details of trust must be given**

- ‘(1) A corporation may be registered in the register as trustee of an interest in a plantation licence or plantation sublicence.
- Examples—*
- a mortgagee of a plantation licence may be registered as holding that interest as trustee
  - a plantation licensee may be registered as holding that interest as trustee
- ‘(2) A certified copy of a document stating details of the trust, or a certified copy of the document creating the trust, must be lodged with the chief executive (lands) with the document creating the corporation’s interest as a trustee.
- ‘(3) If the details of the trust change, the trustee must lodge a certified copy of the document effecting the change with the chief executive (lands).
- ‘(4) A document given to the chief executive (lands) under subsection (2) or (3) does not form part of the register.

## **‘Division 9            Enforcement warrants**

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**‘61SU Definition for division**

‘In this division—

*enforcement warrant* means an enforcement warrant under—

- (a) the *Supreme Court Act of Queensland 1991*, section 93A; or
- (b) the *State Penalties Enforcement Act 1999*, section 63.

**‘61SV Registering an enforcement warrant**

‘(1) The chief executive (lands) may register a request to record an enforcement warrant only if an office copy of the warrant is lodged with the request.

‘(2) In this section—

*office copy* of an enforcement warrant under the *State Penalties Enforcement Act 1999* means a copy of the enforcement warrant issued by the registrar under that Act.

**‘61SW Effect of registering an enforcement warrant**

‘Until an enforcement warrant is registered—

- (a) it does not bind or affect a plantation licence or plantation sublicence, whether or not there is actual or constructive notice of the enforcement warrant; and
- (b) it binds or affects a plantation licence or plantation sublicence only if the enforcement warrant is executed and put in force within—
  - (i) 6 months after its lodgement; or
  - (ii) for an enforcement warrant under the *Supreme Court of Queensland Act 1991*, section 93A—the extended time allowed by the court that issued the enforcement warrant, if notified to the chief executive (lands).

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**‘61SX Cancellation of registration of an enforcement warrant**

‘Registration of an enforcement warrant may be cancelled if a request to cancel it is lodged and the chief executive (lands) is satisfied the time, or extended time, for executing and putting the warrant into force has ended.

**‘61SY Discharging or satisfying an enforcement warrant**

‘Discharge or satisfaction of an enforcement warrant may be registered if a request to register it is lodged and the chief executive (lands) is satisfied the warrant has been discharged or satisfied.

**‘61SZ Transfer of plantation licence or plantation sublicence sold in execution**

- ‘(1) If a plantation licence or plantation sublicence is sold under a registered enforcement warrant, the registrar of the relevant court may execute a transfer to the purchaser.
- ‘(2) On registration of the transfer, the transferee becomes the plantation licensee or plantation sublicensee for the plantation licence or plantation sublicence subject to—
  - (a) registered mortgages and other registered interests; and
  - (b) unregistered mortgages notified by caveat lodged before registration of the enforcement warrant.
- ‘(3) To remove any doubt, it is declared that a sale of a plantation licence or plantation sublicence under a registered enforcement warrant is subject to the requirements of this Act relating to consent to the transfer of a plantation licence or plantation sublicence.

**‘61T Effect on enforcement warrant of transfer after sale by mortgagee**

- ‘(1) Subsection (2) applies if—

- 
- (a) a mortgage is registered over a plantation licence or plantation sublicence; and
  - (b) an enforcement warrant is later registered in relation to the plantation licence or plantation sublicence.
- ‘(2) If the mortgagee of the plantation licence or plantation sublicence signs a transfer of the plantation licence or plantation sublicence after exercising the power of sale under the mortgage—
- (a) registration of the enforcement warrant does not prevent registration of the transfer; and
  - (b) on registration of the transfer, the chief executive (lands) must cancel registration of the enforcement warrant.
- ‘(3) To remove any doubt, it is declared that a transfer of a plantation licence or plantation sublicence by a mortgagee exercising its power of sale is subject to the requirements of this Act relating to consent to the transfer of a plantation licence or plantation sublicence.

## ‘Division 10 Powers of attorney

### ‘61TA Power of attorney

- ‘(1) A power of attorney that allows dealings with an interest in a plantation licence or plantation sublicence under this Act must be registered in the powers of attorney register under the *Land Title Act 1994*.
- ‘(2) A power of attorney registered under the *Land Title Act 1994*—
  - (a) is taken to be a power of attorney registered for this Act; and
  - (b) authorises the donee to deal with any interest in a plantation licence or plantation sublicence that may be dealt with by the donor under the power of attorney and this Act.

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## **‘Division 11            Caveats**

### **‘Subdivision 1        Caveats—general**

#### **‘61TB Requirements of caveats**

- ‘(1) A caveat in relation to a plantation licence must be signed by or for the caveator.
- ‘(2) The caveat must state—
  - (a) the name of the caveator; and
  - (b) an address where documents can be served on the caveator; and
  - (c) unless the chief executive (lands) dispenses with it, the name and address of—
    - (i) the plantation licensee or plantation sublicensee affected by the caveat; and
    - (ii) anyone else having the right to deal with the plantation licence or plantation sublicense affected by the caveat; and
  - (d) the plantation licence affected by the caveat; and
  - (e) the registrable interest claimed by the caveator; and
  - (f) the grounds on which the interest is claimed.
- ‘(3) This section applies to caveats under this division other than a caveat prepared and registered by the chief executive (lands) under section 61TL(1).

#### **‘61TC Lodging caveat**

- ‘(1) A caveat may be lodged by the following—
  - (a) a person claiming a registrable interest in a plantation licence or plantation sublicense;

- 
- (b) a person to whom an Australian court has ordered that an interest in a plantation licence or plantation sublicense be transferred;
  - (c) a person who has the benefit of a subsisting order of an Australian court in restraining a plantation licensee or plantation sublicensee from dealing with a plantation licence or plantation sublicense.
- ‘(2) However a caveat may only be lodged by a mortgagee under an unregistered mortgage if it is a caveat to which section 61TG applies.

*Note—*

The chief executive (lands) may prepare and register a caveat under section 61TL(1).

- ‘(3) An office copy of a court order mentioned in subsection (1)(b) or (c) must be deposited when a caveat is lodged under subsection (1).

### **‘61TD Notifying caveat**

‘The chief executive (lands) must give written notice of lodgement of a caveat under this division to each person whose registered interest or whose right to registration of a document is affected by the caveat.

### **‘61TE Effect of lodging caveat**

- ‘(1) A caveat lodged under this division prevents registration of a document affecting the plantation licence or plantation sublicense over which the caveat is lodged from the date and time endorsed by the chief executive (lands) on the caveat as the caveat’s date and time of lodgement.
- ‘(2) Subsection (1) has effect for a caveat until the caveat is cancelled, rejected, removed or withdrawn.
- ‘(3) However, lodgement of a caveat under this subdivision does not prevent registration of the following—

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- (a) a document stated in the caveat as a document to which the caveat does not apply;
  - (b) a document if the caveator consents to its registration;
  - (c) a document executed by a mortgagee whose interest was registered before lodgement of the caveat if the mortgagee has power under the mortgage to execute the document;
  - (d) a document of transfer of mortgage executed by a mortgagee whose interest was registered before lodgement of the caveat;
  - (e) another interest that, if registered, will not affect the interest claimed by the caveator.
- ‘(4) The exceptions mentioned in subsection (3)(c) and (d) do not apply to a caveat lodged by the chief executive (lands).
- ‘(5) Also, registration of a caveat under section 61TL(1) does not prevent registration of the following—
- (a) a document stated in the caveat as a document to which the caveat does not apply;
  - (b) a document if the chief executive (lands) consents to its registration.
- ‘(6) Lodgement of a caveat does not create in the caveator an interest in the plantation licence or plantation sublicense affected by the caveat.

#### **‘61TF Withdrawing caveat**

‘A caveator may withdraw a caveat lodged under this division by lodging a request to withdraw it.

#### **‘61TG Lapsing of caveat**

- ‘(1) This section does not apply to a caveat if—
- (a) it is lodged by the registered plantation licensee; or

- 
- (b) the consent of the registered plantation licensee is deposited when the caveat is lodged; or
  - (c) an office copy of a court order mentioned in section 61TC(1)(b) or (c) is deposited when the caveat is lodged; or
  - (d) it is prepared and registered by the chief executive (lands) under section 61TL(1).
- ‘(2) A caveatee of a caveat to which this section applies may serve on the caveator a notice requiring the caveator to start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat.
- ‘(3) The caveatee must notify the chief executive (lands) within 14 days of service of the notice on the caveator.
- ‘(4) If a caveator does not want a caveat to which this section applies to lapse, the caveator must—
- (a) start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat—
    - (i) if a notice under subsection (2) is served on the caveator—within 14 days after the notice is served on the caveator; or
    - (ii) if a notice under subsection (2) is not served on the caveator—within 3 months after the lodgement of the caveat; and
  - (b) notify the chief executive (lands) within the 14 days or the 3 months that a proceeding has been started and identify the proceeding.
- ‘(5) If the caveator does not comply with subsection (4), the caveat lapses.
- ‘(6) The caveator is taken to have complied with subsection (4)(a) if a proceeding has been started in a court of competent jurisdiction to establish the interest claimed under the caveat before the caveat was lodged.
- ‘(7) The chief executive (lands) may remove a caveat that has lapsed from the register.

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### **‘61TH Removing caveat**

- ‘(1) A caveatee may at any time apply to the Supreme Court for an order that a caveat lodged under this division be removed.
- ‘(2) The Supreme Court may make the order whether or not the caveator has been served with the application, and may make the order on the terms it considers appropriate.

### **‘61TI Cancelling caveat**

- ‘(1) This section does not apply to a caveat prepared and registered by the chief executive (lands) under section 61TL(1).
- ‘(2) The chief executive (lands) may cancel a caveat if a request to cancel the caveat is lodged and the chief executive (lands) is satisfied—
  - (a) the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or
  - (b) the claim of the caveator has been settled by agreement or otherwise satisfied; or
  - (c) the nature of the interest claimed does not entitle the caveator to prevent registration of a document that has been lodged.
- ‘(3) The chief executive (lands) must notify the caveator of his or her intention to cancel the caveat at least 7 days before cancelling it.
- ‘(4) If a document that has been lodged will, on registration, give full effect to an interest claimed in a caveat, the chief executive (lands) may remove the caveat immediately before registering the document.

### **‘61TJ Further caveat**

- ‘(1) This section applies if a caveat is lodged under this division (the *original caveat*) in relation to an interest.

- 
- ‘(2) A further caveat with the same caveator can never be lodged in relation to the interest on the same, or substantially the same, grounds as the grounds stated in the original caveat unless the leave of a court of competent jurisdiction to lodge the further caveat has been granted.
  - ‘(3) This section does not apply to a caveat prepared and registered by the chief executive (lands) under section 61TL(1).

### **‘61TK Notices to the caveator**

- ‘(1) A notice to a caveator under this subdivision is sufficiently served if left at or sent to the address mentioned in section 61TB(2)(b).
- ‘(2) If the chief executive (lands) is satisfied a notice under this subdivision will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in a way stated in a written direction by the chief executive (lands).
- ‘(3) If the chief executive (lands) is informed in writing, and is satisfied, the name or address of the caveator has changed, the chief executive (lands) must note on the caveat details of the new name or address.
- ‘(4) A new name or address noted under subsection (3) becomes the name or address for service of a notice on the caveator.

## **‘Subdivision 2 Caveats—chief executive (lands)**

### **‘61TL Chief executive (lands) may prepare and register caveat**

- ‘(1) The chief executive (lands) may prepare and register a caveat over a plantation licence in favour of a person.
- ‘(2) The chief executive (lands) may act under subsection (1) to prevent a dealing with a plantation licence that may prejudice—

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- (a) the Commonwealth, a State or a relevant local government; or
  - (b) a person because of—
    - (i) misdescription of the plantation licence; or
    - (ii) fraud or forgery; or
  - (c) a person, other than a person mentioned in any of paragraphs (a) or (b), who has an interest in the plantation licence.
- ‘(3) Also, the chief executive (lands) may act under subsection (1) to prevent a dealing with a plantation licence—
- (a) if the plantation licence is to be cancelled or terminated; or
  - (b) to give effect to an order of a court of competent jurisdiction directed to the chief executive (lands).
- ‘(4) Subsection (2)(c) applies only if the chief executive (lands) is satisfied, because of the nature or urgency of particular circumstances, there is no practicable alternative to registering the caveat.
- ‘(5) In this section—
- dealing***, with a plantation licence, does not include registering a document to cancel or terminate a plantation licence.
- relevant local government*** means the local government in whose local government area the licence area for the plantation licence or plantation sublicense is situated.

## ‘Division 12            Relationship with other laws

### ‘61TM Relationship with Property Law Act 1974

- ‘(1) For parts 6D and 6E, the following provisions of the *Property Law Act 1974* do not apply to a mortgage of a plantation licence or plantation sublicense—

- 
- section 18 (Restrictions on operation of conditions of forfeiture)
  - section 79 (Variation of mortgage)
  - section 80 (Inspection and production of instruments)
  - section 81 (Actions for possession by mortgagors)
  - section 82 (Tacking and further advances)
  - section 83 (Powers incident to estate or interest of mortgagee)
  - section 85(1A) (Duty of mortgagee or receiver as to sale price)
  - section 86 (Effect of conveyance on sale)
  - section 87 (Protection of purchasers)
  - section 89 (Provisions as to exercise of power of sale)
  - section 91 (Amount and application of insurance money)
  - section 99 (Sale of mortgaged property in action for redemption or foreclosure)
  - section 100 (Realisation of equitable charges by the court)
  - section 101 (Facilitation of redemption in case of absent or unknown mortgagees).
- ‘(2) The *Property Law Act 1974*, section 92(1A) applies to a mortgage under this Act as if a reference in that subsection to the Land Act or the Mineral Resources Act were a reference to this Act.

### **‘61TN Relationship with Personal Property Securities Act 2009 (Cwlth)**

- ‘(1) It is declared that the following are not personal property for the purposes of the *Personal Property Securities Act 2009* (Cwlth)—
- (a) a plantation licence;

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- (b) a plantation sublicense;
  - (c) a right conferred on a plantation licensee or plantation sublicensee under this Act, a plantation licence or plantation sublicense, including a right to natural resource product or quarry material in a licence area;
  - (d) any other right, licence or authority granted under this Act.
- ‘(2) Subsection (1) does not limit the application of the *Personal Property Securities Act 2009* (Cwlth), section 8(1)(f)(i) to a plantation licence or plantation sublicense.

## ‘Division 13            General

### ‘61TO Withdrawing lodged document before registration

- ‘(1) If the chief executive (lands) is satisfied the order in which a document has been lodged in relation to other documents will not give effect to the intention expressed in it or a related document, or is a document that should not have been lodged, the chief executive (lands) may—
- (a) withdraw the document; or
  - (b) permit the document to be withdrawn.
- ‘(2) A document withdrawn by the chief executive (lands) under subsection (1)(a) remains in the register, unless the document is a document that should not have been lodged.
- ‘(3) The chief executive (lands) may relodge a document that has been withdrawn by the chief executive (lands).
- ‘(4) On receiving a written application, the chief executive (lands) may permit the applicant to relodge a document that the chief executive (lands) has permitted to be withdrawn.
- ‘(5) A document withdrawn under subsection (1) loses its priority under section 61SA and is taken to have been lodged on the day and at the time endorsed on it by the chief executive (lands) on its relodgement.

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**‘61TP Chief executive may call in document for correction or cancellation**

‘The chief executive (lands), by written notice, may require a person to deposit a document for correction or cancellation.

**‘61TQ Requisitions**

- ‘(1) The chief executive (lands), by written notice (*requisition*) given to a person who has lodged or deposited a document, or to another person who reasonably appears to the chief executive (lands) to be relevantly associated with the document, may require a person to—
- (a) re-execute, complete or correct the document if it appears to the chief executive (lands) to be wrong, incomplete or defective; or
  - (b) produce to the chief executive (lands) stated information, or deposit a stated document, in support of the application to register a document.
- ‘(2) The chief executive (lands) may require the document or information to be verified by statutory declaration or affidavit.
- ‘(3) A requisition may state when, and the place where, it must be complied with.
- ‘(4) The chief executive (lands) may extend the time for complying with a requisition.
- ‘(5) The chief executive (lands) may refuse to deal with a document lodged or deposited (and any document depending on it for registration) until the requisition is complied with.

**‘61TR Rejecting document for failure to comply with requisition**

- ‘(1) If a requisition is not complied with by a person within the time stated or extended by the chief executive (lands), the chief executive (lands) may reject the document to which the requisition relates and any document depending on it for registration.

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- ‘(2) A rejected document loses its priority under section 61SA and must be returned by the chief executive (lands) to the person who lodged it.
- ‘(3) A memorandum recording the rejection of a document may be endorsed on the rejected document or in a separate record kept in the register.
- ‘(4) This section does not prevent relodgement of a rejected document after the requisition has been complied with.

### **‘61TS Entitlement to search the register**

- ‘(1) A person may, on payment of any fee prescribed under a regulation—
  - (a) search and obtain a copy of—
    - (i) the particulars recorded about a document registered in the register; or
    - (ii) a registered document; or
    - (iii) a document that has been lodged but is not registered (whether or not it has been cancelled); and
  - (b) obtain a copy of the particulars recorded about a registered document, or a registered document, certified by the chief executive (lands) to be an accurate copy.
- ‘(2) Subsection (1)(a)(iii) does not apply to a document destroyed by the chief executive (lands).
- ‘(3) A search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, an office of the registry during office hours on a day the registry is open for business.
- ‘(4) Also, a search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, the website of an entity engaged by the chief executive (lands) for the purpose of allowing persons to search the register or obtain copies of particulars, documents or other information kept in the register.

- 
- ‘(5) The chief executive (lands) may allow a person to carry out a search under subsection (1)(a) for—
- (a) only part of the particulars recorded about a document; or
  - (b) only part of a document lodged or deposited with the chief executive (lands); or
  - (c) only part of the information about a document lodged or deposited with the chief executive (lands).
- ‘(6) The chief executive (lands) may enter into an agreement with another department allowing the department to carry out a search, or obtain a copy, under this section without payment of the fee mentioned in subsection (1).
- ‘(7) However, the chief executive (lands) may enter into an agreement under subsection (6) only if the chief executive (lands) is reasonably satisfied the information obtained from the search or the copy will not be—
- (a) used for a commercial purpose, including, for example, the marketing or sale of the information or other information; or
  - (b) included in another database of information, in any form, other than with approval from the chief executive (lands).

### **‘61TT Evidentiary effect of certified copies of documents**

- ‘(1) A document purporting to be a certified copy of the particulars recorded in the register is evidence of the particulars recorded.
- ‘(2) A document purporting to be a certified copy of a registered document obtained under section 61TS(1)(b) is evidence of the registered document.

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### **‘61TU Service**

- ‘(1) A notice required or permitted to be served on a person under this part (*relevant notice*) may be served on the person’s agent.
- ‘(2) The Supreme Court may order that a relevant notice required or permitted be served on a person under this Act be served in the way directed by the Supreme Court.
- ‘(3) The Supreme Court may make an order under subsection (2) if, for example, the person—
  - (a) is not known; or
  - (b) can not be found and has no known agent; or
  - (c) is dead and has no personal representative.
- ‘(4) The Supreme Court may dispense with service of a relevant notice if it is satisfied that it is appropriate to dispense with service of the notice.

### **‘61TV Protection from liability**

- ‘(1) This section applies to the chief executive (lands) and a person performing functions of the chief executive (lands) under a delegation.
- ‘(2) A person to whom this section applies is not civilly liable for an act or omission done honestly and without negligence under this Act.
- ‘(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.
- ‘(4) In this section—  
*function* includes power.’.

## **46 Replacement of pt 7, hdg (Control and prohibition of fires on State forests, timber reserves and forest entitlement areas)**

Part 7, heading—

*omit, insert—*

**‘Part 7                      Fires on State forests, timber  
reserves and forest entitlement  
areas’.**

**47            Renumbering of s 61Q (Application of pt 7 to a State  
plantation forest)**

Section 61Q—

*renumber* as section 61TW.

**48            Amendment of s 62 (Control of fires on State forests etc.)**

(1) Section 62(1)—

*insert—*

*‘Note—*

*A plantation operator or plantation officer is not a person performing duties under this Act for this section. See section 18C. See also the *Fire and Rescue Service Act 1990*, sections 65 and 66 for provisions about the giving of permits to light fires on any land including in a licence area.’.*

(2) Section 62(2), after ‘chief executive’—

*insert—*

*‘, a plantation licensee or plantation sublicensee’.*

(3) Section 62(2), after ‘forest officer’—

*insert—*

*‘or plantation officer’.*

**49            Amendment of s 63 (Duty of lessee of State forest etc.)**

(1) Section 63—

*insert—*

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- ‘(1B) A forest officer or person performing duties under this Act who is notified of a fire under subsection (1) must immediately notify a plantation licensee or plantation sublicensee for a licence area of the fire if the fire is likely to spread to the licence area.

*Note—*

A plantation operator or plantation officer is not a person performing duties under this Act for this section. See section 18C.’.

- (2) Section 63(2), ‘a forest offence’—

*omit, insert—*

‘an offence’.

- (3) Section 63—

*insert—*

- ‘(5) This section does not apply to a plantation licensee or plantation sublicensee or any manager, supervisor or other person acting in the general management or control of the business of the plantation licensee or plantation sublicensee carried on in or on a licence area.’.

## **50 Insertion of new s 63A**

After section 63—

*insert—*

### **‘63A Duty of plantation licensee etc.**

- ‘(1) A plantation licensee must at the person’s own expense, make all reasonable provision for preventing, detecting, controlling and extinguishing bush, grass, or other rural fires on the licence area.

Maximum penalty—100 penalty units.

- ‘(2) A plantation licensee or plantation manager must, on becoming aware of a fire burning on the licence area that the plantation licensee or plantation manager reasonably believes to have been unlawfully lit or is out of control, immediately

do everything reasonably within its power to extinguish the fire.

Maximum penalty—100 penalty units.

- ‘(3) On becoming aware of a fire, a plantation licensee or plantation manager must immediately notify a forest officer of the fire—
- (a) if it is burning on State forest outside the licence area if the plantation licensee or plantation manager reasonably believes it to have been unlawfully lit or to be out of control; or
  - (b) if it is burning outside State forest and the plantation licensee or plantation manager reasonably believes it is likely to spread to the State forest; or
  - (c) if it is burning on the licence area, if the plantation licensee or plantation manager reasonably believes it is likely to spread beyond the licence area to the State forest outside the licence area.

Maximum penalty—100 penalty units.

- ‘(4) In this section—  
*plantation licensee* includes plantation sublicensee.

**51 Amendment of s 64 (Certain person to be incapable of holding permits etc.)**

Section 64—

*insert—*

- ‘(4) This section does not apply to—
- (a) a plantation licensee or plantation sublicensee; or
  - (b) a plantation licence or plantation sublicensee.’.

**52 Amendment of s 65 (Control of fires on lands adjoining State forest etc.)**

- (1) Section 65(1)—

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*insert—*

*Note—*

A plantation operator or plantation officer is not a person performing duties under this Act for the purpose of this section. See section 18C.’.

(2) Section 65(2) and (4), headings—

*omit.*

(3) Section 65(3) and (3A)—

*omit.*

(4) Section 65(2A) —

*renumber* as section 65(3).

(5) Section 65(4), ‘bush fire brigade’—

*omit, insert—*

‘rural fire brigade’.

### **53 Insertion of new ss 65A and 65B**

After section 65—

*insert—*

#### **‘65A Recovery of expenses incurred in extinguishing fires on State forests**

‘(1) Subsection (2) applies if—

(a) a person performing duties under this Act has, within the boundaries of a State forest, timber reserve or forest entitlement area (the *relevant area*) extinguished or caused to be extinguished a fire burning within the relevant area; and

(b) it is established that—

(i) the fire originated on land other than the relevant area; and

(ii) the owner or occupier of the land on which the fire originated, or his or her agent or employee, was responsible for the lighting of the fire; and

- (iii) the lighting of the fire was not authorised under the *Fire and Rescue Service Act 1990*, part 7.

*Note—*

A plantation operator or plantation officer is not a person performing duties under this Act for the purpose of this section. See section 18C.

- ‘(2) The State may recover from the owner or occupier of the land on which the fire originated, in any court of competent jurisdiction, all reasonable expenses incurred by a person performing duties under this Act in controlling and extinguishing the fire, including, for example—
- (a) salaries and wages of officers and employees; and
  - (b) compensation for the use of plant, vehicles and equipment.
- ‘(3) Subsection (2) does not limit the rights of the State, a plantation licensee or plantation sublicensee under any other provision of this Act or at law.

**‘65B Recovery of expenses incurred in extinguishing fires on State forests within licence areas**

- ‘(1) Subsection (2) applies if—
- (a) a plantation licensee has, within a licence area, extinguished or caused to be extinguished a fire burning within the licence area; and
  - (b) it is established that—
    - (i) the fire originated on land, other than a State forest, timber reserve or forest entitlement area, outside the licence area; and
    - (ii) the owner or occupier of the land on which the fire originated, or his or her agent or employee, was responsible for the lighting of the fire; and
    - (iii) the lighting of the fire was not authorised under the *Fire and Rescue Service Act 1990*, part 7.
- ‘(2) The plantation licensee may recover from the owner or occupier of the land on which the fire originated, in any court

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of competent jurisdiction, all reasonable expenses incurred by the plantation licensee in controlling and extinguishing the fire, including, for example—

- (a) salaries and wages of officers and employees; and
- (b) compensation for the use of plant, vehicles and equipment.

‘(3) Subsection (2) does not limit the rights of the State or plantation licensee under any other provision of this Act or at law.

‘(4) In this section—

*owner or occupier* does not include the State.

*plantation licensee* includes plantation sublicensee.’.

**54 Amendment of s 69 (Forfeiture of leases and the like and cancellation of agreements)**

Section 69—

*insert—*

‘(6) In this section—

*authority* does not include plantation licence or plantation sublicensee.’.

**55 Replacement of s 69E (Application of pt 8 to a State plantation forest)**

Section 69E—

*omit, insert—*

**‘69E Chief executive must consult with plantation licensee or plantation sublicensee if considering exercising power in relation to a licence area**

‘(1) This section applies if the chief executive is considering granting or making a permit, licence, lease or other authority, or an agreement or contract, under this Act that is over a licence area (the *relevant authorisation*).

- 
- ‘(2) This section does not apply if a person exercising delegated power under section 96B is considering the granting or making of the relevant authorisation.
- ‘(3) Before granting or making the relevant authorisation, the chief executive must—
- (a) consult with the plantation licensee and any plantation sublicensee for the licence area; and
  - (b) consider any written representations made by the plantation licensee and any plantation sublicensee about the impact of the relevant authorisation on its operations under the plantation licence or plantation sublicensee.
- ‘(4) If activities under a relevant authorisation may result in damage being caused to the licence area, the chief executive must also take into account the ability of the applicant for the relevant authorisation to repair or pay for the damage.
- ‘(5) A person to whom a relevant authorisation is granted or made who causes damage to the licence area is liable in damages to the plantation licensee or plantation sublicensee for the damage to the licence area.
- ‘(6) The plantation licensee or plantation sublicensee may bring an action against a person mentioned in subsection (5) who causes damage to the licence area.’.

**56 Amendment of s 72 (Wild stock)**

Section 72, after ‘forest officer’—

*insert—*

‘or plantation officer’.

