Natural Resources and Other Legislation Amendment Bill 2010

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Natural Resources and Other Legislation Amendment Bill 2010.

Policy Objectives

The objectives of the Bill are to amend:

- the *Land Act 1994 (*Land Act), *Survey and Mapping Infrastructure Act 2003* (SMIA) and *Water Act 2000* (Water Act) to:
    - introduce a feature based methodology to:
        - resolve uncertainty in the location of ambulatory boundaries adjoining tidal and non-tidal waters (other than lakes) in the SMIA; and
        - clarify the lateral extent of the State's management powers in non-tidal watercourses in the Water Act;
    - clearly differentiate between the boundary of the State's ownership of a watercourse and the non-tidal jurisdiction line for managing a watercourse, by removing State ownership matters from the Water Act and inserting them into the Land Act.
- the *Forestry Act 1959*, its Regulations and certain other Acts (Forestry Act) to:
    - facilitate the restructure of the State's interest in Forestry Plantations Queensland (FPQ) and to amend the Forestry Act and other legislation to provide an appropriate regulatory framework for the future. This includes continuation of plantation forestry

management on State Plantation Forest (SPF) and protecting existing access rights over SPF; and

- remove the restriction that a natural resource agreement is not an interest in land. That restriction is currently in Part 6B of the Forestry Act, which enables a landholder to enter into natural resource agreements about a natural resource product (e.g. carbon) and register these agreements as a profit a prendre.

- the Land Act to:
  - extend, from 30 to 100 years, the term that a trust lease or sublease can be granted over an operational Deed of Grant in Trust, and
  - clarify some of the key provisions relating to implementation of the *Delbessie Agreement (State Rural Leasehold Land Strategy)* (hereafter referred to as the Delbessie Agreement).
- the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* to:
  - amend the definition of the Aboriginal or Torres Strait Islander native title party for an area to put beyond doubt the identity of the native title party for cultural and heritage purposes in the situation where there are two or more previously registered claimants for an area.
- the SMIA *& Surveyors Act 2003* (Surveyors Act) to:
  - make minor changes to the endorsement of individuals and companies registered as surveyors;
  - increase terms for Board appointments and make provision for filling of a casual vacancy for the chairperson of the Board;
  - align the definitions of "professional conduct" and "professional misconduct";
  - enable a former surveyor to authorise another to make corrections to plans;
  - align the making of survey guidelines and survey standards; and
  - provide for electronic provision of survey information to the department.
- the *Land Title Act 1994* (Land Title Act) and the Land Act to:

  - clarify, update and improve provisions for the keeping of registers relating to land; and
- the Land Title Act and Land Act to:
  - replace or complement existing advertisement, publication or notice provisions (excluding gazettal requirements) with a provision allowing the relevant decision maker or his or her delegate to determine the most appropriate method of advertising to be undertaken having regard to the nature of the advertisement or notice and the target audience.
- the *Vegetation Management Act 1999* to:
  - further reduce regulatory duplication between the *Vegetation Management Act 1999* and *Nature Conservation Act 1992* by extending the existing national park exemption under the *Vegetation Management Act 1999* to national parks (Aboriginal land), national parks (Torres Strait Islander land) and national parks (Cape York Peninsula Aboriginal land).
- the Water Act to:
  - provide for the finalisation of the Lower Balonne provisions for the Condamine and Balonne Resource Operations Plan.

Reasons for the Policy Objectives

Land Act 1994, Survey and Mapping Infrastructure Act 2003 and Water Act 2000 – (ambulatory boundaries)

Ambulatory Boundaries

Tidal and non-tidal ambulatory boundaries are defined (in the Land Act and Water Act respectively) by reference to a body of water such as a sea or river. Unlike a right line or fixed boundary, the location of an ambulatory boundary may shift through gradual and imperceptible movement (erosion and accretion).

The deed of grant for these types of lots of land identifies that a boundary, or part thereof, is formed by reference to some type of water. For example a deed of grant may state that the boundary commences "on the right bank of the Brisbane River at the East corner of portion …" or "…on the right bank of Obi Obi Creek…" or "…on the high-water mark of Keppel Bay…".

Over the years varying approaches to the interpretation of these terms and their effect on the location of a boundary has been evident.

Traditionally, surveyors for the purposes of establishing or determining ambulatory tenure boundaries, have in most instances, taken a practical approach and adopted a natural boundary such as a land based feature that in most cases was to the edge of the useable land.

The natural feature relied upon by the surveyor did not always accord with the legal definitions in the relevant legislation (currently the Land Act and Water Act) which determine where an ambulatory boundary is located at any given time.

Surveyors used "rules and directions" issued by Surveyors-General or the Registrar of Titles to interpret which feature should be used. Survey plans were then prepared and areas of lots calculated based on the location of the boundary in accordance with the extent of the useable land identified by a surveyor.

Generally, a landowner's understanding and use of tidal and non-tidal boundary land accords with the relevant survey plan, to define the boundary, even though the deed of grant is legally authoritative.

With the increasing value of waterfront land, legal challenges to boundary locations have resulted in Court decisions in relation to both tidal and non-tidal boundaries which have tended to adopt boundaries closer to the water than the original survey at the time of grant.

Court decisions such as these may adversely affect both tidal lands and non-tidal watercourses. For tidal lands, concerns include that beach is being taken into private ownership, the potential for restricted public access and damage to fragile dune areas.

Tidal boundaries

An example of a tidal boundary decision was the 1999 Supreme Court case *(Svendsen v State of Queensland & Anor* [1996] 1 Qd R 216*)* (the Svendsen decision) concerning a high-water mark boundary in which the Court applied a more literal interpretation of the Land Act than that interpreted by the State (i.e. to the tidal plane known as mean high water springs (MHWS)). As a consequence, at least 234 lots along Queensland's coast and rivers have been resurveyed to MHWS.

The Registrar of Titles may not refuse to register these resurveys as they are lawful interpretations of the deed of grant. In the case of land adjoining beaches, some such resurveys have included land that would be considered

public beach and resurveys of land adjoining non-tidal boundary watercourses have included land that the State regards as part of the watercourse. For example, on the coastline near Bargara these resurveys have caused considerable concern about public access to the beach.

In recognition of the concerns regarding tidal land boundaries, the government introduced a three-year stay on the registration of tidal land survey plans in November 2005, during which time a policy response would be determined. The stay is still in operation. It was extended in 2008 and 2009 whilst the policy response was developed. There is no stay in place regarding non-tidal land boundaries.

Non-tidal watercourse boundaries

The Water Act provides that the "bed and banks" of a boundary watercourse are the property of the State, and defines the bed and banks in terms of the normal flow of the watercourse.

In relation to non-tidal watercourse boundaries the disparity between surveyed boundaries and the legal definitions seems to arise because of the need to identify on the ground "normal flow" levels.

Under current law, when a survey is required for a non-tidal boundary watercourse, the surveyor is faced with uncertainty in the meaning of normal flow, and with the impracticality of determining the boundary using flow measurements. Therefore, many surveyors base their survey on a key feature on the bank of the watercourse.

There are a number of factors affecting interpretation of current definitions including the:

- extreme variations in the physical features of watercourses caused by natural erosion and deposition processes over a range of time scales;
- variability of flow conditions in Queensland watercourses - for example, an annual mean flow, as one definition of "normal" flows, would easily be contained in the main channel of the Paroo, whereas in the Wet Tropics large areas of land would be covered. Also, even if a hydrological definition of "normal" flow is decided upon, locating this on a one off site visit to determine the extent of the bed and banks is not practical. Hydrological modelling and mapping would need to be undertaken; and
- imprecision and circular nature of the current definitions and uncertainty emerging over time as to whether it was intended that the

terminology used was intended to capture the lower or upper banks of a watercourse.

The extent of the State's jurisdictional limit to manage watercourses

The Water Act defines a "watercourse", for amongst other things, locating the lateral extent of the State's ability to manage and control activities within the watercourse. The State is obliged to ensure that any State approved activity undertaken in a non-tidal watercourse such as excavating or quarrying is done with minimal or no impact to the watercourse. As stated above, the State's ability to effectively manage potential adverse impacts can be at times, complex and uncertain.

The *Rights in Water and Water Conservation and Utilization Act 1910* (the 1910 Act) established the definition of a watercourse for allocation, quarrying and tenure purposes. Ever since the 1910 Act there has been debate over how to interpret the definition to locate the lateral extent of the watercourse. In fact the Parliamentary debate for the 1910 Act raised many of the issues that are to be resolved by this Bill.

The State has always maintained a broad interpretation relating to the lateral extent of its management rights in non-tidal watercourses. Over the last 15 years, there have been three Queensland lower court decisions in which the lateral extent of the non-tidal watercourse was an important issue and in which the State was required to defend its current position. The judgments in each case favoured a narrower interpretation than that adopted by State. However, these court findings have done little to clarify the uncertainties surrounding the current definition.

For example, in *Karreman Quarries Pty Ltd v Chief Executive* [2007] QPEC 111 the Court determined that the jurisdictional limit was located at a point lower than the high bank (or outer bank) despite long standing practice. There is a risk that in similar circumstances no approval would be required for such quarrying activity under the Water Act despite considerable interference within a watercourse.

Forestry Act 1959 – (restructure)

FPQ is a corporation sole established under the *Forestry Plantations Queensland Act 2006*, and has operated the State's plantation forestry operations on a commercial basis since 1 May 2006. Other than a small number of senior officers, FPQ is staffed by employees of Forestry Plantations Queensland Office (FPQO), a public sector office under the *Public Service Act 2008*, under a work performance agreement.

FPQ currently holds a profit á prendre allowing it to deal with natural resource products (NRPs) on SPF land. Under the Forestry Act, SPF land is that subset of the State forest reserve suitable for use for plantation forestry. Consistent with announced Government policy, the SPF land will not be sold to the buyer of FPQ, but will be retained by the State. The only land sold as a part of this transaction is the freehold land that is directly held by FPQ. This does not form part of the SPF estate that is owned directly by the State and governed by the Forestry Act.

The Bill facilitates the restructure of the State's interest in FPQ and to amend the Forestry Act and other legislation to provide an appropriate regulatory framework for the future. This includes protecting existing access rights over SPF.

Forestry Act 1959 – (natural resource agreements)

Part 6B of the Forestry Act establishes legal mechanisms to allow freehold landholders and lessees who own the trees as improvements to enter into natural resource agreements (agreements) about the ownership, use and economic benefit of natural resource products (e.g. trees or carbon) and for those agreements to be registered as a profit a prendre on the land title pertaining to the property.

Currently section 61J (4) of the Forestry Act provides that these agreements *do not create an interest* in land to the extent they deal with ownership (of natural resource products). The intention of the government at the time was to separate the ownership of the land and the rights intrinsic to the property from the contractual rights of a person in respect of natural resource products.

Whilst it is likely that registration of the agreement under the Land Title Act has the effect of creating an interest in land, the removal of section 61J(4) will remove confusion in the industry and ensure that any natural resource agreement made after commencement will create an interest in the land. Ensuring that an agreement changing the ownership of trees creates an interest in land will provide a level of security for landholders entering into any agreements relating to plantations for use in the voluntary carbon market. Existing agreements will not be affected by the amendment.

Land Act 1994

Chapter 6, Part 4, Division 8B

As stated above, Part 6B of the Forestry Act is intended to enable lessees who own the trees as improvements to enter into natural resource agreements about the ownership, use and economic benefit of natural resource products (e.g. carbon). The only mechanism by which such agreements by lessees can be registered is under Chapter 6, Part 4, Division 8B of the Land Act, which allows the registration of profits a prendre under the Land Act. However, it is not currently clear that Division 8B covers carbon related agreements.

Delbessie Agreement

The Delbessie Agreement is a major land management initiative aimed at ensuring Queensland's rural leasehold land estate remains as productive and viable as possible, while protecting the natural resources and environmental values of the rural leasehold estate. For rural leases, the Delbessie Agreement has clarified duty of care requirements and introduced land management agreements for leases larger than 100 hectares issued for terms of 20 years or more.

The Delbessie Agreement focuses on achieving:

- improved natural resource management and remediation of leasehold land;
- greater industry capability to plan at the property level, resulting in improved profitability, sustainability and certainty;
- improved administration of leasehold land to adapt to emerging issues and climate change;
- enhanced environmental protection;
- increased monitoring of natural resource condition; and
- enhanced partnerships between lessees and indigenous people through access and use arrangements for traditional purposes.

As on-ground implementation of the Delbessie Agreement progresses, it is necessary to provide greater clarity to some of the existing Land Act provisions by better reflecting the agreement's intent.

A further number of minor amendments and improvements to the Land Act are required to provide greater clarification to the intent of the Land Act.

Aboriginal Cultural Heritage Act 2003 & Torres Strait Islander Cultural Heritage Act 2003

The amendment to the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* definition of the Aboriginal or Torres Strait Islander native title party for an area is to take account of a particular set of circumstances which makes native title party identification complex.

The amendment deals with the situation where there are two or more previously registered native title claimants (and no currently registered native title claimant) for an area. The amendment will provide that the last of those claimants to have had their native title claim registered over the area, is the native title party for the area for cultural heritage purposes.

The amendment will put this issue beyond doubt for all stakeholders.

