NATURE CONSERVATION AND OTHER LEGISLATION AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

The Bill's Short Title

Nature Conservation and Other Legislation Amendment Bill 2000

Reasons for the Bill

The Regional Forest Agreement (RFA) process resulted in the signing, on 16 September 1999, of the South East Queensland Forests Stakeholder/Government Agreement (the Agreement). Stakeholder signatories to the Agreement were the Australian Rainforest Conservation Society, Queensland Conservation Council, The Wilderness Society and the Queensland Timber Board.

The Agreement provided, *inter alia*, for an addition to the conservation reserve system of an estimated 425,000 hectares of State forest and timber reserve land, the components of which were identified as an attachment to the document.

It was subsequently decided that the procedures for transferring the land to the nature reserve system would be carried out under the provisions of the *Nature Conservation Act 1992* (the Act), the legislation presently responsible for establishing and administering the protected areas (national park, conservation park, resources reserve etc) to which the land would ultimately be assigned.

It was further decided that the transfer would occur in two stages. All the land would initially be transferred to a new interim holding tenure (forest reserve). Whilst in this tenure, further assessment of the conservation

values could be undertaken, negotiations carried out with stakeholders on final tenure allocation, and Indigenous Land Use Agreements developed with Indigenous groups under the terms of the Building Reconciliation Protocol between the Queensland Government and the Queensland Indigenous Working Group.

Based on resolution of the above matters, the land could then be progressively dedicated as appropriate classes of protected area (stage two) for long-term administration under the provisions of the Act.

The *Nature Conservation and Other Legislation Amendment Bill 2000* facilitates the two stage transfer of the conservation reserve land by establishing an interim holding tenure (forest reserve) and a new class of protected area (national park (recovery)), plus providing the administrative and management framework for both.

Objectives of the Legislation

The objectives of the Bill are to provide for:

- a new interim holding tenure (forest reserve) for State forest and timber reserve land, plus a small area of Land Act reserve land, identified in the Agreement as having conservation values;
- a new class of protected area (national park (recovery)) to facilitate the subsequent transfer from forest reserve to protected area;
- dedication and revocation procedures, objectives, management principles and management procedures for forest reserves;
- dedication and revocation procedures and management principles and certain planning procedures for national park (recovery);
- all existing uses, other than commercial logging, to continue on the forest reserve tenure;
- administrative changes in relation to the powers of the chief executive;
- a change in the application of the *Statutory Instruments Act 1992* in relation to the *Nature Conservation (Protected Areas) Regulation 1994.*

The way in which the policy objectives are to be achieved in the Bill

The primary policy objective of the Bill is to facilitate the transfer of approximately 425,000 hectares of State forest and timber reserve land to protected area status while meeting commitments made to stakeholder groups in relation to the final tenure allocation.

This has been achieved by providing for a new interim holding tenure, called forest reserve, to which all the land will be transferred as soon as practicable after the Bill is proclaimed. The tenure will be subject to a five year sunset clause to establish that it is merely a holding location for the land while further conservation assessments are undertaken, negotiations are carried out with stakeholder groups, and Indigenous Land Use Agreements are developed.

The objectives and management principles for forest reserves clearly establish that "It is Parliament's intention that each area of land dedicated as forest reserve will become a protected area as soon as practicable after its dedication". The new Part 4A, which contains the provisions for establishing and administering forest reserves, is effectively quarantined from the remainder of the Act. This reflects its transient status and the fact that a forest reserve is not a protected area.

An additional class of protected area, national park (recovery), is also established to provide more options for the final tenure allocation process. This new class is designed to cater for land that is destined for national park, but will require significant manipulation of the natural resources (eg removal of plantation timber and subsequent regeneration) to restore conservation values before it can be upgraded to national park status. Such regeneration will require the development of a publicly reviewed regeneration plan.

Alternatives to the Bill

The policy objectives can only be achieved by an amendment to the *Nature Conservation Act 1992*. It was a directive of Government that the *Nature Conservation Act 1992* be used in preference to the *Forestry Act 1959*.

Assessment of the administrative cost to Government

Dedication of the land as forest reserve will incur no additional administrative costs as it will continue to be administered by the existing agencies responsible for the land (DNR and DPI).

