NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 1997

EXPLANATORY NOTES

OBJECTIVES

The Bill makes amendments to the *Acquisition of Land Act 1967, Body Corporate and Community Management Act 1997, City of Brisbane Act 1924, Forestry Act 1959, Land Act 1994, Land Title Act 1994, Local Government Act 1993, Mixed Use Development Act 1993, River Improvement Trust Act 1940, Valuation of Land Act 1944* and the *Water Resources Act 1989.*

The amendments to the *Acquisition of Land Act 1967* provide for greater certainty that the fees being charged under the Act are valid.

The amendments to the *Body Corporate and Community Management Act 1997* provide for:

- ensuring that adequate information is given to prospective buyers when a lot in an existing community titles scheme is subdivided;
- the mandatory giving of consent to a 'new' Community Management Statement (CMS) that accompanies a subsequent plan of survey in a community title scheme if the new CMS is filed for the purpose of registering subsequent stages that are in keeping with the original proposal as laid out in the 'first' CMS;
- retrospective strengthening of the transitional provisions;
- clarity that by-laws which were outdated under the *Building Units and Group Titles Act 1980* are not validated;
- increased flexibility in the manner in which the members of a committee are chosen;
- increased flexibility in the manner in which resolutions are made by the committee;
- clarity as to the term of new body corporate contracts; and

- various minor amendments of a machinery nature.

The amendments to the *Forestry Act 1959* provide for clarification of powers of forest officers in respect to certain documents and correction of two minor drafting errors.

The amendments to the *Land Act 1994* provide for:

- longer periods for lodging review applications and appeals;
- removal of the need to state the facts relied on in addition to the grounds of appeal;
- introduction of appeal provisions in respect of tree clearing permit applications;
- lower rents for permits for investigation purposes; and
- various minor amendments of a machinery nature.

The amendments to the *Land Title Act 1994* provide for:

- generally improved understanding by the real property industry of the requirements for registering easements over freehold land;
- consistency between the *Land Title Act 1994* and the *Land Act 1994* of the provisions for registering easements; and
- clarification that second and subsequent caveats on the same, or substantially the same, grounds as one that has been rejected by the Registrar of Titles may not be lodged without prior leave to do so by a court of competent jurisdiction.

The amendment to the *Mixed Use Development Act 1993* ensures that applications for further stages in continuing projects under this Act are not affected by the application of the *Body Corporate and Community Management Act 1997*.

The amendments to the *Valuation of Land Act 1944* provide for:

- flexibility in the carrying out of statutory valuations by widening the power of delegation;
- removal of the reference to sugar cane assignments from the Act, reflecting the substantial deregulation of the sugar industry in recent years;
- removal of the need for a general valuation, since there is now a system of annual valuations;

- a notice of an annual valuation to be given to an owner, and linking of the objection process to this notice;
- standardisation of the objection, appeal and display periods to 42 days;
- privacy measures which allow an owner's name and postal address to be suppressed from information available to the public in certain circumstances;
- removal of statutory objection and appeal process for certain commercial valuations; and
- other minor changes to improve the operation of the Act.

The amendments to the *City of Brisbane Act 1924* and *Local Government Act 1993* extend a direction to suppress a name and postal address, issued under the *Valuation of Land Act 1944* as amended, to prevent this information from being open for inspection at a local government if it is based on valuation information.

The amendments to the *River Improvement Trust Act 1940* provide for:

- amalgamation of the Burdekin River Improvement Trust and Trust Area with another Trust and Trust Area;
- more efficient administration of the Act; and
- trusts to operate more efficiently.

The amendments to the *Water Resources Act 1989* provide for:

- improved management of natural water resources including the protection and improvement of the physical integrity of watercourses, lakes and springs;
- clarification of the circumstances under which notification of certain decisions of the chief executive concerning applications for licences must be published;
- extended powers of inquiry into breaches of the *Water Resources Act 1989*, and consistency with the level of penalty provisions;
- suspension of a driller's licence as an alternative to cancellation;
- greater flexibility in managing the State's water resources; and

- more efficient administration of the Act.

HOW POLICY OBJECTIVES WILL BE ACHIEVED

Amendments to the *Acquisition of Land Act 1967*

A specific power to make regulations about fees is included.

Amendments to the *Body Corporate and Community Management Act 1997*

The words "when the scheme was established" in section 170(1) limit the section's application to new schemes only. The amendment ensures that adequate information is provided to prospective buyers where existing lots are re-subdivided and the new lots are sold off the plan.

As section 51 currently stands, the intent of the legislation is being overridden in that a 'new' Community Management Statement (CMS) is not being deposited with each survey of lots in a subsequent stage of a community title scheme. Some developers are 'loading' the 'first' CMS to obviate the need for body corporate consent, fearing that it may not be given or only be given subject to demands being met which the developer considers unreasonable. As a result, a 'first' CMS that does not reflect the current circumstances might remain in place indefinitely. If this situation is not remedied, it will rapidly erode public confidence in the legislation. This situation has been addressed by amending section 51 to clarify that a 'new' CMS is required with each subsequent plan of survey in a community title scheme and to specify that, if a 'new' CMS does not substantially alter the 'first' CMS the body corporate must consent to the 'new' CMS.

A retrospective amendment ensures that sub-section 22(3)(2) places beyond doubt that the standard module applies to every building unit plan and group title plan under the *Building Units and Group Titles Act 1980.* These are now community title schemes under the *Body Corporate and Community Management Act 1997*.