Survey and Mapping Infrastructure Act 2003 & Surveyors Act 2003

A number of deficiencies have been identified in these Acts in relation to:

- endorsement of individuals and companies registered as surveyors;
- terms for Board appointments and provision for filling of a casual vacancy for the chairperson of the Board;
- lack of alignment of the definitions of "professional conduct" and "professional misconduct";
- a former surveyor cannot currently authorise another to make corrections to plans;
- the timing of the making of survey guidelines and survey standards are not aligned; and
- electronic provision of survey information is not provided for.

Land Title Act 1994 and Land Act 1994 (land registers)

The need for minor amendments to the Land Title Act has been identified to ensure the keeping of registers relating to land is as efficient, convenient and accurate as possible, and the rights of persons with interests in land and the functions and powers of the registrar of titles are clearly defined. Provisions of the Land Act relating to the keeping of land registers need to be amended for consistency with the Land Title Act.

Land Title Act 1994 and Land Act 1994 (advertising amendments)

The provisions in the Land Title Act and Land Act do not currently enable the decision maker to determine the most appropriate method of advertising, publishing or giving notice (excluding gazettal requirements) to be undertaken having regard to the nature of the advertisement or notice and the target audience.

Vegetation Management Act 1999

The amendment to the *Vegetation Management Act 1999* to extend the existing national park exemption to additional national parks is appropriate because these additional national parks are already adequately protected, with vegetation clearing only allowable when it is conducted in accordance with the stringent management principles already in place under the *Nature Conservation Act 1992*.

Water Act 2000 (Finalising the Lower Balonne provisions for the Condamine and Balonne Resource Operations Plan)

The Lower Balonne provisions of the draft Condamine and Balonne Resource Operations Plan were deferred from finalisation in December 2008 to enable the completion of an outstanding legal proceeding (now considered).

While the Lower Balonne provisions remain unfinalised, the water users in the area continue to be at a disadvantage as compared to other water users in the catchment who have had their water entitlements converted to tradeable water allocations.

The Lower Balonne catchment is the only major catchment in the Murray-Darling Basin which does not yet have tradeable water access entitlements.

How the Policy Objectives will be achieved

Land Act 1994, Survey and Mapping Infrastructure Act 2003 and Water Act 2000 – (ambulatory boundaries)

Tidal and non-tidal boundaries

Upon commencement of the Bill, subject to limited exceptions, the ambulatory boundary of all lots of land will be the feature as identified on the current plan of survey (the current plan). For example, the current plan may identify that the boundary was considered by the surveyor to be the toe of a stable dune, part of a riverbank, or in the case of extended boundaries, mean high water springs.

The ambulatory boundary will remain as identified on the current survey plan and subject to the doctrine of erosion and accretion until such time as a landowner resurveys his or her ambulatory boundary. Unless it is a reserved plan of survey, any new plan of survey (new plan) with an ambulatory boundary lodged after commencement of this Bill must have been prepared using the new rules or it will not be registered.

Further surveys will continue to be located at the feature subject to the ambulatory boundary principles.

The Bill includes a declaratory power for the Chief Executive to declare boundaries for a single lot or a larger area comprising of more than one lot, even when survey plans for all of the land have not been lodged. This may be used where, for example, the high-water mark for several adjoining lots has been significantly modified and determining the tidal boundary has been problematic.

In order to more clearly differentiate between the boundary of the State's ownership of a watercourse and the non-tidal jurisdiction line for managing a watercourse, provisions dealing with State ownership are removed from the Water Act and inserted into the Land Act.

Riparian rights will not be adversely affected by the proposed changes to non-tidal ambulatory boundaries.

Non-tidal jurisdiction scheme

Upon commencement a feature-based definition will determine the extent of the State's jurisdiction to manage activities within a watercourse. This is similar to the approach used in the *Wild Rivers Act 2005,* which uses a feature-based definition for "nominated waterway" rather than a flow based

definition. Adopting a similar definition for non-tidal watercourses will provide increased certainty and consistency across legislation and in the management and control of all watercourses throughout Queensland.

On commencement, any existing activity, such as gravel extraction, undertaken within the outer banks of a watercourse that had not previously been considered to be within the watercourse will require approval by the Chief Executive under the Water Act. A transitional provision will provide a period of six months for such approvals to be sought. This situation is anticipated to occur in a very small number of cases.

Where an application for continuing activities is refused and a business can demonstrate particular hardship arising because of the expansion of the watercourse jurisdiction, an application may be made to the Department of Environment and Resource Management (the Department) for approval to continue the activities for a reasonable time while that business undertakes transitional arrangements to transition their activities out of the watercourse.

Forestry Act 1959 (restructure)

Legislation is necessary to:

- facilitate the restructure of the plantation forestry business of FPQ and the orderly withdrawal of the Government from conducting the business of commercial plantation forestry;
- achieve certain policy objectives of the Government, including protecting existing lawful access rights over SPF, and requiring that SPF land be used for plantation forestry purposes on an ongoing basis; and
- update the Forestry Act and other legislation so that it is capable of working effectively in a restructured plantation forestry environment.

The Bill achieves its main policy objectives by:

- providing for the land comprising the SPF estate to be remapped, ensuring that the boundaries of the estate are appropriate and certain at the point when the State divests its interest in FPQ's plantation forestry business;
- establishing a legislative scheme that will allow the Minister to grant plantation licences over SPF land. A plantation licence will enable the

plantation licensee to undertake plantation forestry operations within all or part of the SPF estate (licence area) on a sustainable basis;

- requiring the plantation licensee to ensure that:
  - the licence area is used for the purpose of plantation forestry; and
  - the plantation licensee does not unreasonably restrict the lawful use of the licence area by members of the public and others,

    and providing for possible cancellation of the plantation licence over all or part of the licence area should the plantation licensee breach these obligations;.
- creating a register for the registration of plantation licences and other relevant interests in plantation licences to be administered by the Registrar of Land Titles, as a delegate of the Chief Executive (lands);
- providing for statutory functions and powers relating to SPF currently held by FPQ and FPQO to revert to the Chief Executive (other than in relation to statutory FPQ sales permits which comprise a key commercial asset of FPQ's business);
- making provisions to permit the plantation licensee to deal with existing sales agreements of FPQ;
- enabling the Chief Executive to delegate certain functions and powers under the Forestry Act (essentially being those functions and powers necessary to operate a plantation forestry business on the SPF land) to the plantation licensee and certain other persons;
- placing obligations on the plantation licensee and certain other persons to prevent and control fire within the licence area; and
- amending certain legislation of general application to ensure that the plantation licensee's commercial interest is appropriately reflected in other Acts.

Forestry Act 1959 - (natural resource agreements)

The Bill will amend the Forestry Act to ensure that any natural resource agreement made after commencement will create an interest in the land. Ensuring that an agreement changing the ownership of trees creates an interest in land will provide a level of security for landholders entering into any agreements relating to plantations for use in the voluntary carbon market. Existing agreements will not be affected by the amendment.

Land Act 1994

Chapter 6, Part 4, Division 8B

Chapter 6, Part 4, Division 8B of the Land Act is amended by the Bill to clarify that a lessee may, subject to the provisions of the part, register a profit a prendre in relation to carbon sequestration and to clarify the link between this Division and Part 6B of the Forestry Act.

Delbessie Agreement

The Bill strengthens the Land Act provisions relating to the Delbessie Agreement by:

- clarifying the requirements for granting or reducing longer lease terms and lease extensions over rural leasehold land and ensuring in the process that all rural leases affected by the Delbessie Agreement are adequately covered by legislation and that they are treated in a consistent and equitable manner;
- allowing certain leases over rural leasehold land in the Cape York region to be extended for a term of up to 75 years and providing guidance on the relevant requirements;
- standardising the timeframe for applying for a lease extension;
- removing any perverse incentive that could encourage actions which result in land degradation in order to qualify for lease extensions;
- requiring that the Minister must be satisfied with agreements for nature conservation and indigenous access and use to ensure that they are of an acceptable standard and fully satisfy the purpose for which they were intended;
- streamlining decision-making in relation to the offer of lease extensions, the condition of lease land, land management agreements, nature conservation agreements or conservation covenants, and indigenous access and use agreements.

A further number of minor amendments and improvements to the Land Act such as exchanging land, registration of land management plans, conversion of tenure, further dealing with a significant development lease and forfeiture because of fraud and rental matters are made by the Bill to give greater clarification to the intent of the Land Act.

Aboriginal Cultural Heritage Act 2003 & Torres Strait Islander Cultural Heritage Act 2003

The Bill amends the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* by amending the definition of the Aboriginal or Torres Strait Islander native title party for an area. This amendment will put beyond doubt the identity of the native title party for cultural purposes in the situation where there are two or more previously registered claimants for an area.

Survey and Mapping Infrastructure Act 2003 & Surveyors Act 2003

The Bill amends the SMIA and the Surveyors Act to provide for:

- minor changes to endorsement of individuals and companies registered as surveyors;
- increased terms for Board appointments and provision for filling of a casual vacancy for the chairperson of the Board;
- alignment of the definitions of "professional conduct" and "professional misconduct";
- enabling a former surveyor to authorise another to make corrections to plans;
- aligning the making of survey guidelines and survey standards; and
- electronic provision of survey information to the Department.

Land Title Act 1994 and Land Act 1994 (land registers)

The Bill provides minor amendments to the Land Title and the Land Act to clarify, update and improve provisions for the keeping of registers relating to land.

Land Title Act 1994 and Land Act 1994 – (advertising amendments)

The Bill amends the Land Title Act and Land Act to replace or complement existing advertisement, publication or notice provisions (excluding gazettal requirements) with a provision allowing the relevant decision maker or his or her delegate to determine the most appropriate method of advertising to

be undertaken having regard to the nature of the advertisement or notice and the target audience.

Vegetation Management Act 1999

Amendment to section 7 (1)(b) (Application of Act) of the *Vegetation Management Act 1999*, to include national parks (Aboriginal land), national parks (Torres Strait Islander land) and national parks (Cape York Peninsula Aboriginal land) to the other national parks already exempted under this section.

Water Act 2000

The Bill amends the Water Act to provide for the finalisation of the Lower Balonne provisions for the Condamine and Balonne Resource Operations Plan.

Alternatives to the Bill

For all the amendments in the Bill, there are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated administrative Cost to the Government for implementation

Land Act 1994, Survey and Mapping Infrastructure Act 2003 and Water Act 2000 – (ambulatory boundaries)

These proposed amendments do not have any direct financial implications for Government. Any additional costs arising from the implementation of the proposed amendments will be met from within existing Departmental resources.

Forestry Act 1959 (restructure)

Post-restructure and disposal, the Government will not conduct plantation forestry operations on SPF. There will be an ongoing need for a contract management function within the Department of Environment and Resource Management in relation to the plantation licence and the related agreements, and an additional demand on the resources of the Land

Registry in relation to the new registration system for plantation licences. However neither are expected to involve significant expense.

The cost of administering the Bill will be offset by the proceeds from the disposal of FPQ.

Forestry Act 1959 – (natural resource agreements), Land Act 1994, Survey and Mapping Infrastructure Act 2003, Aboriginal Cultural Heritage Act 2003 & Torres Strait Islander Cultural Heritage Act 2003, Surveyors Act 2003, Land Title Act 1994 and Land Act 1994 (land registers), Land Title Act 1994 and Land Act 1994 – (advertising amendments), Vegetation Management Act 1999

These proposed amendments do not have any direct financial implications for Government. Any additional costs arising from the implementation of the proposed amendments will be met from within existing Departmental resources.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Land Act 1994, Survey and Mapping Infrastructure Act 2003 and Water Act 2000 – (ambulatory boundaries)

Legislation should provide for the compulsory acquisition of property only with fair compensation—Legislative Standards Act 1992, section 4(3)(i).

Tenure issues

The approach adopted in this Bill is to use trigger points for ambulatory boundary location. On the trigger point, the location at law of the ambulatory boundary shifts in accordance with the relevant formula included in the new provisions, regardless of what is or may have been depicted on any plan of survey for the land, and even, to some extent at least, regardless of a strict construction of the words of any deed of grant.

The new legislative provisions aim to achieve greater certainty and practicality in the identification of ambulatory boundaries by legally

underpinning a moving away from a water level or flow level based approach and moving towards a natural feature based approach.

Because of the significant variety of circumstances that could apply, there are significant exceptions applying, including the possibility that the Chief Executive could declare the location of the boundary (clause 215, new sections 83 (Third exception for the original adopted natural feature rule (tidal) provision (Chief Executive single lot declaration (tidal exception), 93 (Multiple lot declaration (tidal) provision), 109 (First exception for the boundary location criteria rule (non-tidal) provision (Chief Executive single lot declaration (non-tidal) exception) and 120 (Multiple lot declaration (non-tidal) provision)).

Clause 215 of the Bill inserts a new section 122 into SMIA which provides appeal provisions in relation to the Chief Executive declarations mentioned above.

Clause 215, new sections 94 (No compensation for operation of div 2 or this division) and 121 (No compensation for operation of division 4 of this division) provide that no compensation will be payable in relation to the operation of the new ambulatory location rules being implemented by this Bill.

At each trigger point, a scheme of compensation for any statutory shifting of boundaries would appear to involve significant expense and difficulty with little benefit to land owners. For example, working out precisely where an ambulatory boundary used to be could involve difficult fact-finding, and application of difficult to apply legal principles, to achieve an answer that will be of no future benefit.