**57 Amendment of s 73 (Unlawfully using State forests etc.)**

Section 73—

*insert—*

- ‘(3) If a plantation licensee, plantation sublicensee, plantation manager or plantation officer (the *decision maker*) exercising

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power delegated to the decision maker under section 96B makes a decision under this section, the decision maker must advise the applicant for the permit that the applicant may apply for a review of the decision under section 83A within 28 days if the applicant is dissatisfied with the decision.’.

**57A Amendment of s 74 (Unauthorised building etc. within State forest etc.)**

Sections 74(1) and (3), after ‘forest officer’—

*insert—*

‘or plantation officer’.

**58 Amendment of s 75 (Removal of trespassers)**

Section 75—

*insert—*

‘(2) In subsection (1)—

*forest officer* includes, in relation to a licence area, a plantation officer for the licence area.’.

**59 Amendment of s 76 (Entry on to reserves may be prohibited)**

(1) Section 76(1A)—

*omit, insert—*

‘(1A) However, the Minister can not, by notification under subsection (1), exclude the plantation licensee or plantation sublicensee for a licence area from, or limit the plantation licensee’s or plantation sublicensee’s access to, the licence area.’.

(2) Section 76—

*insert—*

‘(5) In subsection (1A)—

*plantation licensee* includes the plantation licensee's employees, agents, contractors, customers and invitees.

*plantation sublicensee* includes the plantation sublicensee's employees, agents, contractors, customers and invitees.'.

#### **59A Amendment of s 79 (Subpurchase)**

Section 79—

*insert—*

- '(2) This section does not apply to a purchaser of natural resource product from a plantation licensee or plantation sublicensee.'.

#### **60 Amendment of s 80 (Accounts of forest products)**

Section 80—

*insert—*

- '(3) This section does not apply to a plantation licensee or plantation sublicensee or a purchaser of natural resource product from a plantation licensee or plantation sublicensee.'.

#### **61 Insertion of new s 83A**

After section 83—

*insert—*

#### **'83A Particular decisions subject to review**

- '(1) A person who is dissatisfied with a reviewable decision made by a delegate of the chief executive exercising a delegated function of the chief executive under section 96B (the *original decision maker*) may ask the chief executive to review the decision within 28 days after the person is notified of the decision.
- '(2) The person reviewing the decision (the *reviewer*) must be more senior than the person who made the decision.
- '(3) The reviewer—

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- (a) may—
    - (i) confirm the original decision; or
    - (ii) make another decision and, for that purpose, has the same powers as the original decision maker; and
  - (b) must give the applicant a statement of reasons for his or her decision.
- ‘(4) In this section—  
*reviewable decision* means—
- (a) a decision in relation to a permit under section 35;
  - (b) a decision in relation to a licence under section 55;
  - (c) a decision in relation to a permit, licence, lease, or other authority, or an agreement or contract, under section 56;
  - (d) a decision in relation to a permit under section 73(2).

**62 Amendment of s 84 (Matters may be completed by different officers)**

Section 84—

*insert—*

- ‘(5) In subsections (1) and (3)—  
*officer* includes plantation officer.’.

**63 Amendment of s 88 (Offences generally)**

- (1) Section 88(2A), after ‘the Crown’—

*insert—*

‘or a plantation licensee or plantation sublicensee’.

- (2) Section 88(2C), after ‘the State’—

*insert—*

‘or, to the extent the loss or damage related to a licence area or natural resource product and quarry material in which the

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plantation licensee or a plantation sublicensee has an interest, the plantation licensee or plantation sublicensee’.

(3) Section 88(3), from ‘by any forest officer’—

*omit, insert—*

‘by—

(a) if the offence happened in, or related to, a licence area—a plantation officer; or

(b) generally—any forest officer or any other person authorised for the purpose either generally, or in the particular case, by the chief executive.’.

#### **64 Insertion of new s 88A**

After section 88—

*insert—*

#### **‘88A Recovery of moneys by plantation licensee or plantation sublicensee**

‘(1) This section applies if a fee or amount—

(a) may be retained or recovered by a plantation licensee or plantation sublicensee under this Act, including under section 96B(6); and

(b) is unpaid.

‘(2) The plantation licensee or plantation sublicensee may recover the fee or amount in any court of competent jurisdiction by action as for a debt

‘(3) The plantation licensee or plantation sublicensee may bring the action in its own name.’.

#### **64A Amendment of s 89 (Recovery of moneys due)**

(1) Section 89(1), after ‘loss or damage’—

*insert—*

‘(including under section 88(2C))’.

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(2) Section 89—

*insert—*

‘(1A) All moneys owing to a plantation licensee or plantation sublicensee in relation to any loss or damage (including under section 88(2C)) to natural resource product or quarry material the property of the plantation licensee or plantation sublicensee may be recovered by the plantation licensee or plantation sublicensee in any court of competent jurisdiction by action as for a debt.’.

(3) Section 89(2), ‘any such moneys’—

*omit, insert—*

‘moneys due or owing under subsection (1) or (1A)’.

(4) Section 89(2), after ‘under this Act’—

*insert—*

‘in relation to the conduct constituting the contravention’.

## **65 Amendment of s 91 (Power to waive proceedings)**

Section 91, before subsection (1)—

*insert—*

‘(1AA) This section does not apply to natural resource product in a licence area that is got, ringbarked, destroyed, damaged, used, marked or in any way interfered with by the plantation licensee or any plantation sublicensee for the licence area or any employee, agent, contractor, customer or invitee of the plantation licensee or plantation sublicensee.’.

## **66 Amendment of s 95 (Facilitation of proof)**

(1) Section 95(e) and (f), ‘or, in relation to a State plantation forest, by FPQ or the head of FPQO, ‘—

*omit.*

- (2) Section 95(k) and (l), ‘, FPQ or the head of FPQO’—  
*omit.*

**67 Insertion of new s 96AA**

After section 96—

*insert—*

**‘96AA Delegation by Minister**

‘The Minister may delegate the Minister’s functions and powers under parts 6D and 6E to the chief executive.’.

**68 Amendment of s 96A (Delegation by chief executive)**

Section 96A, heading, after ‘executive’—

*insert—*

‘—general’.

**69 Insertion of new ss 96B–96E**

After section 96A—

*insert—*

**‘96B Delegation by chief executive—State plantation forests**

‘(1) Without limiting section 96A, the chief executive may delegate the chief executive’s functions under sections 21(2), 34AA, 34AB, 34G, 35(1)(a), (c) or (d) and (2), 55 (other than section 55(1)(g) or (h)), 56 (other than the function of granting sales permits for the sale of natural resource product from a licence area), 58, 59, 72, 73(2) and section 84(3) (to the extent it applies to plantation officers) to—

- (a) a plantation licensee; or
- (b) a plantation sublicensee; or
- (c) a plantation manager; or
- (d) a plantation officer; or

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- (e) a registered mortgagee or an enforcing party exercising power under section 61SQ.

*Note—*

A plantation licensee or plantation sublicensee may not exercise power under section 56 to grant sales permits for the sale of natural resource product from its licence area but it can contract with other persons to sell natural resource product on its licence area under section 61QD.

- ‘(2) The chief executive may also delegate the chief executive’s functions under section 17 to appoint plantation officers to—
- (a) a plantation licensee; or
  - (b) a plantation sublicensee; or
  - (c) a plantation manager; or
  - (d) a registered mortgagee or an enforcing party exercising power under section 61SQ.
- ‘(3) Further, the chief executive may delegate a function under section 83A(1) about reviewable decisions under section 35 or 55 to a person having management responsibility for a plantation licensee or plantation sublicensee.
- ‘(4) A function delegated under subsection (1)—
- (a) is limited in its application to the relevant licence area; and
  - (b) if the delegated function authorises the erection or display of regulatory notices under section 34AA or 34AB or a notice under section 34G, may be exercised only for the following purposes—
    - (i) the protection of the health and safety of persons;  
*Example—*
      - prohibiting or limiting access to an area when tree felling is happening
    - (ii) the protection of a plantation licensee’s or plantation sublicensee’s interests;

*Example—*

- prohibiting or limiting access to an area of young trees at risk of damage because of careless behaviour or general use of the area

(iii) the proper maintenance of roads and tracks.

*Example—*

- prohibiting or limiting use of an unformed road to protect it from traffic damage after heavy rain

‘(5) Subsection (6) applies if, in relation to a function of the chief executive delegated under this section to a plantation licensee or plantation sublicensee (each a *delegate*) or an appointed person and performed by a delegate or an appointed person, the State is entitled to receive a fee prescribed under a regulation or another amount under this Act in connection with the performance of the function (each a *relevant amount*).

‘(6) A relevant amount—

- (a) may be recovered by the delegate who performed the function or appointed the appointed person who performed the function; and
- (b) if received or recovered by the delegate who performed the function or appointed the appointed person who performed the function, may be retained by the delegate; and
- (c) does not form part of the consolidated fund.

‘(7) Subsection (6) does not apply to the performance of a function, or a fee received, under section 72.

‘(8) In this section—

*appointed person* means a plantation officer or plantation manager.

*function* includes power.

*relevant licence area* means—

- (a) for a plantation licensee—the licence area for the plantation licensee’s plantation licence; or

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- (b) for a plantation sublicensee—the licence area for the plantation sublicensee’s plantation sublicense; or
- (c) for a plantation manager—the licence area or part of the licence area for which the plantation manager is appointed; or
- (d) for a plantation officer—the licence area for which the plantation officer is appointed.

### **‘96C Delegation by chief executive (lands)**

‘(1) The chief executive (lands) may delegate his or her functions under this Act to an appropriately qualified public service officer.

‘(2) In subsection (1)—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person’s classification level in the public service

*function* includes power.

### **‘96D Delegation by FPQ and head of FPQO**

‘(1) Without limiting any other power of delegation under another Act, FPQ and the head of FPQO may delegate its or his or her functions under this or another Act to—

- (a) a declared entity within the meaning of the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*; or
- (b) an appropriately qualified person who is an employee of an entity mentioned in paragraph (a).

‘(2) In this section—

*appropriately qualified*, for the performance of a function, includes having the qualifications, experience or standing

appropriate to perform the function.

*function* includes power.

**‘96E Protection from liability**

- ‘(1) This section applies to a person appointed as a plantation officer by a plantation operator under a delegated function as mentioned in section 96B(2).
- ‘(2) The person does not incur civil liability for an act done, or an omission made, honestly and without negligence under this Act.
- ‘(3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to the plantation operator.’.

**70 Amendment of s 97 (Regulation-making power)**

Section 97(4)—

*omit.*

**71 Replacement of pt 10 heading**

Part 10, heading—

*omit, insert—*

**‘Part 10 Other transitional provisions**

**‘Division 1 Forestry Plantations Queensland Act 2006’.**

**72 Insertion of new pt 10, div 2**

Part 10—

*insert—*

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## **‘Division 2                      Natural Resources and Other Legislation Amendment Act 2010**

### **‘118    Definitions for div 2**

‘In this division—

*2010 Amendment Act* means the *Natural Resources and Other Legislation Amendment Act 2010*.

*administering entity* has the meaning given by repealed section 61L.

*administering party*, in relation to an FPQ sales permit, means—

- (a) if there is a plantation sublicensee for the licence area in relation to which the FPQ sales permit is operative—the plantation sublicensee; or
- (b) otherwise—the plantation licensee for the licence area in relation to which the FPQ sales permit is operative.

*commencement* means—

- (a) for section 121—the day on which the section commences; or
- (b) otherwise—the day on which section 119 commences.

*FPQ sales permit* means a permit, licence, lease or another authority, or an agreement or contract, under section 56 granted or made by an administering entity, including by acting under repealed section 61M, under which its holder is entitled to take natural resource product in the form of plantation timber from a future licence area.

*future licence area* means an area that, immediately before the commencement, is in a State plantation forest, and that, after the commencement, becomes a licence area.

*Infrastructure Act* means the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

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*old*, in relation to a provision of this Act, means the provision as in force immediately before its amendment by the 2010 Amendment Act.

**‘119 Provision for s 17 (Appointment of officers)**

‘(1) This section applies to a person who, before the commencement, is an employee of FPQO and appointed by FPQO as a forest officer if—

- (a) the person is transferred or seconded to a declared entity under the Infrastructure Act, section 9(1)(k); and
- (b) the declared entity—
  - (i) enters into an agreement with the Minister under section 61QA(1); or

*Note—*

An agreement under section 61QA(1) is a plantation licence.

- (ii) becomes a plantation sublicensee; or
  - (iii) is appointed, with the Minister’s approval, under section 61QG or 61QQ as a plantation manager for a licence area or part of a licence area.

‘(2) The person’s appointment as a forest officer ends and the person is taken to have been appointed as a plantation officer for the licence area or part by the chief executive under section 17—

- (a) if subsection (1)(b)(i) applies—on the entry into the agreement mentioned in the provision; or
- (b) if subsection (1)(b)(ii) applies—on the day on which the declared entity becomes a plantation sublicensee; or
- (c) if subsection (1)(b)(iii) applies—on the appointment of the declared entity as a plantation manager for a licence area or part of a licence area.

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**‘120 Provision for s 34AA or 34AB**

‘A notice mentioned in section 34AA(1) or (2) or 34AB(1) erected or displayed by an administering entity, including by acting under repealed section 61M, and having effect immediately before the commencement is taken, immediately after the commencement, to have been authorised by the chief executive under section 34AA(1) or (2) or 34AB(1) as appropriate and continues to have effect accordingly.

**‘121 Provision for s 34A (Specialised management within State forests)**

- ‘(1) This section applies if—
- (a) immediately before the commencement, the whole or a part of a State forest was declared to be a feature protection area or scientific area under old section 34A (*declared land*); and
  - (b) immediately after the commencement, the declared land is also State plantation forest.
- ‘(2) Despite the amendment of old section 34A by the 2010 Amendment Act, declared land continues after the commencement to be a feature protection area or scientific area.
- ‘(3) After the commencement, the Governor in Council may, by regulation and despite the amendment of old section 34A, continue to exercise power under old section 34A to revoke or amend a declaration in relation to declared land.

**‘122 Provision for s 34G (Regulating movement of vehicles on feature protection areas etc.)**

‘A notice mentioned in section 34G(1) erected by the chief executive or an administering entity, including by acting under repealed section 61M, and having effect immediately before the commencement is taken, after the commencement, to have been erected by the chief executive under section 34G(1) and continues to have effect accordingly.

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**‘123 Provision for s 34H (Self-registration camping areas)**

- ‘(1) A notice mentioned in section 34H(1) erected by the chief executive or an administering entity, including by acting under repealed section 61M, and having effect immediately before the commencement is taken, after the commencement, to have been erected by the chief executive under section 34H(1) and continues to have effect.
- ‘(2) Subsection (1) does not prevent the chief executive from exercising power to remove the notice after the commencement.
- ‘(3) A form approved for use in relation to self-registration camping areas by an administering entity or the chief executive immediately before the commencement may continue to be used after the commencement until another form is approved for use by the chief executive.

**‘124 Provision for s 35 (Granting of permit for land within State forest)**

- ‘(1) This section applies to a permit or the extension of a permit under section 35 granted or made by an administering entity, including by acting under repealed section 61M, that is in force or of effect immediately before the commencement.
- ‘(2) After the commencement, the permit—
  - (a) continues in force or effect; and
  - (b) is taken to have been granted or made by the chief executive.

**‘125 Provision for s 55 (Licences to get forest products etc.)**

- ‘(1) This section applies to a licence under section 55 granted by an administering entity, including by acting under repealed section 61M, that is in force immediately before the commencement.
- ‘(2) After the commencement, the licence—

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- (a) continues in force; and
- (b) is taken to have been granted by the chief executive.

**‘126 Provision for s 56 (Permits etc.)—general**

- ‘(1) This section applies to an existing authority, other than an FPQ sales permit, granted or made by an administering entity, including by acting under repealed section 61M, and in force immediately before the commencement.
- ‘(2) After the commencement, the existing authority—
  - (a) continues in force; and
  - (b) is taken to have been granted or made by the chief executive.
- ‘(3) In this section—  
*existing authority* means a permit, licence, lease or another authority, or an agreement or contract, under section 56.

**‘127 Provision for s 56 (Permits etc.)—administering party for FPQ sales permits**

- ‘After the commencement, an FPQ sales permit—
- (a) continues in force; and
  - (b) is taken to have been granted or made by the administering party.

**‘128 Provision for s 56 (Permits etc.)—application of relevant provisions for FPQ sales permits**

- ‘(1) In relation to an FPQ sales permit, a function conferred on the chief executive under a relevant provision must be performed by the administering party.
- ‘(2) Power to cancel or suspend an FPQ sales permit under section 58(1) or (1B) may be exercised by the administering party only in relation to an act, omission or event that, under the express terms and conditions of the FPQ sales permit or any

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contract (*related contract*) between the administering party and the permittee in relation to the same subject matter, enables the administering party to terminate the FPQ sales permit.

- ‘(3) Subsection (2) does not apply to an FPQ sales permit if neither the FPQ sales permit nor any related contract contains any express term or condition dealing with its termination.
- ‘(4) A person dissatisfied with a decision of the administering party to cancel or suspend an FPQ sales permit if subsection (2) does not apply may ask the chief executive to review the decision within 28 days after receiving written notice of the decision.
- ‘(5) The chief executive—
- (a) may—
    - (i) reinstate the FPQ sales permit; or
    - (ii) confirm the administering party’s decision; or
    - (iii) make another decision that the chief executive considers appropriate; and
  - (b) must give the person and the administering party a statement of reasons for his or her decision.
- ‘(6) For this section—
- (a) in a relevant provision—
    - (i) a reference to the chief executive, the State or the Crown is taken to be a reference to the administering party; and
    - (ii) a reference to a forest officer is taken to be a reference to a plantation officer employed by the administering party; and
  - (b) in section 88(2C), to the extent it applies to an offence relating to a contravention of an FPQ sales permit, a reference to the State is taken to be a reference to the administering party; and

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- (c) in section 89, to the extent it applies to moneys due in relation to natural resource product under an FPQ sales permit, royalty or stumpage on natural resource product got under an FPQ sales permit or loss or damage to natural resource product (including loss or damage occasioned by an employee, contractor, agent or invitee of the holder), or any other matter or thing relating to an FPQ sales permit, a reference to the Crown or the State is taken to be a reference to the administering party.

‘(7) In this section—

*function* includes power.

*relevant provision* means each of the following—

- (a) section 5, to the extent it is relevant to another relevant provision;
- (b) section 56(1), to the extent it relates to an extension of an FPQ sales permit;
- (c) part 4;
- (d) sections 58, 59, 61(1A) and 80;
- (e) sections 88(3), 89, 91 and 92.

### ‘129 Provision for s 73 (Unlawfully using State forests etc.)

‘(1) This section applies to a permit under section 73(2) granted by an administering entity, including by acting under repealed section 61M, that is in force immediately before the commencement.

‘(2) After the commencement, the permit—

- (a) continues in force; and
- (b) is taken to have been granted by the chief executive.

### ‘130 References to FPQ

‘In an Act or document, a reference to any of the following in relation to a State plantation forest or part of a State plantation

forest may, if the context permits, be taken as a reference to the plantation licensee or a plantation sublicensee for the relevant licence area in the State plantation forest or part—

- (a) FPQ;
- (b) the chief executive of FPQ;
- (c) the head of FPQO.

**‘131 Dissolution of corporation sole under the Forestry Plantations Queensland Act 2006**

The corporation sole constituted by the chief plantation forestry officer under the *Forestry Plantations Queensland Act 2006* is dissolved.

**‘132 Amendment of regulations by the 2010 Amendment Act does not affect powers of Governor in Council**

‘The amendment of the *Forestry Regulation 1998* and the *Forestry (State Forests) Regulation 1987* by the 2010 Amendment Act does not affect the power of the Governor in Council to further amend the regulations or to repeal them.’.

**73 Omission of sch 1 (Administering entity for State plantation forests)**

Schedule 1—  
*omit.*

**74 Amendment of sch 3 (Dictionary)**

- (1) Schedule 3, definitions *administering entity*, *relevant natural resource product* and *relevant provisions*—  
*omit.*
- (2) Schedule 3, definitions *forest officer* and *State plantation forest*—  
*omit.*

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(3) Schedule 3—

*insert—*

*‘accepted representations*, for part 6D, division 6, see section 61QZ(2).

*application for division* see section 61RC.

*approved form* means a form approved by the chief executive (lands) under section 61RU.

*chief executive (fire)* means the chief executive of the department in which the *Fire and Rescue Service Act 1990* is administered.

*compensation event*, for part 6D, see section 61Q.

*enforcement warrant*, for part 6E, division 9, see section 61SU.

*enforcing party* means a person appointed by a mortgagee under a registered mortgage.

*fire commissioner* means the commissioner of the Queensland Fire and Rescue Service.

*forest officer* means a person appointed as a forest officer under section 17.

*licence* means a licence under this Act, but does not include a plantation licence.

*licence area* means the area of State plantation forest specified in a plantation licence or plantation sublicense as the licence area for the plantation licence or plantation sublicense.

*mortgage*, in relation to a plantation licence or plantation sublicense, means a mortgage, charge or other security interest granted by—

- (a) a plantation licensee over its rights under a plantation licence; or
- (b) a plantation sublicensee over its rights under a plantation sublicense.

*mortgagee* means the person entitled to the benefit of a mortgage.

*original plantation licence*, for part 6D, division 7, see section 61RC(1)(a).

*plantation forestry*, for part 6D, see section 61Q.

*plantation licence* see section 61QA(1).

*plantation licence sketch plan*, for part 6E, see section 61RL.

*plantation licensee* see section 61QA(1).

*plantation manager* means a person appointed as a plantation manager under section 61QG or 61QQ.

*plantation officer* means a person appointed as a plantation officer under section 17.

*plantation operator* means any of the following persons—

- (a) a plantation licensee;
- (b) a plantation sublicensee;
- (c) a plantation manager;
- (d) a registered mortgagee or an enforcing party exercising power under section 61SQ.

*plantation sublicense* see section 61QO(2).

*plantation sublicensee* see section 61QO(1).

*reasonably believes* means believes on grounds that are reasonable in the circumstances.

*reasonably suspects* means suspects on grounds that are reasonable in the circumstances.

*register* means the register of plantation licences.

*registered* means registered in the register.

*register of plantation licences* means the register kept by the chief executive (lands) under section 61RM.

*registry* means the land registry under the *Land Act 1994*, section 275.



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**77 Amendment of s 7 (Fire control in recreation areas)**

Section 7(2)(b), after ‘forest officer’—

*insert—*

‘or plantation officer’.

**78 Amendment of s 23 (Operation of vehicles in State forests)**

Section 23(1), after ‘forest officer’—

*insert—*

‘or plantation officer’.

**79 Amendment of s 24 (Operation of vessels in State forests)**

Section 24(2), after ‘forest officer’—

*insert—*

‘or plantation officer’.

**80 Insertion of new s 32A**

After section 32—

*insert—*

**‘32A State plantation forests**

‘Each stated area of State forest in a lot or a plan specified in schedule 4A is declared to be a State plantation forest.’.

**81 Omission of s 33 (Forest drives)**

Section 33—

*omit.*

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**82 Amendment of s 34 (Plan references)**

Section 34(a), ‘FTY or FSM’—

*omit, insert—*

‘FTY, FSM or PLP’.

**83 Replacement of sch 4 (State forest parks)**

Schedule 4—

*omit, insert—*

**‘Schedule 4 State forests parks**

section 32

SFP 1 on plan FSM5

SFP 2 on plan FSM29

SFP 3 on plan FSM31

SFP 4 on plan FSM161

SFP 5 on plan FSM33

SFP 6 on plan FSM34

SFP 10 on plan FSM38

SFP 13 on plan FSM49

SFP 16 on plan FSM56

SFP 19 on plan FSM62

SFP 22 on plan FSM77

SFP 23 on plan FSM160’.

**84 Insertion of new sch 4A**

After schedule 4—

*insert—*

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## **‘Schedule 4A State plantation forests**

### section 32A

- Lot A on PLP0012
- Lot A on PLP0034
- Lots A, B and C on PLP0082
- Lot A on PLP0117
- Lots A, B, C, D, E and F on PLP0124
- Lots A, B, C, D, E, F, G, H, I, J, K, L and M on PLP0135
- Lot A on PLP0138
- Lots A, B, C, D, E, F, G, H, I, J, K, L and M on PLP0185
- Lots A, B, C, D, E, F, G, H, I and J on PLP0207
- Lots A, B and C on PLP0220
- Lots A and B on PLP0242
- Lots A and B on PLP0256
- Lots A, B, C, D, E, F, G and H on PLP0257
- Lots A, B, C and D on PLP0258
- Lots A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P and Q on PLP0263
- Lots A, B, C, D and E on PLP0283
- Lots A, B, C and D on PLP0287
- Lots A, B, C, D, E, F, G and H on PLP0289
- Lots A, B, C, D and E on PLP0298
- Lot A on PLP0313
- Lots A, B, C, D and E on PLP0316
- Lot A on PLP0329
- Lots A, B and C on PLP0379

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Lot A on PLP0391

Lots A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W and X on PLP0435

Lots A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U and V on PLP0461

Lots A, B, C, D and E on PLP0546

Lots A, B, C, D, E, F, G, H, I, J, K, L, M, N, O and P on PLP0561

Lot A on PLP0575

Lots A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X and Y on PLP0589

Lots A, B, C, D, E, F, G, H, I, J, K and L on PLP0591

Lots A, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y and Z on PLP0611

Lot A on PLP0618

Lot A on PLP0637

Lot A on PLP0639

Lots A, B, C and D on PLP0652

Lot A on PLP0658

Lots A, B and C on PLP0673

Lots A, B and C on PLP0695

Lots A, B and C on PLP0700

Lots A, B and C on PLP0766

Lots A, B and C on PLP0792

Lots A, B, C, D, E, F, G, H, I, J, K, L and M on PLP0809

Lots A, B, C, D, E, F and G on PLP0840

Lots A, B and C on PLP0861

Lots A, B, C, D, E, F, G, H, I, J, K and L on PLP0865

Lots A, B, C, D, E, F, G, H, I, and J on PLP0893

Lot A on PLP0898  
Lots A, B, C, D, E and F on PLP0915  
Lot A on PLP0918  
Lots A, B, C, D, E, F, G, H and I on PLP0952  
Lots A, B, C and D on PLP0957  
Lots A, B, C, D and E on PLP0958  
Lots A and B on PLP0986  
Lots A, B, C and D on PLP0997  
Lots A, B, C, D, E, F, G, H and I on PLP1004  
Lots A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P and Q on  
PLP1229  
Lots A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q and R on  
PLP1294  
Lots A, B, C, D, E, F, G and H on PLP1419  
Lots A, B, C, D, E, F, G and H on PLP0169  
Lot A on PLP0179  
Lots A, B, C and D on PLP0191  
Lots A and B on PLP0193  
Lots A, B and C on PLP0200  
Lots A and B on PLP0274  
Lot A on PLP0310  
Lot A on PLP0321  
Lots A and B on PLP0355  
Lots A and B on PLP0359  
Lots A and B on PLP0466  
Lot A on PLP0531  
Lot A on PLP0593  
Lot A on PLP0612



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**88 Omission of s 9 (Limitation on FPQ's powers in relation to State plantation forests)**

Section 9—

*omit.*

**89 Amendment of s 12 (Functions of FPQ)**

(1) Section 12(1)(a), (b), (c), (d), (e) and (g)—

*omit.*

(2) Section 12(1)(j), '(a) to (i)'—

*omit, insert—*

'(f), (h) and (i)'.