Section 283(4) is amended to limit its application to amendments of by-laws made not more than 3 months prior to commencement of the Act. The sub-section currently provides an 18 month window for recording amendments to by-laws made before the commencement of the Act. This window overturns the important provision in the *Building Units and Group*

Titles Act 1980 [s.30(3)] which stipulated that changes of by-laws made more than 3 months prior to lodgment in the Land Registry could not be recorded. It was never intended that section 283 would validate by-laws that had been outdated under the *Building Units and Group Titles Act 1980*.

A retrospective amendment to section 55 includes body corporate assets when referring to common property. The section provides for instances where body corporate consent to a new CMS is required and provides for the type of resolution in each instance. It was not intended to have different resolution levels for common property and assets. There is at least one instance where a 'new' CMS that included a by-law that changed the allocation of an asset was prevented because the resolution without dissent was lost. Accordingly, the amendment clarifies that an ordinary resolution is also required for asset allocations rather than one without dissent and allows these types of property allocation to be dealt with consistently.

A definition of "term limitation period" is included in section 288 to clarify the term where it is used in section 290. Section 290 describes where term limitation is to apply.

There are a number of other amendments of a house keeping nature. Typical of these are replacing the word 'amendment' with 'change' in sub-sections 250(b)(ii) and 250(b)(iii), modifying punctuation in sub-sections 40(3) and 41(3) and adding the missing word 'operator' to sub-section 18(c).

Amendments to the *Forestry Act 1959*

Section 18(1)(e) of the *Forestry Act 1959* provides that a forest officer may require documents to be produced under certain circumstances. The current provision is not clear as to the extent of this power. The amendments clarify that where a forest officer has made such a requirement, the document must be produced in its original form at the time and place stated in the requirement. Any such document may be retained by the officer if the officer is satisfied on reasonable grounds that the retention of the document is necessary for the purposes of an inquiry or as evidence.

Two minor previous drafting errors are addressed to reinstate the power of forest officers to inspect certain places entered for the purposes of the Act and correct a reference to an incorrect section.

Amendments to the *Land Act 1994*

It is considered too onerous to require a person to lodge both an application for review of a decision and an appeal within 28 days and in the case of an appeal, to state the facts relied on. The amendments overcome these problems by dispensing with the need to state the facts relied on and by extending the review and appeal periods to 42 days in line with the *Valuation of Land Act 1944*.

Appeal provisions are introduced in respect of tree clearing permit applications so that an applicant may appeal against conditions of a permit imposed by the chief executive, refusal to issue a permit and cancellation of a permit. There is no intention to allow third party appeal against these decisions.

A lease that requires "investigation and development" is able to obtain a lower rent for the first five years through a provision in the concessional rents area. However, there is no provision for a permit for investigation purposes to have a lower rent than would normally apply. The amendment brings a permit for investigation purposes into line with leases requiring investigation and development.

A number of administrative and machinery defects with the current Act have become obvious with use of the provisions since commencement of the Act. The Bill makes the necessary adjustments to overcome these defects.

Amendments to the *Land Title Act 1994*

There have been differing interpretations of the provisions that relate to easements over freehold land since Division 4, Part 6 of the *Land Title Act 1994* was enacted. The Division contains separate subdivisions that differentiate between the requirements for easements in general that are identified by survey only and 'proposed' easements (subdivision A) and those that are created by an instrument of grant simultaneous with the survey (subdivision B). These provisions are less clear in their intent than corresponding provisions for easements over State land in the *Land Act 1994*. The *Land Act 1994* does not differentiate in separate subdivisions between easements that are proposed and those that are simultaneously granted. There has been no recognisable confusion regarding easements over State land and this is attributable to the provisions of this Act not containing the complexity of 'proposed' or immediately granted easements.

The provisions of Division 4, Part 6 of the *Land Title Act 1994* for freehold land are to be amended so that they align with those for State land in the *Land Act 1994.*

Some persons lodge caveats without a proper claim thereby preventing registration of legal transactions by the owner. Under the *Land Title Act 1994*, after a caveat has lapsed or been withdrawn, canceled or removed, the caveator is prevented from lodging a further caveat on the same grounds without leave of the Court. However, when the Registrar of Titles rejects a caveat that is not capable of supporting the caveator's claim, the caveator is in a position to lodge subsequent caveats of the same or a similar nature.

The amendments ensure that caveats subsequent to ones that have already been rejected by the Registrar may be relodged only with the leave of the Court.

Amendments to the *Mixed Use Development Act 1993*

The amendment ensures that applications for further stages in continuing projects may be made under this Act.

Amendments to the *River Improvement Trust Act 1940*

In response to local government boundary changes the Burdekin River Improvement Trust and the Haughton River Improvement Trust have sought to amalgamate. The amendments effect this amalgamation. This may result in more efficient operations and coordination of trust matters. Other minor amendments should also assist trusts to operate more efficiently.

Amendments to the *Valuation of Land Act 1944, City of Brisbane Act 1924 and Local Government Act 1993*

The Review of the State's Valuation System Report of September 1996 recommended a number of changes to the statutory valuation process. Implementation of two of the recommendations which require amendments to the *Valuation of Land Act 1944* are addressed in this Bill, namely the standardisation of objection, appeal and display periods and the removal of references to sugar cane assignments.

The reintroduction of the issuing of valuation notices in 1997 has been welcomed by the public and the authority for this is now to be included in the *Valuation of Land Act 1944*. The changed objection and appeal periods will be linked to these notices.

The power for the chief executive to order the suppression of an owner's name and postal address from information available to the public from government records will assist in achieving a measure of privacy for certain people who may be at risk of possible harm or whose property may be at risk. The measures are included in the *Valuation of Land Act 1944, City of Brisbane Act 1924 and Local Government Act 1993* to ensure that the provisions operate effectively in both State and local government.