The first major trigger point is the commencement of the legislative changes. At this point in time, Clause 215 of the Bill inserts new sections 76 (Current adopted natural feature rule (tidal) provision) and 103 (Current adopted natural feature rule (non-tidal) provision) into the SMIA to provide that the boundary at law will, where possible, become the line of the current location of a natural feature shown in the current plan of survey, even though, immediately before the commencement of the legislative changes, the boundary could have been located at law closer to the water than that current location. In other words, in some cases, at the first trigger point, the area of a parcel of land could be reduced by operation of statute.

The operation of the first trigger point is justified by:

- the necessity to maintain public access and ownership of Queensland beaches and the otherwise prohibitive cost of doing so should compensation be payable to all affected landholders;
- the location of the boundary will arguably continue to accord with a landholder's expectation that the current survey plan for the lot depicts the full extent of their land. The area described on the survey plan will not alter and the lot remains subject to erosion and accretion;
- the uncertainty in the current statutory definition of the boundary for non-tidal lots, making it difficult to determine the current location of the boundary at law;
- the potentially vast number of lots that may be affected and therefore the compensation payable could be quite large, particularly in the case of non-tidal lots; and
- the resource intensive process to identify all lots for which compensation may be payable. For non-tidal blocks it would be necessary to investigate stream conditions in order to determine (in accordance with recent court decisions) "where water normally flows".

The other major trigger point is the registration of the first new plan of survey for the land after the commencement of the legislative changes. Clause 215 of the Bill inserts new sections 80 (Original adopted natural feature rule (tidal) provision) and 108 (Boundary location criteria rule (non) tidal provision) that provide that:

- for a tidal boundary, at this point in time the boundary at law will where possible become the current location of a natural feature identified by going right back to the first old plan of survey that adopted a natural feature; and
- for a non-tidal boundary, a natural feature identified under criteria stated in the new legislative provisions will locate the boundary at law.

There is a possibility here is, again, that before the registration of the first new plan of survey, the boundary could have been located at law closer to the water than its new location. In other words, again, in some cases, at the second trigger point, the area of a parcel of land could be reduced by operation of statute. This trigger point occurs when the owner of the land decides to deal with the land in a way that requires a survey of the land.

There has been an analogous situation in the local government context in which the High Court determined that if the surrender of property is required as a condition to consent, for example, to a subdivision approval, the acquisition is not compulsory as the developer has the option not to continue with the subdivision *(Lloyd v. Robinson (1962))*. The general principles of this case will apply to the proposed amendments. Accordingly, in this circumstance the fundamental legislative principle of acquisition with fair compensation is not breached.

It must also be noted that the loss of area as outlined above may, in many cases, be technically true, but practically of little or no consequence. For example, for land with a tidal boundary, planning legislation and coastal protection legislation have over the years reduced the scope for development. For land with a non-tidal watercourse boundary, any loss of land area is balanced to some extent by a corresponding extension into the lost land of the riparian rights provided for in the Water Act. (These rights are being transferred to the Land Act).

State Jurisdiction

Clause 239 of the Bill, new section 5 (Meaning of watercourse) provides new criteria for determining the outer limits of State jurisdiction under the Water Act. The amendments, on commencement, may extend the State's jurisdiction into parts of privately owned land not previously under the State's jurisdiction for the purposes of the Act.

The jurisdictional amendments do not involve any loss of private land area, but could involve the application of Water Act requirements to land not previously subject to those requirements, for example, a requirement for to obtain a permit to take quarry material from a watercourse. It is arguable that this may be considered a diminution of property rights.

It is unlikely that these amendments will negatively impact upon many landholders as the Department has consistently taken a practical approach to the administration of the Water Act and asserted a broad jurisdictional extent in relation to watercourses. Consequently it is likely that there will be only insignificant changes to a small number of landholder's activities.

The impacts of these amendments will be largely ameliorated by transitional provisions to be included in the Water Act which will on a temporary basis maintain the authority of licences and permits for activities on land that, on the commencement of the new Act, becomes land under the jurisdiction of the department as a watercourse.

The amendments are aimed at moving away from a problematical flow level based approach to the identification of the extent of a watercourse, and moving towards a natural feature based approach to provide greater certainty as to jurisdiction

Land Act 1994

Whether legislation has sufficient regard to rights and liberties of individuals by being consistent with principles of natural justice—LSA, s 4(3)(b)

Delbessie Agreement

Clause 110 replaces section 155D of the Land Act that provides for the Minister's power to reduce the extended term of a rural lease. The replacement provisions will allow the Minister to reduce not only the extended term, but also the original term of the lease, if requirements that were met by the lessee at the time the original lease was granted cease being met, and those requirements formed the basis for the particular term of the lease being granted.

It is arguable that these amendments would not be consistent with principles of natural justice because although an appeal against the Minister's decision would be available under section 155D, natural justice requires a right to make submissions before the decision is made. However, the amendment inserts a requirement that the lessee must be notified in writing of the proposed exercise of the power to reduce the term of the lease and the lessee may make a submission in response. Additionally, the decision must be notified in writing and is appealable.

Land Title Act 1994

Legislation should have sufficient regard to rights and liberties of individuals—Legislative Standards Act 1992, section 4(3).

Clause 193 of the Bill amends section 130 of the Land Title Act to clarify that that section does not apply in relation to a caveat lodged by the registrar of titles (registrar).

The intent of section 30 is to discourage persons from lodging caveats under section 122 for improper purposes, that is when there is no real basis on which an interest in land can be claimed. The registrar's power to lodge a caveat under section 17 is to assist in the registrar's statutory functions, which may require lodgement of a caveat to protect the integrity of the

freehold land register and/or to protect the rights of persons with an interest in land in certain circumstances. The reversal of the onus of proof and compensation provided for in section 130 are not appropriate, and were never intended to apply, in relation to registrar's caveats. The amendment is for clarification as section 189(1)(i) already provides that no compensation is payable in relation to a registrar's caveat. However this could be interpreted as applying only to compensation under section 188 or section 188A and it is desirable to clarify that no compensation is available under section 130. The amendment does not abrogate any rights a person may have at common law.

Aboriginal Cultural Heritage Act 2003 & Torres Strait Islander Cultural Heritage Act 2003

Whether legislation has sufficient regard to rights and liberties of individuals by:

- *being consistent with principles of natural justice—LSA, s 4(3)(b); and*
- *having sufficient regard to Aboriginal tradition and Island custom – LSA, s4(3)(j)*

The proposed amendment at clause 4 seeks to recognise the last registered native title claim over an area where there are two or more previously registered claimants for an area. Currently, section 34(1)(b)(i)does not distinguish between previously registered native title claimants and as a result, any previously registered claimant is considered to be the Aboriginal party for an area.

This does not cause any concerns where there are no overlaps to consider. However when dormant previously registered native title claims become active upon the dismissal/discontinuance/withdrawal/striking out of the last registered claim by the Federal Court, problems are created for stakeholders engaged in cultural heritage activities seeking to identify the native title party.

No transitional provisions are envisaged as the Department intends to recognise all agreements received prior to the amendments to the Acts being implemented.

Forestry Act 1959 (restructure)

Whether legislation has sufficient regard to rights and liberties of individuals by having sufficient regard to Aboriginal tradition and Island custom (Legislative Standards Act, s 4(3)(j))

The grant of a plantation licence in respect of the SPF may have native title implications. Advice from Crown Law was obtained in relation to this issue. The Bill does not extinguish native title rights. Further, the grant of a plantation licence under the proposed provisions is the grant of a non-exclusive licence and does not extinguish native title rights. Native title holders remain entitled to seek compensation under the *Native Title (Queensland) Act 1993* and the *Native Title Act 1993* (Cth). Thus, it is submitted that the Bill has sufficient regard to Aboriginal tradition and Island custom.

Delegation of administrative power only in appropriate cases and to appropriate persons (Legislative Standards Act 1992 section 4(3)(c))

Delegation

The Bill proposes to delegate certain powers to a plantation licensee to allow it to:

- control the activities and conduct of persons within its licence area; and
- administer pre-existing licences/permits and issue new licences/permits.

The plantation licensee requires the power to control the activities and conduct of persons within its licence area to ensure the safety of persons and to protect the interests of licence and permit holders.

The delegation of powers to administer pre-existing licences/permits and issue licences/permits to the plantation licensee is consistent with the policy goal of ensuring access to the land and the principle of ensuring the plantation licensee has appropriate authority to manage the land.

These powers are limited to the licence area and the proposed Bill ultimately vests these powers in the State (with the exception of powers relating to pre-existing commercial contracts for the sale of plantation timber previously issued in the form of "sales permits" under the Forestry Act, which will be administered by the plantation licensee directly). The powers will be delegated by deed. The Delegation Deed provides the State

with a mechanism to control and manage the plantation licensee's exercise of its powers.

As there are good policy grounds for the plantation licensee to be able to exercise delegated powers, and the State is incorporating adequate controls of the exercise of that power into the Delegation Deed, it is submitted that the delegation of power in these circumstances is appropriate.

Appointment of plantation licensee as an administering entity for existing sales permits

FPQ derives its right to the NRPs in the SPF from its profit a prendre granted under section 46A of the Forestry Act. When FPQ was established, sales permits granted by the Department of Primary Industry and Forestry to customers to purchase NRP were vested in FPQ under the *Forest Plantations Queensland Act 2006*. FPQ was granted powers to administer those contracts under the Forestry Act independently of the Chief Executive of the Department who administers the Forestry Act. FPQ continued the business of entering into commercial agreements with customers to purchase NRPS exercising these powers under its commercial mandate set out in section 12 of the *Forest Plantations Queensland Act 2006* (the post 2006 agreements).

The sales permits vested in FPQ and the post 2006 agreements may have dual legal characteristics, namely as both a general law contract and as a statutory permit (ie a sales permit) (sales permits/commercial agreements). They are a general law contract in that the commercial terms were negotiated at arms length between the parties. They are also sales permits since they may have been simultaneously issued as a permit under section 56 of the Forestry Act. It is intended to vest the business, asset and liabilities of FPQ (including the sales permits/commercial agreements) into a special purpose vehicle (NewCo) by a transfer notice under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009.* This does not deal with the statutory permit characteristic of the sales permits/commercial agreements. In the absence of a provision to the contrary, the sales permits/commercial agreements may also be subject to the control of the Chief Executive of the Department.

Given that the sales permits are an essential commercial asset of NewCo, this is an unintended and inappropriate outcome. An illustration of the difficulty arising is where NewCo seeks to determine a sales permit/commercial agreement lawfully in accordance with its commercial terms. The customer may seek to argue that the statutory permit itself has

not been lawfully terminated, since it may only be terminated by the Chief Executive under the Forestry Act.

It is proposed to deal with this issue in two ways. Firstly, it is necessary to grant to NewCo a set of powers under the Forestry Act including powers under section 58(1) and 58(1B) to the exclusion of the Chief Executive of the Department by appointing NewCo as an administering authority for these and other provisions solely in relation to these sales permits/commercial agreements.

If that is the case NewCo may exercise powers under the Forestry Act and under the general law to manage the sales permits/commercial agreements. Thus in certain circumstances NewCo may terminate a sales permits/commercial agreement where a customer has contravened the Forestry Act or a term of the sales permit/commercial agreement. The termination if exercised under section 58 will cancel the statutory permit.

Two control mechanisms are proposed to constrain the exercise of the powers to terminate under section 58(1) and 58(1B) of the Forestry Act. Firstly, where a sales permit/commercial agreement contains terms and conditions permitting termination under the general law, NewCo may only terminate the statutory permit under section 58, if it is also permitted to terminate the sales permit/commercial agreement under the general law. Secondly, where a sales permit is more akin to a statutory permit than a commercial agreement and does not contain terms and conditions permitting termination under the general law, NewCo may exercise its powers under section 58 to terminate the sales permit. However this is a decision that can be reviewed by the Chief Executive under the Forestry Act.

It is further submitted that the power is sufficiently constrained and its exercise is subject to appropriate review. The *Judicial Review Act 1994* continues to apply to decisions made under provisions of the Forestry Act, including section 58. To the extent that the sales permits are agreements, conduct which is in breach of the agreement can be litigated in a Court of appropriate jurisdiction. If the consequence of the exercise of a statutory power is in breach of the terms of the commercial agreement, it may give rise to judicial review remedies and it also may give rise to a common law right to damages.

Whether legislation has sufficient regard to rights and liberties of individuals by delegation of administrative power only in appropriate

cases and to appropriate persons (Legislative Standards Act 1992, s 4(3)(c))

It is proposed that the powers of the Minister and the Chief Executive under the Forestry Act and the Chief Executive (fire) under the *Fire and Rescue Service Act 1990* (Fire Act) will initially be exercised by the Treasurer.

The rights of the Treasurer to exercise these powers will be terminated after an initial "bedding in" period by way of gazette notice. The relevant provisions are subject to a sunset clause. The conferral of powers does not deprive the Minister or the Chief Executive under the Forestry Act and the Chief Executive (fire) of that head of administrative power and thus the overall administration of the Forestry Act will not be affected. The appropriation of these powers is necessary to facilitate the efficient and effective restructure of FPQ and the completion of transaction documentation.