(3) Section 12(2)(a)—

*omit.*

(4) Section 12(3)—

*omit.*

**90 Omission of ss 35 and 36**

Sections 35 and 36—

*omit.*

**91 Omission of s 39 (Application of mineral resources legislation)**

Section 39—

*omit.*

**92 Insertion of new pt 5, div 1 hdg**

Part 5, before section 58—

*insert—*

[s 93]

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**‘Division 1                    Transitional provisions for Act No.  
16 of 2006’.**

**93        Omission of s 61 (Relevant proceedings)**

Section 61—

*omit.*

**94        Insertion of new pt 5, div 2**

After section 63—

*insert—*

**‘Division 2                    Transitional provisions for Natural  
Resources and Other Legislation  
Amendment Act 2010**

**‘64        Particular improvements on State plantation forest  
taken to personal property of FPQ**

‘(1) This section applies to a building, structure or other improvement (the *improvement*) on a State plantation forest that—

(a) was—

(i) transferred to FPQ under section 60(1)(a); or

(ii) constructed, built, erected or placed on the State plantation forest by FPQ; and

(b) is situated on land which forms part of the State plantation forest after the day the *Natural Resources and Other Legislation Amendment Act 2010* receives assent.

‘(2) The improvement is taken to be the personal property of FPQ from the later of 1 May 2006 and the date on which the improvement was constructed, built, erected or placed on the State plantation forest by FPQ.

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‘(3) Subsection (2) has effect according to its terms despite any rule of law to the contrary.’.

**95 Amendment of sch 2 (Dictionary)**

Schedule 2, definitions *community service obligation*, *natural resource product*, *State forest* and *State plantation forest*—  
*omit*.

**Part 10 Amendment of Forestry (State Forests) Regulation 1987**

**96 Regulation amended**

This part amends the *Forestry (State Forests) Regulation 1987*.

**97 Amendment of schedule (State forests)**

Schedule, entry for SF466 on plan FTY576—  
*omit, insert*—

‘SF466 on plan FTY576 together with lot 1 on AP4678’.

**Part 11 Amendments of Land Act 1994 commencing on assent**

**98 Act amended**

This part amends the *Land Act 1994*.

[s 99]

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**99 Amendment of s 15 (Leasing land)**

Section 15(6)—

*omit.*

**100 Amendment of s 18 (Exchanging land)**

Section 18—

*insert—*

- ‘(5) If a registered owner or lessee asks for an agreement to be made under this section, the request must be accompanied by the fee prescribed under a regulation.’.

**101 Amendment of s 48 (Trustees to give information and allow inspection of records)**

Section 48—

*insert—*

- ‘(2) If a management plan mentioned in subsection (1)(a) is approved, the plan may be registered in the appropriate register.’.

**102 Amendment of s 61 (Conditions on trustee leases and trustee permits)**

- (1) Section 61(2) to (4)—

*renumber* as section 61(3) to (5).

- (2) Section 61—

*insert—*

- ‘(2) However, a trustee lease or sublease may be for up 100 years if—
- (a) the lease or sublease is for land the subject of an operational deed of grant in trust; and
  - (b) the purpose of the lease or sublease is development that, in the opinion of the Minister—

- (i) will have a significant impact on the economic and social development of a locality or region; and
- (ii) is necessary to support existing or proposed infrastructure that provides, or will provide, services to the community.

*Example of a purpose for paragraph (b)—*

construction of buildings at, or an upgrade of, an airport in a regional area

‘(6) In this section—

*operational deed of grant in trust* means a deed of grant in trust that was granted under the repealed Act for a public purpose that is not a community purpose under this Act.’

(3) Section 61(5), as renumbered, ‘subsection (3)’—

*omit, insert—*

‘subsection (4)’.

### **103 Insertion of new ch 4, pt 1, div 2A, hdg**

After section 127—

*insert—*

### **‘Division 2A Leases for significant development’**

### **104 Replacement of s 129 (Lease for significant development)**

Section 129—

*omit, insert—*

### **‘129 Lease for significant development**

‘(1) This section applies if—

- (a) an interest in a lease for a significant development is made available to a person under division 1; or
- (b) under division 2, a person applies for a lease for a significant development.

[s 104]

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- ‘(2) Before the lease is granted, the chief executive must obtain an independent assessment of the person’s financial and managerial capabilities.
- ‘(3) The person must pay the cost of the assessment.
- ‘(4) The cost is not refundable.
- ‘(5) The lease must not be granted to the person unless the chief executive is satisfied, having regard to the independent assessment, about the person’s financial and managerial capabilities.

**‘129A Further dealings with lease land on completion of significant development**

- ‘(1) The Minister may include the following in a lease for significant development—
  - (a) a purchase price, or formula for calculating the purchase price, if the land is converted to freehold land;
  - (b) the term of a new lease for operating and maintaining the significant development, if a new lease is granted.
- ‘(2) If a price, formula or term mentioned in subsection (1) is included in the lease, the lessee may, after the significant development is substantially complete, apply to the Minister to purchase the lease land or enter a new lease to operate and maintain the significant development.
- ‘(3) If the Minister is satisfied the lessee has complied with the terms of the lease, the Minister must—
  - (a) for an application to purchase the land—ask the Governor in Council to grant the land in fee simple to the lessee; or
  - (b) for an application for a new lease—grant the application.
- ‘(4) If a deed of grant or new lease is issued over part of the land the subject of a significant development lease, the rest of the land must be dedicated as a reserve or road.’

**105 Relocation and renumbering of s 131 (Amalgamation may be a condition)**

Section 131—

*relocate* and *renumber*, in chapter 4, part 1, division 2, as section 127A.

**106 Insertion of new ch 4, pt 3, div 1A, hdg**

After section 154—

*insert*—

**‘Division 1A Length of term on issue of term lease’.**

**107 Amendment of s 155 (Length of term leases)**

(1) Section 155(2)(a), after ‘development’—

*insert*—

‘or the operation and maintenance of a significant development’.

(2) Section 155(4) to (7)—

*omit, insert*—

‘(4) However, a term lease for rural leasehold land may be issued for a term of no more than 40 years, if—

(a) the lease land is 100ha or more; and

(b) the Minister is satisfied the lease land is in good condition.

‘(5) Also, a term lease for rural leasehold land may be issued for a term of no more than 50 years, if—

(a) the lease land is 100ha or more; and

(b) the Minister is satisfied the lease land is in good condition; and

(c) either or both of the following apply—

[s 107]

---

- (i) if the Minister considers land (the *relevant land*) that is all or part of the lease land should be the subject of a conservation agreement or conservation covenant—a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land;
    - (ii) if the Minister considers it is appropriate for there to be an indigenous access and use agreement for land that is all or part of the lease land (the *relevant land*)—an indigenous access and use agreement for the relevant land has been entered into; and
  - (d) the Minister considers the term appropriate, having regard to either or both of the following for the lease land—
    - (i) the terms of any conservation agreement or conservation covenant;
    - (ii) the terms of any indigenous access and use agreement.
- ‘(6) In addition, a term lease for rural leasehold land may be issued for a term of no more than 75 years if all of the following apply—
- (a) the lease land is 100ha or more;
  - (b) the Minister is satisfied the lease land is in good condition;
  - (c) all or part of the lease land (the *declared land*) is an area of international conservation significance under the *Cape York Peninsula Heritage Act 2007*;
  - (d) if the Minister considers land (the *relevant land*) that is all or part of the lease land should be the subject of a conservation agreement or conservation covenant—a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land;
  - (e) an indigenous land use agreement relating to the lease land has been entered into;

- 
- (f) the Minister considers the term is appropriate, having regard to any or all of the following for the lease land—
- (i) the terms of any conservation agreement or conservation covenant;
  - (ii) the terms of the indigenous land use agreement;
  - (iii) the size of the declared land.

‘(7) This section is subject to sections 155A, 155B and 155BA.’.

## **108 Replacement of ss 155A and 155B**

Sections 155A and 155B—

*omit, insert—*

### **‘Division 1B Extension of particular term leases**

#### **‘155AA Application of division 1B**

- ‘(1) This division applies to a term lease if—
- (a) the lease is for rural leasehold land; and
  - (b) the lease land is 100ha or more; and
  - (c) the term is 20 years or more; and
  - (d) there is a land management agreement for the lease; and
  - (e) more than 5 years have passed since the lease was entered into or the land management agreement was first registered, whichever is the later, unless the Minister is satisfied that special circumstances exist; and
  - (f) no more than 80% of the existing term of the lease has expired.
- ‘(2) In this section—
- existing term*, of the lease, does not include any extension of the lease granted under section 155A, 155B or 155BA.

[s 108]

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### **‘155A Extensions for a term of up to 40 years**

- ‘(1) This section applies to a lease if—
  - (a) the term of the lease is less than 40 years; and
  - (b) the land management agreement for the lease contains a commitment by the Minister to extend the lease under this section; and
  - (c) the lease has not already been extended under this section.
- ‘(2) The lessee may apply to extend the lease.
- ‘(3) The Minister may grant the application and extend the lease if the Minister is satisfied—
  - (a) the lease land is in good condition; and
  - (b) the lessee has complied with the land management agreement and any requirements under it for the granting of the extension.
- ‘(4) However, the term of the extension—
  - (a) can not be for more than 10 years; and
  - (b) must not extend the term of the lease beyond 40 years.

### **‘155B Extensions for a term of up to 50 years**

- ‘(1) This section applies to a lease if—
  - (a) the term of the lease is less than 50 years, including any extension of the term under section 155A; and
  - (b) the land management agreement for the lease contains a commitment by the Minister to extend the lease if either or both of the following circumstances apply—
    - (i) if the Minister considers land (the *relevant land*) that is all or part of the lease should be the subject of a conservation agreement or conservation covenant—a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land;

- 
- (ii) if the Minister considers it is appropriate for there to be an indigenous access and use agreement for land that is all or part of the lease land (the *relevant land*)—an indigenous access and use agreement for the relevant land has been entered into; and
  - (c) the lease has not already been extended under this section.
- ‘(2) The lessee may apply to extend the lease.
- ‘(3) The Minister may grant the application and extend the lease if the Minister is satisfied—
- (a) the lease land is in good condition; and
  - (b) the lessee has complied with any land management agreement and any requirements under it for the granting of the extension; and
  - (c) the lessee has complied with any conservation agreement, conservation covenant or indigenous access and use agreement applying to all or part of the lease land; and
  - (d) the extension is appropriate, having regard to either or both of the following for the lease land—
    - (i) the terms of any conservation agreement or conservation covenant;
    - (ii) the terms of any indigenous access and use agreement.
- ‘(4) However, the extension—
- (a) can not be for more than 10 years; and
  - (b) must not extend the term of the lease beyond 50 years.
- ‘(5) If an extension is granted for a lease under this section at the same time as an extension for the lease is granted under section 155A—
- (a) for subsection (4)(b), the term of the lease includes the extension granted under section 155A; and

[s 108]

---

- (b) the extension granted under this section starts on the day after the day the extension granted under section 155A ends.

### **‘155BA Extensions for a term of up to 75 years**

- ‘(1) This section applies to a lease if—
  - (a) the term of the lease is less than 75 years, including any extension of the term under section 155A or 155B; and
  - (b) the land management agreement for the lease contains a commitment by the Minister to extend the lease if the following circumstances apply—
    - (i) if the Minister considers land (the *relevant land*) that is all or part of the lease should be the subject of a conservation agreement or conservation covenant—a conservation agreement has been entered into, or a conservation covenant exists, for the relevant land;
    - (ii) there is an indigenous land use agreement for the lease land; and
  - (c) all or part of the lease land (the *declared land*) is an area of international conservation significance under the *Cape York Peninsula Heritage Act 2007*; and
  - (d) the lease has not already been extended under this section.
- ‘(2) The lessee may apply to extend the lease.
- ‘(3) The Minister may grant the application and extend the lease if the Minister is satisfied—
  - (a) the lease land is in good condition; and
  - (b) the lessee has complied with the land management agreement and any requirements under it for the granting of the extension; and

- (c) the lessee has complied with any conservation agreement or conservation covenant applying to all or part of the lease land; and
  - (d) the lessee has complied with the indigenous land use agreement relating to the lease land; and
  - (e) the extension is appropriate, having regard to any or all of the following for the lease land—
    - (i) the terms of any conservation agreement or conservation covenant;
    - (ii) the terms of the indigenous land use agreement;
    - (iii) the size of the declared land.
- ‘(4) However, the term of the extension—
- (a) can not be for more than 25 years; and
  - (b) must not extend the term of the lease beyond 75 years.
- ‘(5) If an extension is granted for a lease under this section at the same time as an extension is granted for the lease under section 155A or 155B—
- (a) for subsection (4)(b), the term of the lease includes the extension granted under sections 155A or 155B; and
  - (b) the extension granted under this section starts on the day after the day all extensions granted under sections 155A and 155B end.’.

**109 Amendment of s 155C (Registering and taking of effect of extension)**

Section 155C(1), ‘section 155A or 155B’—

*omit, insert—*

‘section 155A, 155B or 155BA’.

**110 Replacement of s 155D (Power to reduce term of extended lease)**

Section 155D—

[s 110]

---

*omit, insert—*

## **‘Division 1C            Reduction of particular term leases**

### **‘155D When Minister may reduce**

- ‘(1) This section applies to a term lease for rural leasehold land granted for a term mentioned in section 155(3) to (6) or extended under section 155A, 155B or 155BA, if any of the following happens (each a *relevant circumstance*)—
- (a) if, when the lease was granted or extended, the Minister was satisfied the land was in good condition—the Minister considers the land is no longer in good condition;
  - (b) if a conservation covenant existed or a conservation agreement had been entered into for the land when the lease was granted or extended—
    - (i) the covenant or agreement ceases to be in effect for the land; or
    - (ii) the Minister considers the lessee has not complied with the terms of the covenant or agreement;
  - (c) if an indigenous access and use agreement had been entered into for the land when the lease was granted or extended—
    - (i) the agreement ceases to be in effect for the land; or
    - (ii) the Minister considers the lessee has not complied with the terms of the agreement;
  - (d) for a lease granted for a term of up to 75 years under section 155(6) or extended under section 155BA—all or any part of the land ceases being an area of international significance under the *Cape York Peninsula Heritage Act 2007*.
- ‘(2) Subject to sections 155DA and 155E, the Minister may reduce the term of the lease by the number of years the Minister considers appropriate, having regard to the maximum term for which the lease would have been granted or extended if the

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relevant circumstance had existed at the time of the grant or extension.

‘(3) However, the Minister can not reduce the term by an amount that results in the lease no longer having an unexpired term.

‘(4) In this section—

*term*, of a lease, includes any extension of the term of the lease under section 155A, 155B or 155BA, whether or not the extended term has commenced.

### **‘155DA Notice of intention to reduce term**

‘(1) This section applies if the Minister proposes to reduce the term of a lease under section 155D.

‘(2) However, this section does not apply to a lease if—

(a) the lease has been extended under section 155A, 155B or 155BA; and

(b) the Minister proposes to reduce the term of the lease by an amount that is no more than the period for which it was extended.

‘(3) Before reducing the term, the Minister must give the lessee a notice stating each of the following—

(a) that the Minister proposes to reduce the term of the lease;

(b) the number of years by which the Minister proposes to reduce the term;

(c) the reasons for the Minister’s proposal to reduce the term;

(d) that the lessee may, within the reasonable period stated in the notice, make written submissions to show why the term should not be reduced.

‘(4) In deciding whether to reduce the term, the Minister must consider any written submissions made by the lessee within the period stated in the notice.’.

[s 111]

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**111 Amendment of s 155E (Provisions about reduction)**

(1) Section 155E(1)—

*omit, insert—*

‘(1) This section applies if—

(a) the Minister decides under section 155D to reduce the term of a term lease; and

(b) for a reduction to which section 155DA applies—the Minister has complied with that section.’.

(2) Section 155E(2), after ‘must’—

*insert—*

‘be’.

**112 Insertion of new ch 4, pt 3, div 1D**

After section 155E—

*insert—*

**‘Division 1D Relationship with Dividing Fences Act 1953’.**

**113 Amendment of s 158 (Application for new lease)**

Section 158(5), definition *existing term*, ‘section 155A or 155B’—

*omit, insert—*

‘division 1B’.

**114 Amendment of s 159A (Provisions for decision about most appropriate form of tenure)**

Section 159A—

*insert—*

‘(5) Subsections (3) and (4) apply despite any provision contained in the lease.’.

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**115 Amendment of s 162 (Issuing of new lease)**

- (1) Section 162(3) to (6)—  
*renumber* as section 162(4) to (7).
- (2) Section 162—  
*insert*—
- ‘(3) For working out the purpose of the old lease, the Minister may have regard to its category and conditions.’.

**116 Amendment of s 166 (Application to convert lease)**

- Section 166(6), definition *existing term*, ‘section 155A or 155B’—  
*omit, insert*—  
‘section 155A, 155B or 155BA’.

**117 Amendment of s 169 (Conditions of freehold offer)**

- (1) Section 169, ‘1 or both’  
*omit, insert*—  
‘1 or more’.
- (2) Section 169—  
*insert*—  
‘(c) that the purchase price for the conversion be paid in full.’.

**118 Amendment of s 176A (General provisions for deciding application)**

- Section 176A(5)—  
*omit, insert*—
- ‘(5) However, the subdivision offer must be subject to the condition that a land management agreement must be entered into for—

[s 119]

---

- (a) if there is a land management agreement for the existing lease—each new lease the subject of the offer; or
- (b) any lease the subject of the offer to which the following applies—
  - (i) the lease is for rural leasehold land;
  - (ii) the lease land is 100ha or more;
  - (iii) the term of the lease is 20 years or more.’.

**119 Amendment of s 176L (General provisions for deciding application)**

Section 176L(5)—

*omit, insert—*

- ‘(5) However, the amalgamation offer must be subject to the condition that a land management agreement must be entered into for the amalgamated lease if—
  - (a) there is a land management agreement for any of the existing leases; or
  - (b) all of the following apply—
    - (i) the lease is for rural leasehold land;
    - (ii) the lease land is 100ha or more;
    - (iii) the term of the lease is 20 years or more.’.

**120 Amendment of s 176W (Content of land management agreement)**

Section 176W(1)(a), ‘section 155A(1)(e) or 155B(1)(f)’—

*omit, insert—*

‘section 155A(1)(b), 155B(1)(b) or 155BA(1)(b)’.

**121 Amendment of s 183 (Rent payable generally)**

- (1) Section 183(1)—

*omit, insert—*

- ‘(1) The rent for a lease, licence or permit is—
- (a) if a regulation prescribes an amount for all leases in a category of lease (a *prescribed category*)—the amount prescribed; or
  - (b) otherwise—the amount calculated by multiplying the valuation for rental purposes prescribed under a regulation by the rate prescribed under a regulation’.
- (2) Section 183(4)(a), ‘the regulations’—

*omit, insert—*

‘a regulation, unless the lease is of a prescribed category.’.

## **122 Amendment of s 183A (Set rents)**

Section 183A—

*insert—*

- ‘(2) Also, a regulation may prescribe the rent for a particular lease (also a *set rent*).’.

## **123 Insertion of new s 201A**

After section 201—

*insert—*

### **‘201A Land management agreement condition**

‘A term lease is subject to the condition that a land management agreement must be entered into for the lease land, if all of the following apply—

- (a) the lease—
  - (i) is for rural leasehold land;
  - (ii) is for a term of 20 years of more;
- (b) the lease land is 100ha or more.’.

[s 124]

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**124 Amendment of s 214E (Power to reduce term of lease or impose additional conditions)**

Section 214E(2)—

*insert—*

‘(c) require a land management agreement to be entered into for the lease land.’.

**125 Amendment of s 234 (When lease may be forfeited)**

Section 234(d)—

*omit, insert—*

‘(d) if the lessee is found by a court of competent jurisdiction to have acquired the lease by fraud; or’.

**126 Amendment of ch 5, pt 4, div 2A, hdg (Forfeiture of leases by referral to court)**

Chapter 5, part 4, division 2A, heading, after ‘court’—

*insert—*

‘**or for fraud**’.

**127 Amendment of s 238 (Application to the court for forfeiture)**

(1) Section 238(1) to (4)—

*renumber* as section 238(2) to (5).

(2) Section 238—

*insert—*

‘(1) This section does not apply to the forfeiture of a lease under section 234(d).’.

**128 Amendment of s 239 (Designated person’s options if court decides on forfeiture)**

(1) Section 239, heading, ‘if court decides on forfeiture’—

*omit.*

- (2) Section 239(1), ‘If the court’ to ‘forfeited, the’—

*omit, insert—*

‘The’.

- (3) Section 239(1) to (3)—

*renumber* as section 239(2) to (4).

- (4) Section 239—

*insert—*

- ‘(1) This section applies—

(a) if the court decides the lease may be forfeited under section 238; or

(b) for a lease that may be forfeited under section 234(d).’.

- (5) Section 239(3) and (4) as renumbered, ‘subsection (1)(b)(iv)’—

*omit, insert—*

‘subsection (2)(b)(iv)’.

## **129 Amendment of s 240E (Sale by lessee)**

Section 240E(1), ‘238(2)’—

*omit, insert—*

‘238(3)’.

## **130 Amendment of s 240F (Sale by mortgagee instead of forfeiture)**

Section 240F(1), ‘238(2)’—

*omit, insert—*

‘238(3)’.

[s 131]

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**131 Amendment of s 240G (Application)**

Section 240G(1), ‘238(2)’—

*omit, insert—*

‘238(3)’.

**132 Amendment of s 240J (Application of sdiv 4)**

Section 240J, ‘239(1)(b)(iv)’—

*omit, insert—*

‘239(2)(b)(iv)’.

**133 Amendment of s 240N (Advice about entering transition to sale agreement)**

Section 240N(5), ‘239(1)(b)(iv)’—

*omit, insert—*

‘239(2)(b)(iv)’.

**134 Amendment of s 240P (Auction or sale of lease)**

Section 240P(9)(b), ‘239(1)(b)(iv)’—

*omit, insert—*

‘239(2)(b)(iv)’.

**135 Amendment of s 275 (Registers comprising land registry)**

Section 275—

*insert—*

‘(ba) a register of State forests;’.

**136 Amendment of s 276 (Registers to be kept by chief executive)**

Section 276—

*insert—*

‘(ba) a register of State forests;’.

**137 Amendment of s 288A (Original mortgagee to confirm identity of mortgagor)**

(1) Section 288A(1)—

*omit, insert—*

‘(1) This section applies to—

(a) the mortgaging of a lease or sublease; and

(b) an amendment of a mortgage mentioned in paragraph (a).’.

(2) Section 288A(2), from ‘Before the mortgage’ to ‘executed the mortgage’—

*omit, insert—*

‘Before the mortgage or amendment is lodged for registration, the mortgagee under the mortgage (the *original mortgagee*) must take reasonable steps to ensure the person who executed the mortgage or amendment’.

(3) Section 288A(4), ‘mortgage is registered’—

*omit, insert—*

‘mortgage or amendment is registered’.

(4) Section 288A(5), ‘registration of the mortgage’—

*omit, insert—*

‘registration of the mortgage or amendment’.

**138 Amendment of s 288C (Effect of registration of mortgage under Land Title Act 1994)**

Section 288C(4)(a), after ‘instrument of mortgage’—

*insert—*

‘or amendment of mortgage’.

[s 139]

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**139 Amendment of s 290I (Division of lot on standard format plan of subdivision)**

Section 290I(2), ‘standard lot’—

*omit, insert—*

‘standard format lot’.

**140 Amendment of s 294I (Extinguishing a building management statement)**

Section 294I(4)—

*omit, insert—*

‘(4) However, a building management statement may be extinguished or partially extinguished only if—

(a) for a partial extinguishment—all registered mortgagees of a lot to be removed consent to the partial extinguishment; or

(b) otherwise—all registered mortgagees of lots to which the building management statement applies consent to the extinguishment.’.

**141 Amendment of s 327 (Absolute surrender of deed of grant)**

(1) Section 327, heading, ‘deed of grant’—

*omit, insert—*

‘**freehold land**’.

(2) Section 327, ‘a deed of grant’—

*omit, insert—*

‘freehold land’.

**142 Amendment of s 327B (Applying to surrender)**

Section 327B(1), ‘a deed of grant’—

---

*omit, insert—*  
'freehold land'.

**143 Amendment of s 331 (Effect of surrender on existing interests)**

Section 331(2), 'deed of grant'—  
*omit, insert—*  
'freehold land'.

**144 Amendment of s 373A (Covenant by registration)**

(1) Section 373A—  
*insert—*

(2A) A document creating the covenant may be registered even if the covenantor under the instrument is the same entity as the covenantee.'

(2) Section 373A(9)(a)—  
*omit, insert—*

'(a) an architectural, construction or landscaping standard for the land or building; or'.

**145 Amendment of s 373E (Application of div 8B)**

Section 373E, after 'natural resource'—  
*insert—*  
'product'.

**146 Amendment of s 373F (Definitions for div 8B)**

- (1) Section 373F, definition *natural resource*—  
*omit.*
- (2) Section 373F—

[s 147]

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*insert—*

‘**carbon sequestration**, for a tree or vegetation, includes the process by which the tree or vegetation absorbs carbon dioxide from the atmosphere.

**natural resource product—**

1 *Natural resource product* includes the following—

- (i) all parts of a tree or vegetation, whether alive or dead, including parts below the ground;
- (ii) carbon stored in a tree or vegetation;
- (iii) carbon sequestration by a tree or vegetation.

2 However, *natural resource product* does not include a tree planted to comply with a compliance notice’.

#### **147 Amendment of s 374 (Details of trust must be given)**

(1) Section 374(1)(b), from ‘a document stating’ to ‘creating the trust,’—

*omit, insert—*

‘a certified copy of a document stating details of the trust, or creating the trust,’.

(2) Section 374(2), ‘The document’—

*omit, insert—*

‘A copy of the document’.

(3) Section 374(4)—

*omit.*

(4) Section 374(5)—

*renumber* as section 374(4).

#### **148 Amendment of s 374A (Interests held in trust must be registered)**

Section 374A(a), after ‘interest to’—

---

*insert—*

‘, or a document creating the interest in favour of.’

**149 Amendment of s 375 (Document of transfer to trustee)**

(1) Section 375(1)(b)—

*omit, insert—*

‘(b) a certified copy of either of the following is deposited with the transfer—

(i) a document stating details of the trust;

(ii) the document creating the trust.’

(2) Section 375(3)—

*omit.*

**150 Amendment of s 389J (Further caveat)**

Section 389J—

*insert—*

‘(3) However, subsection (2) does not apply if the original caveat is a caveat prepared and registered by the chief executive under section 389L.’

**151 Amendment of s 392 (Delegation by Minister)**

(1) Section 392(4)(d)—

*omit, insert—*

‘(d) granting an extension of a term of a lease under chapter 4, part 3, division 1B;’

(2) Section 392—

*insert—*

‘(4A) To remove any doubt, it is declared that other than the power to grant an extension of a lease, the Minister may delegate any of the Minister’s other functions under chapter 4, part 3,

[s 152]

---

division 1B to the chief executive or an officer or employee of the department.’.

## **152 Insertion of new ch 9, pt 1H**

Chapter 9—

*insert—*

# **‘Part 1H Transitional provisions for Natural Resources and Other Legislation Amendment Act 2010**

## **‘521U Definitions for pt 1H**

‘In this part—

*commencement* means the day this section commences.