The requirement to use the statutory objection and appeal processes for certain commercial valuations is to be removed from the *Valuation of Land Act 1944*. Grievance processes for commercial valuations exist through the normal avenues applying to private valuers, such as conferences, arbitration and litigation.

Various other amendments have been included to ensure the operational efficiencies of these legislative changes and of the *Valuation of Land Act 1944* generally.

Amendments to the *Water Resources Act 1989*

Unauthorised extraction of quarry material can result in serious damage to the physical integrity of watercourses and lakes. The Bill gives the chief executive the power to issue notices to stop persons engaging in such activities. Where a person contravenes such a notice, a Supreme Court injunction may be issued, thereby significantly increasing the ability of the chief executive to protect and improve the physical integrity of watercourses, lakes and springs

A recent amendment to the Act required that decisions of the chief executive pertaining to applications for certain licences be published where a right of appeal existed. Where an application is made for a licence for an artesian or subartesian bore only the applicant may appeal the decision. This Bill removes the need to publish decisions concerning these bores. However, the chief executive must give written notification of the decision concerning certain bores to dissatisfied persons, thereby reducing unnecessary delays and costs. The amendments in this Bill clarify which decisions must be published, and improve administrative efficiency.

The chief executive needs to be able to exercise discretion when dealing with driller's licences because of the direct impact on the livelihood of drillers. Currently, the Act only provides for the cancellation or revocation of a driller's licence. The amendments include a specific power for the chief executive to suspend a driller's licence as an alternative to cancellation or revocation.

Individuals who refuse to provide a name and address have frustrated the Department's efforts to investigate alleged offences. The collection of evidence for the purpose of prosecution will be simplified by the inclusion of part 11, division 1A which requires a person to state the person's name and address, answer questions and produce documents, and creates offences for failure to comply.

The amendment to the definition of "water allocation" enables the chief executive to allocate unregulated surface water and groundwater resources by quantity, and provides greater flexibility in managing the available resource by having the power to declare announced allocations.

The Bill also contains other minor amendments which will clarify existing provisions and improve administrative efficiency.

ADMINISTRATIVE COST TO GOVERNMENT

There are no administrative costs to Government involved in implementing the proposed amendments to the *Acquisition of Land Act 1967*, *Body Corporate and Community Management Act 1997*, *Forestry Act 1959*, *Land Title Act 1994* and *Mixed Use Development Act 1993.*

The introduction of appeal provisions in the *Land Act 1994* in respect of tree clearing permit applications, and the value of commercial timber on forest entitlement areas may impact on resources, although the proposal removes these decisions from possible grievance appeal through Judicial Review.

There are no additional administrative costs to Government to implement the other amendments to the *Land Act 1994.*

A minimal reduction in administrative costs may result from the amendment to the *Land Title Act 1994* regarding further caveats.

If all local governments were valued in the one year, the cost of postage of the notices of valuation to owners under the *Valuation of Land Act 1944*

would be about $800,000. However the actual cost in any one year depends on the local government areas valued.

The implementation of the suppression of owners' names and postal addresses in some cases, under the *Valuation of Land Act 1944, City of Brisbane Act 1924* and *Local Government Act 1993,* will involve slightly higher administrative costs for State and local government but such will be far outweighed by the social benefits of this initiative.

There are no significant administrative costs to Government to implement the proposed amendment to the *Water Resources Act 1989* or the *River Improvement Trust Act 1940.*

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The Bill conforms with fundamental legislative principles.

- The amendments to sections 22 and 55 of the *Body Corporate and Community Management Act 1997* are to operate retrospectively:

  — The amendment to section 22 is to provide certainty that the *Body Corporate and Community Management (Standard Module) Regulation* always applied to schemes which were Building Unit Plans or Group Title Plans under the *Building Units and Group Titles Act 1980* from commencement.

  — The allocation of rights over body corporate assets (eg. a marina berth) is an administrative and commercial matter best dealt with by the committee of a body corporate. As allocations of such rights may have been made since the commencement of the Act, the retrospectivity is necessary to ensure that allocations have been made correctly.

  The retrospectivity does not adversely affect rights or impose obligations.

- The amendments to the *Land Act 1994* contain three retrospective provisions. The removal of the time restriction on the Land Court's power to extend the period for filing a notice of appeal and the removal of the requirement for an appeal to state the facts relied on, are of benefit to appellants. The amendment to ensure

that rules and regulations under the *Cemetery Act 1865* continue as by-laws under the *Land Act 1994* for three years from the commencement of the *Land Act 1994* (1 July 1995) is necessary to correct an oversight in the drafting of the *Land Act 1994.*

The retrospectivity expands the rights of appellants.

- There is a retrospective clause in the *Valuation of Land Act 1944* which validates an annual valuation where a general valuation should have been carried out in a particular year. This validation does not affect land owners in any way as the valuations have already been used for rating and taxing purposes, albeit as an annual valuation instead of a general valuation. Another clause validates a fee that has been collected from local governments since 1985.
- The amendments to the *Water Resources Act 1989* contain a clause which removes the requirement for the chief executive to publish decisions of the chief executive concerning applications for licences for certain artesian or subartesian bores. The purpose of this requirement was to ensure that those with a right of appeal were made aware of the decision. However, only applicants have a right of appeal regarding these licences and provision has been made for the chief executive to give written notification of such decisions to applicants and other "dissatisfied persons". The amendments ensure that existing rights are preserved.

CONSULTATION

Consultation has taken place with some members of relevant client groups regarding the amendments to the *Body Corporate and Community Management Act 1997*. The amendments address matters raised by them.