Compulsory acquisition of property only with fair compensation –(Legislative Standards Act 1992 section 4(3)(i))

Amendments will be made to the Forestry Act to provide for the transition of certain areas of SPF of high conservation value back to the State at a certain date without payment of compensation to the plantation licensee. These "conservation hand back" areas have been identified by agreement with conservation stakeholders. The State is permitting the plantation licensee to harvest these areas at the end of the current growth cycle, and requiring the plantation licensee to remediate the land to an appropriate standard. Accordingly, the plantation licensee obtains the benefit of a single rotation. Potential bidders will be made aware of the conservation hand back areas intended to revert to the State. Given that:

- these areas have been identified as conservation areas;
- the plantation licensee's right to harvest these areas is limited to a single rotation; and
- the successful bidder will be aware of this limitation prior to making its bid,

it is submitted that this does not constitute a compulsory acquisition of property.

Water Act 2000

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (Legislative Standards Act 1992,section 4(3)(a)).

The *Legislative Standards Act 1992* (LSA 1992) defines fundamental legislative principles (FLPs) as principles relating to legislation that underlie a parliamentary democracy based on the rule of law.

The proposed amendment to finalise the Lower Balonne provisions (deferred from finalisation in December 2008) for the Condamine and Balonne Resource Operations Plan (CB ROP) poses in clause 243 a potential breach of the principle which provides that legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review [LSA s4(3)(a)].

The potential breach is in relation to the inclusion of a provision that affects the review and appeal rights for aggrieved persons which would ordinarily be available under existing process for finalisation of a Resource Operations Plan (ROP).

In this situation existing administrative powers to amend a ROP are not being used and instead legislative power is to be used which is excluded from review by the *Judicial Review Act 1991*.

Restricting the right to judicial review is considered justified in this case as it is balanced with the extensive consultation undertaken throughout the ROP development process and the robust merit review process undertaken by the ROP Referral Panel.

Extensive consultation was undertaken over a period of several years during the preparation of the draft CB ROP and prior to finalising the CB ROP, giving interested parties opportunity to provide input. This included public release of the notice of intention to prepare the draft CB ROP and submissions on the draft CB ROP.

In addition, the Chief Executive established a referral panel (ROP Referral Panel) to advise on relevant matters about the draft CB ROP and public submissions to it. A ROP Referral Panel is an expert panel of independent members of the public, established to review the draft CB ROP, any relevant submissions and make recommendations to the Chief Executive. In preparing the final draft CB ROP the Chief Executive considered the recommendations of the ROP Referral Panel, including recommendations relating to the Lower Balonne provisions.

Finally, the Supreme Court of Queensland (in *Munya Lake Pty Ltd & Ors v The Chief Executive, The Department of Natural Resources and Water*) considered and reviewed the previous decision process and found in favour of the Chief Executive and did not find fault.

Consultation

Community and industry stakeholders

Land Act 1994, Survey and Mapping Infrastructure Act 2003 and Water Act 2000 – (ambulatory boundaries)

Key external stakeholders were consulted during July and August 2009 and included:

- Cement Concrete & Aggregates Australia;
- Urban Development Institute Australia;
- Surveying and Spatial Sciences Institute;
- Queensland Conservation Council;
- Local Government Association of Queensland;
- Spatial Industries Business Association;
- Queensland Farmers Federation;
- AgForce;
- Queensland Law Society; and
- Queensland Resources Council.

Aboriginal Cultural Heritage Act 2003 & Torres Strait Islander Cultural Heritage Act 2003

The Department has discussed this issue with Queensland Gas Company, Australia Pacific LNG, Origin Energy, Arrow Energy, Xstrata, Santos, representatives of the Barunggam People, and members of the Wiri People Core Country native title claim group.

Forestry Act 1959 (restructure)

Targeted consultation has been undertaken with specific stakeholder groups including employees, unions, customers of FPQ, joint venture partners and conservation groups.

Surveyors Act 2003

The Surveyors Board, the Spatial Industries Business Association and the surveying profession were consulted on the proposed amendments regarding endorsement of individuals and corporations.

Land Act 1994 and Land Act 1994 (land registers)

The proposed amendments to the Land Act to support the Delbessie Agreement have been tabled with the State Rural Leasehold Land Ministerial Advisory Committee (MAC) in their November 2009 meeting

Government

Representatives from the following Departments were consulted in relation to the Bill:

- The Department of the Premier and Cabinet and Queensland Treasury have been consulted throughout the development of the Bill on issues relating to compensation. Various other government agencies have been consulted on the tidal and non-tidal feature based methodologies.
- Primary Industries and Fisheries have also been consulted in relation to the amendment to the Forestry Act and are supportive of the amendment due to their ongoing interest in facilitating investment in Queensland's timber plantation industry.

Results of consultation

Community

Land Act 1994, Survey and Mapping Infrastructure Act 2003 and Water Act 2000 – (ambulatory boundaries)

The Queensland Resources Council did not provide any specific feedback on the consultation draft of the Bill and stated that they will continue to monitor the progress and implementation of the legislative changes.

One of the key concerns raised has been the lack of compensation to landowners whose boundary shifts on commencement.

Other concerns raised included the effect of the Bill on development applications lodged and on existing extraction operations in watercourses.

Aboriginal Cultural Heritage Act 2003 & Torres Strait Islander Cultural Heritage Act 2003

The consultation parties indicated that it sought leadership from the Department, as the administrator of the Acts to eliminate any conjecture and uncertainty relating to the definition of the native title party for an area where there are two or more previously registered claimants for an area.

The amendment will eliminate duplication of processes in certain circumstances, which was welcomed by some of the consultation parties.

Surveyors Act 2003

The Spatial Industries Business Association does not consider it necessary to require a corporation registered as a surveyor to employ a surveyor who holds a consulting endorsement. However, there is widespread support amongst the profession for the proposed amendment. The Surveyors Board considers the amendment essential to ensure that corporations registered as surveyors have the relevant competency.

Land Act 1994

The State Rural Leasehold Land Ministerial Advisory Committee has not identified concerns about the amendments relating to the Delbessie Agreement.

Government

All Departments consulted supported the Bill.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the Act is the *Natural Resources and Other Legislation Amendment Act 2010*.

Commencement

Clause 2 provides that the following parts of the Bill commence on a day to be fixed by proclamation:

- part 3 (Amendment of the *Aboriginal Land Act 1991*);
- part 4 (Amendment of the *Coastal Protection and Management Act 1995*);
- part 12 (Amendments of the Land Act commencing by Proclamation);
- part 15 (Amendment of *State Development and Public Works Organisation Act 1971*);
- part 16 (Amendment of *Survey and Mapping Infrastructure Act 2003*);
- part 17 (Amendment of *Surveyors Act 2003*);
- part 19 (Amendment of *Torres Strait Islander Land Act 1991*);
- part 21 (Amendment of *Water Act 2000*), other than sections 237 and 243 (Insertion of new ch 8, pt 4B - Special provision for Condamine and Balonne Resource Operations Plan).
- clauses 199 to 202 (insertion of new section 196A - Publication of particular public notices on department's website); and

In relation to the Forestry Act – restructure amendments to be effected by this Bill:

- amendments relating to the eventual dissolution of FPQ and the repeal of the *Forestry Plantations Queensland Act 2006* (contained in clause 72 (to the extent it inserts new section 131 into the Forestry Act), clause 249 and the amendments to the *Public Service Act 2008* and the

Statutory Bodies Financial Arrangements Act 1982 in the schedule)) commence on a day to be fixed by proclamation; and

- certain transitional and consequential provisions which have the effect of making either the Chief Executive administering the Forestry Act or the plantation licensee the "successor" of FPQ need to commence simultaneously with the granting of the first plantation licence. These transitional and consequential provisions are listed in subclause 2(3). Subclause 2(4) facilitates public notice of the date of effect of the transitional and consequential provisions by requiring the date to be notified by gazette notice.

Part 2 Amendment of Aboriginal Cultural Heritage Act 2003

Act amended

Clause 3 provides that this part amends the *Aboriginal Cultural Heritage Act 2003*.

Amendment of s 34 (Native title party for an area)

Clause 4 amends the definition of the Aboriginal native title party for an area to put beyond doubt the identity of the native title party for cultural purposes in the situation where there are two or more previously registered claimants for an area. The amendment will put this issue beyond doubt for all stakeholders.

Part 3 Amendment of Aboriginal Land Act 1991

Clause 5 provides that this part amends the *Aboriginal Land Act 1991*.

Amendment of s 20 (Beds and banks of watercourses and lakes)

Clause 6 amends section 20 of the Act, which provides that watercourses are "available State land" (land in which no person other than the State has an interest) to remove the terms "beds and banks" of a watercourse. This amendment reflects the fact that changes made in this Bill to the criteria for determining the ambulatory boundary for non-tidal land mean that these terms are no longer relevant in determining the extent of the State's ownership of a watercourse.

Amendment of schedule (Dictionary)

Clause 7 amends the Schedule to the Act by omitting the definition of "beds and banks". The definition referred to the Water Act, *Schedule 4*. The changes made in this Bill to the criteria for determining the ambulatory boundary for non-tidal land mean that these terms are no longer relevant in determining the extent of the State's ownership of a watercourse and have been omitted from the Water Act.

Part 4 Amendment of Coastal Protection and Management Act 1995

Act amended

Clause 8 provides that this part amends the *Coastal Protection and Management Act 1995*.

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

Clause 9 amends section 123 of the Act which provides, except in certain listed circumstances a right to use and occupy land on which tidal works are situated that have been granted a development permit for operational work that is tidal work.

This amendment is consequential to amendment to the definition of "tidal work" by clause 10 below, to ensure that "tidal works" previously on

freehold land which are now on State land between the tidal boundary and "tidal water" (orphaned assets) come under the definition of tidal works. The amendment to section 123 will provide that the extension to the definition of tidal works does not extend the right to use and occupy beyond the area of any orphaned assets to land on the landward side of a tidal boundary or right line tidal boundary.

Amendment of schedule (Dictionary)

Clause 10 amends the definition of "tidal works" and inserts an associated new definition in the dictionary. The amendments to the criteria for determining the ambulatory boundary for tidal land made by this Bill may result, in some cases, in structures such as boat ramps and associated utilities (e.g. power and water) which previously ran straight from freehold land to "tidal waters" now being partially located on State land in between the new tidal boundary and tidal waters.

The revised definition will ensure that "tidal works" previously on freehold land which are now on State land between the tidal boundary and "tidal water" (orphaned assets) come under the definition of tidal works. The consequence of this amendment is that the owner of the tidal works will, by virtue of section 123 of the Act, have a right to use and occupy the land on which the orphaned assets are located.

Part 5 Amendment of Dividing Fences Act 1953

Act amended

Clause 11 refers to the Act which this part amends namely, the *Dividing Fences Act 1953.*

Insertion of new s 4A (Act not to apply to licence areas)

Clause 12 inserts a new section 4A into the Act, which is to ensure that the obligation to contribute to the construction or repair of a dividing fence under the Act does not apply to a plantation licensee or plantation sublicensee in relation to a licence area under the Act.

Part 6 Amendment of Fire and Rescue Service Act 1990

Act amended

Clause 13 refers to the Act which this part amends namely, the Fire Act.

Amendment of s 61 (Interpretation and application of division)

Clause 14 amends the definitions in section 61 of the Act to define "licence area", "occupier of land", "plantation licensee", "plantation officer", "plantation operator" and "plantation sublicensee". These definitions support the amendments to sections 66 and 68 of the Act discussed below.

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

Clause 15 amends section 66 of the Act. Subsection 66(1)(b) provides that division 1 of part 7 of the Act (which relates, amongst other things, to the giving of permits to light fires) does not apply to the actions of persons performing duties under the Act on certain categories of State land, including State forest. The SPF and the licence area are subsets of the State forest. After the grant of a plantation licence, it is intended that the regulatory environment for the buyer, so far as is relevant to fire prevention and control, should be as similar as possible to that of other private sector occupants of land. The effect of this amendment is therefore to apply division 1 of part 7 of the Act to the licence area which, amongst other things, enables the commissioner to grant permits to any appropriate person (including a plantation licensee or plantation sublicensee) to light fires in a licence area. The amendment also clarifies that a plantation operator or a plantation officer is not a person performing duties under the Act in relation to the lighting of fires in a licence area.

The overall effect of this amendment is that while FPQ currently does not require a permit under the Act to light a fire in the SPF, the plantation licensee and any plantation sublicensee will require a permit. The existing provisions of the Act (specifically subsection 71(2)) contemplate the possibility of a "standing" permit being given where the commissioner is satisfied that this is appropriate, including having regard to subsection 65(3). A "standing" permit arrangement could allow the plantation licensee or a plantation sublicensee to light fires within a particular "burn period" in

accordance with a fire management plan without being required to submit an application for each individual burn.

It is intended that, the plantation licensee or any plantation sublicensee will derive their powers and obligations in relation to fire prevention and control on the licence area both from the Fire Act and the Forestry Act. However, the plantation licensee will derive their powers and obligations in relation to any fire prevention and control activities conducted outside the licence area from the Fire Act. As such it is anticipated that the plantation licensee will seek registration as a rural fire brigade under section 79 of the Act. This will enable the holder of such registration to exercise a number of powers under the Act additional to those of an occupier of land, and facilitate responsible fire management and response activities on the licence area and, where appropriate, surrounding areas, within the oversight of the Queensland Fire and Rescue Service.