*previous*, for a stated provision that includes a number, means the provision that included that number as in force immediately before the commencement.

## **‘521V Existing term lease applications**

‘Section 155 applies to an application for a term lease that has been made but not decided before the commencement.

## **‘521W Existing extension applications**

- ‘(1) Section 155A applies to an application for an extension of a term lease made under previous section 155A, but not decided before the commencement.
- ‘(2) Section 155B applies to an application for an extension of a term lease made under previous section 155B, but not decided before the commencement.

---

**‘521X Application of s 155D to existing leases**

‘From the commencement, section 155D applies to leases granted under previous section 155 or extended under previous section 155A or 155B.

**‘521Y Application of s 201A to existing leases**

‘Section 201A does not apply to leases entered into before the commencement.’.

**153 Amendment of sch 2 (Original decisions)**

Schedule 2, ‘239(1)’—

*omit, insert—*

‘239(2)’.

**154 Amendment of sch 6 (Dictionary)**

(1) Schedule 6, definition *natural resource*—

*omit.*

Schedule 6—

*insert—*

‘***carbon sequestration***, for chapter 6, part 4, division 8B, see section 373F.

***natural resource product***, for chapter 6, part 4, division 8B, see section 373F.

***profit a prendre*** includes a profit a prendre under the *Forestry Act 1959*, section 61J.’.

[s 155]

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## **Part 12**                      **Amendments of Land Act 1994 commencing by proclamation**

### **155 Act amended**

This part amends the *Land Act 1994*.

### **156 Replacement of s 5 (Land to which Act applies)**

Section 5—

*omit, insert—*

#### **‘5 Land to which Act applies**

- ‘(1) This Act applies to all land, including land that is, whether permanently or from time to time, covered by water subject to tidal influence.

*Note—*

Although this Act generally applies to non-freehold land, most freehold land contains a reservation to the State for minerals. To that extent, this Act applies to all land.

- ‘(2) Layers and strata above and below the surface of land may be dealt with under this Act.

*Note—*

However, see section 14(3).’.

### **157 Replacement of ch 1, pt 4 hdg (Land near high-water mark)**

Chapter 1, part 4, heading—

*omit, insert—*

## **‘Part 4**                      **Tidal and non-tidal boundaries and associated matters**

### **‘Division 1**                      **Preliminary’.**

---

**158 Amendment of s 8 (Definitions for pt 4)**

- (1) Section 8, definitions *navigable river*, *ship* and *tidal navigable river*—

*omit.*

- (2) Section 8—

*insert—*

*‘ambulatory boundary principles* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

*lake* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

*non-tidal boundary (lake)* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

*non-tidal boundary (watercourse)* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

*right line boundary* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

*right line tidal boundary*, of land, means a right line boundary of the land that is located approximately where a tidal boundary might otherwise be located.

*Example—*

The boundaries of a lot include a tidal boundary. Because of difficulties arising in relation to the location at law of the tidal boundary, or for some other reason, the registered owner of the lot agrees to surrender the lot to the State. The lot is resurveyed, and a new deed of grant is issued for the lot, but without the tidal boundary. The deed of grant and associated plan of survey now provide for a right line boundary in a location that is the approximate location of the previous tidal boundary.

*tidal boundary* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

*watercourse* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.’.

- (3) Section 8, definition *tidal water*, ‘(including any tidal navigable river)’—

*omit, insert—*

[s 159]

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‘, or of a watercourse, lagoon, swamp or other place where water may be found.’.

## 159 Replacement of ss 9 and 10

Sections 9 and 10—

*omit, insert—*

### ‘Division 2 The tidal environment

#### ‘9 Land adjacent to tidal boundary or right line tidal boundary owned by State

- ‘(1) If land has a boundary that is a tidal boundary or right line tidal boundary, other land that is on the same side of the boundary as the water subject to tidal influence—
- (a) is the property of the State; and
  - (b) may be dealt with as unallocated State land.
- ‘(2) Subsection (1) does not apply to land if it is inundated land or a registered interest in the land is held by someone else.
- ‘(3) Subsections (1) and (2) apply even if a person owns land having tidal boundaries or right line tidal boundaries on both sides of water subject to tidal influence.

*Example—*

A person owns land that has as its northern boundary a tidal boundary that is located on the southern edge of a river. The same person also owns land in the same locality that has as its southern boundary a tidal boundary located on the northern edge of the same river. The ownership of land on both sides of the river does not in these circumstances confer on the person ownership of the river itself.

- ‘(4) To remove any doubt, it is declared that, before the commencement of this section, if a boundary of land (the **relevant land**) was formed by high-water mark—
- (a) other land that adjoined the boundary and was below high-water mark was, and always was, the property of the State, unless it was inundated land or a registered interest in the land was held by someone else; and

- (b) if the line of the high-water mark shifted over time by gradual and imperceptible degrees, the shift was a shift in the boundary of the relevant land.
- ‘(5) An act before the commencement of this section to occupy, use, build works or remove material or product, with or without lawful authority, could never divest the State of its ownership of land below high-water mark.
- ‘(6) An act after the commencement of this section to occupy, use, build works or remove material or product, with or without lawful authority, can not divest the State of its ownership of land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence.

**‘10 Land raised above high-water mark by works**

- ‘(1) Land in the ownership of the State that becomes raised above high-water mark as a result of the carrying out of works on or in proximity to the land remains owned by the State and may be dealt with as unallocated State land.
- ‘(2) This section does not apply to land the subject of reclamation mentioned in section 127.’.

**160 Amendment of s 13 (Power to deal with land below high-water mark)**

- (1) Section 13, heading, ‘below high-water mark’—  
*omit, insert—*  
**‘seaward of tidal boundary or right line tidal boundary’.**
- (2) Section 13, ‘Land below high-water mark’—  
*omit, insert—*  
‘Land that is on the seaward side of a tidal boundary or right line tidal boundary’.
- (3) Section 13—  
*insert—*

[s 161]

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- ‘(2) Subsection (1) does not stop land that is on the seaward side of a tidal boundary or right line tidal boundary from being granted in fee simple if it is the subject of reclamation mentioned in section 127.’.

## **161 Insertion of new ch 1, pt 4, div 3**

After section 13—

*insert—*

### **‘Division 3 The non-tidal environment**

#### **‘13A Land adjacent to non-tidal boundary (watercourse) or non-tidal boundary (lake) owned by State**

- ‘(1) If land has a non-tidal boundary (watercourse), other land that adjoins the boundary and is on the watercourse side of the boundary is the property of the State.
- ‘(2) If land has a non-tidal boundary (lake), other land that adjoins the boundary and is on the lake side of the boundary is the property of the State.
- ‘(3) Subsections (1) and (2) apply despite the alienation of land by the State.
- ‘(4) A person (the *owner*) who may take water under the *Water Act 2000*, section 20(3)—
- (a) may exercise a right of access for the owner, the owner’s family, executive officers, employees, agents and stock over the part (the *adjacent area*) of the watercourse or lake that is the property of the State and that adjoins the owner’s land; and
  - (b) may exercise a right of grazing for the person’s stock over the adjacent area; and
  - (c) may bring action against a person who trespasses on the adjacent area as if the owner were the registered owner of the adjacent area.

- 
- ‘(5) If the adjacent area is being used by the State for a purpose under the *Water Act 2000*—
- (a) subsection (4)(a) and (b) applies only to the extent exercising the right does not interfere with the State’s use of the adjacent area; and
  - (b) subsection (4)(c) does not allow the owner to bring an action against a person acting on behalf of the State.

*Note—*

This section effectively replaces the *Water Act 2000*, section 21 (Beds and banks forming boundaries of land are State property), which was repealed by the *Natural Resources and Other Legislation Amendment Act 2010*. However, that Act inserted a transitional provision into the *Water Act 2000* to provide that the repealed section 21 continues to apply for all matters arising before its repeal.

**‘13B Power to declare and deal with former watercourse land**

- ‘(1) A person (the *applicant*) who is the owner of land (the *relevant land*) having a non-tidal boundary (watercourse) may apply to the chief executive (water) to have land (the *watercourse land*) adjoining the relevant land’s non-tidal boundary (watercourse) declared to be former watercourse land if—
- (a) no person holds a registered interest in the watercourse land; and
  - (b) the physical location of the boundary’s associated watercourse has been the subject of change, whether before or after the commencement of this section; and
  - (c) on an application of the ambulatory boundary principles, the location at law of the non-tidal boundary (watercourse) has not changed correspondingly; and
  - (d) the watercourse land has effectively ceased to be part of a functioning watercourse.
- ‘(2) The application must be accompanied by the prescribed fee.

[s 161]

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- ‘(3) The chief executive (water) may by gazette notice declare the watercourse land to be former watercourse land.
- ‘(4) The chief executive (water) may make the former watercourse land declaration only if—
  - (a) the chief executive (water) has, to the extent it is reasonably practicable to do so, consulted with, and taken into account the views of, the owners of any land that adjoins the watercourse land; and
  - (b) the chief executive (water) is satisfied that—
    - (i) the matters stated in subsection (1)(a) to (d) are true; and
    - (ii) taking a long term perspective, there is negligible likelihood that the watercourse land will again become part of a functioning watercourse.
- ‘(5) In making the application, the applicant must give the chief executive (water) enough evidence to satisfy the chief executive (water) that the watercourse land has effectively ceased to be part of a functioning watercourse.

*Examples of evidence—*

photographs, survey material identifying topographical changes and authoritative information about flow history

- ‘(6) The applicant may appeal against the refusal of the application, and a person entitled to be consulted under subsection (4)(a) may appeal against the granting of the application.
- ‘(7) When the watercourse land becomes former watercourse land, it does not become unallocated State land, but it may be dealt with under this Act as if it were unallocated State land.
- ‘(8) Despite subsection (7), the granting of an estate in fee simple, a lease or a permit to occupy for the purpose of dealing with the former watercourse land under that subsection is not subject to any public auction, tender or ballot requirements under chapter 4, part 1, division 1.
- ‘(9) To remove any doubt, it is declared that the former watercourse land declaration may incorporate by reference a

map or plan held by the chief executive under this Act for identifying the boundaries of the former watercourse land.

‘(10) The chief executive (water) may delegate his or her powers under this section to an appropriately qualified public service officer or employee.

‘(11) In this section—

*ambulatory boundary principles* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

*appropriately qualified*, for a person to whom a power may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*associated watercourse*, of a non-tidal boundary (watercourse), means the watercourse on which the boundary is based.

*chief executive (water)* means the chief executive under the *Water Act 2000*.

*former watercourse land* means the land the subject of a former watercourse land declaration.

*former watercourse land declaration* means a declaration under subsection (3).

*owner*, of land, means—

- (a) if the land is freehold land—the registered owner of the land; or
- (b) if the land is the subject of a lease—the lessee of the land; or
- (c) if the land is a reserve—the trustee of the reserve; or
- (d) if a person has occupation rights in relation to the land under a licence or permit—the licensee or permittee.’

## 162 Amendment of s 14 (Governor in Council may grant land)

(1) Section 14(3), ‘land below high-water mark’—

*omit, insert—*

[s 163]

---

‘land that adjoins a tidal boundary or right line tidal boundary of other land’.

(2) Section 14—

*insert—*

‘(5) Subsection (3) does not stop land that is on the seaward side of a tidal boundary or right line tidal boundary from being granted in fee simple if it is the subject of a reclamation mentioned in section 127.’.

### **163 Amendment of s 15 (Leasing land)**

(1) Section 15(4), ‘A lease below high-water mark’—

*omit, insert—*

‘A lease for land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence’.

(2) Section 15(5)—

*omit, insert—*

‘(5) A lease for land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence is not an approval to reclaim the lease land.’.

### **164 Amendment of s 86 (Public notice of proposed surrender)**

Section 86(c), from ‘a newspaper’ to ‘appropriate and’—

*omit.*

### **165 Amendment of s 113 (Public notice of availability to be given)**

Section 113(2)(b), from ‘and in’ to ‘appropriate’—

*omit.*

---

**166 Amendment of s 116 (Interests in land may be sold after auction)**

- (1) Section 116(1)(b), from ‘in the newspaper’ to ‘advertised’—  
*omit.*
- (2) Section 116—  
*insert—*
- ‘(3) The advertisement may be made in the same way as the advertisement for the auction.’.

**167 Amendment of s 126 (Strategic port land)**

- (1) Section 126(1), ‘If land above high-water mark’—  
*omit, insert—*  
‘If land having a tidal boundary or right line tidal boundary’.
- (2) Section 126(2), ‘if land below high-water mark’—  
*omit, insert—*  
‘if land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence’.

**168 Amendment s 178 (Permits below high-water mark)**

- (1) Section 178, heading, ‘below high-water mark’—  
*omit, insert—*  
**‘for land in area of tidal influence’.**
- (2) Section 178, ‘permit below high-water mark’—  
*omit, insert—*  
‘permit for land that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence’.

[s 169]

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**169 Amendment of s 240P (Auction or sale of lease)**

Section 240P(5), from ‘in a newspaper’ to ‘is for sale’—  
*omit.*

**170 Amendment of s 358 (Changing deeds of grant—change in description or boundary of land)**

Section 358(2)—  
*omit, insert—*

- ‘(2) A registered owner or trustee, with the Minister’s written approval, may surrender the land contained in the registered owner’s deed of grant or trustee’s deed of grant in trust if, on resurvey of the land, the boundaries of the land do not agree with the boundaries described in the existing deed or appropriate plan, and no doubt exists about the boundaries of the land.’.

**171 Amendment of s 359 (Correcting or cancelling deeds of grant)**

Section 359(1) from ‘and in a newspaper’ to ‘appropriate,’—  
*omit.*

**172 Amendment of s 360 (Governor in Council may change freeholding leases)**

Section 360(1)(c)—  
*omit.*

**173 Amendment of s 360C (Applying to amend description of lease)**

Section 360C(1), ‘360(1)(a), (c) or (d)’—  
*omit, insert—*  
‘360(1)(a) or (d)’.

---

**174 Amendment of s 393 (Delegation by chief executive)**

- (1) Section 393(4)(a), ‘below high-water mark’—  
*omit, insert—*  
‘that is on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence and that is’.
- (2) Section 393(4)(b), ‘above high-water mark’—  
*omit, insert—*  
‘having a tidal boundary or right line tidal boundary’.

**175 Insertion of new ch 7, pt 1, div 6**

Chapter 7, part 1—

*insert—*

**‘Division 6 Public notices other than gazette notices**

**‘403C Publication of particular public notices on department’s website**

- ‘(1) This section applies if an official is required under this Act to give a public notice, unless the notice is a gazette notice.
- ‘(2) This section applies even if this Act provides for a particular way in which the notice must be given.
- ‘(3) The official must publish the notice on the department’s website for a total of at least 10 business days.
- ‘(4) The 10 business days may be, but need not necessarily be, consecutive.
- ‘(5) Subsection (3) does not prevent the official from also giving the notice in another way the official considers appropriate.
- ‘(6) In deciding to give the notice in another way, the official must consider the intended audience for the notice.
- ‘(7) In this section—

[s 176]

---

*give*, for a notice, includes advertising it.

*notice* includes an advertisement.

*official* means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) a person performing functions or exercising powers under this Act for the Minister or the chief executive.

*public notice* means a notice of a public nature that is not required only to be given, or only intended for, a particular person or group of persons.’.

#### **176 Amendment of s 431C (Further evidentiary aids)**

Section 431C—

*insert*—

- ‘(e) that on a stated day, or during a stated period, a stated notice was published on the department’s website.’.

#### **177 Omission of ch 7, pt 3B (Tidal boundary plans of subdivision)**

Chapter 7, part 3B—

*omit*.

#### **178 Insertion of new ss 521Z and 521ZA**

Chapter 9, part 1H—

*insert*—

#### **‘521Z Continuing application of no compensation provision**

- ‘(1) The repealed section 431NG continues to apply after the repeal of chapter 7, part 3B in relation to the operation of that part.

‘(2) In this section—

*repealed section 431NG* means section 431NG as in force immediately before the commencement of this section.

### ‘521ZA Lease or permit

‘(1) This section applies if—

- (a) immediately before the commencement of this section, a person (the *relevant person*) is the lessee of, or is the holder of a permit to occupy, land (the *relevant land*) that adjoins a tidal boundary of other land (the *primary land*); and
- (b) the relevant person is also the registered owner or lessee of the primary land; and
- (c) after the commencement of this section, because of the operation of the *Survey and Mapping Infrastructure Act 2003*, part 7, division 2, subdivision 2 or 3, there effectively occurs a relocation of the tidal boundary of the primary land.

*Editor’s note—*

*Survey and Mapping Infrastructure Act 2003*, part 7 (Tidal and non-tidal boundaries and associated matters), division 2 (Tidal boundaries), subdivision 2 (Locating tidal boundaries at law until registration of first new plan of survey) or 3 (Locating tidal boundaries at law from registration of first new plan of survey)

‘(2) There is taken to be a corresponding alteration of the area of the permit or lease for the relevant land to ensure it continues to adjoin the primary land.’.

## 179 Amendment of sch 2 (Original decisions)

Schedule 2—

*insert—*

‘13B about the granting of an application to have land declared as former watercourse land’.

[s 180]

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## 180 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definitions *earlier plan of subdivision*, *navigable river*, *new plan of subdivision*, *relevant section*, *ship*, *tidal boundary*, *tidal boundary plan of subdivision* and *tidal navigable river*—

*omit.*

- (2) Schedule 6—

*insert—*

*‘lake*, for chapter 1, part 4, see section 8.

*non-tidal boundary (lake)*, for chapter 1, part 4, see section 8.

*non-tidal boundary (watercourse)*, for chapter 1, part 4, see section 8.

*right line boundary*, for chapter 1, part 4, see section 8.

*right line tidal boundary* see section 8.

*seaward side*, of a tidal boundary or right line tidal boundary, means on the same side of the boundary as the water subject to tidal influence that is relevant to the identification of the boundary as a tidal boundary or right line tidal boundary.

*tidal boundary* see section 8.

*watercourse*, for chapter 1, part 4, see section 8.

*water subject to tidal influence*, in relation to a boundary that is a tidal boundary or right line tidal boundary, means the water that is relevant to the identification of the boundary as a tidal boundary or right line tidal boundary.’.

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## Part 13                      Amendment of Land Title Act 1994

### 181    Act amended

This part amends the *Land Title Act 1994*.

### 182    Amendment of s 9A (Land title practice manual)

Section 9A(2)—

*insert—*

‘(ba) directions given by the chief executive under the  
*Forestry Act 1959*, section 61RW; and’.

### 183    Amendment of s 11A (Original mortgagee to confirm identity of mortgagor)

(1) Section 11A(1)—

*omit, insert—*

‘(1) This section applies to—

- (a) the mortgaging of a lot or an interest in a lot; and
- (b) an amendment of a mortgage mentioned in paragraph (a).’.

(2) Section 11A(2), after ‘instrument of mortgage’—

*insert—*

‘or amendment of mortgage’.

(3) Section 11A(4), ‘of mortgage’—

*omit.*

(4) Section 11A(5), ‘registration of the mortgage’—

*omit, insert—*

‘registration of the instrument’.

[s 184]

---

**184 Amendment of s 18A (Pre-examination of plans)**

Section 18A(1)(a), ‘sealed’—

*omit, insert—*

‘approved’.

**185 Replacement of s 49DA (Creation of common property)**

Section 49DA—

*omit, insert—*

**‘49DA Creation of common property**

‘(1) This section applies if—

(a) the community management statement for a community titles scheme provides for the progressive subdivision of scheme land; and

(b) under the scheme, the scheme land is to be subdivided by a plan of subdivision to create common property under sections 49B to 49D.

‘(2) The registration of the plan and recording of the new community management statement for the scheme operate, without anything further, to create the common property.’.

**186 Amendment of s 49E (Division of lot on standard format plan of subdivision)**

Section 49E(2), ‘standard lot’—

*omit, insert—*

‘standard format lot’.

**187 Amendment of s 54B (Circumstances under which building management statement may be registered)**

Section 54B—

*insert—*

- 
- ‘(3) In this section, a reference to standard format lot or volumetric format lot is taken to include a reference to common property, if the common property is created on registration of—
- (a) a building format plan of subdivision; or
  - (b) a volumetric format plan of subdivision.’.

**188 Amendment of s 54H (Extinguishing a building management statement)**

Section 54H(4)—

*omit, insert—*

- ‘(4) However, a building management statement may be extinguished or partially extinguished only if—
- (a) for a partial extinguishment—all registered mortgagees of a lot to be removed consent to the partial extinguishment; or
  - (b) otherwise—all registered mortgagees of lots to which the building management statement applies consent to the extinguishment.’.

**189 Amendment of s 97A (Covenant by registration)**

(1) Section 97A—

*insert—*

- ‘(2A) An instrument of covenant may be registered even if the covenantor under the instrument is the same entity as the covenantee.’.

(2) Section 97A(3)(c)—

*insert—*

‘(iv) a registered lease for another lot or part of a lot.’.

(3) Section 97A(8)(a)—

*omit, insert—*

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‘(a) an architectural, construction or landscaping standard for the lot or building; or’.

**190 Amendment of s 109 (How trusts may be registered)**

(1) Section 109, heading, ‘trusts’—

*omit, insert—*

‘**interest as trustee**’.

(2) Section 109(a)—

*omit, insert—*

‘(a) an instrument transferring the interest to, or creating the interest in favour of, the person as trustee; or’.

**191 Amendment of s 110 (Instrument of transfer to trustee)**

(1) Section 110(3)—

*omit, insert—*

‘(3) A certified copy of a document stating details of the trust, or creating the trust, must be deposited with the instrument of transfer.’.

(2) Section 110(5)—

*omit.*

**192 Amendment of s 129 (Further caveat)**

Section 129—

*insert—*

‘(3) However, subsection (2) does not apply if the original caveat is a caveat prepared and registered by the registrar under section 17.’.

**193 Amendment of s 130 (Compensation for improper caveat)**

Section 130—

*insert—*

- ‘(4) Subsection (1) does not apply to the registrar in relation to a caveat prepared and registered under section 17.’.

**194 Amendment of s 154 (Lodging certificate of title)**

Section 154(2)(a), ‘of transfer of’—

*omit, insert—*

‘transferring or otherwise dealing with the interest of a lessee under’.

**195 Amendment of s 162 (Obligations of witness for individual)**

Section 162(b), ‘document’—

*omit, insert—*

‘instrument’.

**196 Amendment of s 185 (Exceptions to s 184)**

- (1) Section 185(1A)(a)(i), after ‘mortgage’—

*insert—*

‘or amendment of mortgage’.

- (2) Section 185(1A)(b), after ‘mortgage’—

*insert—*

‘or amendment of mortgage’.

**197 Amendment of s 189 (Matters for which there is no entitlement to compensation)**

Section 189(1)(i), ‘lodgment of a caveat’—

*omit, insert—*

‘lodgement or continuation of a caveat prepared and registered’.

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**198 Amendment of s 189A (Limit on amounts recoverable by mortgagee)**

(1) Section 189A(1)(c)—

*omit, insert—*

‘(c) the mortgagee is entitled to—

- (i) if the lot or interest is sold—any proceeds of the sale; or
- (ii) payment of an amount under the mortgage, if the mortgage is otherwise discharged; and’.

(2) Section 189A(2), from ‘If’ to ‘subsections’—

*omit, insert—*

‘Subsections’.

(3) Section 189A(2)(a)—

*omit, insert—*

‘(a) apply to limit the interest and costs components of the proceeds of sale or an amount that the mortgagee is entitled to under the mortgage; and’.

**199 Insertion of new s 196A**

After section 196—

*insert—*

**‘196A Publication of particular public notices on department’s website**

- ‘(1) This section applies if an official is required under this Act to give a public notice, unless the notice is a gazette notice.
- ‘(2) This section applies even if this Act provides for a particular way in which the notice must be given.
- ‘(3) The official must publish the notice on the department’s website for a total of at least 10 business days.
- ‘(4) The 10 business days may be, but need not necessarily be, consecutive.

- ‘(5) Subsection (3) does not prevent the official from also giving the notice in another way the official considers appropriate.
- ‘(6) In deciding to give the notice in another way, the official must consider the intended audience for the notice.
- ‘(7) In this section—
- give*, for a notice, includes advertising it.
- notice* includes an advertisement.
- official* means—
- (a) the chief executive; or
- (b) the registrar; or
- (c) a person performing functions or exercising powers under this Act for the chief executive or the registrar.
- public notice* means a notice of a public nature that is not required only to be given, or only intended for, a particular person or group of persons.’.

**200 Omission of pt 10A (Tidal boundary plans of subdivision)**

Part 10A—

*omit.*

**201 Insertion of new pt 12, div 5**

Part 12—

*insert—*

**‘Division 5 Transitional provision for Natural Resources and Other Legislation Amendment Act 2010**

**‘211 Continuing application of no compensation provision**

- ‘(1) The repealed section 191F continues to apply after the repeal of part 10A in relation to the operation of that part.

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‘(2) In this section—

*repealed section 191F* means section 191F as in force immediately before the commencement of this section.’.

## **202 Amendment of sch 2 (Dictionary)**

Schedule 2, definitions *earlier plan of subdivision*, *public interest*, *relevant section*, *tidal boundary* and *tidal boundary plan of subdivision*—

*omit.*

# **Part 14 Amendment of Mineral Resources Act 1989**

## **203 Act amended**

This part amends the *Mineral Resources Act 1989*.

## **204 Amendment of schedule (Dictionary)**

Schedule, definition *owner*—

*insert*—

‘(ha) for a licence area under the *Forestry Act 1959*—the plantation licensee for the licence area under that Act; and’.

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## Part 15                      Amendment of State Development and Public Works Organisation Act 1971

### 205    Act amended

This part amends the *State Development and Public Works Organisation Act 1971*.

### 206    Amendment of sch 2 (Dictionary)

(1) Schedule 2—

*insert—*

*‘right line tidal boundary* has the same meaning as in the *Land Act 1994*.

*tidal boundary* has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, part 7.

*water subject to tidal influence*, in relation to a boundary, means the water that is relevant to the identification of the boundary as a tidal boundary or right line tidal boundary.’.

(2) Schedule 2, definition *foreshore*, ‘at spring tides’—

*omit, insert—*

‘at spring tides, and includes land that adjoins land with a tidal boundary or right line tidal boundary and is on the same side of the boundary as the water subject to tidal influence and is not ordinarily covered and uncovered by the flow and ebb of the tide at spring tides’.

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## **Part 16**                      **Amendment of Survey and Mapping Infrastructure Act 2003**

### **207 Act amended**

This part amends the *Survey and Mapping Infrastructure Act 2003*.

### **208 Amendment of s 6 (Survey standards)**

- (1) Section 6(3)(d), (e) and (f)—  
*renumber* as section 6(3)(e), (f), and (h) respectively.
- (2) Section 6(3)—  
*insert*—
  - ‘(d) how the information and plan of survey may be given to the chief executive under this Act, including, for example, by electronic communication;
  - ‘(g) particular requirements for—
    - (i) the surveying of any tidal or non-tidal boundary; and
    - (ii) making use of searchable registered, or otherwise authoritative, information held by the chief executive (land) or the registrar of titles for the plan of survey if it is a compiled plan of survey in relation to a tidal or non-tidal boundary; and
    - (iii) the type and extent of information to be supplied for demonstrating consistency with the public interest under part 7;’.
- (3) Section 6—  
*insert*—
- ‘(6) In this section—

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*electronic communication* see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.’.