Dedication of the forest reserve land, over a five year period, as protected area will transfer those administrative costs to the Queensland Parks and Wildlife Service. Required funding has been determined at $16 per hectare. This figure has been agreed to by Treasury and foreshadowed in budget estimates.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

The issuance of codes of practice raises a potential fundamental legislative principle issue. The Scrutiny of Legislation Committee is of the view that an Act should not permit statutory instruments of a legislative nature to be made other than by regulation.

While it is not envisaged codes would be used in this manner, the matter has been addressed in the Bill by applying sections 49, 50 and 51 of the *Statutory Instruments Act 1992* to the codes as if they were subordinate legislation. The codes must therefore be tabled and subject to disallowance.

Clause 30 of the Bill could, at face value, be construed as a retrospective provision, and therefore a fundamental legislative principle issue. However, the clause has the same effect as the expired transitional section 165 of the Act (which does not appear in the reprint). Despite its expiry, its operation is preserved under section 20 of the *Acts Interpretation Act 1954*. The provision is being reinserted because it is needed for reference (and will continue to be until 2049). The reinsertion clarifies the existing legislative circumstances and does not adversely affect any rights.

Consultation

Consultation in relation to the draft Bill was carried out with the following key stakeholders:

Queensland State Government

Department of Natural Resources

Department of Primary Industries

Department of the Premier and Cabinet

Department of State Development

Department of Mines and Energy

Department of Emergency Services

Stakeholder Organisations

Australian Rainforest Conservation Society

Queensland Conservation Council

Queensland Wildlife Preservation Society

Queensland Beekeepers' Association

Forest Recreation Reference Group

Queensland Indigenous Working Group

AgForce Queensland Industrial Union of Employers (AgForce)

NOTES ON PROVISIONS

Clause 1 states the short title of the Bill.

Clause 2 provides for the commencement of the Bill

Clause 3 states that Part 2 of the Bill amends the *Nature Conservation Act 1992* (the Act), and that certain minor amendments to the Act are included in the schedule.

Clause 4 inserts a new divisional heading (*Dictionary*) in Part 3 of the Act.

Clause 5 provides for the definitions in section 7 of the Act (renamed *Dictionary* in Clause 4) to be placed in a schedule to comply with present drafting procedures. It also inserts two new definitions ('EIS' and 'regeneration plan').

Clause 6 inserts a new divisional heading (*Key definitions*) for sections 8-13 of the Act.

Clause 7 amends section 14 by inserting a new class of protected area, national park (recovery), and renumbers the subsections affected.

Clause 8 inserts a new section 19A to provide the management principles of a new class of protected area, known as national park (recovery). The principles establish that a national park (recovery) will ultimately become a national park and is to be managed similarly to a national park. It is, in effect, a national park-in-waiting.

It differs from a national park in that the management principles provide for manipulation of the area's natural resources in order to restore its conservation values. This may, for example, involve the removal of unwanted plantation timber and subsequent active (by planting) or passive regeneration of the affected land. Or it may involve the regeneration and recovery of an area that was affected by logging or some other damaging force prior to dedication as national park (recovery).

Any manipulation of the park's natural resources for the purpose of restoring conservation values must be done in accordance with a regeneration plan that is prepared and approved under the terms of Clause 21 of the Bill. This manipulation of natural resources may be carried out as a commercial operation. For example, the removal of plantation timber may be undertaken as a commercial logging operation.

As for a national park, the use of the park, other than a manipulative use of the natural resources designed to restore its conservation values, must be nature-based.

Clause 9 inserts the term 'national park (recovery)' with certain other classes of protected area in section 27 (Prohibition on mining), thereby establishing that a mining interest, under the provisions of the *Mineral Resources Act 1989*, cannot be granted in relation to a national park (recovery).

Clause 10 inserts a new subdivisional heading (*Subdivision 1—Preliminary*) for section 24 of the Act.

Clause 11(1) amends section 28 of the Act by inserting 'national park (recovery)' in the definition of protected area for the purpose of Part 4, Division 2.

Clause 11(2) renumbers the list of protected areas to cater for this insertion.

Clause 12 inserts a new subdivisional heading (*Subdivision 2—Dedication, revocation and amalgamation*) for sections 29-33 of the Act.

Clause 13(1) inserts the term 'national park (recovery)' in section 29 (Dedication of protected areas) of the Act.

Clause 13(2) renumbers the list of protected areas to cater for this insertion.