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

Clause 16 amends section 68 of the Act to insert a new subsection 68(4) and renumber the existing subsection 68(4). Subsection 68(3) requires an occupier of land (which will include the plantation licensee or any plantation sublicensee) to, inter alia, make certain notifications if they become aware of a grass fire burning within 1.6 kilometres of their land. The category of persons to whom the notification must be directed is "prescribed persons" who are listed in the definition in subsection 68(4) and who, relevantly, include an officer of a rural fire brigade. As it is anticipated that the plantation licensee will seek registration as a rural fire brigade, the effect of this amendment is to clarify that an occupier which is registered as a rural fire brigade cannot meet its obligations under section 68 by "self-notifying".

Part 7 Amendment of Forestry Act 1959

Act amended

Clause 17 provides that this part amends the *Forestry Act 1959*.

Insertion of new ss 14–15

Clause 18 inserts new sections 14 and 15 in the Forestry Act.

New section 14 (Joint Ministerial power)

New section 14 provides that, until an end day declared by a gazette notice, a reference in the Forestry Act to the Minister, the Chief Executive or the chief executive (fire) (each a relevant person), includes a reference to the Minister administering the *Financial Accountability Act 2009* (Treasurer).

New section 15 (Expiry of ss 14-15)

New section 15 provides a sunset date for sections 14 and 15, being one year from commencement. There is an option to extend this period by a regulation, for a maximum of two years.

The effect of new section 14 is to temporarily permit the Treasurer to exercise the full range of functions under the Forestry Act granted to the Minister administering the Forestry Act, the Chief Executive administering the Forestry Act and the Chief Executive administering the Fire Act.

This is a temporary mechanism to enable the plantation licence and the related agreements to be executed by the Treasurer under section 61QA of the Forestry Act. This reflects the commercial reality that major transactions can be time sensitive and protects the State's interests by enabling the State to respond quickly to issues relating to the divestment of FPQ.

It is likely that the end day referred to in this section will be shortly after the restructure and divestment of FPQ is completed. The provision for an extension of not more than 2 years duration (by regulation) is intended to provide coverage for unforeseen contingencies and thereby protect the commercial interests of the State.

Amendment of s 17 (Appointment of officers)

Clause 19 amends section 17 of the Act to empower the Chief Executive to appoint "plantation officers" for a licence area. The amendments to section 17 also provide that the appointment ceases if the person stops being an employee of a plantation operator, or the plantation operator ceases to be a delegate of the Chief Executive's powers under new section 96B of the Forestry Act.

Under new subsection 96B(2) of the Forestry Act, the Chief Executive may delegate his or her functions under section 17 to appoint plantation officers to a plantation licensee, plantation sublicensee, plantation manager, or a registered mortgagee or an enforcing party (appointed by the mortgagee). It is intended that the appointing function will be delegated to the direct employer of the plantation officers because that entity is best placed to supervise and oversee the activities of the plantation officers.

The power to appoint "forest officers" and "other officers" as referred to in subsection 17(1) will not be delegated to the plantation licensee, a plantation sublicensee or a plantation manager – they will only be able to appoint plantation officers, and then only for so long as the delegation remains in place. Pursuant to new subsection 17(2A), plantation officers must be appointed for a specified licence area, being (under new subsection 96B(4)(a)) the relevant licence area for the appointing plantation licensee, plantation sublicensee or plantation manager, and may exercise powers only within that licence area (new subsection 18A(1)).

Plantation officers will exercise a smaller range of powers than forest officers, being only those powers listed in new sections 18A and 18B and existing sections 72, 75 and 88 (as amended by the Bill).

Insertion of new ss 18A–18C

Clause 20 inserts new sections 18A to 18C into the Forestry Act.

New section 18A (General powers of plantation officers)

New section 18A outlines the general powers of a plantation officer and makes the failure to comply with a lawful direction or requirement of a plantation officer an offence. A plantation officer may:

- take away or dispose of an unauthorised notice in a licence area;
- require the production of an authorisation permitting a person to conduct an activity in the licence area and inspect, examine and take copies of the authorisation (new section 20 is a supporting provision for this power);
- where a plantation officer finds a person committing (or who can be reasonably suspected of having committed) an offence, require the name and address of that person;

- direct a person to stop committing an offence, and/or to leave the licence area; and
- direct a person to leave an area if the plantation officer reasonably believes that the person's presence in or near the licence area involves a risk to that person's, or another person's, health or safety.

All of these powers are only capable of being exercised in the relevant licence area. Reflecting the commitment to maintain public access to the SPF, the power to direct persons to leave an area is limited to those circumstances where the person's presence involves a risk to a person's health or safety. For example, a person may be directed to leave an area where tree felling is occurring.

Regulatory signs erected by the plantation licensee, plantation sublicensee, plantation manager or a plantation officer under section 34AA as the delegate of the Chief Executive under new section 96B are another means of ensuring that persons are not in parts of the licence area where activities such as tree felling and back burning are occurring or are scheduled to occur.

New section 18B (Powers of plantation officers in relation to fire)

New section 18B provides a plantation officer with certain powers in relation to a fire in a licence area. If a plantation officer reasonably believes that a fire is, or is likely to be, a hazard, the plantation officer may put the fire out or direct a person to put the fire out or to reduce the intensity of the fire. Failure to comply with a direction of a plantation officer in respect of a fire is an offence.

Plantation officers will often be "first on scene" within the licence area, and therefore require appropriate powers in relation to fire control. These powers are consistent with the powers of:

- forest officers under section 12 of the *Forestry Regulation 1998*; and
- rural fire brigades under the Fire Act (although rural fire brigades also have additional powers).

New section 18C (Plantation operator and plantation officer are persons performing duties only for particular provisions)

New section 18C is a clarifying provision to the effect that certain references in the Act to persons "performing duties under this Act" include:

- a plantation operator; and
- a plantation officer,

when performing duties under the Forestry Act. Plantation operators and plantation officers will also be treated as persons performing duties under the Forestry Act for the purposes of subsections 39(2)(a) (offence of interfering with forest products on State Forest), 84(4) (requirement to produce a person's authority), 86(1) (offence of obstruction of officer), 95(a)(b) (rebuttable presumption about a signature) and 96 (acknowledgement of service) of the Forestry Act, but not for other sections of the Forestry Act.

The amendments to the Forestry Act effected by the Bill create a number of new categories of persons/entities in relation to the plantation licence and the licence area, including as follows:

- the plantation licensee, which is the corporation to which a plantation licence is granted by the Minister under new section 61QA;
- a plantation sublicensee, which is a corporation to which a sublicence of a plantation licence is granted by the plantation licensee (with the consent of the Minister) under new section 61QO; and
- a plantation manager, who is a person engaged by a plantation licensee or a plantation sublicensee to conduct plantation forestry operations in the licence area on behalf of the plantation licensee or plantation sublicensee.

Generally, rights and obligations relating to the use and occupation of the licence area are granted to/placed on the plantation licensee and any plantation sublicensee. Sublicensing arrangements are explicitly recognised under the amended provisions of the Forestry Act because business structures involving a combination of a "property company" and an "operations company" which is a lessee, sublessee or sublicensee of the "property company" are common in the forestry industry.

In addition, new section 96B provides for the Chief Executive to delegate certain functions under the Act to the plantation licensee, and any person

associated with the plantation licensee which may be the employer of the staff involved in the day to day operations of the plantation forestry business. Thus, new section 96B allows for a delegation to a plantation licensee, a plantation sublicensee or a plantation manager, as well as a registered mortgagee or an enforcing party exercising power under section 61SQ.

The Forestry Act uses the term "plantation operator" to refer to any of a plantation licensee, plantation sublicensee, plantation manager, registered mortgagee or enforcing party.

Plantation officers mainly derive their powers from the Forestry Act, but can also be the delegate of the Chief Executive under new section 96B.

Particularly because of the delegation arrangements, it is possible that there may be some confusion in relation to whether, and when, plantation operators and plantation officers are to be regarded as persons "performing duties under this Act". New section 18C clarifies this issue.

Insertion of new s 20 (Retention of document produced to plantation officer)

Clause 21 inserts new section 20 in the Forestry Act to set out the procedural obligations that apply where a plantation officer requires a person to produce documents under new subsection 18A(2)(b).

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

Clause 22 amends section 21 of the Forestry Act to include plantation officers as officers covered by the section. Section 21 prevents officers becoming subject to a conflict of interest by prohibiting them from engaging in certain dealings without the consent of the Chief Executive. The power to grant such a consent, so far as is relevant to the licence area, is amongst the powers capable of delegation under new section 96B.

Insertion of new s 32AA (Chief executive to notify chief executive (lands) of change to State forest)

Clause 23 inserts a new section 32AA, which requires the Chief Executive to notify the Chief Executive (lands) of any increase or decrease in the area of land declared to be State forest.

This section is included to ensure the Chief Executive, who administers the State forest and is best placed to know about any changes, notifies the Chief Executive (lands) about any land related changes.

Insertion of new pt 3A

Clause 24 inserts new Part 3A into the Forestry Act.

New Part 3A (State plantation forest)

New Part 3A deals with the declaration of State forest as SPF and sets out the circumstances in which land can be removed from the SPF.

New section 32A (Declaration of land as State plantation forest)

New section 32A provides for the declaration of the SPF by regulation. The relevant regulation is the *Forestry Regulation 1998*, which is amended in Part 8 to insert a new schedule 4A which will list the plans showing the SPF estate as at the date of assent. The amendment of the *Forestry Regulation 1998* by primary legislation is required to enable the restructure timing to be met. After the restructure, if required, areas can be placed in and removed from SPF by a regulation amending schedule 4A of the *Forestry Regulation 1998*.

Only land which is already classified as State forest is capable of being classified as SPF. This reflects the current arrangements. New subsection 32A(2) provides that if land which is SPF stops being State forest, it automatically ceases to be SPF. This subsection is required to replace subsection 4(3) of the *Forestry Plantations Queensland Act 2006*.

SPF is currently declared by regulation under subsection 4(1) of the *Forestry Plantations Queensland Act 2006*. As it is proposed to repeal the *Forestry Plantations Queensland Act 2006* after FPQ is restructured (see clause 249 of the Bill), it is necessary to move this mechanism into the Forestry Act.

New section 32B (Particular areas of conservation value to be removed from State plantation forest)

New section 32B provides for the automatic removal of certain areas of conservation value from the SPF as specified in the section, with the effect

that these areas cease to be part of the licence area, but remain as State forest.

As part of the preparations for the sale of FPQ, certain areas of the SPF estate were identified as having conservation value, and the Government has committed to removing these from the SPF estate once the current plantation timber has been harvested. The dates specified in new section 32B provide a sufficient period for the current plantation timber to mature and be harvested, and for the area to be rehabilitated to standards specified in the plantation licence. The plantation licence also allows for these areas to be excised from the licence area before the dates specified in new section 32B if the plantation licensee harvests and rehabilitates them before those dates. It should be noted that when these areas are removed from the licence area, there is no entitlement to compensation.

New section 32C (Quarrying in State plantation forest)

New section 32C provides that the Chief Executive may not get or authorise a person to get a total of 5,000t or more of quarry material, in a year, from an area within SPF. The reason for including this provision is that quarrying activities of this intensity are likely to be disruptive to plantation forestry operations. The effect of the provision is that if the State wishes to place a quarry of this capacity in an area which is currently SPF, the State can revoke the SPF classification of the area by regulation, and the area will retain its classification as State forest. Areas removed from SPF are automatically removed from any licence area, triggering the application of the compensation provisions in new division 8 of part 6D of the Forestry Act. The section exempts quarrying activities conducted by a plantation licensee or plantation sublicensee on SPF because their quarrying activities (which, under the terms of the proposed plantation licence, may be restricted to getting and using quarry material in the licence area to construct and maintain the plantation licensee's own roads and certain other roads) will not be inconsistent with plantation forestry and the conduct of plantation forestry activities by the licensee.

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

Clause 25 omits section 33AA of the Forestry Act, which modified the application of part 4 of the Forestry Act to SPF in order to recognise the role of FPQ and FPQO as set out in Part 6C. This amendment will take

effect simultaneously with the omission of Part 6C from the Forestry Act which will occur upon entry into a plantation licence.

Amendment of s 34 (Use of State forests)

Clause 26 amends section 34 of the Forestry Act to provide that subsections 34(1)(a), 34(1)(c), 34(2) and 34(2A) do not apply to natural resource products in a licence area. Section 34 sets out a list of powers of the Chief Executive for the purposes of the use and management of State forests, including SPF. This amendment limits the exercise of certain of these powers, namely the power to:

- determine and cause to be put into operation the silvicultural system most suitable to the circumstances of a State forest; and
- determine, in relation to the period specified in the determination, the maximum quantities of forest products of any kind or description which may be removed from a State forest during such period without impairing the permanent productive capacity of the State forest or State forests in question.

The plantation licence requires that the plantation licensee holds an appropriate forestry management accreditation under an internationally recognised accreditation system which requires the implementation of sustainable management practices. At this stage, provided that such accreditation is maintained, it is not intended that the State will impose a silvicultural system on the plantation licensee, or set maximum harvest quantities (which, regardless, is a concept relevant to native forest harvesting activities, not plantation based activities). These will be matters for the plantation licensee's business judgement, having regard to the requirement to maintain their forestry management accreditation.

The Chief Executive continues to hold powers under these sections in relation to forest products other than natural resource products, because the plantation licensee does not obtain the exclusive right to deal with forest products other than natural resource products.