The Department of Justice has no concerns regarding the proposed amendments to the *Forestry Act 1959.*

The Land Court has been consulted concerning amendments to the *Land Act 1994* in relation to longer periods for lodging review applications and appeals, removing the need to state the facts relied on in appeals and introducing appeal provisions in respect of tree clearing permit applications. The Court supports the amendments.

The Department of Transport has been consulted concerning the

extension of the Minister's power under the *Land Act 1994* to issue a general authority to sublease to sublessees as well as lessees. The Department of Transport initiated this amendment to facilitate the leasing of rail corridor land and is in agreement.

Consultation has occurred with members of Consulting Surveyors Queensland and members of the Law Society regarding the proposed amendments to provisions about easements in the *Land Title Act 1994*.

The amendments to the *River Improvement Trust Act 1940* were discussed with the North Queensland River Trusts Association and some individual Trusts. All gave support for the amendments.

Most of the amendments to the *Valuation of Land Act 1944* were fully canvassed in the *1996 Review of the State's Valuation System.*

The amendments to the *Water Resources Act 1989* were discussed with industry representatives, including representatives of the Queensland Farmers' Federation, Queensland Irrigators' Council, Queensland Conservation Council and the Local Government Association. The Queensland Farmers' Federation supports the proposed changes and no other concerns have been raised.

Some proposed amendments to the *Land Act 1994, River Improvement Trust Act 1940, Valuation of Land Act 1944* and *Water Resources Act 1989* were discussed with my consultative groups, the Ministerial Land Infrastructure and Services Advisory Council and the Ministerial Resource Management Advisory Council whose members represent local governments, the development industry, and relevant industry groups. No objections were raised to the amendments discussed.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for the commencement of the provisions of this Act.

PART 2—AMENDMENT OF *ACQUISITION OF LAND ACT 1967*

Clause 3 identifies the Act being amended.

Clause 4 provides a power to make regulations about fees.

PART 3—AMENDMENT OF *BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997*

Clause 5 identifies the Act being amended.

Clause 6 inserts a missing word.

Clause 7 is a retrospective amendment to section 22 to place beyond doubt that the *Body Corporate and Community Management (Standard Module) Regulation 1997* applies to existing building unit plans and group title plans under the *Body Corporate and Community Management Act 1980*. These have now become community title schemes under the *Body Corporate and Community Management Act 1997.*

Clause 8 corrects the punctuation in the section.

Clause 9 corrects the punctuation in the section.

Clause 10 amends section 51 for the purpose of clarifying that:

(i) a 'new' CMS is required with every subsequent plan of survey in a community title scheme; and

(ii) the body corporate must consent to the recording of a 'new' CMS if the new plan is consistent with future subdivision proposals in the original CMS.

Clause 11 is a retrospective amendment. Its purpose is to allow body corporate assets to be dealt with using the same resolution as applies to dealings with common property.

Clause 12 amends section 91(2) to allow the regulation modules under the Act to provide additional methods for bodies corporate to choose a committee other than solely by election.

Clause 13 inserts a new section to provide that a resolution may be decided other than at a general meeting, for example if all the owners live overseas a telephone conference or internet email would be appropriate.

Clause 14 amends section 107(3) to omit its application to a body corporate manager as the various regulation module provisions relating to payments on transfer of an engagement do not apply to these persons.

Clause 15 is a machinery amendment to section 112(5) as the chapter reference is in footnote 19.

Clause 16 amends section 113(2)(j) to include reference to "auditor" which is a defined term.

Clause 17 amends section 169 to remove the section's limitations applying to new community titles schemes only. The amended section will then apply also to any subdivision of a lot in an existing scheme. The amendment is to ensure the disclosure provisions for proposed lots apply in all instances, as a consumer protection.

Clause 18 amends section 170 in a number of instances, to have the same effect as the amendments to section 169.

Clause 19 amends section 174 to have the same effect as the amendments to sections 169 and 170.

Clause 20 amends section 176(3) to have the same effect as the amendment to section 174.

Clause 21 amends section 177 to have the same effect as the amendment to section 176.

Clause 22 is a machinery amendment to insert the correct reference to the part heading.

Clause 23 makes a machinery amendment to section 250 to correctly refer to the part heading rather than a division as well as replacing the word "amendment" with a more appropriate word "change".

Clause 24 is a machinery amendment to insert the correct reference to the part heading.

Clause 25 amends section 268(3) to allow a higher penalty to be imposed where a person votes on behalf of a person without authority. The purpose is to provide a proper deterrent for an area of past abuse. In

addition, the clause extends the 3 month exemption for the requirement for a regulatory impact statement under the *Statutory Instruments Act 1992* to 6 months. The clause is to have effect retrospectively. The amendment will allow sufficient time for the remaining regulation modules to be finalised.

Clause 26 amends section 283(4) to ensure that any changes to by-laws that are to be recorded in the Land Registry must made not more than 3 months prior to commencement of the Act. The amendment continues the limitation imposed under the *Building Units and Group Titles Act 1980.*

Clause 27 omits paragraph (f) from the definition of "exempted provisions" in section 288. The amendment recognises that the remuneration review is available only to new agreements.

Clause 28 amends section 290 to clarify the term of new body corporate contracts after 24 October 1994.

PART 4—AMENDMENT OF *CITY OF BRISBANE ACT 1924*

Clause 29 identifies the Act being amended.

Clause 30 inserts a new section to ensure that any part of the valuation roll which is subject to a suppression direction under the *Valuation of Land Act 1944* is not open to inspection under the *City of Brisbane Act 1924*.

PART 5—AMENDMENT OF *FORESTRY ACT 1959*

Clause 31 identifies the Act being amended.

Clause 32 enables a forest officer to inspect a place entered under section 18(1)(g) of the Act, amends a term and omits unnecessary words.