Clause 14 omits section 32(3) of the Act thereby requiring the revocation process for a resources reserve to be the same as that for a national park (scientific), national park, national park (recovery) and conservation park. The process involves a resolution of the Legislative Assembly requesting the Governor in Council to make the revocation.

Clause 15 omits section 33(3) of the Act thereby requiring that any change in the boundaries of a resources reserve to remove land from the reserve be made by regulation only after a resolution of the Legislative Assembly requesting the Governor in Council to make the revocation.

Clause 16 inserts a new subdivisional heading (*Subdivision 3—Interests in protected areas*) for sections 34-39 of the Act.

Clause 17(1) inserts a reference to national park (recovery) in section 34(1)(a)(i) of the Act to the effect that a lease, licence or other authority can be granted by the chief executive under section 34 over that class of protected area.

Clause 17(2) rewords section 34(2)(b) to clarify that a lease, licence or other authority can still be granted under section 34 in the absence of a management plan. However, if a management plan has been approved for the protected area, the lease, licence or other authority must be consistent with it. The original wording was open to an interpretation that a lease, licence or other authority could not be granted unless an approved management plan was in place. That was never intended, and the amendment places the matter beyond doubt.

Clause 18(1) inserts the words 'national parks (recovery)' in the heading for section 35 of the Act.

Clause 18(2) inserts a reference to national park (recovery) in section 35(1) to establish that leases, licences and other authorities can be granted under section 35 for that class of protected area.

Clause 18(3) amends section 35(1)(b)(i) to establish that the paragraph only applies to national parks.

Clause 18(4) inserts a new paragraph to establish that the first management principle for national parks (recovery) must be observed to the greatest possible extent in considering the granting of a lease, licence or other authority under section 35.

Clause 18(5) renumbers the last four paragraphs in section 35(1)(b).

Clause 19 amends section 36 to apply to national parks and national parks (recovery). The section provides a capacity for an authority to be granted on a national park or national park (recovery) for certain uses that are inconsistent with the management principles for these classes of protected areas. This applies to a use that was being legally carried out on the land immediately before it was dedicated as national park or national park (recovery).

In the case of a national park and a national park (recovery), the authority for the use (previous use authority) may be granted only for the unexpired term of (a) an occupation permit for a service facility under section 35(1)(a) of the *Forestry Act 1959*, (b) a stock grazing permit under 35(1)(c) of the *Forestry Act 1959*, (c) an apiary permit under section 35(1)(d) of the *Forestry Act 1959*, or (d) a lease under the *Land Act 1994*. If these do not apply, the maximum period for which the authority can be granted is three years.

In the case of a national park (recovery), a previous use authority may also be granted for a sales permit under section 46 of the *Forestry Act 1959* for the taking of plant parts in a manner that does not cause the plant to die. This provides a capacity for authorised foliage harvesting on a State forest, timber reserve or forest reserve to continue on a national park (recovery) for the unexpired term of the Forestry Act authority.

The authority for the previous use is not able to be renewed. However, if it is a use that can be granted under section 35 of the Act, the application of that section is not limited by the terms of section 36. An example of a use that might be granted under section 35 of the Act is a service facility (as defined in section 36). It was primarily for this purpose that section 35 was inserted in 1994.

The intent of the section is to allow certain uses that are inconsistent with the management principles to continue for the term for which they were originally authorised, after which they must cease unless they can be authorised to continue under section 35.

Clause 20 inserts a new subdivisional heading (*Subdivision 4—Environmental impact statements*) for the new sections 39A, 39B and 39C which provide a capacity for the chief executive to require an Environmental Impact Statement (EIS) for certain interests in land in a protected area.

39A establishes that an EIS can be required for an interest in land that is sought under sections 34, 35 and 38 of the Act. This precludes its use in relation to sections 36 and 37 where the interest has already been created and consideration is being given to permitting it to continue under the terms of those sections.

39B specifies that the chief executive may require the EIS before the interest is created, and the person seeking the interest must pay the cost of the EIS. 39B(2) states that the interest must be prepared in the way prescribed under a regulation. This could be a regulation under another Act if it was considered appropriate to utilise procedures already prescribed elsewhere.

39C specifies that, if an EIS has been required, the completed EIS must be taken into account before a decision is made whether or not to create the interest.

Clause 21 inserts a new divisional heading (*Division 3A—Regeneration plans for national park (recovery)*) after section 42 in relation to the inserted sections 42A, 42B, 42C, 42D, 42E and 42F.