**209 Amendment of s 9 (When survey standards and survey guidelines have effect)**

Section 9(5)—

*omit, insert—*

- ‘(5) A survey guideline takes effect—
- (a) on the day it is published on the department’s website under section 10(1); or
  - (b) if a later day is stated in the survey guideline for that purpose—on the later day.’.

**210 Insertion of new s 25A**

Part 3, division 3—

*insert—*

**‘25A Special provision for taking of soil samples for multiple lot declarations**

- ‘(1) The chief executive may direct a surveyor to take soil samples from land of a type mentioned in section 21 for the purposes of collecting relevant evidence under the multiple lot declaration (tidal) provision or the multiple lot declaration (non-tidal) provision.
- ‘(2) Subject to the direction, the surveyor—
- (a) may enter the land and take soil samples; and
  - (b) in entering the land and taking soil samples is subject to the same requirements as would apply under sections 21 to 24 in relation to the placing of a permanent survey mark on the land.
- ‘(3) The surveyor—
- (a) must cause as little damage as possible in taking the soil samples; and

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- (b) must not cause any permanent damage to any property on the land.’.

**211 Amendment of s 32 (Authority for cadastral surveyor to act for another in particular circumstances)**

Section 32(1), ‘A’—

*omit, insert—*

‘A person who is or was a’.

**212 Amendment of s 51 (Survey control register)**

Section 51(2)(b), ‘section 69’—

*omit, insert—*

‘section 139’.

**213 Amendment of s 59 (Meaning of particular words used in describing an administrative area boundary)**

Section 59—

*insert—*

- ‘(2) To remove any doubt, it is declared that definitions in this section apply only in the context of administrative area boundaries, and do not affect the meaning of words used in this Act other than in this part.’.

**214 Renumbering of pts 7 and 8**

- (1) Parts 7 and 8—

*renumber* as parts 8 and 9.

- (2) Sections 62 to 64—

*renumber* as sections 131 to 133.

- (3) Sections 65 to 72—

*renumber* as sections 135 to 142.

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**215 Insertion of new pt 7**

After section 61—

*insert—*

**‘Part 7 Tidal and non-tidal boundaries  
and associated matters**

**‘Division 1 Preliminary**

**‘62 Definitions for pt 7**

‘In this part—

*‘ambulatory boundary principles* means the principles applying under, and the operation generally of, the general law relating to boundaries of land bounded by water, whether tidal or non-tidal, and in particular the general law relating to—

- (a) the change to the location at law of a boundary, having regard to any shift or modification over time of the feature constituting the boundary, by gradual and imperceptible degrees; and
- (b) the absence of change to the location at law of a boundary, having regard to any shift or modification of the feature constituting the boundary that is not gradual and imperceptible, including, for example, a shift or modification caused by a flood or storm or another rapidly occurring natural process, or by substantial modification of land through human activity.

*associated material*, for a plan of survey, means anything that records, whether on the plan of survey, in field notes accompanying the plan of survey or anywhere else, any aspect of the survey the subject of the plan of survey, including any of the following—

- (a) a measurement or analysis, including an electronically produced measurement or analysis, made for, or in

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relation to, the survey;

- (b) information about survey marks for the survey.

**bar**, in a watercourse, means a temporary accumulation of sediment—

- (a) that is within the bed of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
  - (i) it is formed during the recession of flows in the watercourse when sediment is deposited in the bed of the watercourse;
  - (ii) it is a dynamic feature, being changed by flow events in the watercourse;
  - (iii) because of its dynamic nature as mentioned in subparagraph (ii), its covering vegetation is immature, and not woody;
  - (iv) it is made up of coarse materials, in particular, sand and gravel.

**bed and banks**, of a lake, means the land that is normally covered by the water of the lake, whether permanently or intermittently, regardless of frequency, but does not include adjoining land from time to time covered in flood events.

**bench**, in a watercourse, means a storage of sediment—

- (a) that is within the channel of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
  - (i) it is higher than the bed of the watercourse and bars in the watercourse, but lower than the level of either outer bank of the watercourse;
  - (ii) it is formed through sediment deposition during flow events in the watercourse that are at or near the level of either outer bank;
  - (iii) it is a reasonably flat sediment deposit, reasonably straight or gently curved as viewed from above,

and at least partly consolidated by riparian vegetation;

- (iv) it may be distinguished from a floodplain because the deposits making up a floodplain are finer and more layered.

***boundary location criteria rule (non-tidal) provision*** means section 109.

***compiled plan of survey***, in relation to any length (the ***relevant length***) of a tidal or non-tidal boundary of land, means a plan of survey for the land that—

- (a) does not involve a resurveying of the relevant length; and
- (b) represents the relevant length using searchable registered, or otherwise authoritative, information held by the chief executive (land) or the registrar of titles.

***court*** means the Land Court.

***current adopted natural feature rule (non-tidal) exception provision*** means section 104.

***current adopted natural feature rule (non-tidal) provision*** means section 103.

***current adopted natural feature rule (tidal) provision*** means section 76.

***declaration decision*** means a decision mentioned in section 83(9)(b), 93(9)(b), 109(9)(b) or 120(9)(b).

***deposit***, in relation to a plan of survey, means deposit under a registration Act.

***depositional feature***, in relation to a watercourse, means a deposit of clay, sand or silt that is carried during flows of water in the watercourse.

*Examples—*

- mud deposited in cracks in rocks
- sand deposits behind rocks

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***drainage feature*** means a natural landscape feature, including a gully, drain, drainage depression or other erosion feature that—

- (a) is formed by the concentration of, or operates to confine or concentrate, overland flow water during and immediately after rainfall events; and
- (b) flows for only a short duration after a rainfall event, regardless of the frequency of flow events; and
- (c) commonly, does not have enough continuing flow to create a riverine environment.

*Example for paragraph (c)—*

There is commonly an absence of water favouring riparian vegetation.

***floodplain*** means an area of reasonably flat land adjacent to a watercourse that—

- (a) is covered from time to time by floodwater overflowing from the watercourse; and
- (b) does not, other than in an upper valley reach of the watercourse, confine floodwater to generally follow the path of the watercourse; and
- (c) has finer sediment deposits than the sediment deposits of any bench, bar or in-stream island in the watercourse.

***floodwater***, in relation to a watercourse, means water that has overflowed the outer banks of the watercourse because of a flood event affecting the watercourse, and is on land near the watercourse.

***gradual change***, of a natural feature, means any shift or modification over time of the natural feature, by gradual and imperceptible degrees.

***indigenous land*** means—

- (a) Aboriginal land under the *Aboriginal Land Act 1991* or Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*; or
- (b) land that is the subject of—

- 
- (i) a deed of grant in trust under the *Land Act 1994*, granted for the benefit of Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes; or
  - (ii) a lease granted under the *Local Government (Aboriginal Lands) Act 1978*, section 3; or
  - (c) any of the following land in the county of Torres, parish of Umaga—
    - (i) lot 48 on crown plan TS207;
    - (ii) lot 1 on crown plan 846896;
    - (iii) lot 55 on crown plan 846896.

***in-stream island***, in a watercourse, means a storage of sediment—

- (a) that is within the channel of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
  - (i) it is formed by processes within the watercourse;
  - (ii) its crest is not higher than either outer bank of the watercourse;
  - (iii) it is a dynamic feature, being changed by flow events in the watercourse;
  - (iv) it is made up of coarse materials, in particular, sand and gravel.

***intermittent***, in relation to the flow of water in a watercourse or the collection of water in a lake, includes variable, having regard to seasonal variations, and to year by year variability of seasons.

***lake*** includes—

- (a) a lagoon, swamp or other natural collection of water, whether permanent or intermittent; and
- (b) the bed and banks of the lake, and any other element of the lake confining or containing the water of the lake.

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***Land Title Act compensation provisions*** means the *Land Title Act 1994*, sections 188 and 188A.

***lessee*** means a person who is registered in the land registry as the holder of a lease from the State.

***lodge*** means lodge under a registration Act.

***multiple lot declaration (non-tidal)*** see section 120(1).

***multiple lot declaration (non-tidal) provision*** means section 120.

***multiple lot declaration (tidal)*** see section 93(1).

***multiple lot declaration (tidal) provision*** means section 93.

***new plan of survey*** means a plan of survey registered after the commencement of this definition.

***new source material*** means source material that comes into force after the commencement of this definition.

***non-tidal boundary*** means—

- (a) a non-tidal boundary (lake); or
- (b) a non-tidal boundary (watercourse).

***non-tidal boundary (lake)*** see section 99(1).

***non-tidal boundary (watercourse)*** see section 99(2).

***non-tidal boundary (watercourse) location criteria*** means the criteria stated in section 100.

***old plan of survey*** means a plan of survey registered, or otherwise recorded or recognised by the State as an authoritative instrument relating to land boundaries, before the commencement of this definition.

***original adopted natural feature rule (tidal) provision*** means section 80.

***outer bank***, of a watercourse, means a line or feature that is an outer bank of the watercourse under the *Water Act 2000*.

***overland flow water*** see the *Water Act 2000*, schedule 4.

**plan of survey** includes a plan of subdivision under a registration Act.

**Property Law Act relief provisions** means the *Property Law Act 1974*, part 11.

**public interest** includes the cultural, environmental, heritage, land protection, planning, recreational, social and strategic interests of the public.

**register** means register under a registration Act.

**registered owner**, in relation to land that is freehold land, means the person recorded in the freehold land register as the person entitled to the fee simple interest in the land.

**registration Act** means the *Land Act 1994* or the *Land Title Act 1994*, and if the context permits, includes an Act directly or indirectly superseded by the *Land Act 1994* or the *Land Title Act 1994*.

**review decision** see section 125(1).

**review notice day** see section 125(3)(a).

**right line boundary**, of land, means a boundary of the land to which all of the following apply—

- (a) the boundary is represented, or, having regard to the source material for the land, would be represented, on a plan of survey for the land as a straight line or series of straight lines;
- (b) the boundary's location is fixed;
- (c) the boundary's location is marked on the ground, or, having regard to the source material for the land, would be marked on the ground, by the placement of survey marks that—
  - (i) delineate the boundary; or
  - (ii) allow the location of the boundary to be worked out by reference to them; or
  - (iii) are a combination of subparagraphs (i) and (ii).

**scour mark**, in relation to a watercourse, means—

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- (a) a mark made by the sweeping action of suspended sediments in water during flows in the watercourse; or
- (b) a mark that can be identified by weathering stains, or the absence of lichens, on erosion-resistant surfaces of a bank of the watercourse.

*Example of an erosion-resistant surface—*

rock

***second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception)*** means section 82.

***single lot declaration (non-tidal)*** see section 109(1).

***single lot declaration (tidal)*** see section 83(1).

***source material***, for land, means any instrument forming the origin of the land's identity for the system of land titling or land administration in place in the State under the registration Acts.

*Examples of what is and what is not source material—*

- 1 For freehold land, the most significant source material would ordinarily be the most recently issued deed of grant that granted the land in fee simple. A subsequently issued certificate of title under the *Land Title Act 1994* following a subdivision or resurvey of all or part of the freehold land would not ordinarily be source material for the land or a part of the land.
- 2 A map, plan of survey or other instrument that is contemporaneous with the deed of grant mentioned in example 1 could also be source material if, for example, it is at law justifiable to have recourse to it to better interpret the deed of grant. A subsequent plan of subdivision following a subdivision or resurvey of all or part of the freehold land would not ordinarily be source material for the land or a part of the land.
- 3 For a road or reserve under the *Land Act 1994*, the most significant source material would ordinarily be the instrument under which the road or reserve is dedicated. Source material could also include a map or a plan of survey that is contemporaneous with the dedication of the road or reserve.
- 4 For land that is the subject of a lease, licence or permit under the *Land Act 1994*, the most significant source material would ordinarily be the instrument of lease, licence or permit. Source

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material could also include an entry in a register relating to the identity of the land before the grant of the lease, licence or permit, and a map or a plan of survey that is contemporaneous with the grant of the lease, licence or permit or the making of the entry in the register.

*specified tidal boundary* see section 71.

*subsequent new plan of survey*, for land having a tidal or non-tidal boundary, means a new plan of survey for the land, other than the first new plan of survey for the land.

*sudden change*, of a natural feature, means any shift or modification of the natural feature that is not gradual change of the natural feature, whether by a natural process or by human activity.

*tidal boundary* see section 70.

*tidal boundary location criteria* means the criteria stated in section 72.

*watercourse* see section 63.

### **‘63 Meaning of *watercourse* for pt 7**

- ‘(1) In this part, a *watercourse* is a river, creek or other stream, including a stream in the form of an anabranch or a tributary, in which water flows permanently or intermittently, regardless of the frequency of flow events—
- (a) in a natural channel, whether artificially modified or not; or
  - (b) in an artificial channel that has changed the course of the stream.
- ‘(2) A *watercourse* includes any of the following located in it—
- (a) in-stream islands;
  - (b) benches;
  - (c) bars.
- ‘(3) However, a *watercourse* does not include a drainage feature.

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**‘64 Application of ambulatory boundary principles in pt 7**

- ‘(1) It is the intention of this part that the ambulatory boundary principles are taken to have always applied, and that the principles continue to apply, unless their operation is excluded by contrary intention.
- ‘(2) Subsection (1) applies to a tidal boundary or non-tidal boundary even if the application to the boundary of division 2, subdivisions 2 to 4, or division 4, subdivisions 2 to 4, is excluded.
- ‘(3) Subsection (4) applies if—
- (a) a provision of this part provides for the application of the ambulatory boundary principles to a natural feature; and
  - (b) the natural feature is other than, strictly, the boundary between land and water.

*Examples of natural features for paragraph (b)—*

- the top of a bank
  - the toe of a dune
  - a depositional feature
- ‘(4) The ambulatory boundary principles are taken to apply, and if the case requires, are taken to have applied, to the natural feature, to the greatest practicable extent, in the same way and to the same extent as they apply, or would have applied, to the boundary, between the land and the water, of land bounded by water.

**‘65 Special provision for reserved plans of survey**

- ‘(1) This section applies if, after the commencement of this section, a reserved plan of survey is registered for land having a tidal boundary or non-tidal boundary (watercourse) before any other plan of survey is registered for the land.
- ‘(2) The reserved plan of survey—
- (a) is taken to be, for division 2, subdivision 2, or division 4, subdivision 2, the old plan of survey that is the most

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recently registered or that is otherwise currently authoritative in relation to the land; and

- (b) takes the place of any other old plan of survey for the land that, immediately before the registration of the reserved plan of survey, was the most recently registered or otherwise currently authoritative old plan of survey in relation to the land.
- ‘(3) For the application of division 2, subdivision 3, or division 4, subdivision 3 to the land, the reserved plan of survey is taken not to be the first new plan of survey for the land.
- ‘(4) For this section, a plan of survey is a reserved plan of survey if—
- (a) either—
    - (i) it was prepared and registered only for the purpose of a disposal of, or other dealing with, part of the land under the *Land Act 1994* for a public purpose under that Act; or
    - (ii) it was prepared and registered for the purposes of a development approval under the *Sustainable Planning Act 2009* in force at the commencement of this section, other than for the purposes of an amendment of the development approval made after the commencement of this section; or
    - (iii) it was prepared on the basis of a survey performed before the commencement of this section for the purposes of works directed or authorised under a regulation under the *State Development and Public Works Organisation Act 1971* to be undertaken or completed by an entity; and

*Example for subparagraph (iii)—*

Under the *State Development and Public Works Organisation Act 1971*, section 140 (Powers in respect of particular works on foreshore and under waters), a regulation may authorise the coordinator-general to undertake works in, on, over, through or across a foreshore.

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- (b) the chief executive or the registrar of titles is satisfied that paragraph (a)(i), (ii) or (iii) applies, and has certified the plan of survey as being a reserved plan of survey for this section.

## **‘Division 2            Tidal boundaries**

### **‘Subdivision 1        Preliminary**

#### **‘66        Non-application of sdivs 2 to 4 to particular land**

- ‘(1) Subdivisions 2 to 4 do not apply to the location at law of a tidal boundary of land if—
  - (a) the tidal boundary is a specified tidal boundary; or
  - (b) the land is indigenous land; or
  - (c) the land is strategic port land under the *Transport Infrastructure Act 1994*; or
  - (d) the land is, or is a part of, a forest reserve or protected area under the *Nature Conservation Act 1992*; or
  - (e) the land is comprised in a State forest under the *Forestry Act 1959*.
- ‘(2) If land ceases to be strategic port land under the *Transport Infrastructure Act 1994*, subdivisions 2 to 4 commence to apply to the location at law of the tidal boundary of the land as if, for that land, the subdivisions commenced to apply when the land ceased to be strategic port land.
- ‘(3) If the status of land as a protected area under the *Nature Conservation Act 1992* is revoked and the land is not immediately again dedicated as a protected area under that Act, subdivisions 2 to 4 commence to apply to the location at law of the tidal boundary of the land as if, for that land, the subdivisions commenced to apply on the revocation.
- ‘(4) If the status of land as a forest reserve under the *Nature Conservation Act 1992* is revoked and the land is not

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immediately again dedicated as a forest reserve under that Act or immediately dedicated as a protected area under that Act, subdivisions 2 to 4 commence to apply to the location at law of the tidal boundary of the land as if, for that land, the subdivisions commenced to apply on the revocation.

‘(5) If the status of land as being comprised in a State forest under the *Forestry Act 1959* is revoked and the land is not immediately again declared as a State forest under that Act or immediately dedicated as a forest reserve or protected area under the *Nature Conservation Act 1992*, subdivisions 2 to 4 commence to apply to the location at law of the tidal boundary of the land as if, for that land, the subdivisions commenced to apply on the revocation.

‘(6) In this section—

*protected area*, under the *Nature Conservation Act 1992*, does not include any of the following under that Act—

- (a) a coordinated conservation area;
- (b) a wilderness area;
- (c) a World Heritage management area;
- (d) an international agreement area.

## ‘67 Overview of sdivs 2 to 6

‘(1) Subdivision 2 provides for the location at law of a tidal boundary of land for the period starting when this division commences and ending on the registration of the first new plan of survey to be registered for the land after this division commences.

‘(2) Generally, subdivision 2 provides for the location at law of the tidal boundary to be the current location of the natural feature adopted in the currently applicable plan of survey.

‘(3) Subdivision 3 provides for the location at law of a tidal boundary of land from the registration of the first new plan of survey for the land.

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- ‘(4) Generally, subdivision 3 provides for the location at law of the tidal boundary to be the current location of the natural feature adopted in the first old plan of survey that adopted a natural feature, whether or not it is the most recently registered plan of survey for the land.
- ‘(5) Exceptions to the general rules under subdivisions 2 and 3 include providing for the location of tidal boundaries in a way that involves the application of some or all of the tidal boundary location criteria.
- ‘(6) Subdivision 4 provides for the location at law of a tidal boundary of land from the registration of any subsequent new plan of survey for the land, and relies on the feature identified under subdivision 3.
- ‘(7) Subdivision 5 provides for the location at law of a tidal boundary of land, and for the non-application of subdivisions 2 to 4, if the land’s source material is new source material.
- ‘(8) Subdivision 6 provides for particular matters relating to the location at law of boundaries of esplanades not otherwise provided for in subdivisions 2 to 5.

**‘68 Operation of sdivs 2 to 4**

‘The provisions of subdivisions 2 to 4 about the location at law of a tidal boundary of land prevail even if their operation is inconsistent with—

- (a) the representation of the tidal boundary on a plan of survey; or
- (b) the location at law of the tidal boundary under any source material for the land immediately before the commencement of this division.

**‘69 Noting of advice about operation of sdiv 3 or div 3**

- ‘(1) The chief executive (land) or the registrar of titles may keep records in a way that a search of the appropriate register kept by the chief executive (land) or the registrar of titles will show any case where—

- (a) subdivision 3 would, or is likely to, have the effect of locating a tidal boundary in a different place, or in a different form, from its location or form as provided for under subdivision 2; or

*Example of possible record for paragraph (a)—*

Land could be the subject of a record for paragraph (a) if its old plan of survey adopts the line of intersection of a tidal plane with land (for example, the line of mean high water springs) but, on the registration of its first new plan of survey, its tidal boundary will be a different feature (for example the top of a bank).

- (b) a multiple lot declaration (tidal) has been made and the declaration would, or is likely to, have the effect of locating a tidal boundary in a different place, or in a different form, from its location or form as provided for under this division.

*Example of possible record for paragraph (b)—*

Land could be the subject of a record for paragraph (b) if it and other land are the subject of a multiple lot declaration (tidal), so that on the registration of the next new plan of survey for the land, the tidal boundary will be in accordance with the boundary provided for in the declaration.

- ‘(2) Neither the chief executive (land), the registrar of titles nor anyone else, including the State, has an obligation of any type, arising under this Act or otherwise, to take any action subsection (1) allows.
- ‘(3) No fee is payable for the recording of anything under subsection (1).

## ‘70 Meaning of *tidal boundary* of land

- ‘(1) A boundary of land is a *tidal boundary* if—
- (a) under the source material for the land, the boundary is identified, either expressly or by necessary implication—
- (i) with reference to water, however described, that is subject to tidal influence; or

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*Examples of tidal boundary identifiers for subparagraph (i)—*

- ‘by the right bank of the Maroochy River’
  - ‘high-water mark’
  - ‘by the high-water mark of Moreton Bay’
  - ‘mean high water springs’
  - other similar language relating to a bay, ocean or sea
  - other similar language relating to a watercourse at a place where the waters of the watercourse are subject to tidal influence
- (ii) with reference to a natural feature or other thing whose existence and location are dependent on, or otherwise linked to the existence and location of, water that is subject to tidal influence; and

*Example of tidal boundary identifier for subparagraph (ii)—*

the top of a bank running in proximity to the water’s edge at spring tide

- (b) having regard to how the boundary is identified, it can not appropriately be represented on a plan of survey as a right line boundary.
- ‘(2) For subsection (1), a boundary that would otherwise be a tidal boundary under subsection (1) is taken not to be a tidal boundary to the extent it is located upstream of a downstream limit declared under the *Water Act 2000*, section 1006(1).

## ‘71 **Meaning of *specified tidal boundary***

- ‘(1) A tidal boundary of land is a *specified tidal boundary* if, under the source material for the land, the identification of the tidal boundary is specific rather than general in relation to the element of tidal influence, including for example, a description of the tidal boundary that—
- (a) uses the expression ‘mean high water springs’ or ‘ordinary high-water mark at spring tides’; or

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- (b) uses some other form of words to describe the tidal boundary that indicates a clear intention to locate the boundary at a specific tidal plane.
- ‘(2) Also, a tidal boundary of land is a *specified tidal boundary* if—
- (a) under the source material for the land, the identification of the tidal boundary is general rather than specific in relation to the element of tidal influence; and
- (b) the source material was in force for the land on the commencement of this division and is, or includes, a deed of grant issued under—
- (i) the *Land Act 1994*, section 358(3)(b) following a surrender under section 358(2)(b) of that Act; or
- (ii) provisions of the repealed *Land Act 1962*, or an earlier Act relating to the creation of freehold land, corresponding to the provisions mentioned in subparagraph (i).
- ‘(3) Without limiting what may be an identification of a tidal boundary that is general rather than specific, the identification of a tidal boundary is taken to be general rather than specific if it does not use a form of words to describe the tidal boundary that indicates a clear intention to locate the boundary at a specific tidal plane.

*Examples of forms of words achieving a general rather than specific identification of a tidal boundary—*

- ‘by the left bank of the Endeavour River’
- ‘high-water mark’
- ‘by the high-water mark of Moreton Bay’

## ‘72 Tidal boundary location criteria

- ‘(1) The first criterion is that the tidal boundary must not be subject to tidal inundation under any combination of astronomical conditions and average meteorological conditions.

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- ‘(2) The second criterion is that the tidal boundary must be on the landward side of any sandy beaches, foredunes, mangroves, sea grasses, salt grasses, salt marshes, saltpans, intertidal flats, tidal sand banks and other similar features.
- ‘(3) The third criterion is that the location of the tidal boundary must be consistent with the public interest.
- ‘(4) The fourth criterion is that the tidal boundary—
  - (a) must be in a stable location that has been shown to have long term sustainability under normal seasonal events; and
  - (b) must not require any construction to keep it free from complete or partial inundation or obliteration.
- ‘(5) The fifth criterion is that a natural feature must be adopted as the tidal boundary unless there is no natural feature in reasonable proximity to where the tidal boundary must be located, having regard to the description of the boundary in the source material for the land.

*Examples of natural features—*

the top or bottom of a bank, a natural geomorphic form, a change in grade of the natural landform, a change in type of native vegetation

- ‘(6) The sixth criterion is that if the fourth criterion can not be complied with, and no natural feature can be adopted under the fifth criterion, the tidal boundary chosen must nevertheless be on the landward side of any sandy beaches or sandy dunes and of any active erosion areas that have no natural vegetation.

*Example for subsection (6)—*

The edge of vegetation that is above the highest astronomical tide could be adopted as the tidal boundary.

### **‘73 Special regulation-making power to support tidal boundary location**

- ‘(1) Regulations made under this Act may include a regulation supporting the application of the provisions of this division relating to tidal boundaries.

- ‘(2) Without limiting subsection (1), a regulation may, by words and diagrams, indicate how the provisions of this division must be applied in varying tidal environments.
- ‘(3) A regulation under this section is not invalid only because it supplements the provisions of this Act by providing greater certainty than would otherwise be the case in relation to the location at law of tidal boundaries in particular circumstances or types of circumstances.

**‘74 Special provision for plans of survey approved under stay provisions**

- ‘(1) This section applies if—
  - (a) the registration of a plan of survey of land (the *relevant plan of survey*) was approved under the *Land Act 1994*, section 431ND or 431NE or the *Land Title Act 1994*, section 191D or 191E before the repeal of those provisions; and
  - (b) the relevant plan of survey—
    - (i) was registered before the commencement of this section; or
    - (ii) is registered after the commencement of this section.
- ‘(2) Subsections (3) to (5) apply to the land—
  - (a) if subsection (1)(b)(i) applies—from the commencement of this section; or
  - (b) if subsection (1)(b)(ii) applies—from the registration of the relevant plan of survey.
- ‘(3) The tidal boundary of the land is, at law, the natural feature or anything else represented on the plan of survey.
- ‘(4) To decide where the tidal boundary is located at any time after the commencement of this section or the registration of the relevant plan of survey, there must be taken into account the application of the ambulatory boundary principles to a natural feature represented on the relevant plan of survey.

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- ‘(5) Subdivisions 2 and 3 do not apply to the location at law of the tidal boundary of the land, but subdivision 4 applies as if the relevant plan of survey were the first new plan of survey for the land.

## **‘Subdivision 2      Locating tidal boundaries at law until registration of first new plan of survey**

### **‘75      Application of sdiv 2**

‘This subdivision provides for the location at law of a tidal boundary of land at any time in the period starting when this division commences and ending on the registration of the first new plan of survey for the land.

### **‘76      Current adopted natural feature rule (tidal) provision**

- ‘(1) This section applies if an old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land, together with any associated material for the plan, clearly adopted a natural feature for representing the tidal boundary.

*Examples of natural features—*

landward edge of mangroves, seaward edge of grassy dune, stable toe of dune

- ‘(2) For subsection (1), the adoption of the line of intersection of a tidal plane with land is sufficient to have achieved the adoption of a natural feature.
- ‘(3) The tidal boundary is, at law, the adopted natural feature, taking into account the application of the ambulatory boundary principles to the adopted natural feature both before and after the commencement of this division.