Clause 33 introduces new section 19 which provides that where a requirement for the production of a document is made by a forest officer

under section 18(1)(e) the document must be produced in its original form at the time and place stated in the requirement. It also provides that the forest officer may retain any such document where the officer is satisfied on reasonable grounds that retention of the document is necessary for the purposes of an inquiry or as evidence, subject to certain time constraints. The section further provides that any person who would otherwise be entitled to possession of a retained document may inspect or make copies of it until it is returned.

Clause 34 corrects an incorrect reference in section 82(3).

PART 6—AMENDMENT OF *LAND ACT 1994*

Clause 35 identifies the Act being amended.

Clause 36 replaces section 35 to allow an additional community purpose to be inserted in an existing deed of grant in trust (DOGIT), to enable the land to be used for extended purposes.

Clause 37 amends section 57 to make it clear that each trustee lease must be approved by the Minister and must also be registered in the appropriate register.

Clause 38 clarifies the definition of "exhume" to ensure that it applies to places of interment above or below the ground.

Clause 39 amends section 112 to allow a permit, as well as a term lease, over a reserve to be put up at auction.

Clause 40 amends section 140 to clarify the approach to be taken by the Land Court in determining the value of improvements and ensure that where the land is to be used for a different purpose to that of the previous lease, the incoming lessee or purchaser does not have to pay a value for improvements of little use in relation to the new purpose.

Clause 41 amends section 174 to make it clear that the section, which concerns restrictions on corporations holding freehold land over 2,500 hectares, applies to a deed of grant resulting from the completion of payment of instalments on a grazing homestead freeholding lease as well as to a deed of grant resulting from the conversion of a perpetual lease for

agricultural or grazing purposes. It also clarifies that the restriction, which applies to a corporation, also applies to a person holding the land in trust for a corporation, reflecting the provisions of the previous *Land Act 1962.*

Clause 42 amends section 175 to allow an appeal against the value of the commercial timber in the disposal of forest entitlement areas. An appeal against the value of the land is covered in sections 24 and 25 but an appeal in respect of commercial timber was inadvertently omitted.

Clause 43 amends section 185 to provide for a lower rent to be charged for a permit for investigation purposes. A lease that requires "investigation and development" is able to obtain a lower rent for the first five years through a provision in the concessional rents section of the *Land Act 1994*. The proposed amendment brings a permit for investigation purposes into line with these leases.

Clause 44 inserts section 194A to make it clear that the definition of "instalment" for the purpose of charging penalty interest includes a fee for issuing and registering a deed of grant. This reflects the corresponding provision of the *Land Act 1962.*

Clause 45 rectifies a minor drafting omission in section 199.

Clause 46 amends section 219 to clarify the effect of resumption of a lease in terms of the *Land Act 1994*. Previously it could be construed that if a lease over a reserve was resumed, the land became unallocated State land. This was not the intention.

Clause 47 corrects a spelling error.

Clause 48 amends section 225 to clarify the effect of resumption of a lease under a condition of the lease. Previously it could be construed that if a lease over a reserve was resumed, the land became unallocated State land. This was not the intention.

Clause 49 deletes the word "land" from the term "land degradation" in the definition of "critical area" in section 253 to bring it into line with the definition of "environmentally sensitive area" which refers only to "degradation".

Clause 50 amends section 263 to provide for an appeal by the applicant for a tree clearing permit against conditions of the permit imposed by the chief executive and refusal to issue a permit.

Clause 51 amends section 266 to provide for an appeal against the

cancellation of a tree clearing permit.

Clause 52 makes a minor drafting change.

Clause 53 inserts section 334A to extend the Minister's power to issue to a lessee a general authority to sublease without seeking the Minister's approval in each case, to a sublessee as well.

Clause 54 omits section 358(6) to make it clear that a fee for correction of title is payable under section 358 but an additional fee for issuing and registering a deed of grant is not payable. A complementary amendment will be made to the fees schedule of the *Land Regulation 1995*.

Clause 55 corrects a spelling error.

Clause 56 inserts a missing word.

Clause 57 inserts section 369B to ensure that a provision in an easement agreement over unallocated State land or reserve (the "power of attorney provision") appointing the grantor of the easement as the attorney of the grantee of the easement for the purpose of surrendering the easement upon default of the grantee of any condition, covenant or clause, continues to be binding if there is a change in the grantees.

Clause 58 amends section 421 to make it clear that, where a person has a right to appeal against a decision under the *Land Act 1994*, the requirement to provide a written notice to that person advising them of their right of appeal includes a requirement to provide notice of how the appeal is started.

Clause 59 amends section 424 to increase from 28 days to 42 days the period in which an application for review of a decision may be made.

Clause 60 amends section 426 to specify that notice of a review decision must state the day the notice is given to the applicant and to increase from 28 days to 42 days the period stated in the notice in which the applicant may appeal against the decision to the Court.

Clause 61 amends section 428 to increase from 28 days to 42 days the period in which a notice of appeal must be filed and clarifies the wording of the section to remove any doubt about the date of commencement of the appeal period. The clause also removes the restriction for extending the period for filing the notice of appeal and removes the necessity for the notice of appeal to state the facts relied on in addition to the grounds of appeal. The intention is that the notice of appeal must only state the grounds of appeal.

Clause 62 amends section 434 to clarify that a lessee is only required to pay for improvements and development work **performed by the State** in the assessment of "unimproved value". The way the Act is currently worded may be interpreted to include all improvements and development work, including work performed and paid for by the lessee.