The management principles of national parks (recovery) require any manipulative use of the park's natural resources for the restoration of its conservation values to be consistent with a regeneration plan for the park. Sections 42A-42F provide the obligation, purpose, preparation requirements and approval procedures in relation to such a plan.

A regeneration plan must be made as soon as practicable after the park is dedicated if the chief executive considers such a plan is necessary (42A). The purpose of the plan is to describe how it is proposed to manage the manipulation of the park's natural resources to restore its conservation values (for example, how it is proposed to remove plantation timber and restore the subsequently disturbed area). The procedures in the regeneration plan must be consistent with any management plan that has been approved for the park (42B).

When a draft regeneration plan has been prepared, the chief executive must publish a notice of its preparation in an appropriate newspaper inviting public comments on the plan. The comment period must be at least 35 days after publication of the notice in the newspaper, and the draft plan must be available for review at places stated in the notice (42C).

Before making the final plan, all public comments must be considered by the chief executive (42D). The final plan is made by notice in the gazette, and must be kept available for public inspection in the department's head office and the regional and district offices which are responsible for the park to which the plan applies (42E). The chief executive must give effect to the plan (42F).

Clause 22(1) inserts a reference to national park (recovery) in section 61 of the Act.

Clause 22(2) inserts a new section 61(2) which relates to land in a national park (scientific), national park, national park (recovery), conservation park and resources reserve that was forest reserve land immediately before dedication of those classes as protected area. In those circumstances, the application of 61(1) does not extinguish or affect native title or native title rights and interests in relation to the land.

Clause 23(1) inserts the words 'other than an authorised person' to clarify that the chief executive or an officer performing duties on a protected area under the authority of the chief executive is exempt from the requirement to have a permit or other authority in order to carry out those duties which involve taking, using, keeping or interfering with natural or cultural resources on the protected area.

For example, the construction of a walking track, picnic area or camping ground on a protected area involves interference with natural resources. The amendment places beyond any doubt that the performance of such duties does not need to be the subject of a permit or other authority.

Clause 23(2) inserts a reference to 'sections 34 to 38' in 62(1)(c)(i) to correct an oversight in the existing section (which only refers to section 34). Authorities under sections 34 to 38 all have the capacity to authorise a use that involves some interference with natural resources. It is appropriate that the conditions for such use be placed in the one authority issued under those sections (as is the case for a permit, such as a stock grazing permit, issued under the *Nature Conservation Regulation 1994*).

Clause 23(3) defines an authorised person for the purposes of the amendment to section 62(1).

Clause 23(4) inserts a reference to national park (recovery) in the definition of national park.

Clause 24 inserts a new Part of the Act (PART 4A—FOREST RESERVES) and new sections 70A to 70R relating to the purpose, definitions, dedication and revocation procedures, management principles, management procedures, review requirements, establishment of proposed protected areas, and expiry provisions in relation to the new interim holding tenure known as forest reserve.

70A clearly establishes that the purpose of forest reserves is an interim measure to assist the ultimate dedication of State forest, timber reserve and Land Act reserve land as classes of protected area (national park (scientific), national park, national park (recovery), conservation park and resources reserve). It is the intention of Parliament that all the land dedicated as forest reserve will become protected area as soon as practicable, though there is a capacity to revoke some of the land for another purpose in the event of unforeseen circumstances.

70B provides a number of definitions that apply only to Part 4A.

70C specifies that the dedication of a forest reserve is by the Governor in Council under a regulation.

70D provides for the regulation to assign a name to, or change the name of, a forest reserve.

70E provides for the Governor in Council to revoke a forest reserve by regulation. If the revocation is for a purpose other than to make the forest reserve a protected area, the regulation can be made only if the Legislative Assembly has passed a resolution requesting the Governor in Council to make the revocation. However, this is not required if the regulation states that the purpose of the revocation is to allow the forest reserve to become a protected area.

70F provides the management principles of a forest reserve. The first principle (70F(1)(a)) establishes that a forest reserve is to be managed to protect biological diversity, cultural resources and values and conservation values having regard to the fact that the area is destined to be dedicated a protected area.

The second principle (70F(1)(b)) provides for the continuation of any lawful existing use of the land, and examples of certain prominent lawful uses are provided. This principle is qualified by 70F(2) which establishes that commercial logging (defined in 70F(4)) is not a lawful use of the land (in keeping with the South East Queensland Forests Stakeholder/Government Agreement) unless the logging involves the removal of plantation trees for the purpose of restoring the land's conservation values.