Subsection 34(3) of the Forestry Act provides that despite any lease, licence, permit or other right or authority granted under this or any other Act, the Chief Executive may within any State forest from time to time construct, carry out, improve, maintain, operate, protect, control, and otherwise manage any silvicultural or other works of any description whatsoever which the Chief Executive considers necessary or desirable for the proper utilisation and management of the State forest. The effect of the

amendment is that the State will not have an overriding ability to unilaterally carry out works in the licence area. Such works are the responsibility of the plantation licensee.

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

Clause 27 amends section 34A of the Forestry Act so that the Governor in Council cannot declare an area of SPF to be a feature protection area, scientific area, State forest park or forest drive. These "specialised management areas" are subject to specific requirements under sections 34C, 34D, 34E and 34F of the Forestry Act, and it is not appropriate that these requirements be unilaterally imposed upon the plantation licensee post-sale. The Chief Executive still retains the ability to remove areas from SPF (which triggers the compensation arrangements under new division 7 of part 6D of the Forestry Act) but retain their State forest classification, and may then designate such areas as "specialised management areas".

There are a small number of areas within the SPF which are currently classified as feature protection areas and scientific areas. The "dual classification" of these areas is saved by clause 72 of the Bill. Provisions have been included in the plantation licence to ensure that these areas continue to be managed in accordance with sections 34C and 34E of the Forestry Act.

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

Clause 28 amends section 34H of the Forestry Act to provide that SPF cannot be a self-registration camping area. After commencement, there will be no existing self-registration camping areas in the SPF estate. The Department of Environment and Resource Management, rather than the plantation licensee, will be responsible for the management of camping sites within State forest.

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

Clause 29 amends section 35 of the Forestry Act to insert a subsection (1A) in respect of granting an occupation permit, a stock grazing permit or an apiary permit within State forest and a licence area. This subsection requires a plantation licensee or other person exercising delegated power

under section 35 to advise an applicant of its ability to apply for a review of a decision under section 83A of the Forestry Act.

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

Clause 30 amends section 37 of the Forestry Act in order to clarify that the section is not intended to limit or otherwise affect the provisions under which compensation is payable to owners of land under the *Mineral Resources Act 1989*, the *Petroleum & Gas (Protection & Safety) Act 2004* or the *Greenhouse Gas Storage Act 2009.*

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

Clause 31 amends section 39 of the Forestry Act. Section 39 is an offence provision relating to unauthorised interference with forest products (including natural resource products) in State forest. The effect of the amendment is to ensure that authorised dealings with forest products cover the contemplated post-sale arrangements. To this end, new paragraph (b) of subsection 39(1) provides that it is not an offence to interfere with forest products under the authority of a permit to light fires given under section 65 of the Fire Act.

New paragraph (b) of subsection 39(2) provides that section 39 does not apply to a person acting under a plantation licence, a plantation sublicence or a related agreement or in accordance with an agreement entered into with a plantation licensee or plantation sublicensee. The reference to persons acting in accordance with an agreement entered into with a plantation licensee or plantation sublicensee includes customers, who will be getting natural resource products from agreed areas within the licence area pursuant to a customer contract with the plantation licensee. It is intended that the plantation licensee will enter into customer contracts on a purely contractual basis, and not as "sales permits" under the Forestry Act.

Replacement of s 43 (Application of pt 6 to forest products from a licence area)

Clause 32 omits and replaces section 43 of the Forestry Ac to provide that Part 6 does not affect the rights of a plantation licensee or plantation sublicensee to deal with natural resources or to get and use quarry material under Part 6D or a plantation licence or plantation sublicence. Current

section 43 modified the application of Part 6 of the Forestry Act to SPF in order to recognise the role of FPQ and FPQO as set out in Part 6C. This amendment will take effect simultaneously with the omission of Part 6C from the Forestry Act.

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

Clause 33 omits section 46(1AA) of the Forestry Act to remove the power of the Chief Executive to enter into a profit á prendre with FPQ. Instead, the Minister is empowered under new section 61QA to enter into a plantation licence in respect of SPF. FPQ's existing profit á prendre will in fact be terminated when the first plantation licence is entered under new section 61QA. This section will be omitted at the time the plantation licence is granted.

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

Clause 34 inserts a new subsection (2) into section 55 of the Forestry Act with respect to licences to get forest products etc. This subsection requires a plantation licensee or other person exercising delegated power under this section to advise an applicant of its ability to apply for a review of a decision under section 83A of the Forestry Act.

Amendment of s 56 (Permits etc.)

Clause 35 inserts a new subsection (4) into section 56 of the Forestry Act with respect to licences to get forest products etc. This subsection requires a plantation licensee or other person exercising delegated power under this section to advise an applicant of its ability to apply for a review of a decision under section 83A of the Forestry Act.

Clause 35 also inserts a new subsection (5) into section 56 of the Forestry Act to make it clear that new section 61QA and not section 56 is the operative provision as regards plantation licences and plantation sublicences. Other permits, licences, leases, authorities, agreements and contracts will continue to be able to be granted and extended by the Chief Executive under subsection 56(1), including over the licence area.

Amendment of s 57 (Power of entry under licence or permit)

Clause 36 inserts a new subsection (7) into section 57 of the Forestry Act to provide that section 57 (which grants to holders of permits and licences

under the Act certain powers of entry over nearby land for the purpose of accessing their permit or licence area) does not apply to a plantation licence or plantation sublicence. A plantation licensee's or plantation sub-licensee's rights of access over relevant State land will be governed by a licence, permit or agreement as contemplated by new subsection 61QL.

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

Clause 37 inserts a new subsection (7) into section 58 of the Forestry Act to provide that section 58 (which contains the Chief Executive's power to cancel, suspend a permit, licence, lease or other authority, or an agreement or contract granted or made under the Forestry Act) does not apply to a plantation licence or plantation sublicence. After the restructure, a plantation licence may only be cancelled in accordance with Division 6 of Part 6D of the Forestry Act. The ability to cancel a plantation sublicence will be governed by the terms of the sublicence.

Amendment of s 59 (Transfer of permits etc.)

Clause 38 inserts a new subsection (3) into section 59 (under which a lease, agreement, contract, permit, licence or other authority granted or made under the Forestry Act can be transferred or surrendered), which provides that the section does not apply to a plantation licence or plantation sublicence.

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

Clause 39 inserts a new subsection (3) into section 60 (under which a failure to comply with a provision, condition or restriction to which a lease, agreement, contract, permit, licence or other authority is granted or made under the Forestry Act is an offence) does not apply to a plantation licence or plantation sublicence. The consequence of a breach of the terms of a plantation licence will be set out in the plantation licence and also in Division 6 of Part 6D of the Forestry Act. The terms of a plantation sublicence will set out the consequences for a breach by the sublicensee.

Amendment of s 61H (Appeal to Land Court)

Clause 40 amends section 61H of the Forestry Act to correct a reference to a "division" of the Act which should instead be a reference to a "part" of the Act. This amendment is not related to the restructure of FPQ.

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

Clause 41 omits paragraph 61J(4)(a), which provides that the vesting of natural resource product under the agreement does not create an interest in land under the Land Act or the Land Title Act.

Section 61J establishes legal mechanisms to allow freehold landholders and lessees who own the trees as improvements to enter into natural resource agreements about the ownership, use and economic benefit of natural resource products (e.g. trees or carbon) and for those agreements to be registered as a profit a prendre on the land title pertaining to the property.

Whilst it is likely that registration of the agreement under Land Title Act has the effect of creating an interest in land, the removal of section 61J will remove confusion in the forestry plantation industry and ensure that any natural resource agreement made after commencement will create an interest in the land. Ensuring that an agreement changing the ownership of trees creates an interest in land will provide a level of security for landholders entering into any agreements relating to plantations for use in the voluntary carbon market. Existing agreements will not be affected by the amendment.

Amendment of s 61L (Definitions)

Clause 42 adds a reference to section 65A of the Forestry Act to a list of provisions set out in paragraph (d) of the definition of "relevant provision" in section 61L of the Forestry Act.

This amendment reflects a change to section 65 effected by clauses 52 and 53 (to omit subsections 65(3) and 65(3A) and insert new section 65A, which restates this subsection in more modern language). Section 61L of the Forestry Act is not repealed on assent, but only when clause 44 of the Bill becomes effective.

Amendment of s 61N (Application of relevant provisions)

Clause 43 replaces a reference to subsection 65(3) of the Forestry Act to new section 65A, reflecting the change effected by clause 53. Section 61N of the Forestry Act is not repealed on assent, but only when clause 44 Part 3A SPF of the Bill becomes effective.

Omission of pt 6C and s 61T

Clause 44 omits part 6C and section 61TW of the Forestry Act when the plantation licence is entered into. Part 6C made FPQ and FPQO, rather than the Chief Executive, the "administering entity" for various sections of the Forestry Act, so far as they applied to SPF. The effect of the repeal of part 6C is that functions and powers under these sections "revert" to the Chief Executive, who may exercise them personally or through a delegate such as the plantation licensee under new section 96B, or through another delegate such as an appropriately qualified employee of the Department. Transitional provisions reflecting this change are included in new sections 120, 122 to 126 and 129 of the Forestry Act.

Section 61T (formerly numbered 61Q) modified the application of part 7 of the Forestry Act to SPF in order to recognise the role of FPQ and FPQO as set out in Part 6C. This amendment will take effect simultaneously with the omission of Part 6C from the Forestry Act.

New Part 6D (Plantation forestry)

Clause 45 inserts new Parts 6D and 6E into the Forestry Act.

Insertion of new pts 6D and 6E

New Part 6D establishes the regulatory arrangements for plantation licences in respect of SPF.

New Division 1 - Preliminary

New section 61Q (Definitions for pt 6D)

New section 61Q provides supporting definitions for part 6D.

The term "plantation forestry" is relevant (inter alia) to the "use it or lose it" obligation imposed on the plantation licensee under new subsection 61QE(1)(a). Importantly, "plantation forestry" is an ongoing activity, consistent with the principle that State forests are permanently reserved for the purpose of producing timber and associated products in perpetuity in subsection 33(1) of the Forestry Act. This is directed towards ensuring that the licence area will be appropriately managed for forestry activities including being replanted after harvesting, consistent with sustainable management practices for plantation forestry that are generally accepted in the Australian plantation forestry industry at the relevant time.

New Division 2 - Plantation licences

New section 61QA (Agreements to deal with natural resource product etc.)

New subsection 61QA(1) empowers the Minister to grant a corporation the right to deal with natural resource product on specified SPF or specified parts of SPF for the purpose of plantation forestry and for incidental purposes, by entering into an agreement (plantation licence) with the corporation (plantation licensee) and provides for the matters that may be included in a plantation licence.

Under new section 61QA of the Forestry Act, a plantation licence can only be granted in respect of SPF land. New section 61QA(7) provides that if land forming part or all of the licence area for a plantation licence stops being SPF, the land also stops being licence area. This will also occur if land forming part or all of the licence area stops being State forest (which has the effect that it also stops being SPF). Removal of land from the licence area under new subsection 61QA(7) (except pursuant to new section 32B) is a compensation event under new section 61RH.

Without limitation, the incidental purposes contemplated by this section include granting and administering permits and licences under sections 35, 55, 56 and 73(2) to the extent that such functions and powers are delegated to the plantation licensee and other persons under new section 96B.

Consistent with the Government's commitment to protect lawful access rights for the public over SPF, a plantation licence does not confer rights of exclusive possession on the plantation licensee. Instead, it gives the plantation licensee the exclusive right to deal with, including get and sell, natural resource products in the licence area. The plantation licensee also

has a right to enter and remain in, and use, the licence area, but this is a non-exclusive right. This position is further clarified by new subsection 61QA(7).

The Bill will not give the plantation licensee the right to sell quarry material in the licence area (quarry material is not natural resource product under the Forestry Act). Instead, the plantation licensee will have the right to get and use quarry material in the licence area as provided for in the plantation licence and the relevant agreements. In this regard, it is intended that the plantation licensee will be permitted to use quarry material in the licence area to construct and maintain roads and tracks both within the licence area and outside the licence area where required to access the licence area. Pursuant to new subsection 61QA(5), no fee is payable in relation to a plantation licensee's right to get and use quarry material under its plantation licence.

New subsection 61QA(2)(e) provides that the plantation licensee's rights under new subsections 61QA(2)(a) and 61QA(2)(b) may be restricted or limited in relation to particular areas in the licence area. It is intended that more limited rights will apply to the areas known as "buffer areas", which are native forest areas within the licence area. Although the licence area comprises predominantly plantation timber, there are native forest areas which border plantation areas and protect them against fire, and which border and protect watercourses within the licence area. The plantation licence does not grant the plantation licensee the right to get and sell timber from these "buffer areas" (except to the extent that tree felling in these areas is incidental to routine maintenance). To the extent that the Chief Executive currently grants sales permits over these areas to third party timber processors, these arrangements will not be changed as a result of the amendments made by the Bill (however such permittees will be subject to new subsection 69E(5)).

New section 61QB (Related agreements)

New section 61QB empowers the Chief Executive under the Forestry Act, and the Chief Executive (fire) to enter into one or more agreements with a plantation licensee or plantation sublicensee about operational and other matters relevant to the use, maintenance and management of the licence area (related agreements). Such agreements can also, amongst other things, deal with arrangements relating to access over relevant State land. These agreements are not intended to be registered.

New section 61QC (Plantation licence is an interest in land)

New section 61QC clarifies that the nature of the interest conferred by a plantation licence is akin to a profit á prendre. As profits á prendre are classified as interests in land, the new section explicitly states that plantation licences and plantation sublicences confer an interest in land.