Clause 63 inserts section 449(3) to make it clear that reserves for cemetery purposes set apart under the *Land Act 1962* may also be used for crematorium and mortuary purposes, as is the case for such reserves dedicated under the *Land Act 1994.*

Clause 64 inserts section 451(3) to make it clear that deeds of grant in trust (DOGITs) for cemetery purposes granted under the *Land Act 1962* may also be used for crematorium and mortuary purposes, as is the case for such DOGITs granted under the *Land Act 1994.*

Clause 65 inserts section 457(3) to clarify that the discount for early payment of a pre-Wolfe freeholding lease only applies to the unimproved value of the land and not to the value of commercial timber.

Clause 66 corrects a drafting error and inserts section 466(3) to clarify that the discount for early payment of a grazing homestead freeholding lease only applies to the unimproved value of the land and not to the value of commercial timber.

Clause 67 inserts section 469(4) to make it clear that redundant or inappropriate conditions are not carried over to a grazing homestead freeholding lease from a grazing homestead perpetual lease upon conversion.

Clause 68 inserts section 471(3) to make it clear that redundant or inappropriate conditions are not carried over to a post-Wolfe freeholding lease from a non-competitive lease upon conversion.

Clause 69 inserts section 478(3) to make it clear that redundant or inappropriate conditions are not carried over to a post-Wolfe freeholding lease from a special lease upon conversion.

Clause 70 inserts section 506(2) to make it clear that all rules and regulations made by trustees under the *Cemetery Act 1865* for reserves or deeds of grant in trust (DOGITs) for cemetery purposes continue as by-laws for such reserves and DOGITs under the Land Act for 3 years from the commencement of the *Land Act 1994.*

Clause 71 makes minor drafting changes to section 506A and inserts a definition of "repealed Act".

Clause 72 makes minor drafting changes to section 506H.

Clause 73 renumbers the subsections of section 506I and makes minor drafting changes to the section.

Clause 74 omits section 506J.

Clause 75 clarifies that the section numbers referred to in section 506K refer to sections in the repealed Act.

Clause 76 updates the title of the Act referred to in section 506M.

Clause 77 modifies the heading of section 506O to reflect the contents of the section.

Clause 78 makes minor drafting changes to section 506P.

Clause 79 amends schedule 2 (original decisions) to insert additional sections to enable review and appeal provisions to apply to the sections.

Clause 80 amends schedule 6 to omit a redundant definition and insert Land Act leases freeholded under the provisions of the *Special Freeholding of Leases Act 1991* into the definition of a "pre-Wolfe freeholding lease" so that the minimum instalment provisions [section 457(1)(e) and Land Regulation 31] apply to them.

PART 7—AMENDMENT OF *LAND TITLE ACT 1994*

Clause 81 identifies the Act being amended.

Clause 82 omits the heading of Part 6, division 4, subdivision A and includes relevant divisional definitions.

Clause 83 amends section 82 to allow the creation of easements over land only by registration of an instrument of easement and sets out the requirements of the instrument.

Clause 84 replaces section 83 and provides the requirements for a plan

showing the location of an easement.

Clause 85 inserts sections 85A and 85B. Section 85A sets out the particulars that must be recorded in the appropriate register when an easement is registered. Section 85B sets out the rights that come into effect on registration of an easement instrument. It vests the benefits created by registration in the person entitled to them, on registration of the instrument.

Clause 86 replaces section 89. The new section provides for the purposes for which a public utility easement may be registered.

Clause 87 omits Part 6, division 4, subdivision B.

Clause 88 amends the existing section 129 by including caveats, subsequent to ones that have been rejected by the Registrar of Titles, as a caveat which requires Court leave prior to lodgement.

Clause 89 omits the definition "public utility provider". The term is now incorporated as a divisional definition in part 6, division 4.

PART 8—AMENDMENT OF *LOCAL GOVERNMENT ACT 1993*

Clause 90 identifies the Act being amended.

Clause 91 inserts a new section to ensure that any part of the valuation roll which is subject to a suppression direction under the *Valuation of Land Act 1944* is not open to inspection under the *Local Government Act 1993*.

PART 9—AMENDMENT OF *MIXED USE DEVELOPMENT ACT 1993*

Clause 92 identifies the Act being amended.

Clause 93 amends section 28 to ensure that applications for further stages in continuing projects under this Act are not affected by the

application of the *Body Corporate and Community Management Act 1997*.

PART 10—AMENDMENT OF *RIVER IMPROVEMENT TRUST ACT 1940*

Clause 94 identifies the Act being amended.

Clause 95 replaces "Meaning of terms" in section 2 and inserts "Definitions".

Clause 96 amends section 3 to show that the "Burdekin River Improvement Area" is now the "Burdekin Shire Rivers Improvement Area".

Clause 97 amends section 4 to provide for the Burdekin River Improvement Trust and Trust Area to continue under the name of the "Burdekin Shire Rivers Improvement Trust" and the "Burdekin Shire Rivers Improvement Area".

Clause 98 amends section 5(1)(b) and (1A) to provide for a local government to appoint more than 2 representatives to constitute a trust where such is expressly provided in a regulation. The amendment also enables the chief executive to fix the time and place for holding the first meeting of a new trust.

Clause 99 amends section 7 by replacing "Burdekin River Improvement Trust" and inserting "Burdekin Shire Rivers Improvement Trust" to provide consistency with references contained elsewhere in the Act.

Clause 100 amends section 8(1) to provide for a trust to be a statutory body under the *Financial Administration and Audit Act 1997*.

Clause 101 amends section 10 to provide for trusts to undertake and maintain works as approved or directed by the Primary Industries Corporation without the need to have the consent of the Minister, and to clarify that trusts must comply with all laws in relation to undertaking and maintaining approved works.

Clause 102 amends section 12 to provide for the transfer of the Minister's powers to the chief executive in relation to funds of a trust for

operational efficiency.