This capacity to carry out logging on a forest reserve for the purpose of restoring the land's conservation values has relevance to the similarly worded management principle for a national park (recovery). It provides a capacity to remove, or commence removal of, timber plantation trees while the land is still forest reserve, rather than having to wait for its dedication as national park (recovery). This takes account of the possibility that land may be required to remain as forest reserve for some years before dedication as a protected area.

The third management principle (70F(1)(c)) ensures that all uses of the forest reserve under an authority are ecologically sustainable (which is defined in 70F(4)).

The fourth management principle (70F(1)(d)) establishes that if all or part of a forest reserve is designated as a proposed protected area (under 70K), all uses of the land under an authority made after the land is so designated must be consistent with the management principles of the class of protected area the land is proposed to become.

For example, if part or all of a forest reserve is designated as a proposed national park, any authority granted after the area has been designated as a proposed national park must be consistent with the management principles of a national park (section 17 of the Act). This requirement would have no effect on authorities that were in place when the land was designated, but could have an effect (depending on the use) if an authority expired after the designation and the person sought to renew it.

70F(3) establishes that native title or native title rights and interests are not extinguished or affected by the dedication of land as forest reserve or the designation of an area of forest reserve as a proposed protected area.

70G applies if land to be dedicated as forest reserve is in a State forest or timber reserve. Despite the provisions of the *Forestry Act 1959*, the dedication as forest reserve serves to revoke that area of State forest or timber reserve which is so dedicated.

However, despite the land ceasing to be State forest or timber reserve, the *Forestry Act 1959* (other than section 33) continues to apply in relation to the forest reserve and its management as if the forest reserve were still a State forest or timber reserve. This ensures that all authorities continue unchanged and day-to-day management and administration continues to be carried out by the agency or agencies presently responsible for the land. The latter arrangements will be confirmed by the necessary administrative arrangements.

70H applies if land to be dedicated as forest reserve is a Land Act reserve. The section has a similar effect to 70G with the *Land Act 1994* continuing to apply as if the forest reserve still were a Land Act reserve. 70H(4) clarifies that a trustee of the Land Act reserve immediately before it was dedicated as a forest reserve would continue to be a trustee.

70I requires a forest reserve to be managed under the management principles (70F), and if there is an inconsistency between the principles and the *Forestry Act 1959* or *Land Act 1994*, the management principles prevail. 70I(3) and (4) have particular application in relation to a proposed protected area, a designation that is not referred to in the *Forestry Act 1959* or the *Land Act 1994*. The requirements of the management principles will prevail in relation to an authority granted over a proposed protected area.

70J requires the chief executive to review each forest reserve in order to determine the most appropriate class of protected area for the land, and this must start as soon as practicable after the dedication of the forest reserve.

70K to 70O are concerned with the designation, application and registration of a proposed protected area. In order to designate an area of forest reserve as proposed protected area, the chief executive must (a) review the forest reserve (70J), (b) publish a notice of a proposed designation in the appropriate newspaper seeking public comments on the proposal (70K(2) and (3)), (c) provide a period of not less than 35 days for public comments (70K(4)), and (d) consider any comments about the proposal (70K(5)). The designation is made by entry in a proposed protected area register.

70L specifies that a proposed protected area is subject to the management principle (70F(1)(d)) and is only a proposal. The area continues to be a forest reserve. It is not a protected area, and its designation does not bind the Governor in Council to dedicate it subsequently as that particular class of protected area.

The necessity for an ability to designate an area of forest reserve as a proposed protected area derives from the possibility that it may take some time before certain forest reserve land can be dedicated as protected area. The designation would have the effect of controlling certain uses of the land which could compromise the ultimate dedication as a particular class of protected area.

The designation as a proposed protected area ends if the forest reserve is revoked or the forest reserve is dedicated as a protected area (70M).

A register of proposed protected areas must be kept by the chief executive. The register must contain certain specified information. It may be kept in electronic form and must be open for public inspection at specified locations (70N).

The designation of an area as a proposed protected area may be amended by an entry in the register. In order to carry out such an amendment, a public consultation process (identical to the one for the original designation) must be undertaken and the comments about the proposal must be considered by the chief executive (70O).