New section 61QD (Sale of natural resource product)

New section 61QD clarifies that, subject to the plantation licence, a plantation licensee may contract with other persons for the sale of natural resource products from its licence area, including by granting to a customer the right to get a specified volume of natural resource products from a specified area within the licence area (an "at stump" contract). It is intended that the plantation licensee or plantation sublicensee will enter into contracts on a purely contractual basis, and not as "sales permits" under the Forestry Act. The licensee may also conduct a business of selling harvested timber (e.g. merchandising timber sales delivered to mill door).

New section 61QE (Statutory obligations)

New section 61QE imposes statutory obligations on the plantation licensee, without limiting any other obligations of a plantation licensee under the Act, the plantation licence or a related agreement. It is intended that the plantation licence and the related agreements will impose a range of obligations on the plantation licensee, however, the two obligations imposed by section 61QE are particularly important in terms of protecting the public interest and have been included in the Forestry Act for this reason.

The plantation licensee's statutory obligations are:

- to use the licence area for the purpose of plantation forestry; and
- to not interfere with the lawful use of the licence area by members of the public and others unless it is reasonably required for the plantation licensee's use of the licence area for the purpose of plantation forestry or an incidental purpose.

The requirement to use the licence area for the purpose of plantation forestry, together with the enforcement mechanisms available to the Minister under new Division 4 of Part 6D of the Forestry Act, imposes a "use it or lose it" obligation on the plantation licensee. Consistent with the announced objectives for the sale, it is expected that the buyer will operate

a commercially and environmentally sustainable plantation forestry business post-sale. This requires an appropriate level of continuing investment in replanting the licence area, subject to legitimate plantation forestry considerations such as environmental conditions and forecast final product demand patterns. Although the plantation licence will allow the licence area to be used for purposes incidental to plantation forestry (ie including those activities conducted prior to sale, such as grazing, beekeeping, communications infrastructure and recreational activities), under new subsection 61QE(1)(a), plantation forestry must be the dominant purpose for which the licence area is used. It is implicit in the definition of "plantation forestry" that compliance with the obligation in new subsection 61QE(1)(a) will be assessed over a timeframe of appropriate length, and in respect of areas within the licence area of an appropriate size, having regard to generally accepted industry practice.

The requirement not to interfere with the lawful use of the licence area by members of the public and others unless it is reasonably required for the plantation licensee's use of the licence area for plantation forestry purposes or incidental purposes is one of a number of measures included in the Bill, the plantation licence and the relevant agreements to deliver on the Government's commitment to protect existing lawful access rights for the public over SPF land. Other mechanisms include the limitation on the delegated power to erect regulatory signs imposed by new subsection 96B(4)(b) and a requirement in the plantation licence to include information on the plantation licensee's website about how to apply for access permits in respect of the licence area.

Without limitation, "interference" can take the form of:

- erecting a regulatory notice prohibiting entry into an area (if the prohibition is not reasonably required for plantation forestry purposes or incidental purposes, it is also likely that the delegation of the notices power by the Chief Executive to the plantation licensee does not authorise the notice because of new subsection 96B(4)(b)); or
- creating a permanent physical barrier to public access.

It should be noted that the use of the licence area by members of the public and others contemplated by subsection 61QE(1)(b) is *lawful* use, such as a licensed driver or rider using a registered vehicle on formed roads in accordance with the road rules.

New subsection 61QE(3) provides that section 61QE does not require a plantation licensee to plant trees on:

- a "conservation" area identified in new section 32B: These areas are included in the plantation licence on a "one harvest" basis. After they are harvested, they will be rehabilitated to standards set out in the plantation licence and then removed from the licence area and from SPF, rather than being replanted; or
- an unformed plantation forestry road that is taken to be part of the licence area under new section 61QM. This is because the rights of the licensee over these areas are temporary in nature due to the fact that a road constructing authority may decide to construct a formed road on the unformed plantation forest road.

New section 61QF (Rights under a plantation licence)

New section 61QF clarifies that, subject to any contrary intention expressed or implied in the Forestry Act, the plantation licence or a related agreement, a right conferred on a plantation licensee under the Forestry Act, the plantation licence or a related agreement may be exercised by the plantation licensee's employees, agents, contractors, customers and invitees.

New section 61QG (Appointment of plantation manager)

New section 61QG gives the plantation licensee the right to appoint a person as a plantation manager, with the Minister's written approval, over part or all of the licence area. A plantation manager may also be a delegate of the Chief Executive of the Act under section 96B.

New section 61QH (Acts and omissions of a plantation sublicensee or plantation manager etc.)

New section 61QH makes the plantation licensee liable for the acts and omissions of a plantation sublicensee, plantation manager appointed by it and an employee, agent, contractor, customer or invitee of a plantation licensee, a plantation sublicensee or a plantation manager.

Those acts or omissions may amount to a breach of the Forestry Act, the plantation licence or the related agreements. This strengthens the need for the plantation licensee to supervise these persons.

New section 61QI (Plantation licence may be transferred)

New section 61QI permits a plantation licensee to transfer its rights and obligations under a plantation licence with the Minister's approval. The transfer must be registered (see section 61RO) and will take effect on registration. The section provides for the obligations of the plantation licensee to be transferred on registration, to overcome the common law position that obligations cannot be transferred.

A transfer cannot be registered unless the registered mortgagee of the plantation licence (if any) gives its written consent (see section 61RW(1)(d)).

Only the whole of a plantation licensee's interest in a plantation licence can be transferred. The mechanism for transferring part of a licence area is dealt with in sections 61RB to 61RS.

New section 61QJ (Related agreements may be transferred)

New section 61QJ allows the plantation licensee to transfer related agreements and its obligations under related agreements if it transfers its interest in a plantation licence to another party, provided certain conditions are met.

New section 61QK (Amending a plantation licence)

New section 61QK sets out a process for amending a plantation licence. A plantation licence may only be amended with the Minister's approval. Parties cannot be added or removed by amending a plantation licence. The appropriate dealing to add or remove parties may be a transfer.

New section 61QL (Plantation licensee's rights of access over relevant State land)

New section 61QL permits the Chief Executive to grant to the plantation licensee the rights of access over relevant State land, and to State owned infrastructure on relevant State land, that are necessary for the exercise of the plantation licensee's rights or obligations under the Forestry Act, the plantation licence or a related agreement under section 61QB(1).

If the Chief Executive and the plantation licensee fail to agree on the grant of reasonable access rights under this section, the plantation licensee's access rights are to be decided by the Minister. These rights bind all

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

Despite that, it is not intended that the Minister would grant access rights that are inconsistent with existing uses of land (i.e. existing tenures or interests in land).

New section 61QM (Unformed plantation forest roads)

New section 61QM will allow unformed plantation forest roads to be treated as being part of a licence area and used for plantation purposes.

Currently, dedicated roads do not form part of the State forest. There are a number of dedicated roads that run through the SPF that have never been constructed or used as a road, but have been planted with timber. Because these areas are not being used as roads, the State wishes to ensure that the plantation licensee may maintain these areas and use them to continue to grow and harvest timber until they are required (if ever).

New section 61QN (Chief Executive to identify unformed plantation forest roads for s 61QM)

New section 61QN provides that the Chief Executive may identify and record the boundaries of unformed plantation forest roads, as described in section 61QM, within the licence area.

New Division 3 - Plantation sublicences

New section 61QO (Approval)

New section 61QO establishes a statutory basis for a sublicence of a plantation licence to be granted. The plantation licensee (with the approval of the Minister and the written consent of any registered mortgagee) may enter into an agreement (plantation sublicence) with a corporation (plantation sublicensee) under which all of the plantation licensee's rights under its plantation licence in relation to all or part of the licence area are granted to the plantation sublicensee for a period that is less than the unexpired term of the plantation licence. A plantation sublicence may be used where the plantation licensee wishes to be a "property" investor and the plantation sublicensee is the operator of the plantation forestry business. Further, a plantation licensee may seek to sublicence part of a

licence area e.g. the licence area located in North Queensland, which the sublicence could operate.

Sections 61QO to 61QT replicate the provisions relating to plantation licences in Division 2 (so far as is relevant to plantation sublicensees).

Plantation sublicences must be registered (see section 61RO(2)(b)) and are effective upon registration (see section 61SF(1)).

New section 61QP (Rights under the plantation sublicence)

New section 61QP allows the plantation sublicensee to exercise the plantation licensee's rights under this Forestry Act, the plantation licence or a related agreement, subject to an express or implied contrary intention in any of those documents.

New section 61QQ (Appointment of plantation manager)

New section 61QQ gives the plantation sublicensee the right to appoint a person as a plantation manager over part or all of the licence area, with the Minister's approval.

New section 61QR (Plantation sublicence may be transferred)

New section 61QR permits a plantation sublicensee to transfer its rights and obligations under a plantation sublicence with the Minister's written approval and any such transfer must be registered.

Any transfer cannot be registered unless the registered mortgagee has given its written consent. The section provides for the obligations of the plantation sublicensee to be transferred on registration, to overcome the common law position. Only the whole of a plantation sublicence can be transferred.

New section 61QS (Related agreements may be transferred)

New section 61QS allows the plantation sublicensee to transfer related agreements and its obligations under related agreements if it transfers its interest in a plantation sublicence to someone else, provided certain conditions are met.

New section 61QT (Amending a plantation sublicence)

New section 61QT sets out a process for amending a plantation sublicence. A plantation sublicence may only be amended with the approval of the Minister, subject to the constraints set out in section 61QT(2). Any such amendment must be registered.

New section 61QU (Validity of plantation sublicence or amendment of plantation sublicence against mortgagee)

New section 61QU provides protection for a registered mortgagee if a plantation sublicence or an amendment of a plantation sublicence is entered into without the consent of the mortgagee. In that situation, the plantation sublicence or amendment of the plantation sublicence will not be binding on the mortgagee.

New Division 3A - Mortgages

New section 61QV (Mortgages require Ministerial approval)

New section 61QV allows a plantation licensee or plantation sublicensee to mortgage its interest in a plantation licence or plantation sublicence with the Minister's approval and to mortgage its interest in a related agreement in certain circumstances. As a condition of the Minister's approval, the Minister may require the mortgagee to enter into a tripartite agreement with the State in respect of its security interest.

New Division 3B - Ownership of improvements

New sections 61QW (Application of division) and 61QX (Ownership of equipment and improvements)

New sections 61QW and 61QX address the ownership of equipment and improvements taken, constructed or placed on a licence area by the plantation licensee or plantation sublicensee for the purpose of plantation forestry or an incidental purpose.

These sections are intended to overcome the common law rule in relation to fixtures being owned by the owner of the land.

New Division 4 - Cancellation

New section 61QY (Show cause notice for a cancellation of plantation licence)

New section 61QY allows the Minister to give a show cause notice to a plantation licensee where the Minister reasonably believes that the plantation licensee is not complying with its obligations under section 61QE(1) in relation to a licence area or part of a licence area. The show cause notice must satisfy the criteria specified in subsection (2). Thus, if a plantation licensee is not conducting the business in accordance with sustainable management practices for plantation forests, the Minister may give a show cause notice to the plantation licensee.

New section 61QZ (Representations about show cause notice)

New section 61QZ permits the plantation licensee to make written representations (known as accepted representations) in response to a show cause notice and compels the Minister to consider all written representations.

New section 61R (Ending show cause process without further action)

New section 61R provides that where the Minister concludes, after considering the accepted representations, that the plantation licensee is complying with its obligations under section 61QE(1), the Minister must not take any further action pursuant to the show cause notice. The Minister must notify the plantation licensee by notice that no further action will be taken about the show cause notice.

New section 61RA (Cancellation of plantation licence for licence area or part)

New section 61RA applies where the Minister, after considering submissions of the plantation licensee, continues to believe that the plantation licensee is not complying with its obligations under section 61QE(1) and considers that cancellation of the plantation licence for the licence area or part of the licence area is warranted. The Minster must then advise the plantation licensee of the decision and a cancellation must be lodged and registered.

New Division 6 - Surrender or division of plantation licence

New section 61RB (Surrender of plantation licence or part of a plantation licence)

New section 61RB sets out the method under the Forestry Act for a plantation licensee to transfer part of the plantation licence. This section permits a plantation licensee to apply to the Minister to surrender part or the whole of a plantation licence. Without limiting the Minister's discretion, the Minister may refuse an application to surrender until the area to be surrendered is rehabilitated to the Minister's satisfaction. Consent to the surrender must be obtained from any registered mortgagee or plantation sublicensee.

New section 61RC (Application for division)

New section 61RC permits a plantation licensee to apply to the Minister to divide its plantation licence by effectively surrendering part of the licence area and entering into a new plantation licence with respect to that affected area. The section sets out the requirements for the application. The concept of division does not enable the Minister to approve the surrender and then refuse the grant of a new licence over the affected area. The two acts are part of the one division process, which cannot be separated.

It is intended that plantation licensees would apply for a division in order to transfer their interest in the plantation licence in respect of part of the licence area. It is not intended for this provision to be used simply to split plantation licences. Therefore, section 61RE(2) has been inserted to allow for the original plantation licence and the new plantation licence to be linked contractually, in the event of default or termination.

New section 61RD (Deciding the application)

New section 61RD addresses how the Minister must decide the application for the proposed division. A key factor for the Minister is whether, after division, the affected area would be sustainable as a viable forestry plantation. The Minister must be satisfied that all required consents have been obtained (including the consent of any registered mortgagee).