Clause 103 inserts new section 12A to enable a trust to elect to utilise a local government's bank accounts and accounting systems for operational efficiency.

Clause 104 amends section 13 to provide for the transfer of the Minister's powers to the chief executive in relation to funds of a trust for operational efficiency.

Clause 105 amends section 20A to clarify that the section refers to accounts of superannuation schemes instituted by trusts. As trusts are statutory bodies, other trust accounts will be dealt with in accordance with the provisions of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1997.*

Clause 106 amends section 21 by omitting the provisions pertaining to annual reporting by a trust as trusts must now report in accordance with the provisions of the *Financial Administration and Audit Act 1997,* and inserting power for the chief executive to delegate his powers as appropriate.

Clause 107 inserts new section 24 to provide transitional arrangements for the change of name of the Burdekin River Improvement Area and Trust to the Burdekin Shire Rivers Improvement Area and the Burdekin Shire Rivers Improvement Trust.

PART 11—AMENDMENT OF *VALUATION OF LAND ACT 1944*

Clause 108 identifies the Act being amended.

Clause 109 amends section 2 to insert definitions of "annual valuation notice", "protected person" and "suppression direction".

Clause 110 omits the redundant section 11 **"secrecy"** provision which is now overridden by the *Freedom of Information Act 1992* and widens the power of delegation in section 12.

Clause 111 removes references to sugar cane assignments in section 14 and makes some consequential drafting changes.

Clause 112 makes a minor drafting change to section 18.

Clause 113 removes the requirement to undertake a general valuation at least every eight years. This is no longer required as section 37 provides that annual valuations must be made unless otherwise directed by the Minister.

Clause 114 makes a consequential drafting change and omits a reference to sugar cane assignments in section 28.

Clause 115 ensures that the annual valuations will be available for inspection by any person for 42 days. However if an owner has obtained a suppression direction, the name and postal address of the owner will not be disclosed.

Clause 116 amends section 41 dealing with advertising the fact that an annual valuation has been made to include the details of when those valuations are available for inspection by any person.

Clause 117 inserts section 41A to provide that a notice of valuation must be given in an annual valuation. The notice must advise an owner of the right to object to the valuation and the way to object.

Clause 118 amends section 42 to extend the objection period from 28 days to 42 days and links the period to the date that the valuation notice is given to an owner.

Clause 119 redrafts section 44 and extends the period in which discretion may be given to accept a late objection.

Clause 120 extends the period for lodging an appeal to the Land Court on a decision on an objection from 28 days to 42 days.

Clause 121 is a consequential amendment linking the rights of a new owner to object to the date of an annual valuation notice.

Clause 122 standardises the period for lodging an objection to 42 days.

Clause 123 introduces a discretionary power for the chief executive to accept a late objection in terms of Part 6—General Valuation, which also applies to a maintenance valuation.

Clause 124 makes consequential drafting changes.

Clause 125 makes a consequential drafting change.

Clause 126 standardises the period for lodging an appeal to the Land Court on a decision on an objection to 42 days.

Clause 127 updates terminology.

Clause 128 inserts section 73A which provides for a suppression direction of a particular in the valuation roll to be notified to a local government.

Clause 129 ensures that the statutory objection and appeal processes do not apply to other special valuations made under section 74. These type of valuations are not conducted for rating and taxation purposes. They are for the purpose of commercial activities. Therefore similar grievance procedures to those applying to the private sector can be used.

Clause 130 empowers a fee for categorisation of land for rating purposes when requested by a local government. Fees have been charged since 1985 without realising there was no specific regulation making power in the section.

Clause 131 implements a measure of privacy by inserting additional material in Part 8 to provide the power for the chief executive to suppress an applicant's name and postal address from records publicly available under the Act. It sets out the grounds and procedure for an application, including the right of appeal on a decision not to issue a suppression direction, the procedures for an appeal hearing and the action to be taken pending a decision on an appeal.

Clause 132 inserts a validation, transitional and savings part which:

- validates an annual valuation which may have been made in any year in which, in terms of section 27, a general valuation should have been made;
- validates fees paid by a local government for the identification of land by the chief executive for the purposes of categorisation; and
- is a transitional provision to maintain the period of 60 days for any objection or any appeal under Part 6 which may have been lodged prior to this amending Act coming into force.

PART 12—AMENDMENT OF *WATER RESOURCES ACT 1989*

Clause 133 identifies the Act being amended.

Clause 134 amends the long title of the Act to show that protecting and improving the physical integrity of watercourses includes "lakes" and "springs".

Clause 135 amends section 2(1) to include definitions explaining the terms "declared subartesian area", "driller's licence", and "water available for allocation", and amends the definition of "water allocation" to provide for improved management of water resources.

Clause 136 amends section 8(1) and (2) by adding the words "lakes" and "springs" to make it consistent with similar references contained elsewhere in the Act.

Clause 137 amends section 29(2) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 138 amends section 30(6) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 139 removes sections 31 and 32 to enable certain specific provisions of the Act about subartesian bores to be redefined in new part 4, division 1A.

Clause 140 inserts new part 4, division 1A to enable the provisions of the Act about subartesian bores to apply only to subartesian bores in declared subartesian areas, and to provide for exemption of certain small bores from the requirement that they must be licensed.

Clause 141 amends section 38(1) by linking paragraphs (a) and (b) by use of the word "or" thereby removing a technical restraint on prosecutions brought by the Department, and by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 142 amends section 41 by linking paragraphs in (a) and (b) by use of the word "or" thereby removing a technical restraint on prosecutions brought by the Department, and by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 143 amends section 43(1) by incorporating the inquiry provisions

relating to applications for driller's licences into the inquiry provisions for other applications for licences made under part 4 of the Act so that there is only one process for dealing with applications for licences under part 4.