70P specifies that a reference to a State forest or timber reserve in another Act or subordinate legislation is taken to be a reference to a forest reserve if the context permits. 70Q makes similar provision for a reference to a Land Act reserve. This obviates the necessity to search for all such references and make appropriate amendments.

70R is a sunset clause and stipulates that Part 4A expires five years after 70R (the only section in Division 6) commences.

Clause 25 amends section 88 of the Act for the same reason as section 62 to provide for an authorised person (the chief executive or an officer acting under the chief executive's authority) to take, use or keep a protected animal without a licence, permit or other authority in the performance of that person's duties under the Act.

Clause 26 amends section 89 of the Act for the same reason as section 62 to provide for an authorised person (the chief executive or an officer acting under the chief executive's authority) to take a protected plant without a licence, permit or other authority in the performance of that person's duties under the Act.

Clause 27 amends section 90 of the Act for the same reason as section 62 to provide for an authorised person (the chief executive or an officer acting under the chief executive's authority) to use a protected plant that is threatened or rare wildlife without a licence, permit or other authority in the performance of that person's duties under the Act.

Clause 28 amends section 91 of the Act for the same reason as section 62 to provide for an authorised person (the chief executive or an officer acting under the chief executive's authority) to take certain action in relation to prohibited wildlife without a licence, permit or other authority in the performance of that person's duties under the Act.

Clause 29 amends section 97 of the Act for the same reason as section 62 to provide for an authorised person (the chief executive or an officer acting under the chief executive's authority) to take, use, keep or interfere with wildlife in a critical habitat or an area of major interest without a licence, permit or other authority in the performance of that person's duties under the Act.

Clause 30 amends section 99 of the Act to ensure there is no conflict between this section and the powers of a conservation officer under Part 9 of the Act.

Clause 31(1) inserts, in section 111(1)(a) of the Act, a reference to national park (recovery) in the list of protected areas for which management plans must be prepared.

Clause 31(2) renumbers the list of protected areas.

Clause 31(3) replaces 'conservation plan' in section 111(1)(b)(i) with 'management plan'. This amendment corrects an error. Management plans are prepared for nature refuges, not conservation plans.

Clause 32 inserts, in section 133 of the Act, a requirement for the chief executive to maintain a register of leases granted under sections 34 to 37. Leases are significant, and often long term, interests in land. Leases granted under the *Land Act 1994* are available for search through the Registrar of Titles. As this capacity is not available for leases granted under the *Nature Conservation Act 1992*, it is appropriate that a search facility be made available.

Clause 33 inserts a reference to sections 33(2) and 70E(2) in section 174 of the Act. As is the case with the other exemptions referred to in section 174, the regulations mentioned in 33(2) and 70E(2) have already been the subject of a resolution of the Legislative Assembly requesting the Governor in Council to make the regulation. As the matter has already been resolved by Parliament, the tabling and disallowance provisions of the *Statutory Instruments Act 1992* are unnecessary.

Clause 34 inserts a new section 174A which provides for the chief executive to make codes of practice for protected areas, forest reserves or protected wildlife.

Section 174A(2) applies sections 49, 50 and 51 of the *Statutory Instruments Act 1992* to any code. This means that the code is subject to tabling and disallowance as if it were subordinate legislation.

These codes are of an administrative nature, often providing detailed guidelines (eg relating to care of captive wildlife or fire management procedures on a protected area) or addressing matters that might otherwise be inserted as conditions of a permit or other authority. It would not be appropriate to make the codes by subordinate legislation.

By requiring the codes to be subject to tabling and disallowance, they can be scrutinised by Parliament to ensure they do not contain matters of a legislative nature.

Copies of the codes must be made available for public inspection at the department's head office, each regional office and other appropriate places.

Clause 35 inserts, in section 175 of the Act, a power to make regulations in relation to codes of practice approved under section 174A.

Clause 36 inserts a new section 183 relating to authorities under the repealed *National Parks and Wildlife Act 1975* and to the position of Director of National Parks and Wildlife under that Act.

The *Nature Conservation Act 1992* contained section 165, a transitional section, with the words now used in the new section 183(1) and (2). Section 165 was amended in the *Nature Conservation Amendment Act 1994*, and came into force on 19 December 1994 when the majority of the Act was proclaimed. Being a transitional section, it expired 12 months after it came into force (ie on 19 December 1995). As a result, it was not included in the 25 December 1995 reprint of the Act. In fact, in its amended form, it had not appeared in any reprint of the Act.