*Example for subsection (3)—*

Immediately before the commencement of this division, the tidal boundary may have been located, at law, having regard strictly to the terms of a deed of grant, at the current line of mean high water springs. Further, the most recently registered plan of survey for the land adopted the line of mean high water springs, rather than a natural feature such as the top of a bank, to represent the tidal boundary. On the commencement of this division, the tidal boundary remains as mean high water springs until a new plan of survey is registered.

- ‘(4) Subsection (3) has effect even if, immediately before the commencement of this division, the tidal boundary was at law located in a different place.

*Example for subsection (4)—*

Immediately before the commencement of this division, the tidal boundary may have been located at law, having regard strictly to the terms of a deed of grant, at the current line of mean high water springs. However, the most recently registered plan of survey for the land adopted an adjacent top of a bank to represent the boundary. On the commencement of this division, the tidal boundary changes to the current location of the top of the bank.

**‘77 Current adopted natural feature rule (tidal)  
exception provision**

- ‘(1) This section provides for the location at law of the tidal boundary if the current adopted natural feature rule (tidal) provision does not apply or can not practicably be applied to establish the location.
- ‘(2) The tidal boundary is, at law, located where it could most reasonably be expected to be located, under subdivision 3, if the first new plan of survey were to be registered for the land.
- ‘(3) To decide where the tidal boundary is located at any time, there must be taken into account the application of the ambulatory boundary principles to any natural feature that locates the tidal boundary under subsection (2).
- ‘(4) Without limiting subsection (1), the current adopted natural feature rule (tidal) provision can not practicably be applied if all of the following apply—

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- (a) there is an old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land;
- (b) the plan, together with any associated material for the plan, adopted a natural feature for representing the tidal boundary;
- (c) either—
  - (i) it is not possible to make a meaningful correspondence between the evidence on the plan of the adopted natural feature and evidence on the ground of any natural feature; or
  - (ii) the adopted natural feature is currently located in a substantially different location than it would have been if it had been the subject of only gradual change since it was adopted in the old plan of survey.

### **‘Subdivision 3      Locating tidal boundaries at law from registration of first new plan of survey**

#### **‘78      Application of sdiv 3**

‘This subdivision provides for the location at law of a tidal boundary of land on and from the registration of the first new plan of survey for the land.

*Note—*

The operation of this subdivision could be displaced by a multiple lot declaration (tidal) under division 3.

#### **‘79      Special requirement to support the operation of sdiv 3**

- ‘(1) The representation of the tidal boundary on the first new plan of survey for the land together with associated material, including a plan of survey lodged but not registered before the

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commencement of this division, must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.

- ‘(2) Subject to subsection (3), the first new plan of survey must not be a compiled plan of survey in relation to any length of the tidal boundary.
- ‘(3) The first new plan of survey may be a compiled plan of survey in relation to any length (the *relevant length*) of the tidal boundary if—
- (a) on the registration of the new plan of survey, the original adopted natural feature rule (tidal) provision applies to locate, at law, the tidal boundary as a natural feature adopted in an old plan of survey (the *original plan of survey*) to represent the tidal boundary; and
  - (b) the searchable registered, or otherwise authoritative, information held by the chief executive (land) or the registrar of titles obtained for the purposes of the first new plan of survey, to the extent it is a compiled plan of survey in relation to the relevant length—
    - (i) is information included in the original plan of survey and associated material for the original plan of survey; or
    - (ii) is information that allows the tidal boundary to be represented substantially as required under subsection (1), even though no resurvey of the boundary has occurred.

*Note—*

This subsection will allow for some or all of the tidal boundary to be represented on the first new plan of survey without a resurvey, but will not affect the actual location at law of the tidal boundary under this subdivision.

- ‘(4) Subsection (3) applies even if a later old plan of survey represented the tidal boundary generally closer to the water subject to tidal influence than the natural feature mentioned in subsection (3)(a).

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*Example—*

A later old plan of survey represented the tidal boundary at mean high water springs.

‘(5) In this section—

*water subject to tidal influence*, in relation to a tidal boundary, means the water that is relevant to the identification of the boundary as a tidal boundary.

### ‘80 Original adopted natural feature rule (tidal) provision

‘(1) This section applies if—

(a) an old plan of survey, whether or not it is the most recently registered or is otherwise currently authoritative in relation to the land, together with any associated material for the plan, clearly adopted a natural feature for representing the tidal boundary; and

(b) the old plan of survey was the first plan of survey to be registered or otherwise become authoritative in relation to the land that adopted a natural feature for representing the tidal boundary.

‘(2) For subsection (1)(a), the adoption of the line of intersection of a tidal plane with land is not sufficient to have achieved the adoption of a natural feature.

‘(3) The tidal boundary is, at law, the adopted natural feature, taking into account the application of the ambulatory boundary principles to the adopted natural feature, both before and after the registration of the first new plan of survey.

‘(4) Subsection (3) has effect even if, immediately before the registration of the first new plan of survey, the tidal boundary was, at law, having regard to the provisions of subdivision 2, located in a different place.

*Example for subsection (4)—*

Immediately before the registration of the first new plan of survey, the tidal boundary may have been located at law, having regard to subdivision 2, at the current line of mean high water springs. However, the first old plan of survey for the land to adopt a natural feature (other

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than the line of intersection of a tidal plane with land) to represent the tidal boundary adopted an adjacent top of a bank to represent the boundary. On the registration of the first new plan of survey, the location at law of the tidal boundary changes to the current location of the top of the bank.

**‘81 First exception for the original adopted natural feature rule (tidal) provision (alternative natural feature exception)**

- ‘(1) This section provides for an alternative for the location at law of the tidal boundary, but applies only if the land was freehold land when this section commenced.
- ‘(2) This alternative applies if, although the original adopted natural feature rule (tidal) provision can be applied to establish the location (the *location under the rule*), there exists, on the same side of the location under the rule as the water subject to tidal influence, a natural feature (the *alternative natural feature*) that complies with the requirements of the first, second, third and fourth of the tidal boundary location criteria.
- ‘(3) The cadastral surveyor may adopt the alternative natural feature for representation on the first new plan of survey.
- ‘(4) The surveyor must consult with the registered owner of the land before acting under subsection (3).
- ‘(5) If the alternative natural feature is adopted, the tidal boundary is, at law, the alternative natural feature, taking into account the application of the ambulatory boundary principles to the adopted natural feature after the registration of the first new plan of survey.
- ‘(6) In this section—  
*water subject to tidal influence*, in relation to the location under the rule, means the water that is relevant to the identification of the tidal boundary as a tidal boundary.

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**‘82 Second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception)**

- ‘(1) This section provides for the location at law of the tidal boundary if the original adopted natural feature rule (tidal) provision can not be applied because there is no old plan of survey that, together with any associated material for the plan, clearly adopted a natural feature (other than the line of intersection of a tidal plane with land) for representing the tidal boundary.
- ‘(2) The tidal boundary is, at law, the natural feature or anything else that to the greatest practicable extent complies with the requirements of all the tidal boundary location criteria and is represented on the first new plan of survey.
- ‘(3) To decide where the tidal boundary is located at any time after the registration of the first new plan of survey, there must be taken into account the application of the ambulatory boundary principles to a natural feature represented on the first new plan of survey under subsection (2).
- ‘(4) Subsection (2) does not apply if a single lot declaration (tidal) is made about the location of the tidal boundary.

**‘83 Third exception for the original adopted natural feature rule (tidal) provision (chief executive single lot declaration (tidal) exception)**

- ‘(1) This section provides for the location at law of the tidal boundary if the chief executive has by gazette notice under this section made a declaration (a *single lot declaration (tidal)*) about the location of the tidal boundary.
- ‘(2) The tidal boundary is, at law, the natural feature or anything else declared by the chief executive to be the tidal boundary for the land under the single lot declaration (tidal).
- ‘(3) To decide where the tidal boundary is located at any time after the registration of the first new plan of survey, there must be taken into account the application of the ambulatory boundary

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principles to any natural feature declared by the chief executive to be the tidal boundary.

- ‘(4) The chief executive may make a single lot declaration (tidal) only if a plan of survey intended to be the first new plan of survey for the land has been lodged, or has been deposited with a view to subsequent lodgement.
- ‘(5) Subject to subsection (4), the chief executive may make a single lot declaration (tidal) only if—
- (a) the original adopted natural feature rule (tidal) would otherwise apply, but—
    - (i) it is not possible to make a meaningful correspondence between the evidence on the old plan of survey of the adopted natural feature and evidence on the ground of any natural feature; or
    - (ii) the adopted natural feature is currently located in a substantially different location than it would have been if it had been the subject of only gradual change since it was adopted in the old plan of survey; or
    - (iii) the natural feature adopted for representing the tidal boundary in the old plan of survey was different from the natural feature that should have been adopted, having regard to the directions and instructions applying to surveyors when the old plan of survey was prepared; or
    - (iv) because of circumstances not otherwise provided for in this subdivision, the original adopted natural feature rule (tidal) provision can not practicably be applied; or
  - (b) all of the following apply—
    - (i) the directions and instructions applying to surveyors when an old plan of survey was prepared were not correctly complied with;
    - (ii) if they had been complied with, the old plan of survey would have been the first old plan of survey

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- to be registered or otherwise become authoritative in relation to the land that clearly adopted a natural feature (other than the line of intersection of a tidal plane with land) for representing the tidal boundary;
- (iii) the old plan of survey instead incorrectly adopted a line other than a natural feature for representing the tidal boundary; or
- (c) the second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception) would otherwise have applied to locate the tidal boundary.
- ‘(6) To remove any doubt, it is declared that the single lot declaration (tidal) may incorporate by reference a map or plan held by the chief executive for identifying the tidal boundary.
- ‘(7) In making a single lot declaration (tidal), the chief executive must ensure the location of the tidal boundary to the greatest practicable extent complies with the requirements of the first, second and third of the tidal boundary location criteria.
- ‘(8) The chief executive or registrar of titles may defer dealing with a first new plan of survey that has been lodged, or has been deposited with a view to subsequent lodgement, to allow the chief executive a reasonable time to investigate and make a single lot declaration (tidal).
- ‘(9) The following requirements apply for the making of a single lot declaration (tidal)—
- (a) the chief executive must take reasonable steps to obtain the views of any registered owner or lessee of the land about the proposed declaration;
- (b) the chief executive must make a decision that the chief executive intends to make the proposed declaration, and what the terms of the proposed declaration are to be;
- (c) the chief executive must give the registered owner or lessee of the land written notice of—
- (i) the decision and reasons for the decision; and

- (ii) the owner's or lessee's right to appeal against the decision and how the appeal is started;
- (d) after any review of, and any appeal against, the decision have been completed, the chief executive may, unless following review or appeal no declaration is to be made, make the single lot declaration (tidal)—
  - (i) in accordance with the decision; or
  - (ii) if the decision is amended or substituted as a result of review or appeal—in accordance with the decision as amended or substituted.

#### **'Subdivision 4      Locating tidal boundaries at law from registration of subsequent new plan of survey**

##### **'84      Application of sdiv 4**

'This subdivision provides for the location at law of a tidal boundary of land on and from the registration of a subsequent new plan of survey for the land.

*Note—*

The operation of this subdivision could be displaced by a multiple lot declaration (tidal) under division 3.

##### **'85      Special requirement to support the operation of sdiv 4**

- '(1) The representation of the tidal boundary on the subsequent new plan of survey for the land together with associated material must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.
- '(2) Subject to subsections (3) and (4), the subsequent new plan of survey must not be a compiled plan of survey in relation to any length of the tidal boundary.

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- ‘(3) The subsequent new plan of survey may be a compiled plan of survey in relation to any length (the *relevant length*) of the tidal boundary if—
- (a) the first new plan of survey was not a compiled plan of survey in relation to the relevant length; and
  - (b) the searchable registered, or otherwise authoritative, information held by the chief executive (land) or the registrar of titles obtained for the purposes of the subsequent new plan of survey in relation to the relevant length is information included in the first new plan of survey and associated material for the first new plan of survey.
- ‘(4) Further, the subsequent new plan of survey may be a compiled plan of survey in relation to any length (also the *relevant length*) of the tidal boundary if—
- (a) the first new plan of survey was a compiled plan in relation to the relevant length; and
  - (b) the searchable registered, or otherwise authoritative, information held by the chief executive (land) or the registrar of titles obtained for the purposes of the subsequent new plan of survey in relation to the relevant length is the same information obtained for the purposes of the first new plan of survey.

*Note for subsections (3) and (4)—*

Subsections (3) and (4) will allow for some or all of the tidal boundary to be represented on the subsequent new plan of survey without a resurvey, but will not affect the actual location at law of the tidal boundary under this subdivision.

## ‘86 First new plan of survey adopted feature rule (tidal)

‘The tidal boundary is, at law, the natural feature or other thing that constituted the tidal boundary immediately before the registration of the subsequent new plan of survey, taking into account, if a natural feature constituted the boundary, the application of the ambulatory boundary principles to the

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natural feature, both before and after the registration of the subsequent new plan of survey.

## **‘Subdivision 5 Locating tidal boundaries at law on coming into force of new source material**

### **‘87 Application of sdiv 5**

‘This subdivision provides for the location at law of a tidal boundary of land on and from the coming into force of new source material for the land.

### **‘88 Special requirement to support the operation of sdiv 5**

‘The representation of the tidal boundary on any plan of survey for the land together with associated material must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.

### **‘89 New source material adopted feature rule (tidal)**

- ‘(1) Subdivisions 2 to 4 do not apply to the land.
- ‘(2) The tidal boundary is, at law, the natural feature or other thing identified as the tidal boundary in the new source material, taking into account, if a natural feature is identified as the boundary, the application of the ambulatory boundary principles to the natural feature, after the coming into force of the source material.
- ‘(3) For subsection (2), the adoption of the line of intersection of a tidal plane with land is not sufficient to have achieved the adoption of a natural feature unless the land is, or is about to become, indigenous land or a protected area under the *Nature Conservation Act 1992*.

## **‘Subdivision 6      Esplanades**

### **‘90      Boundary of land with excluded or dedicated esplanade—source material coming into force before commencement**

- ‘(1) This section applies if—
- (a) either—
    - (i) source material for land (the *relevant land*) coming into force before the commencement of this section, and still in force on the commencement, provides for the exclusion of land from the relevant land for an esplanade; or
    - (ii) source material for land (also the *relevant land*) coming into force before the commencement of this section, and still in force on the commencement, provides for the reservation of land within the relevant land for an esplanade, and the land the subject of the reservation has been dedicated as an esplanade; and
  - (b) the esplanade is bounded on one side by a tidal boundary and on the other by the relevant land; and
  - (c) the boundary between the relevant land and the esplanade (the *esplanade boundary* of the relevant land) is not a right line boundary.
- ‘(2) To remove any doubt, it is declared that subdivisions 2 to 4 apply to the location at law of the tidal boundary unless, under subdivision 1, the subdivisions do not apply to its location.
- ‘(3) The location of the esplanade boundary of the relevant land is taken to have been fixed as if it were a right line boundary on the coming into force of—
- (a) if subsection (1)(a)(i) applies—the source material; or
  - (b) if subsection (1)(a)(ii) applies—the dedication.

*Example for subsection (3)—*

If the tidal boundary of the esplanade is for any reason eroded, there is no corresponding change in the location of the esplanade boundary of the relevant land.

- ‘(4) If subsection (1)(a)(i) applies and a survey was performed to identify the location of the tidal boundary, the esplanade boundary is located at the offset from the tidal boundary as provided for in—
  - (a) the source material; and
  - (b) the plan of the survey, whether or not the plan forms part of the source material.
- ‘(5) If subsection (1)(a)(i) applies and no survey was performed to identify the location of the tidal boundary, the esplanade boundary is located at an offset, consistent with the source material, from the tidal boundary’s location at law when the source material came into force.
- ‘(6) If subsection (1)(a)(ii) applies, the esplanade boundary is located as provided for in the dedication of the esplanade.

**‘91 Boundary of land with excluded or dedicated esplanade—source material coming into force after commencement**

- ‘(1) This section applies if—
  - (a) either—
    - (i) the source material for land (the *relevant land*) coming into force after the commencement of this section provides for the exclusion of land from the relevant land for an esplanade; or
    - (ii) the source material for land (also the *relevant land*) coming into force after the commencement of this section provides for the reservation of land within the relevant land for an esplanade, and the land the subject of the reservation has been dedicated as an esplanade; and

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- (b) the esplanade is bounded on one side by a tidal boundary and on the other by the relevant land; and
  - (c) the boundary between the relevant land and the esplanade (the *esplanade boundary* of the relevant land) is not a right line boundary.
- ‘(2) To remove any doubt, it is declared that subdivision 5 applies to the location at law of the tidal boundary.
- ‘(3) The location of the esplanade boundary of the relevant land is taken to have been fixed as if it were a right line boundary on the coming into force of—
- (a) if subsection (1)(a)(i) applies—the source material; or
  - (b) if subsection (1)(a)(ii) applies—the dedication.
- Example for subsection (3)—*
- If the tidal boundary of the esplanade is for any reason eroded, there is no corresponding change in the location of the esplanade boundary of the relevant land.
- ‘(4) If subsection (1)(a)(i) applies and a survey is performed to identify the location of the tidal boundary, the esplanade boundary is located at the offset from the tidal boundary as provided for in—
- (a) the source material; and
  - (b) the plan of the survey, whether or not the plan forms part of the source material.
- ‘(5) If subsection (1)(a)(i) applies and no survey is performed to identify the location of the tidal boundary, the esplanade boundary is located at an offset, consistent with the source material, from the tidal boundary’s location at law when the source material came into force.
- ‘(6) If subsection (1)(a)(ii) applies, the esplanade boundary is located as provided for in the dedication of the esplanade.

**‘92 Boundary of land subject to reservation of esplanade, before dedication**

- ‘(1) This section applies if—

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- (a) the source material that is currently in force for land (the *relevant land*) provides for the reservation of land within the relevant land for an esplanade; and
  - (b) the land proposed as an esplanade has not been dedicated as an esplanade in accordance with the reservation; and
  - (c) dedication of the esplanade in accordance with the source material would require that the esplanade be bounded on one side by a tidal boundary and on the other by the relevant land.
- ‘(2) To remove any doubt, it is declared that, until the esplanade is dedicated in accordance with the reservation—
- (a) if the source material came into force before the commencement of this section, subdivisions 2 to 4 apply to the location at law of the tidal boundary of the relevant land unless, under subdivision 1, the subdivisions do not apply to its location; and
  - (b) if the source material came into force after the commencement of this section, subdivision 5 applies to the location at law of the tidal boundary of the relevant land.

## ‘Division 3                      **Miscellaneous issues in the tidal environment**

### ‘93      **Multiple lot declaration (tidal) provision**

- ‘(1) The chief executive may by gazette notice make a declaration (a *multiple lot declaration (tidal)*) under this section providing for the location of the tidal boundary of each of 2 or more lots (each a *relevant lot*).
- ‘(2) The chief executive may make a multiple lot declaration (tidal) even if, for any relevant lot—
  - (a) a new plan of survey has been lodged, or has been deposited with a view to subsequent lodgement; or

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- (b) there has already been 1 or more new plans of survey registered.
- ‘(3) However, the chief executive may make a multiple lot declaration (tidal) only if—
- (a) at any time before the commencement of this section—
    - (i) all the land (the *original land*) constituting the relevant lots was the subject of one old plan of survey (the *original old plan of survey*), whether or not any other land was also the subject of the original old plan of survey; and
    - (ii) the tidal boundary of the original land was represented on the original old plan of survey by an adopted natural feature (the *original adopted natural feature*); and

*Example for paragraph (a)—*

The original land was represented on the original old plan of survey as being bounded by a bank, and if the original land was made up of 2 or more lots, each lot was represented on the original plan of survey as being bounded by a separate length of that bank.

- (b) on a consideration of all the relevant lots taken as a whole, it is not possible to make a meaningful correspondence between the evidence on the original old plan of survey of the adopted natural feature and evidence on the ground of any natural feature because the original adopted natural feature has effectively been obliterated.
- ‘(4) On and from the registration of the next new plan of survey for a relevant lot—
- (a) the tidal boundary of the relevant lot is, at law, the line that would describe on the ground the line declared by the chief executive to be the tidal boundary for the lot under the multiple lot declaration (tidal); and
  - (b) the tidal boundary is taken to be fixed as if it were a right line boundary.

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- ‘(5) To remove any doubt, it is declared that the gazette notice may incorporate by reference a map or plan held by the chief executive for identifying the location of the tidal boundary of the relevant lots.
- ‘(6) In making a multiple lot declaration (tidal), the chief executive must ensure, to the greatest practicable extent, having regard to all relevant evidence, that the location of the tidal boundary as provided for in the multiple lot declaration (tidal) is not generally closer to the water subject to tidal influence than the last known location of the original adopted natural feature.
- ‘(7) On and from the registration of the next new plan of survey for a relevant lot, the lot is taken still to be land having a tidal boundary, even though the location of the boundary becomes fixed as provided for under subsection (4)(b).
- ‘(8) The chief executive or registrar of titles may defer dealing with a new plan of survey that has been lodged, or has been deposited with a view to subsequent lodgement, to allow the chief executive a reasonable time to investigate the making of, and make, a multiple lot declaration (tidal).
- ‘(9) The following requirements apply for the making of a multiple lot declaration (tidal)—
- (a) the chief executive must take reasonable steps to obtain the views of any registered owner or lessee of each relevant lot about the proposed declaration;
  - (b) the chief executive must make a decision that the chief executive intends to make the proposed declaration, and what the terms of the proposed declaration are to be;
  - (c) the chief executive must give the registered owner or lessee of each relevant lot written notice of—
    - (i) the decision and reasons for the decision; and
    - (ii) the owner’s or lessee’s right to appeal against the decision and how the appeal is started;
  - (d) after any review of, and any appeal against, the decision have been completed, the chief executive may, unless,

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following review or appeal no declaration is to be made, make the multiple lot declaration (tidal)—

- (i) in accordance with the decision; or
- (ii) if the decision is amended or substituted as a result of review or appeal—in accordance with the decision as amended or substituted.

‘(10) Division 2, subdivisions 3 and 4 do not provide for the location at law of a tidal boundary of land to the extent their operation would be inconsistent with the operation of this section.

‘(11) In this section—

*relevant evidence* means—

- (a) all evidence about the history of the location of the original adopted natural feature that is reasonably available to the chief executive; and
- (b) if soil samples are taken generally in the last known location of the original adopted natural feature—the results of analysis of the samples.

*water subject to tidal influence*, in relation to a tidal boundary, means the water that is relevant to the identification of the boundary as a tidal boundary.

#### ‘94 **No compensation for operation of div 2 or this division**

‘A person is not entitled to relief or compensation from the State or anyone else, under this Act, the Land Title Act compensation provisions, the Property Law Act relief provisions or otherwise, for deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of the operation of division 2 or this division, including in particular—

- (a) the relocation, at law, of a tidal boundary because of the operation of—

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- (i) the current adopted natural feature rule (tidal) provision, or any exception to it, under division 2, subdivision 2; or
  - (ii) the original adopted natural feature rule (tidal) provision, or any exception to it, under division 2, subdivision 3; or
  - (iii) the multiple lot declaration (tidal) provision; or
- (b) the chief executive (land) or the registrar of titles keeping, or not keeping, a record about the likely location of a tidal boundary arising out of the operation of division 2, subdivision 3 or out of a multiple lot declaration (tidal).

## **‘Division 4            Non-tidal boundaries**

### **‘Subdivision 1        Preliminary**

#### **‘95        Non-application of sdivs 2 to 4 to particular land**

- ‘(1) Subdivisions 2 to 4 do not apply to the location at law of a non-tidal boundary (watercourse) of land if the land—
- (a) is indigenous land; or
  - (b) is, or is a part of, a forest reserve or protected area under the *Nature Conservation Act 1992*; or
  - (c) is comprised in a State forest under the *Forestry Act 1959*.
- ‘(2) If the status of land as a protected area under the *Nature Conservation Act 1992* is revoked and the land is not immediately again dedicated as a protected area under that Act, subdivisions 2 to 4 commence to apply to the location at law of the non-tidal boundary (watercourse) of the land as if, for that land, the subdivisions commenced to apply on the revocation.

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- ‘(3) If the status of land as a forest reserve under the *Nature Conservation Act 1992* is revoked and the land is not immediately again dedicated as a forest reserve under that Act or immediately dedicated as a protected area under that Act, subdivisions 2 to 4 commence to apply to the location at law of the non-tidal boundary (watercourse) of the land as if, for that land, the subdivisions commenced to apply on the revocation.
- ‘(4) If the status of land as being comprised in a State forest under the *Forestry Act 1959* is revoked and the land is not immediately again declared as a State forest under that Act or immediately dedicated as a protected area under the *Nature Conservation Act 1992*, subdivisions 2 to 4 commence to apply to the location at law of the non-tidal boundary (watercourse) of the land as if, for that land, the subdivisions commenced to apply on the revocation.
- ‘(5) In this section—  
*protected area*, under the *Nature Conservation Act 1992*, does not include any of the following under that Act—
  - (a) a coordinated conservation area;
  - (b) a wilderness area;
  - (c) a World Heritage management area;
  - (d) an international agreement area.

## ‘96 Overview of sdivs 2 to 6

- ‘(1) Subdivision 2 provides for the location at law of a non-tidal boundary (watercourse) of land for the period starting when this division commences and ending on the registration of the first new plan of survey to be registered for the land after this division commences.
- ‘(2) Generally, subdivision 2 provides for the location at law of the non-tidal boundary (watercourse) to be the current location of the natural feature adopted in the currently applicable plan of survey, although it also provides for circumstances in which the location at law of the non-tidal boundary (watercourse)

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must be decided on an application of the non-tidal boundary (watercourse) location criteria.

- ‘(3) Subdivision 3 provides for the location at law of a non-tidal boundary (watercourse) of land from the registration of the first new plan of survey for the land.
- ‘(4) Subdivision 3 provides for the location at law of the non-tidal boundary (watercourse) to be decided on an application of the non-tidal boundary (watercourse) location criteria.
- ‘(5) Subdivision 4 provides for the location at law of a non-tidal boundary (watercourse) of land from the registration of any subsequent new plan of survey for the land, and relies on the feature identified under subdivision 3.
- ‘(6) Subdivision 5 provides for the location at law of a non-tidal boundary (watercourse) of land, and for the non-application of subdivisions 2 to 4, if the land’s source material is new source material.
- ‘(7) Generally, subdivision 6 provides for the location at law of a non-tidal boundary (lake) at any time.

**‘97 Operation of sdivs 2 to 4**

‘The provisions of subdivisions 2 to 4 about the location at law of a non-tidal boundary (watercourse) of land prevail even if their operation is inconsistent with—

- (a) the representation of the non-tidal boundary (watercourse) on a plan of survey; or
- (b) the location at law of the non-tidal boundary (watercourse) under any source material for the land immediately before the commencement of this division.

**‘98 Noting of advice about operation of sdiv 3 or div 5**

- ‘(1) The chief executive (land) or the registrar of titles may keep records in a way that a search of the appropriate register kept by the chief executive (land) or the registrar of titles will show any case where—

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- (a) subdivision 3 would, or is likely to, have the effect of locating a non-tidal boundary (watercourse) in a different place, or in a different form, from its location or form as provided for under subdivision 2; or

*Example of possible record for paragraph (a)—*

Land could be the subject of a record for paragraph (a) if its old plan of survey adopts the line of intersection of a particular level of water flow with land but, on the registration of its first new plan of survey, its non-tidal boundary (watercourse) will be a different feature (for example, a scour mark).