Clause 144 amends section 43A to clarify that the section applies to decisions of the chief executive under section 43 concerning applications for a licence that may be appealed to the Land Court other than those decisions concerning the construction or use of an artesian or subartesian bore.

Clause 145 inserts new section 43B to provide for the chief executive to promptly give notice of the chief executive's decision about the construction or use of an artesian or subartesian bore to the applicant and, if necessary, any other dissatisfied person rather than to publish notice of the decision.

Clause 146 inserts new section 48A to require licensed drillers to record information about boreholes they drill, and to supply this information to the chief executive unless otherwise exempted for a particular area by a regulation thereby removing these requirements from land owners who hold licences to construct bores.

Clause 147 amends section 50(2)(b) to clarify that a licence cannot be suspended for a longer period than the period specified in the show cause notice.

Clause 148 inserts new section 50A to provide for the internal review of decisions made by an officer exercising the power delegated by the chief executive to inquire into and determine applications for driller's licences or to deal with existing driller's licences.

Clause 149 amends section 51(4) to clarify when notification of a decision of the chief executive mentioned in section 51, and made under section 43, has been given. If an appeal is to be instituted, a notice of appeal must be filed in the registry of the Land Court within 30 days of the date of notification.

Clause 150 amends section 53(1) and (2) to clarify that an offence occurs if a person operates, or employs, someone who does not hold a driller's licence, or a driller's licence that authorises a particular type of drilling operation. It also increases the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 151 amends section 56(2)(b) to provide for the issue of a temporary water permit for a maximum period of 1 year to reduce

unnecessary administration and associated costs for permittees and the Department.

Clause 152 amends section 57(6) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 153 amends section 58(2) and (3) to provide for the issue of a permit for quarry material other than controlled quarry material to a person other than the owner of land through or past which a watercourse flows or on which part of a lake is situated.

Clause 154 amends section 63(3) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 155 inserts new section 64A to provide for the issue of a notice to stop unauthorised quarrying activities thereby safeguarding the physical integrity of watercourses and lakes.

Clause 156 amends section 65(3) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 157 amends section 66(1) and (5) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 158 amends section 67(2) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 159 amends section 68 by amending the definition "placing of fill" to include lake or spring to make it consistent with similar references contained elsewhere in the Act.

Clause 160 amends section 70 to enable the chief executive to exercise control over destruction of vegetation, excavating or the placing of fill in lakes or springs (in addition to watercourses) to ensure the protection and improvement of the physical integrity of those features. It also amends the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 161 amends section 71(1) to include lake or spring so that it is

consistent with similar references mentioned in clause 160, and to enable a person, other than the owner of riparian land, to hold a permit authorising the destruction of vegetation, excavating or the placing of fill in a watercourse, lake or spring.

Clause 162 amends section 72(1)(d) and (e) and (2)(a) to include lake or spring so that it is consistent with similar references mentioned in clause 160.

Clause 163 amends section 73(1)(b) to include lake or spring so that it is consistent with similar references mentioned in clause 160.

Clause 164 amends section 74(2) and (3) to include lake or spring so that it is consistent with similar references mentioned in clause 160 and to make the maximum penalty consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 165 amends section 76 to include lake or spring so that it is consistent with similar references mentioned in clause 160, and to provide for an authorised officer to give a notice to a person engaging in, or about to engage in, an unauthorised activity thereby safeguarding the physical integrity of watercourses and lakes. It also amends the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 166 amends section 77 to include lake or spring so that it is consistent with similar references mentioned in clause 160, and to provide for an authorised officer to give a notice to an owner or occupier of land in order to protect or restore the physical integrity of a watercourse, lake or spring, or protect the quality of the water. It also amends the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 167 amends section 93(4) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 168 amends section 156(2)(a) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 169 amends section 194(1) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act

for offences of a similar nature.

Clause 170 amends section 213 by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 171 amends section 218 by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 172 amends section 222(3) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 173 amends section 223 by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature. The amendment also inserts new section 223(3) to provide for payment of costs of remedial work or rehabilitation necessary or desirable as a result of the unauthorised activity in a watercourse or lake.

Clause 174 amends section 224 to clarify the provision relating to contravention of licences and certain permits, and increases the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for those classes of offences.

Clause 175 inserts new part 11, division 1A to provide additional powers to authorised officers investigating alleged offences against the Act including the power to require a name and address, answer questions and produce documents, and to create a range of offences for non-compliance. The new sections are based on similar provisions contained in the *Environmental Protection Act 1994.*

This clause also inserts new part 11, division 1B to provide for the chief executive or an authorised officer to apply to the Supreme Court for an injunction where a person has contravened a notice to stop activities issued under section 64A or 76 of the Act to ensure the protection of the physical integrity of watercourses and lakes.

Clause 176 amends section 225(2) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 177 amends section 233(1), (2) and (3) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 178 amends section 234(3) by increasing the maximum penalty to make it consistent with penalty provisions contained elsewhere in the Act for offences of a similar nature.

Clause 179 amends section 250 to correct a spelling error.

Clause 180 inserts new section 253 to ensure that the provisions of the Act about localities declared under a regulation before the commencement of this section continue to apply to ensure continuity of the licensing of subartesian bores; inserts new section 254 to provide for the holder of a licence to construct an artesian or subartesian bore, or enlarge, deepen or alter an existing bore to be excused from giving to the chief executive a copy of the information from a driller's log where that information is given to the chief executive by the driller; inserts new section 255 to provide for the continued existence of current driller's licences.