Despite its expiry, section 165 continued to apply to any authority granted under sections 33 and 35 of the repealed Act which had not expired or been terminated. Its application was preserved under the terms of section 20 of the *Acts Interpretation Act 1954.* Certain authorities to which it applies are still current, and one will not expire until 2049.

Therefore the terms of the expired section 165 will still have application for a considerable period of time. It is inappropriate that the terms of the section do not appear in the Act as it will be needed for reference over that time. The absence of the expired section has already led to confusion in certain legal matters. This has been rectified by reinserting the terms of section 165 in the new section 183.

The amendment merely clarifies an existing circumstance and improves access to relevant legislation. It is not a 'new' provision with retrospective application, and no rights are adversely affected.

The responsible officer in the repealed *National Parks and Wildlife Act 1975* was the Director of National Parks and Wildlife. That position will need to continue in relation to any dealings with an authority the subject of 183(1) and (2). Sections 183(3) and 184(4) establish that the chief executive is taken to be the Director of National Parks and Wildlife for the purpose of applying sections 183(1) and 183(2) and in relation to any reference to the Director in the authority.

Clause 37 inserts the Dictionary (previously the contents of section 7 of the Act) as a Schedule.

Clause 38 provides for the removal of the words in brackets following a cross reference to another section of the Act. This is consistent with current drafting procedures.

Clause 39 states that this part (PART 3—AMENDMENT OF STATUTORY INSTRUMENTS ACT 1992) amends the *Statutory Instruments Act 1992.*

Clause 40 amends Schedule 2A of the *Statutory Instruments Act 1992*. The effect of the amendment is to exempt the *Nature Conservation (Protected Areas) Regulation 1994* from the expiry provisions of Part 7 of that Act.

The *Nature Conservation (Protected Areas) Regulation 1994* dedicates and declares protected areas under the terms of the *Nature Conservation Act 1992*. It consists of a list of protected areas, their names, and Lot on Plan descriptions of the land. The current classes of protected area in the regulation are national parks (scientific), national parks, conservation parks, resources reserves, nature refuges and coordinated conservation areas.

Of these, national parks (scientific), national parks and conservation parks are already exempt from the expiry provisions pursuant to section 57 of the *Statutory Instruments Act 1992*. World Heritage management areas, none of which has yet been declared, are also exempt under the same provision. Under the terms of the proposed amendment to section 32 of the Act (Clause 14), resources reserves would also be exempt.

However nature refuges, coordinated conservation areas, wilderness areas and international agreement areas are not exempt from the expiry provisions, as they may be revoked without a resolution of the Legislative Assembly.

Nature Refuges, coordinated conservation areas and wilderness areas may be the subject of conservation agreements or conservation covenants under the terms of sections 45 and 49 of the Act. Many agreements are binding not only on the landholder, but also on the landholder's successors in title (section 45(5) of the Act). Because of the binding nature of these agreements and covenants, it is appropriate that their declaration should be exempt from the expiry provisions under the Statutory Instruments Act.

International agreement areas may give effect to obligations under international treaties. For that reason, it is appropriate that their declaration should also be exempt.

Section 53(a) of the *Statutory Instruments Act 1992* establishes that one of the primary purposes of the expiry provision for subordinate legislation is to reduce the legislative burden without compromising environmental objectives. It could be argued that subjecting these classes of protected area to expiry could compromise environmental objectives.

Clause 41 inserts a schedule of minor consequential amendments to the following Acts: *Forestry Act 1959*, *Fossicking Act 1994*, *Land Act 1994*, *Mineral Resources Act 1989*, *Nature Conservation Act 1992*, *Recreation Areas Management Act 1988*, *Rural Lands Protection Act 1985*, and *Valuation of Land Act 1994*.

The majority of consequential amendments relate to the insertion of a reference to national park (recovery) in definitions of 'protected area', 'national park' or 'Crown land' in those Acts.

It should be noted that the definition of protected area has not been amended in the *Forestry Act 1959.* By not making a national park (recovery) a protected area for the purpose of that Act, sections 46 and 48 of that Act (which prohibit the sale of forest products on a protected area) would not prevent DPI Forestry acting as agents for the Queensland Parks and Wildlife Service in the removal of plantation timber from a national park (recovery) for the purpose of restoring conservation values. This form of use for restoration purposes is provided for in the management principles of a national park (recovery).