- (b) a multiple lot declaration (non-tidal) has been made and the declaration would, or is likely to, have the effect of locating a non-tidal boundary (watercourse) in a different place, or in a different form, from its location or form as provided for under this division.

*Example of possible record for paragraph (b)—*

Land could be the subject of a record for paragraph (b) if it and other land are the subject of a multiple lot declaration (non-tidal), so that on the registration of the next new plan of survey for the land, the non-tidal boundary (watercourse) will be in accordance with the boundary provided for in the declaration.

- ‘(2) Neither the chief executive (land), the registrar or titles nor anyone else, including the State, has an obligation of any type, arising under this Act or otherwise, to take any action subsection (1) allows.
- ‘(3) No fee is payable for the recording of anything under subsection (1).

‘99 **Meanings of *non-tidal boundary (lake)* and *non-tidal boundary (watercourse)***

- ‘(1) A boundary of land is a *non-tidal boundary (lake)* if—
- (a) under the source material for the land, the boundary is identified with reference to a lake, however described; and

*Examples of non-tidal boundary (lake) identifiers—*

- the southwest bank of Victoria Lake

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- the eastern bank of the lagoon
- (b) having regard to how the boundary is identified, no part of the boundary can appropriately be represented on a plan of survey as a right line boundary; and
- (c) the boundary is not a tidal boundary.
- (2) A boundary of land is a ***non-tidal boundary (watercourse)*** if—
- (a) under the source material for the land, the boundary is identified, either expressly or by necessary implication—
- (i) with reference to a watercourse, however described; or
- Examples of non-tidal boundary (watercourse) identifiers for subparagraph (i)—*
- the left bank of the Calladoon Anabranche of the Macintyre River
  - the Bremer River
  - the left bank of the Gregory River
- (ii) with reference to a natural feature or other thing whose existence and location are dependent on, or otherwise linked to the existence and location of, a watercourse; and
- Examples of non-tidal boundary (watercourse) identifiers for subparagraph (ii)—*
- an identified scour mark on a bank of the watercourse
  - an identified depositional feature on a bank of the watercourse
- (b) having regard to how the boundary is identified, no part of the boundary can appropriately be represented on a plan of survey as a right line boundary; and
- (c) the boundary is not a tidal boundary.

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**‘100 Non-tidal boundary (watercourse) location criteria**

- ‘(1) The first criterion to be satisfied for identifying a non-tidal boundary (watercourse) is that the boundary must be a feature that—
- (a) occurs naturally; and
  - (b) is within the channel, but not within the bed, of the watercourse; and
  - (c) is in a reasonably stable location.
- ‘(2) The second criterion to be satisfied for identifying a non-tidal boundary (watercourse) is that the boundary must not be a feature, or form part of a feature—
- (a) that is the line of intersection of a particular level of water flow with land; or
  - (b) that is transient in nature, including, for example, any of the following transient features within the watercourse—
    - (i) a bar;
    - (ii) an in-stream island;
    - (iii) a sand or reed bank.
- ‘(3) The third criterion to be satisfied for identifying a non-tidal boundary (watercourse) is that the boundary must be any of the following—
- (a) the top of a bank;
  - (b) a particular line of change in a grade of a landform;
  - (c) a naturally occurring change in vegetation;
  - (d) another feature of sufficient substance to be an equivalent of a feature mentioned in paragraph (a), (b) or (c).
- ‘(4) However, if it is not practicable to identify a non-tidal boundary (watercourse) under subsection (3), the alternative third criterion to be satisfied for identifying a non-tidal boundary (watercourse) is that the boundary must be—

- (a) a depositional feature or a scour mark; or
  - (b) if it is not practicable to identify a depositional feature or a scour mark but a non-tidal boundary (watercourse) is identifiable on the other side of the watercourse on an application of this section—the line that runs along the bank of the watercourse at the same level as the non-tidal boundary (watercourse) on the other side.
- ‘(5) A line identified under subsection (4)(b) is taken to be a natural feature for the provisions of this part applying to natural features.

*Example for subsection (5)—*

A provision of this part that applies the ambulatory boundary principles to a natural feature will also have the effect of applying the ambulatory boundary principles to the line identified under subsection (4)(b).

#### **‘101 Special regulation-making power to support non-tidal boundary (watercourse) location**

- ‘(1) Regulations made under this Act may include a regulation supporting the application of the provisions of this division relating to non-tidal boundaries (watercourse).
- ‘(2) Without limiting subsection (1), a regulation may, by words and diagrams—
  - (a) indicate how the provisions of this division must be applied in varying environments and in watercourses, or sections of watercourses, of varying profiles; or
  - (b) give examples of the occurrence of depositional features and scour marks and of how they may locate non-tidal boundaries (watercourse); or
  - (c) explain how a bench, bar, in-stream island or sand or reed bank in a watercourse may typically be recognised; or
  - (d) explain how an anabranch may be recognised.
- ‘(3) A regulation under this section is not invalid only because it supplements the provisions of this Act by providing greater certainty than would otherwise be the case in relation to the

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location at law of non-tidal boundaries (watercourse) in particular circumstances or types of circumstances.

## **‘Subdivision 2      Locating non-tidal boundaries (watercourse) at law until registration of first new plan of survey**

### **‘102      Application of sdiv 2**

‘This subdivision provides for the location at law of a non-tidal boundary (watercourse) of land at any time in the period starting when this division commences and ending on the registration of the first new plan of survey for the land.

### **‘103      Current adopted natural feature rule (non-tidal) provision**

‘(1) This section applies if an old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land, together with any associated material for the plan, clearly adopted a natural feature for representing the non-tidal boundary (watercourse).

*Examples of natural features—*

- the top of a bank
- a particular point of change in a grade of landform
- a naturally occurring change in vegetation
- the edge of useable land

‘(2) For subsection (1)—

- (a) the adoption of the line of intersection of a particular level of water flow with land is sufficient to have achieved the adoption of a natural feature; and
- (b) the adoption of the notional middle line separating the lands of owners on opposite sides of the watercourse is

not sufficient to have achieved the adoption of a natural feature.

- ‘(3) The non-tidal boundary (watercourse) is, at law, the adopted natural feature, taking into account the application of the ambulatory boundary principles to the adopted natural feature both before and after the commencement of this division.

*Example for subsection (3)—*

Immediately before the commencement of this division, the non-tidal boundary (watercourse) may have been located, at law, having regard strictly to the terms of a deed of grant and the provisions of the *Water Act 2000*, at the line of a particular level of flow in the watercourse. The most recently registered plan of survey for the land adopted a natural feature such as the line of the edge of useable land to represent the non-tidal boundary (watercourse). On the commencement of this division, the non-tidal boundary (watercourse) changes to the current location of the line of the edge of useable land until the first new plan of survey is registered.

- ‘(4) Subsection (3) has effect even if, immediately before the commencement of this division, the non-tidal boundary (watercourse) was at law located in a different place.

#### ‘104 **Current adopted natural feature rule (non-tidal) exception provision**

- ‘(1) This section provides for the location at law of the non-tidal boundary (watercourse) if the current adopted natural feature rule (non-tidal) provision does not apply or can not practicably be applied to establish the location.
- ‘(2) The non-tidal boundary (watercourse) is, at law—
- (a) the natural feature that to the greatest practicable extent complies with the requirements of the non-tidal boundary (watercourse) location criteria; or
  - (b) if it is not practicable to identify a natural feature under paragraph (a)—located where it could most reasonably be expected to be located, under subdivision 3, if the first new plan of survey were to be registered for the land.

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- ‘(3) To decide where the non-tidal boundary (watercourse) is located at any time, there must be taken into account the application of the ambulatory boundary principles to any natural feature that locates the non-tidal boundary (watercourse) under subsection (2).
- ‘(4) Without limiting subsection (1), the current adopted natural feature rule (non-tidal) provision can not practicably be applied if all of the following apply—
- (a) there is an old plan of survey that is the most recently registered or that is otherwise currently authoritative in relation to the land;
  - (b) the plan, together with any associated material for the plan, adopted a natural feature (other than the notional middle line separating the lands of owners on opposite sides of the watercourse) for representing the non-tidal boundary (watercourse);
  - (c) either—
    - (i) it is not possible to make a meaningful correspondence between the evidence on the plan of the adopted natural feature and evidence on the ground of any natural feature; or
    - (ii) the adopted natural feature is currently located in a substantially different location than it would have been if it had been the subject of only gradual change since it was adopted in the old plan of survey.
- ‘(5) Without limiting subsection (2)(b), it is not practicable to identify a natural feature under subsection (2)(a) if, for example, the watercourse has been significantly modified over time because of the installation of walls, jetties, ramps, revetments or other structures.

### **‘105 No shift of boundary towards watercourse**

- ‘(1) This section applies if the application of the current adopted natural feature rule (non-tidal) provision or the current



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- ‘(2) Subject to subsection (3), the first new plan of survey must not be a compiled plan of survey in relation to any length of the non-tidal boundary (watercourse).
- ‘(3) The first new plan of survey may be a compiled plan of survey in relation to any length (the *relevant length*) of the non-tidal boundary (watercourse) if—
- (a) any subdivision of land provided for in the plan of survey does not include the creation of any new right line boundary of land that intersects with the relevant length—
    - (i) in its location as depicted on the plan of survey on which the non-tidal boundary (watercourse) was represented immediately before registration of the new plan of survey; or
    - (ii) in its location at law on the commencement of this division; or
    - (iii) in its location at law, as provided for in this subdivision, on the registration of the new plan of survey; and
  - (b) the size and nature of the land and the relevant length make it impracticable to resurvey the boundary.

*Note for subsection (3)—*

Subsection (3) will allow for some or all of the non-tidal boundary (watercourse) to be represented on the first new plan of survey without a resurvey, but will not affect the actual location at law of the non-tidal boundary (watercourse) under this subdivision.

### ‘108 **Boundary location criteria rule (non-tidal) provision**

- ‘(1) The non-tidal boundary (watercourse) is, at law, the natural feature that to the greatest practicable extent complies with the requirements of the non-tidal boundary (watercourse) location criteria.
- ‘(2) To decide where the non-tidal boundary (watercourse) is located at any time after the registration of the first new plan of survey, there must be taken into account the application of

the ambulatory boundary principles to the natural feature mentioned in subsection (1).

- ‘(3) Subsections (1) and (2) have effect even if, immediately before the registration of the first new plan of survey, the non-tidal boundary (watercourse) was, at law, having regard to the provisions of subdivision 2, located in a different place.

*Example—*

Immediately before the registration of the first new plan of survey, the non-tidal boundary (watercourse) may have been located at law, having regard to subdivision 2, at the current line of the edge of useable land. On the registration of the first new plan of survey, the location at law of the non-tidal boundary (watercourse) changes to the current location of a depositional feature identified under the non-tidal boundary (watercourse) location criteria.

- ‘(4) Subsection (5) applies if subsection (1) would result in the non-tidal boundary (watercourse) being located at law generally closer to the opposite side of the watercourse than it was immediately before the registration of the first new plan of survey.
- ‘(5) Despite subsection (1), on the registration of the first new plan of survey, the non-tidal boundary (watercourse) stays located at law in the same place it was located immediately before the registration of the first new plan of survey.
- ‘(6) Subsection (5) does not prevent subsequent movement of the non-tidal boundary (watercourse) through the application of the ambulatory boundary principles.

**‘109 First exception for the boundary location criteria rule (non-tidal) provision (chief executive single lot declaration (non-tidal) exception)**

- ‘(1) This section provides for the location at law of the non-tidal boundary (watercourse) if the chief executive has by gazette notice under this section made a declaration (a *single lot declaration (non-tidal)*) about the location of the non-tidal boundary (watercourse).
- ‘(2) The non-tidal boundary (watercourse) is, at law, a natural feature or anything else declared by the chief executive to be

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the non-tidal boundary (watercourse) for the land under the single lot declaration (non-tidal).

- ‘(3) To decide where the non-tidal boundary (watercourse) is located at any time after the registration of the first new plan of survey, there must be taken into account the application of the ambulatory boundary principles to any natural feature declared by the chief executive to be the non-tidal boundary (watercourse).
- ‘(4) The chief executive may make a single lot declaration (non-tidal) only if—
  - (a) a plan of survey intended to be the first new plan of survey for the land has been lodged, or has been deposited with a view to subsequent lodgement; and
  - (b) it is not practicable to identify a natural feature for the purpose of applying the boundary location criteria rule (non-tidal) provision.
- ‘(5) To remove any doubt, it is declared that the single lot declaration (non-tidal) may incorporate by reference a map or plan held by the chief executive for identifying the location of the non-tidal boundary (watercourse).
- ‘(6) In making a single lot declaration (non-tidal), the chief executive must ensure the location of the non-tidal boundary (watercourse) to the greatest practicable extent complies with the requirements of the non-tidal boundary (watercourse) location criteria.
- ‘(7) However, in making the single lot declaration (non-tidal), the chief executive must ensure, to the greatest practicable extent, having regard to all evidence about the history of the location of the non-tidal boundary (watercourse) that is reasonably available to the chief executive, that the location of the non-tidal boundary (watercourse) as provided for in the single lot declaration (non-tidal) is not generally closer to the opposite side of the watercourse than the last known location of the non-tidal boundary (watercourse).
- ‘(8) The chief executive or registrar of titles may defer dealing with a first new plan of survey that has been lodged, or has

been deposited with a view to subsequent lodgement, to allow the chief executive a reasonable time to investigate the making of, and to make, a single lot declaration (non-tidal).

- ‘(9) The following requirements apply for the making of a single lot declaration (non-tidal)—
- (a) the chief executive must take reasonable steps to obtain the views of any registered owner or lessee of the land about the proposed declaration;
  - (b) the chief executive must make a decision that the chief executive intends to make the proposed declaration, and what the terms of the proposed declaration are to be;
  - (c) the chief executive must give the registered owner or lessee of the land written notice of—
    - (i) the decision and reasons for the decision; and
    - (ii) the owner’s or lessee’s right to appeal against the decision and how the appeal is started;
  - (d) after any review of, and any appeal against, the decision have been completed, the chief executive may, unless, following review or appeal no declaration is to be made, make the single lot declaration (non-tidal)—
    - (i) in accordance with the decision; or
    - (ii) if the decision is amended or substituted as a result of review or appeal—in accordance with the decision as amended or substituted.

**‘110 Second exception for the boundary location criteria rule (non-tidal) provision (previous sudden change)**

- ‘(1) This section provides for the location at law of the non-tidal boundary (watercourse) if the natural feature applying as the boundary under the current adopted natural feature rule (non-tidal) provision was the subject of sudden change at any time before the registration of the first new plan of survey, whether before or after the commencement of this division.

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- (2) The location of the non-tidal boundary (watercourse) is in accordance with its location on an application of the ambulatory boundary principles to the natural feature.

## **‘Subdivision 4 Locating non-tidal boundaries (watercourse) at law from registration of subsequent new plan of survey**

### **‘111 Application of sdiv 4**

‘This subdivision provides for the location at law of a non-tidal boundary (watercourse) of land on and from the registration of a subsequent new plan of survey for the land.

*Note—*

The operation of this subdivision could be displaced by a multiple lot declaration (non--tidal) under division 5.

### **‘112 Special requirement to support the operation of sdiv 4**

- ‘(1) The representation of the non-tidal boundary (watercourse) on the subsequent new plan of survey for the land together with associated material must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.
- ‘(2) Subject to subsections (3) and (4), the subsequent new plan of survey must not be a compiled plan of survey in relation to any length of the non-tidal boundary (watercourse).
- ‘(3) The subsequent new plan of survey may be a compiled plan of survey in relation to any length (the *relevant length*) of the non-tidal boundary (watercourse) if—
- (a) the first new plan of survey was not a compiled plan of survey in relation to the relevant length; and
  - (b) the searchable registered, or otherwise authoritative, information held by the chief executive (land) or the

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registrar of titles obtained for the purposes of the subsequent new plan of survey in relation to the relevant length is information included in the first new plan of survey and associated material for the first new plan of survey.

- ‘(4) Further, the subsequent new plan of survey may be a compiled plan of survey in relation to any length (also the *relevant length*) of the non-tidal boundary (watercourse) if—
- (a) the first new plan of survey was a compiled plan in relation to the relevant length; and
  - (b) the searchable registered, or otherwise authoritative, information held by the chief executive (land) or the registrar of titles obtained for the purposes of the subsequent new plan of survey in relation to the relevant length is the same information obtained for the purposes of the first new plan of survey; and
  - (c) any subdivision of land provided for in the subsequent plan of survey does not include the creation of any new right line boundary of land that intersects with the relevant length—
    - (i) in its location as depicted on the plan of survey on which the non-tidal boundary (watercourse) was represented immediately before registration of the first new plan of survey; or
    - (ii) in its location at law on the commencement of this division; or
    - (iii) in its location at law, as provided for in this subdivision, on the registration of the subsequent new plan of survey.

*Note for subsections (3) and (4)—*

Subsections (3) and (4) will allow for some or all of the non-tidal boundary (watercourse) to be represented on the subsequent new plan of survey without a resurvey, but will not affect the actual location at law of the non-tidal boundary (watercourse) under this subdivision.

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**‘113 First new plan of survey adopted feature rule  
(non-tidal)**

‘The non-tidal boundary (watercourse) is, at law, the natural feature or other thing that constituted the non-tidal boundary (watercourse) immediately before the registration of the subsequent new plan of survey, taking into account, if a natural feature constituted the boundary, the application of the ambulatory boundary principles to the natural feature, both before and after the registration of the subsequent new plan of survey.

**‘Subdivision 5 Locating non-tidal boundaries  
(watercourse) at law on coming into  
force of new source material**

**‘114 Application of sdiv 5**

‘This subdivision provides for the location at law of a non-tidal boundary (watercourse) of land on and from the coming into force of new source material for the land.

**‘115 Special requirement to support the operation of  
sdiv 5**

‘The representation of the non-tidal boundary (watercourse) on any plan of survey for the land together with associated material must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.

**‘116 New source material adopted feature rule  
(non-tidal)**

- ‘(1) Subdivisions 2 to 4 do not apply to the land.
- ‘(2) The non-tidal boundary (watercourse) is, at law, the natural feature or other thing identified as the non-tidal boundary (watercourse) in the new source material, taking into account,

if a natural feature is identified as the boundary, the application of the ambulatory boundary principles to the natural feature, after the coming into force of the source material.

## **‘Subdivision 6 Locating non-tidal boundaries (lake)**

### **‘117 Application of sdiv 6**

- ‘(1) This subdivision provides for the location at law of a non-tidal boundary (lake) of land at any time.
- ‘(2) This subdivision is not intended to provide for the location at law of a non-tidal boundary (lake) of land immediately after the commencement of this division to be different from its location at law immediately before the commencement.

### **‘118 Special requirement to support the operation of sdiv 6**

‘The representation of the non-tidal boundary (lake) on any plan of survey for the land together with associated material must, to the greatest practicable extent, be consistent with the location at law of the boundary as provided for in this subdivision.

### **‘119 Lake boundary rule**

- ‘(1) The non-tidal boundary (lake) is, at law, the line of the outermost extent of the bed and banks of the lake.
- ‘(2) To decide where the non-tidal boundary (lake) is located at any time, there must be taken into account the application of the ambulatory boundary principles to the bed and banks, both before and after the commencement of this division.

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## **‘Division 5                      Miscellaneous issues in the non-tidal environment**

### **‘120    Multiple lot declaration (non-tidal) provision**

- ‘(1) The chief executive may by gazette notice make a declaration (a *multiple lot declaration (non-tidal)*) under this section providing for the location of the non-tidal boundary (watercourse) of each of 2 or more lots (each a *relevant lot*).
- ‘(2) The chief executive may make a multiple lot declaration (non-tidal) even if, for any relevant lot—
- (a) a new plan of survey has been lodged, or has been deposited with a view to subsequent lodgement; or
  - (b) there has already been 1 or more new plans of survey registered.
- ‘(3) However, the chief executive may make a multiple lot declaration (non-tidal) only if—
- (a) at any time before the commencement of this section—
    - (i) all the land (the *original land*) constituting the relevant lots was the subject of one old plan of survey (the *original old plan of survey*), whether or not any other land was also the subject of the original old plan of survey; and
    - (ii) the non-tidal boundary (watercourse) of the original land was represented on the original old plan of survey by an adopted natural feature (the *original adopted natural feature*); and

*Example for paragraph (a)—*

The original land was represented on the original old plan of survey as being bounded by a bank, and if the original land was made up of 2 or more lots, each lot was represented on the original plan of survey as being bounded by a separate length of that bank.

- (b) on a consideration of all the relevant lots taken as a whole, any suitable natural feature that could be adopted as the non-tidal boundary (watercourse) for the relevant

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lots under the non-tidal boundary (watercourse) location criteria has effectively been obliterated.

- ‘(4) On and from the registration of the next new plan of survey for a relevant lot—
  - (a) the non-tidal boundary (watercourse) of the relevant lot is, at law, the line that would describe on the ground the line declared by the chief executive to be the non-tidal boundary (watercourse) for the lot under the multiple lot declaration (non-tidal); and
  - (b) the non-tidal boundary (watercourse) is taken to be fixed as if it were a right line boundary.
- ‘(5) To remove any doubt, it is declared that the gazette notice may incorporate by reference a map or plan held by the chief executive for identifying the location of the non-tidal boundary (watercourse) of the relevant lots.
- ‘(6) In making a multiple lot declaration (non-tidal), the chief executive must ensure, to the greatest practicable extent, having regard to relevant evidence, that the location of the non-tidal boundary (watercourse) as provided for in the multiple lot declaration (non-tidal) is not generally closer to the opposite side of the watercourse than the last known location of the original adopted natural feature.
- ‘(7) On and from the registration of the next new plan of survey for a relevant lot, the lot is taken still to be land having a non-tidal boundary (watercourse), even though the location of the boundary becomes fixed as provided for under subsection (4)(b).
- ‘(8) The chief executive or registrar of titles may defer dealing with a new plan of survey that has been lodged, or has been deposited with a view to subsequent lodgement, to allow the chief executive a reasonable time to investigate the making of, and if considered appropriate, to make, a multiple lot declaration (non-tidal).
- ‘(9) The following requirements apply for the making of a multiple lot declaration (non-tidal)—

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- (a) the chief executive must take reasonable steps to obtain the views of any registered owner or lessee of each relevant lot about the proposed declaration;
  - (b) the chief executive must make a decision that the chief executive intends to make the proposed declaration, and what the terms of the proposed declaration are to be;
  - (c) the chief executive must give the registered owner or lessee of each relevant lot written notice of—
    - (i) the decision and reasons for the decision; and
    - (ii) the owner’s or lessee’s right to appeal against the decision and how the appeal is started;
  - (d) after any review of, and any appeal against, the decision have been completed, the chief executive may, unless, following review or appeal no declaration is to be made, make the multiple lot declaration (non-tidal)—
    - (i) in accordance with the decision; or
    - (ii) if the decision is amended or substituted as a result of review or appeal—in accordance with the decision as amended or substituted.
- ‘(10) Division 4, subdivisions 3 and 4 do not provide for the location at law of a non-tidal boundary (watercourse) of land to the extent their operation would be inconsistent with the operation of this section.
- ‘(11) In this section—  
*relevant evidence* means—
  - (a) all evidence about the history of the location of the original adopted natural feature that is reasonably available to the chief executive; and
  - (b) if soil samples are taken generally in the last known location of the original adopted natural feature—the results of analysis of the samples.

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**‘121 No compensation for operation of div 4 or this division**

‘A person is not entitled to compensation from the State or anyone else, under this Act, the Land Title Act compensation provisions, the Property Law Act relief provisions or otherwise, for deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of the operation of division 4 or this division, including in particular—

- (a) the relocation, at law, of a non-tidal boundary (watercourse) because of the operation of—
  - (i) the current adopted natural feature rule (non-tidal) provision, or any exception to it, under division 4, subdivision 2; or
  - (ii) the boundary location criteria rule (non-tidal) provision, or any exception to it, under division 4, subdivision 3; or
  - (iii) the multiple lot declaration (non-tidal) provision; or
- (b) the chief executive (land) or the registrar of titles keeping, or not keeping, a record about the likely location of a non-tidal boundary (watercourse) arising out of the operation of division 4, subdivision 3 or out of a multiple lot declaration (non-tidal).

**‘Division 6 Review of declaration decisions and appeals**

**‘Subdivision 1 Right of appeal**

**‘122 Right of appeal**

‘A registered owner or lessee who is given notice of a declaration decision has a right to appeal against the decision.

## **‘Subdivision 2 Internal review of decisions**

### **‘123 Appeal process starts with internal review**

- ‘(1) Every appeal against a declaration decision must be, in the first instance, by way of an application for an internal review.
- ‘(2) A person who has a right to appeal against a declaration decision may apply to the Minister for a review of the decision.

### **‘124 Applying for review**

- ‘(1) An application by a person for review of a declaration decision must be made within 42 days after notice of the decision was given to the person.
- ‘(2) The Minister may extend the period for making an application for review.
- ‘(3) An application for review must be written and state in detail the grounds on which the applicant seeks review of the decision.

### **‘125 Decision on reconsideration**

- ‘(1) After reviewing the declaration decision, the Minister must make a further decision (the *review decision*) to confirm the declaration decision, amend the declaration decision or substitute a new declaration decision.
- ‘(2) The chief executive must immediately give the applicant written notice of the review decision.
- ‘(3) The notice must state—
  - (a) the day the notice is given to the applicant (the *review notice day*); and
  - (b) if the review decision is not the decision sought by the applicant—
    - (i) the reasons for the decision; and

- (ii) that the applicant may appeal against the decision to the court within 42 days after the review notice day.

## **‘Subdivision 3 Appeals**

### **‘126 Who may appeal**

‘A person who has applied for review of a declaration decision under subdivision 2 and is dissatisfied with the review decision may appeal to the court against the decision.

### **‘127 Procedure for an appeal to the court**

- ‘(1) An appeal to the court is started by filing written notice of appeal with the registrar of the court.
- ‘(2) A copy of the notice must be served on the chief executive.
- ‘(3) The notice of appeal must be filed within 42 days after the review notice day.
- ‘(4) However, a regulation may provide a different period for particular declaration decisions.
- ‘(5) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.
- ‘(6) The notice of appeal must state fully the grounds of the appeal.

### **‘128 Powers of court on appeal**

- ‘(1) In deciding an appeal, the court has the same powers as the chief executive.
- ‘(2) An appeal is by way of rehearing.
- ‘(3) The court may—
  - (a) confirm the review decision; or

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- (b) set aside the review decision and substitute another; or
- (c) set aside the review decision and return the issue to the chief executive with directions the court considers appropriate.

### **‘129 Effect of decision of court on appeal**

- ‘(1) If the court acts to set aside the review decision and return the issue to the chief executive with directions the court considers appropriate, and the chief executive makes a new declaration decision, the new decision is not subject to review or appeal under this division.
- ‘(2) If the court substitutes another decision, the substituted decision is taken to be the declaration decision of the chief executive, and the chief executive may give effect to the decision as if the decision was the original declaration decision of the chief executive and no application for review or appeal had been made.

### **‘130 Evidentiary provisions for appeal**

- ‘(1) Subsections (2) to (4) apply for a proceeding under this subdivision.
- ‘(2) The appointment or power of the chief executive or a surveyor must be presumed unless a party, by reasonable notice, requires proof of—
  - (a) the appointment; or
  - (b) the power to do anything under this Act.
- ‘(3) A signature purporting to be the signature of the Minister, the chief executive or a surveyor is evidence of the signature it purports to be.
- ‘(4) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
  - (a) that the source material for any land is the material stated in the certificate;

- (b) that the records of the department in which the *Land Act 1994* is administered in relation to any land are the records identified in the certificate.’

## 216 Insertion of new s 134

Part 8, as renumbered under this Act—

*insert—*

### ‘134 Delegations

- ‘(1) The chief executive may delegate his or her functions under this Act to an appropriately qualified officer or employee of the department.

- ‘(2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate for the functions.

*Example of standing for an employee of the department—*

the employee’s classification level in the department

*functions* includes powers.’

## 217 Amendment of schedule (Dictionary)

- (1) Schedule—

*insert—*

*‘ambulatory boundary principles*, for part 7, see section 62.

*associated material*, for part 7, see section 62.

*bar*, for part 7, see section 62.

*bed and banks*, for part 7, see section 62.

*bench*, for part 7, see section 62.

*boundary location criteria rule (non-tidal) provision*, for part 7, see section 62.

*chief executive (land)* means the chief executive under the *Land Act 1994*.

*compiled plan of survey* see section 62.

*court*, for part 7, see section 62.

*current adopted natural feature rule (non-tidal) exception provision*, for part 7, see section 62.

*current adopted natural feature rule (non-tidal) provision*, for part 7, see section 62.

*current adopted natural feature rule (tidal) provision*, for part 7, see section 62.

*declaration decision*, for part 7, see section 62.

*deposit*, for part 7, see section 62.

*depositional feature*, for part 7, see section 62.

*drainage feature*, for part 7, see section 62.

*floodplain*, for part 7, see section 62.

*floodwater*, for part 7, see section 62.

*gradual change*, for part 7, see section 62.

*indigenous land*, for part 7, see section 62.

*in-stream island*, for part 7, see section 62.

*intermittent*, for part 7, see section 62.

*lake*, for part 7, see section 62.

*Land Title Act compensation provisions*, for part 7, see section 62.

*lessee*, for part 7, see section 62.

*lodge*, for part 7, see section 62.

*lot* means a lot under a registration Act.

*multiple lot declaration (non-tidal)* see section 120(1).

*multiple lot declaration (non-tidal) provision* means section 120.

*multiple lot declaration (tidal)* see section 93(1).

*multiple lot declaration (tidal) provision* means section 93.

- new plan of survey*, for part 7, see section 62.
- new source material*, for part 7, see section 62.
- non-tidal boundary* see section 62.
- non-tidal boundary (lake)*, for part 7, see section 62.
- non-tidal boundary (watercourse)* see section 62.
- non-tidal boundary (watercourse) location criteria*, for part 7, see section 62.
- old plan of survey*, for part 7, see section 62.
- original adopted natural feature rule (tidal) provision*, for part 7, see section 62.
- outer bank*, for part 7, see section 62.
- overland flow water*, for part 7, see section 62.
- plan of survey*, for part 7, see section 62.
- Property Law Act relief provisions*, for part 7, see section 62.
- public interest*, for part 7, see section 62.
- register*, for part 7, see section 62.
- registered owner*, for part 7, see section 62.
- registration Act*, for part 7, see section 62.
- review decision*, for part 7, see section 62.
- review notice day*, for part 7, see section 62.
- right line boundary*, for part 7, see section 62.
- scour mark*, for part 7, see section 62.
- second exception for the original adopted natural feature rule (tidal) provision (applied criteria exception)*, for part 7, see section 62.
- single lot declaration (non-tidal)*, for part 7, see section 62.
- single lot declaration (tidal)*, for part 7, see section 62.
- source material*, for part 7, see section 62.
- specified tidal boundary*, for part 7, see section 71.



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**220 Replacement of s 15 (Term of appointment)**

Section 15—

*omit, insert—*

**‘15 Term of appointment**

- ‘(1) Each member of the board is appointed for a term of not more than 3 years, stated in the member’s instrument of appointment.
- ‘(2) Despite subsection (1), a member continues holding office after the member’s term of office ends until the member’s successor is appointed.’.

**221 Amendment of s 19 (Vacation of office)**

- (1) Section 19(1)(f)—

*renumber* as section 19(1)(g).

- (2) Section 19(1)—

*insert—*

‘(f) was appointed because the member was a cadastral surveyor employed in the department and the member stops being a cadastral surveyor or the member’s employment in the department ends; or’.

**222 Amendment of s 36 (Eligibility for registration or registration endorsement—individuals)**

- (1) Section 36(2)(c)(i), ‘or the repealed Act’—

*omit.*

- (2) Section 36(2)(c)(ii) and (iii)—

*omit, insert—*

‘(ii) either—

- (A) takes out and maintains the insurance cover prescribed under a regulation; or

[s 223]

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- (B) is covered for the period of registration by insurance cover taken out and maintained by a corporation that is a consulting surveyor.’

**223 Amendment of s 38 (Eligibility for registration and registration endorsement—corporations)**

- (1) Section 38(2)(b), ‘or the repealed Act’—  
*omit.*
- (2) Section 38(2)(c)—  
*omit.*
- (3) Section 38(2)(d) and (e)—  
*renumber* as section 38(2)(c) and (d).
- (4) Section 38(3)—  
*omit, insert—*
- ‘(3) The corporation must employ or have as one of its executive officers—
- (a) a surveyor who holds a registration endorsement as a consulting surveyor; and
- (b) if the corporation requires an endorsement other than as a consulting surveyor—a surveyor who holds the registration endorsement required.’

**224 Amendment of s 45 (Procedural requirements for application)**

Section 45(3)—  
*omit, insert—*

- ‘(3) In addition, an application by an individual for a registration endorsement as a consulting surveyor must be accompanied by satisfactory evidence that the applicant—
- (a) has taken out and maintains the insurance cover prescribed under a regulation; or

- 
- (b) will be covered for the period of registration by insurance cover taken out and maintained by a corporation that is a consulting surveyor.’.

**225 Amendment of s 46 (Additional requirements for application by corporation)**

- (1) Section 46(1)(b) and (c)—

*omit.*

- (2) Section 46(1)(d)—

*renumber* as section 46(1)(b).

- (3) Section 46(2)—

*omit, insert—*

- ‘(2) An application for a registration endorsement for a corporation must also be accompanied by satisfactory evidence that—
- (a) a surveyor employed by or an executive officer of the corporation holds a registration endorsement as a consulting surveyor; and
- (b) if the application is for a registration endorsement other than an endorsement as a consulting surveyor—a surveyor employed by or an executive officer of the corporation holds the registration endorsement.’.

**226 Replacement of pt 12, hdg (Transitional provisions)**

Part 12, heading—

*omit, insert—*

**‘Part 12 Transitional and repeal provisions for Act No. 70 of 2003’.**

[s 227]

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**227 Replacement of pt 13, hdg (Repeal)**

Part 13, heading—

*omit, insert—*

**‘Division 3 Repeal’.**

**228 Insertion of new pt 13**

After section 205—

*insert—*

**‘Part 13 Transitional provisions for  
Natural Resources and Other  
Legislation Amendment Act  
2010**

**‘206 Definitions for pt 13**

‘In this part—

*commencement* means the day this part commences.

**‘207 Existing application for registration or renewal by  
corporation**

‘(1) This section applies—

- (a) to an application made by a corporation for registration as a surveyor with a registration endorsement as a consulting surveyor; and
- (b) if the application was made but not decided before the commencement.

‘(2) For deciding the application, sections 38 and 46 as in force immediately before the commencement continue to apply as if the amendments of those sections under the *Natural Resources and Other Legislation Amendment Act 2010*, part 17 had not commenced.

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**‘208 Continuation of board members**

- ‘(1) Subsection (2) applies to an existing member of the board, if the member was appointed after 1 March 2010 but before the commencement.
- ‘(2) On the commencement, the member is taken to be appointed as a member for a term ending on 1 March 2013.
- ‘(3) Subsection (4) applies to an existing member of the board if, other than for the subsection, the member’s appointment would end on 29 October 2010.
- ‘(4) On the commencement, the member is taken to be appointed as a member for a term ending on 1 September 2011.
- ‘(5) This section applies to an existing member despite section 15 as in force before or after the commencement.
- ‘(6) In this section—  
*existing member* means a member of the board holding office immediately before the commencement.’.

**229 Amendment of sch 3 (Dictionary)**

Schedule 3, definition *professional misconduct*, paragraph (b), after ‘another Act for a survey’—

*insert—*

‘, including, for example, a cadastral survey carried out under the supervision of the registrant or former registrant’.

[s 230]

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## **Part 18**                      **Amendment of Torres Strait Islander Cultural Heritage Act 2003**

### **230 Act amended**

This part amends the *Torres Strait Islander Cultural Heritage Act 2003*.

### **231 Amendment of s 34 (Native title party for an area)**

Section 34(1)(b)(i)—

*omit, insert—*

‘(i) the person’s claim has failed and—

- (A) the person’s 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; or’.

## **Part 19**                      **Amendment of Torres Strait Islander Land Act 1991**

### **232 Act amended**

This part amends the *Torres Strait Islander Land Act 1991*.

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**233 Amendment of s 3 (Definitions)**

Section 3, definition *bed and banks*—  
*omit.*

**234 Amendment of s 17 (Beds and banks of watercourses and lakes)**

(1) Section 17, heading, ‘Beds and banks of watercourses’—  
*omit, insert—*

**‘Watercourses’.**

(2) Section 17, ‘the bed and banks of a watercourse or lake only if the bed and banks are’—

*omit, insert—*

‘a watercourse or lake only to the extent the watercourse or lake is’.

## **Part 20 Amendment of Vegetation Management Act 1999**

**235 Act amended**

This part amends the *Vegetation Management Act 1999*.

**236 Amendment of s 7 (Application of Act)**

Section 7(1)(b)—

*omit, insert—*

‘(b) any of the following protected areas under the *Nature Conservation Act 1992*—

- (i) a national park (scientific);
- (ii) a national park;

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- (iii) a national park (Aboriginal land);
- (iv) a national park (Torres Strait Islander land);
- (v) a national park (Cape York Peninsula Aboriginal land);
- (vi) a national park (recovery);
- (vii) a conservation park;
- (viii) a resources reserve; or’.

## **Part 21                      Amendment of Water Act 2000**

### **237    Act amended**

This part amends the *Water Act 2000*.

### **238    Insertion of new ch 1, pt 1 hdg**

Before section 1—

*insert—*

## **‘Part 1                      Introduction’.**

### **239    Insertion of new ch 1, pt 2**

After section 4—

*insert—*

## **‘Part 2                      Watercourses**

### **‘5        Meaning of *watercourse***

- ‘(1) A *watercourse* is a river, creek or other stream, including a stream in the form of an anabranch or a tributary, in which

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water flows permanently or intermittently, regardless of the frequency of flow events—

- (a) in a natural channel, whether artificially modified or not; or
- (b) in an artificial channel that has changed the course of the stream.

‘(2) A *watercourse* includes any of the following located in it—

- (a) in-stream islands;
- (b) benches;
- (c) bars.

‘(3) However, a *watercourse* does not include a drainage feature.

‘(4) Further—

- (a) unless there is a contrary intention, a reference to a watercourse in this Act, other than in this part or in the definitions in schedule 4 to the extent they support the operation of this part, is a reference to anywhere that is—
  - (i) upstream of the downstream limit of the watercourse; and
  - (ii) if there is an upstream limit of the watercourse—downstream of the upstream limit; and
  - (iii) between the outer bank on one side of the watercourse and the outer bank on the other side of the watercourse; and
- (b) a reference in this Act to, or to a circumstance that involves, land adjoining a watercourse, is a reference to, or to a circumstance that involves, land effectively adjoining a watercourse.

*Note for paragraph (b)—*

Generally, the non-tidal boundary (watercourse) of land bounded by a watercourse, as provided for under the *Survey and Mapping Infrastructure Act 2003*, would not correspond precisely with the line of the outer bank of a watercourse under this Act.

[s 239]

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‘(5) In subsection (4)(b)—

*adjoining* includes being bounded by, being adjacent to, or abutting.

## ‘5A Meaning of *outer bank*

‘(1) The *outer bank*, at any location on one side of a watercourse, is—

(a) if there is a floodplain on that side of the watercourse—the edge of the floodplain that is on the same side of the floodplain as the watercourse; or

(b) if there is not a floodplain on that side of the watercourse—the place on the bank of the watercourse marked by—

(i) a scour mark; or

(ii) a depositional feature; or

(iii) if there are 2 or more scour marks, 2 or more depositional features or 1 or more scour marks and 1 or more depositional features—whichever scour mark or depositional feature is highest.

‘(2) However, subsection (3) applies if, at a particular location in the watercourse—

(a) there is a floodplain on one side of the watercourse; and

(b) the other side of the watercourse is confined by a valley margin.

*Examples of valley margin—*

hill, cliff, terrace

‘(3) Despite subsection (1)(b), the *outer bank* on the valley margin side of the watercourse is the line on the valley margin that is at the same level as the outer bank on the other side of the watercourse.

‘(4) Despite subsections (1) to (3), if under this part the chief executive has declared an outer bank on a side of a watercourse for any length of the watercourse, the *outer bank*

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on that side of the watercourse for that length is the outer bank as declared by the chief executive.

- ‘(5) To remove any doubt, it is declared that an outer bank of a watercourse—
- (a) can not be, or be a part of, an in-stream island, bench or bar located in the watercourse; and
  - (b) can not be generally closer to the middle of the watercourse than any part of an in-stream island, bench or bar located in the watercourse.

#### **‘5B Declaration of outer bank**

- ‘(1) The chief executive may by gazette notice declare an outer bank of a watercourse for a length (the *relevant length*) of the watercourse.
- ‘(2) The chief executive may make a declaration under subsection (1) only if—
- (a) it is not reasonably practicable to otherwise identify the outer bank of the watercourse for the relevant length; or
  - (b) the chief executive is satisfied that the outer bank of the watercourse for the relevant length does not appropriately locate a watercourse for the purposes of the exercise of jurisdiction over watercourses under this Act.
- ‘(3) If the chief executive acts under subsection (2)(a), the chief executive must, in making a declaration under subsection (1), take reasonable steps to declare the outer bank consistently with what would have been the location of the outer bank if it had not become impracticable to identify it.
- ‘(4) However, a declaration can not have effect to locate an outer bank for any period before the declaration is made.’

[s 240]

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**240 Omission of s 21 (Beds and banks forming boundaries of land are State property)**

Section 21—

*omit.*

**241 Amendment of s 279 (Ownership and management of certain quarry material)**

(1) Section 279(a), ‘, the beds and banks of which are’—

*omit, insert—*

‘that is’.

(2) After section 279(a)—

*insert—*

*‘Note—*

See the *Land Act 1994*, chapter 1, part 4, division 3 in relation to the ownership by the State of land adjoining a non-tidal boundary (watercourse).’.

**242 Amendment of s 967 (Approval for development under Sustainable Planning Act 2009 is subject to approval under this Act)**

Section 967(5), (6) and (7), ‘the bed or bank of’—

*omit.*

**243 Insertion of new ch 8, pt 4B**

Chapter 8—

*insert—*



[s 244]

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*Editor's note—*

On the commencement of this section, the document is available for inspection at the department's office at 41 George Street, Brisbane and on the department's website.'

## **244 Amendment of s 1006 (Declarations about watercourses)**

Section 1006—

*insert—*

- '(4) If a regulation under subsection (1) purports to declare a limit of a feature that is not a watercourse, the regulation is ineffective in relation to that feature, but is otherwise as effective, as a regulation, as it would have been if reference to the feature had not been included in the regulation.

*Example for subsection (4)—*

A regulation under subsection (1) would be ineffective to the extent it purports to declare a limit of a drainage feature.'

## **245 Amendment of s 1014 (Regulation-making power)**

Section 1014(2)(k), 'the bed or banks of'—

*omit.*

## **246 Insertion of new s 1014A**

After section 1014—

*insert—*

### **'1014A Special regulation-making power to support outer bank identification**

- '(1) Regulations made under this Act may include a regulation supporting the identification of watercourses and the outer banks of watercourses.
- '(2) Without limiting subsection (1), a regulation may, by words and diagrams—
- (a) indicate how chapter 1, part 2, including the definitions in schedule 4 supporting chapter 1, part 2, must be

- 
- applied in varying environments and in watercourses, or sections of watercourses, of varying profiles; or
- (b) give examples of the occurrence of depositional features and scour marks and of how they may locate outer banks; or
  - (c) give examples of the occurrence of floodplains and of how the edge of a floodplain may be identified; or
  - (d) explain how a bench, bar or in-stream island in a watercourse may typically be recognised; or
  - (e) explain how the bed or a bank of a watercourse may typically be recognised; or
  - (f) explain how an anabranch may be recognised.
- ‘(3) A regulation under this section is not invalid only because it supplements the provisions of this Act by providing greater certainty than would otherwise be the case under this Act in relation to the identification of watercourses and the outer banks of watercourses in particular circumstances or types of circumstances.’

## **247 Insertion of new ch 9, pt 5, div 14**

Chapter 9, part 5—

*insert—*

### **‘Division 14 Transitional provisions for Natural Resources and other Legislation Amendment Act 2010**

#### **‘1171 Continuing application of s 21**

- ‘(1) The repealed section 21 continues to apply for all matters arising before the commencement of this section as if the *Water Act 2000* had not been amended by the *Natural Resources and Other Legislation Amendment Act 2010*.
- ‘(2) In this section—

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*repealed section 21* means section 21 as in force before the commencement of this section.

**‘1172 Transition for jurisdictional change for existing licence or permit**

- ‘(1) This section applies if—
- (a) immediately before the commencement of this section, a person was authorised under a licence or permit under this Act to conduct an activity of any type within a watercourse; and
  - (b) before the commencement of this section, the person lawfully conducted, on land adjoining the land to which the licence or permit applied, an activity of the same nature; and
  - (c) on the commencement of this section, the adjoining land became land included in a watercourse; and
  - (d) the licence or permit is still in force after the commencement of this section.
- ‘(2) The licence or permit, while still in force, is taken to be extended to authorise the conduct of the activity on the adjoining land—
- (a) for the period of 6 months immediately following the commencement of this section; or
  - (b) if within the 6 months period the person makes an application under subsection (3) and the application has not been approved or refused at the end of the 6 months period—until the chief executive approves or refuses the application.
- ‘(3) The person may apply to the chief executive for the extension of the application of the licence or permit to the adjoining land.
- ‘(4) An application under subsection (3) must be made within 6 months after the commencement of this section.

- 
- ‘(5) In deciding the application, the chief executive must have regard to the same matters required to be taken into consideration for the grant of the licence or permit.
- ‘(6) If the chief executive approves the application, the licence or permit, while still in force, is taken, subject to any reasonable conditions stated in the approval, to be extended to authorise the conduct of the activity on the adjoining land, starting when the extension provided for in subsection (2) ends.
- ‘(7) If, having regard to the matters mentioned in subsection (5), the chief executive can not approve an application under subsection (3), the chief executive may nevertheless give an authority that applies as for an approval under subsection (6), but only for the period stated in the authority.
- ‘(8) The chief executive may give an applicant an authority under subsection (7) only if the applicant satisfies the chief executive that the applicant will suffer particular hardship because of the refusal of the application under subsection (3).
- ‘(9) The period stated in the authority under subsection (7) must not be longer than the period reasonably needed for the applicant to move the conduct of the activity from the adjoining land, but in any event must not end later than 5 years after the commencement of this section.
- ‘(10) Within 10 days after making a decision about an application or authority under this section, the chief executive must give the applicant an information notice about the decision.’.

#### **248 Amendment of sch 4 (Dictionary)**

- (1) Schedule 4, definitions *bed and banks*, *floodwater* and *watercourse*—  
*omit.*
- (2) Schedule 4—  
*insert*—  
*‘bar*, in a watercourse, means a temporary accumulation of sediment—

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---

- (a) that is within the bed of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
  - (i) it is formed during the recession of flows in the watercourse when sediment is deposited in the bed of the watercourse;
  - (ii) it is a dynamic feature, being changed by flow events in the watercourse;
  - (iii) because of its dynamic nature as mentioned in subparagraph (ii), its covering vegetation is immature, and not woody;
  - (iv) it is made up of coarse materials, in particular, sand and gravel.

***bed and banks***, of a lake, means the land that is normally covered by the water of the lake, whether permanently or intermittently, regardless of frequency, but does not include adjoining land from time to time covered in flood events.

***bench***, in a watercourse, means a storage of sediment—

- (a) that is within the channel of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
  - (i) it is higher than the bed of the watercourse and bars in the watercourse, but lower than the level of either outer bank of the watercourse;
  - (ii) it is formed through sediment deposition during flow events in the watercourse that are at or near the level of either outer bank;
  - (iii) it is a reasonably flat sediment deposit, reasonably straight or gently curved as viewed from above, and at least partly consolidated by riparian vegetation;
  - (iv) it may be distinguished from a floodplain because the deposits making up a floodplain are finer and more layered.

***depositional feature***, in relation to a watercourse, means a deposit of clay, sand or silt that is carried during flows of water in the watercourse.

*Examples—*

- mud deposited in cracks in rocks
- sand deposits behind rocks

***downstream limit***, of a watercourse, means—

- (a) if a regulation under section 1006(1) has declared a downstream limit of the watercourse—the downstream limit declared; or
- (b) otherwise—the point to which the high spring tide ordinarily flows and reflows in the watercourse, whether due to a natural cause or to an artificial barrier.

***drainage feature*** means a natural landscape feature, including a gully, drain, drainage depression or other erosion feature that—

- (a) is formed by the concentration of, or operates to confine or concentrate, overland flow water during and immediately after rainfall events; and
- (b) flows for only a short duration after a rainfall event, regardless of the frequency of flow events; and
- (c) commonly, does not have enough continuing flow to create a riverine environment.

*Example for paragraph (c)—*

There is commonly an absence of water favouring riparian vegetation.

***floodplain*** means an area of reasonably flat land adjacent to a watercourse that—

- (a) is covered from time to time by floodwater overflowing from the watercourse; and
- (b) does not, other than in an upper valley reach, confine floodwater to generally follow the path of the watercourse; and

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- (c) has finer sediment deposits than the sediment deposits of any bench, bar or in-stream island in the watercourse.

***floodwater***, in relation to a watercourse or lake, means water that has overflowed the outer banks of the watercourse, or the bed and banks of the lake, because of a flood event affecting the watercourse or lake, and is on land near the watercourse or lake.

***in-stream island***, in a watercourse, is a storage of sediment—

- (a) that is within the channel of the watercourse; and
- (b) to which the following characteristics can generally be expected to apply—
- (i) it is formed by processes within the watercourse;
- (ii) its crest is not higher than either outer bank of the watercourse;
- (iii) it is a dynamic feature, being changed by flow events in the watercourse;
- (iv) it is made up of coarse materials, in particular sand and gravel.

***intermittent***, in relation to the flow of water in a watercourse or the collection of water in a lake, includes variable, having regard to seasonal variations, and to year by year variability of seasons.

***outer bank*** see section 5A.

***scour mark***, in relation to a watercourse, means—

- (a) a mark made on a bank of the watercourse by the sweeping action of suspended sediments in water during flows in the watercourse; or
- (b) a mark that can be identified by weathering stains, or the absence of lichens, on erosion-resistant surfaces of a bank of the watercourse.

*Example of an erosion-resistant surface—*

rock

*upstream limit*, of a watercourse, means, if a regulation under section 1006(1) has declared an upstream limit of the watercourse, the upstream limit declared.

*watercourse* see section 5.’.

- (3) Schedule 4, definition *weir*, ‘below the banks of’—

*omit, insert—*

‘below the outer banks of’.

## **Part 22**                      **Repeal and consequential and other amendments**

### **249 Act repealed**

The Forestry Plantations Queensland Act 2006, No. 16 is repealed.

### **250 Regulation repealed**

The Forestry Plantations Queensland Regulation 2006, SL No. 78 is repealed.

### **251 Acts amended**

The schedule amends the Acts it mentions.

## Schedule Consequential amendments

section 89

### Aboriginal Cultural Heritage Act 2003

#### 1 Schedule 2—

*insert—*

*'occupier*, of land or a place that is a licence area under the *Forestry Act 1959*, includes a plantation licensee and a plantation sublicensee for the licence area under that Act.'

### Biodiscovery Act 2004

#### 1 Section 14(2A)—

*omit, insert—*

(2A) Also, if the application relates to State land that is a State plantation forest under the *Forestry Act 1959*, the chief executive must consult with any plantation licensee for a licence area in the State plantation forest when considering the application.'

#### 2 Section 14(5)—

*omit, insert—*

(5) In this section—

*licence area*, in a State plantation forest, see the *Forestry Act 1959*, schedule 3.

*plantation licensee*, for a licence area in a State plantation forest, see the *Forestry Act 1959*, schedule 3.'

---

## Environmental Protection Act 1994

### 1 Section 579—

*insert—*

‘(3A) If the land is a licence area under the *Forestry Act 1959*—

- (a) the plantation licensee or plantation sublicensee, as defined under that Act, for the licence area is an occupier of the land for the purposes of this section; and
- (b) compensation is payable as provided under this section to the plantation licensee or plantation sublicensee as occupier of the licence area and the State as owner of the State forest of which the licence area forms part in the proportions decided by a court of competent jurisdiction.’.

## Geothermal Exploration Act 2004

### 1 Section 47(1)(a), ‘the landholder’—

*omit, insert—*

‘each landholder’.

### 2 Schedule, definition *landholder*, paragraphs (b) and (c)—

*renumber* as paragraphs (c) and (d).

### 3 Schedule, definition *landholder*—

*insert—*

- ‘(b) if the land is a licence area under the *Forestry Act 1959*—a person who is a plantation licensee under that Act for the licence area;’.

## Public Service Act 2008

**1 Schedule 1, entry for Forestry Plantations Queensland Office and its head—**

*omit.*

## Queensland Heritage Act 1992

**1 Schedule, definition *owner*, item 1, paragraph (f), after ‘State forest’—**

*insert—*

‘, other than a licence area.’.

**2 Schedule, definition *owner*, item 1, paragraph (f), as amended—**

*renumber* as paragraph (g).

**3 Schedule, definition *owner*, item 1—**

*insert—*

‘(f) for land (*licence area*) the subject of a plantation licence or plantation sublicense under the *Forestry Act 1959*—the State, the plantation licensee and any plantation sublicensee for the licence area;’.

## Recreation Areas Management Act 2006

**1 Schedule, definition *area land-holder*, paragraph (f)—**

*renumber* as paragraph (g).

**2 Schedule, definition *area land-holder*—**

*insert—*

‘(f) for land (*licence area*) subject to a plantation licence under the *Forestry Act 1959*—

- (i) the chief executive of the department in which that Act is administered; and
- (ii) the plantation licensee for the licence area;’.

**3 Schedule, definition *State land*—**

*insert—*

‘(g) subject to a plantation licence under the *Forestry Act 1959*.’.

## Statutory Bodies Financial Arrangements Act 1982

**1 Section 6(1)(ia)—**

*omit.*

## Water Act 2000

**1 Section 203, definition *owner*—**

*insert—*

‘(f) the plantation licensee of a plantation licence under the *Forestry Act 1959*.’.

**2 Schedule 4, definition *owner*, paragraph (a)(iv) and (v)—**

*renumber* as paragraph (a)(v) and (vi).

**3 Schedule 4, definition *owner*, paragraph (a)—**

*insert—*

‘(iv) the plantation licensee of a plantation licence under the *Forestry Act 1959*;’.

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