New section 61RE (Approving the application)

New section 61RE provides that if the Minister approves an application for division, the terms of any new plantation licence entered into as a result of the division will be the same as the terms of the original plantation licence (except in respect of the licence area) unless otherwise agreed by the parties.

Section 61RE(3) has been inserted to make it clear that fully performed obligations should not be repeated in the plantation licence over the affected area (eg. an obligation to pay a one-off licence fee, payable for the grant of the original licence, should not be replicated in the new licence).

New section 61RF (Notice of decision)

New section 61RF provides for a notice to be given to the applicant of the Minister's approval or refusal of an application for division.

New section 61RG (Minister and the plantation licensee may enter into new plantation licence etc.)

New section 61RG provides for the Minister and plantation licensee to amend the original plantation licence, enter into the new plantation licence over the affected area and deal with or enter into related agreements.

Following the grant of the new plantation licence, interests that were registered in respect of the original plantation licence will be registered against the new plantation licence in the same order of priority.

New Division 7 - Compensation

New section 61RH (Events that are compensation events)

New section 61RH defines the compensation events that may occur with respect to the licence area for a plantation licence or plantation sublicence. This includes the commencement of construction of a formed road on an unformed plantation forest road, the removal of areas of the land from the State forest or the grant of leases by the Chief Executive under the Forestry Act in the licence area.

The Chief Executive may also grant a permit (including a sales permit), licence, lease, authority, agreement or contract over the licence area under section 56 personally or through another delegate. However, the right to

deal with natural resource products in the licence area granted under the plantation licence will be an exclusive right, as contemplated by new subsection 61QA(2)(a). Before doing so, the Chief Executive is required to consult with the plantation licensee and any plantation sublicensee for the relevant licence area under new section 69E and if the grant of the permit, licence, lease, authority, agreement or contract materially and adversely interferes with the use of the licence area for the purpose of plantation forestry, the grant is a compensation event under new subsection 61QX(1)(b)(iii).

New section 61RI (Events that are not compensation events)

New section 61RI prevents a plantation licensee or plantation sublicense from claiming compensation for a compensation event with respect to certain events, including the removal of conservation areas from the licence area or the removal of areas from the licence area for breach of the plantation licensee's obligations.

New section 61RJ (Chief executive to give notice of compensation events to the plantation licensee)

New section 61RJ requires the Chief Executive to give notice to affected plantation licensees and plantation sublicensees with respect to any proposed compensation event referred to section 61RH(1).

New section 61RK (Compensation to be assessed under applied provisions of the Acquisition of Land Act 1967 in absence of agreement)

New section 61RK provides for the payment of compensation by agreement. Where the Chief Executive and the plantation licensee cannot agree on the amount of compensation, the compensation payable will be assessed in accordance with Part 4 of the *Acquisition of Land Act 1967* (with appropriate changes).

It should be noted that where the compensation concerns unformed plantation forest roads, the licensee is only entitled to the market value of the natural resource product on the recommended road construction date as a measure of its loss given the temporary nature of its tenure over the unformed plantation forest road.

New Part 6E (Registration of interests in State plantation forests)

New Part 6E establishes a bespoke standalone registration system for the registration of plantation licences and related interests. One of the primary reasons for creating a separate register is that the plans of SPF available do not meet the requirements for registration under the Land Act 1994.

Although plantation licences will be registered pursuant to the Act, plantation licences relate to State land. On that basis, Part 6E has been drafted to reflect established concepts in the Land Act and to a lesser extent the Land Title Act, although these have been modified as appropriate.

Broadly, the functions of the registration system are to:

- publicly record plantation licences and interests in plantation licences;
- enable financiers to have their security interests registered; and
- provide a regime of priority of interests.

New Division 1 - Preliminary

New section 61RL (Definitions for pt 6E)

New section 61RL provides definitions of "plantation licence sketch plan" and "sketch plan" for Part 6E.

New Division 2 - Register

New section 61RM (Register of plantation licences)

New section 61RM requires the Chief Executive (lands) to keep a register of plantation licences. It is intended that this register would fall within the category of registers about land required or permitted by an act to be included in the land registry, pursuant to section 276(g) of the Land Act.

New section 61RN (Form of register)

New section 61RN allows the Chief Executive (lands) to keep the register in a form the Chief Executive considers appropriate.

New section 61RO (Registration of documents)

New section 61RO provides that plantation licences and other specified documents and/or dealings relating to plantation licences must be registered (with a sketch plan if the document relates to part of a licence area identified in a registered sketch plan).

Termination of a plantation licence or plantation sublicence is intended to capture two situations:

- the expiry of the plantation licence or plantation sublicence; or
- where the plantation licence or plantation sublicence is terminated, pursuant to the terms of the plantation licence or plantation sublicence.

A plantation licence will be registered against a State forest title (or multiple State forest titles) in the register of State forests to be kept under section 275(ba) of the Land Act and will be registered in the register of plantation licences. Dealings with plantation licences (e.g. plantation sublicences and mortgages) will be recorded as endorsements on the title for the plantation licence in the register of plantation licences only.

New section 61RP (Particulars that must be registered)

New section 61RP requires the Chief Executive (lands) to record certain particulars. Therefore, the provisions of a plantation licence will be recorded in the register and a "title" for each plantation licence will be created (similar to the creation of a "title" for a lease under the Land Act). All subsequent dealings with respect to the plantation sublicence will be registered against the plantation licence. Despite this terminology, no equivalent to a certificate of title is provided for. The plantation licence will also be recorded in the register of State forests.

Plantation sublicences will be endorsed as dealings on plantation licence titles rather than being the subject of separate "titles".

New section 61RQ (Particulars that may be recorded)

New section 61RQ permits the Chief Executive (lands) to register any particulars necessary to ensure the register is accurate, comprehensive and useable.

New section 61RR (Procedures on lodgement and registration of document)

New section 61RR outlines the procedures that apply on lodgement of documents with the Chief Executive (lands) and then on registration of the documents.

New section 61RS (Chief executive (lands) may correct registers)

New section 61RS provides for when and how the Chief Executive (lands) may correct the register and how correcting the register affects the holder of an interest recorded in the register and the register generally.

New section 61RT (Documents form part of the register)

New section 61RT provides that a document will form part of the register on registration in the register.

New Division 3 - General requirements for documents in the register

New section 61RU (Form of documents)

New section 61RU sets out the requirements as to the format of documents to be lodged in the register.

New section 61RV (Execution of documents)

New section 61RV describes how documents to be lodged in the register may be executed.

New section 61RW (Registered documents to comply with particular requirements)

New section 61RW describes the requirements that must be complied with before a document may be registered.

New section 61RX (Power of the chief executive (lands) when fraud suspected)

New section 61RX permits the Chief Executive (lands) to refuse to accept or register a document where the Chief Executive (lands) reasonably suspects the document to be affected by fraud.

New Division 4 - Registration of documents

New section 61RY (Right to have interest registered)

New section 61RY gives a person a right to have a lodged document registered if the document meets certain requirements.

New section 61RZ (Registered document operates as a deed)

New section 61RZ provides that a registered document operates as a deed.

New section 61S (Order of registration of documents)

New section 61S provides for the order of registration of documents where a series of documents are lodged in relation to the one plantation licence.

New section 61SA (Priority of registered documents)

New section 61SA provides for the priority of registered documents according to the timing of lodgement of documents and also establishes that registered documents have priority over unregistered documents.

New section 61SB (How a document is registered)

New section 61SB provides that a document is registered by recording in the register the particulars necessary to identify the document.

New section 61SC (When a document is registered)

New section 61SC states when a document is registered.

New section 61SD (No registration in absence of required approval or consent of Minister)

New section 61SD provides that a document is not registered if the

necessary Ministerial approval or consent has not been obtained or the terms of the document are inconsistent with the terms of any Ministerial approval or consent. In these circumstances, the Chief Executive (lands) may correct the particulars included in the register in relation to a document. The section also deems Ministerial approval or consent to have been given where the Minister is a party to a document.

New Division 5 - Consequences of registration

The registration system has been created so that a plantation licence will take effect in accordance with its terms. Its validity will not be conditional upon registration. However, registration is mandatory.

Any dealings with or documents affecting a plantation licence (or plantation sublicence), other than mortgages, must also be registered, so as to ensure the integrity of the register and to obtain the benefits arising from registration under the Forestry Act.

Mortgages of plantation licences (or plantation sublicences) are not required to be registered to be binding on the parties. This is to ensure that there is no question as to the validity or effect of an unregistered mortgage given that it does not take effect as a statutory charge. An unregistered mortgage will be effective as between the parties but will not obtain the benefits arising from registration under the Forestry Act. Notwithstanding that a mortgage is not required to be registered, given the benefits arising from registration, it is expected that most, if not all mortgages, will be registered.

Upon registering a mortgage, the mortgage will be effective and enforceable against the parties to the mortgage and third parties.

New section 61SE (Benefits of registration)

The concept of indefeasibility is not intended to apply with respect to the plantation licence system on the basis that it is not appropriate for the State of Queensland to guarantee the title of a person who holds an interest in non-freehold land.

New section 61SE provides that the benefits of Division 5 of Part 6E apply regardless of whether or not valuable consideration has been given.

New section 61SF (Effect of registration on interest)

New section 61SF details the effect of registration of an interest in a plantation licence other than a mortgage and makes it clear that it is the registration of a document that transfers, creates and/or vests a legal interest rather than the execution of the document itself. The section also provides that an interest in a plantation licence or plantation sublicence is subject to the specified rights and interests.

New section 61SG (Evidentiary effect of recording particulars in the register)

New section 61SG provides for the evidentiary effect of recording particulars of a registered document in the register.

New Division 5A - Transfers

New section 61SH (Registering a transfer)

New section 61SH provides for the requirements that must be satisfied in order for a transfer of a plantation licence or plantation sublicence to be registered. This section does not provide for the transfer of part of a plantation licence. See new section 61RC with respect to the process that will need to be followed in order to do so.

New Division 6 - Mortgages

New section 61SI (Registering a mortgage)

New section 61SI allows a plantation licensee or sublicensee to grant a mortgage, charge or other security interest over its rights under a plantation licence or plantation sublicence (mortgage) and specifies the requirements in order to register the mortgage.

New section 61SJ (Original mortgagee to confirm identity of mortgagor)

New section 61SJ provides for the requirements that must be satisfied and the records that must be kept by a mortgagee with respect to confirming the identity of the person who executed a mortgage as a mortgagor before a mortgage is lodged for registration.

New section 61SK (Mortgagee transferee to confirm identity of mortgagor)

New section 61SK provides for the requirements that must be satisfied and the records that must be kept by a mortgagee with respect to confirming the identity of a person who executed a transfer of a mortgage as a transferee before the transfer of mortgage is lodged for registration.

New section 61SL (Releasing a mortgage)

New section 61SL provides for the registration of a release of a registered mortgage and the effect of registration of the release.

New section 61SM (Amending or transferring a mortgage)

New section 61SM provides a mechanism for effecting amendments to and transfers of registered mortgages. An amendment will not require the Minister's approval under the Forestry Act, whereas a transfer will require the Minister's approval under the Forestry Act.

New section 61SN (Amending priority of mortgages)

New section 61SN allows the amendment of the priority of registered mortgages.

New section 61SO (Priority of advances)

New section 61SO addresses the priority of a registered mortgage in relation to all advances and the performance of all obligations secured by the registered mortgage.

New section 61SP (Transfer of mortgage does not affect priority)

New section 61SP addresses the priority of a registered mortgage immediately after it is transferred.

New section 61SQ (Powers of registered mortgagee)

New section 61SQ allows a registered mortgagee to exercise its rights and powers under the mortgage if the plantation licensee or plantation

sublicensee defaults under a registered mortgage and prescribes how those rights and powers must be exercised.

New section 61SR (Mortgagee exercising power of sale)

New section 61SR requires a registered mortgagee to obtain the Minister's approval in order to exercise a power of sale conferred by its mortgage or at law. When exercising a power of sale over a plantation licence or plantation sublicence (as approved by the Minister) the section enables the mortgagee to also transfer obligations under a related agreement in certain circumstances. The power of sale will arise under the mortgage document.

New section 61SS (Effect of transfer after sale under mortgage)

New section 61SS deals with the effect of a transfer executed by a mortgagee after the exercise of a power of sale under a registered mortgage.

New Division 7 - Trusts

New section 61ST (Details of trust must be given)

Trusts are not required to be disclosed on the register. However, new section 61ST allows for holders of interests in plantation licences or plantation sublicences to be registered as trustee of those interests if the required documentation is lodged with the Chief Executive (lands) with the document creating that interest. Obligations apply if the details of the trust change.

New Division 8 - Enforcement warrants

New section 61SU (Definition for div 8)

New section 61SU defines the term "enforcement warrant".

New section 61SV (Registering an enforcement warrant)

New section 61SV permits the Chief Executive (lands) to register a request to record an enforcement warrant in the circumstances outlined in the section.

New section 61SW (Effect of registering an enforcement warrant)

New section 61SW concerns the effect of the registration of an enforcement warrant on a plantation licence with respect to proposed transferees, plantation sublicensees, mortgagees and creditors.

New section 61SX (Cancellation of registration of an enforcement warrant)

New section 61SX deals with cancelling the registration of an enforcement warrant.

New section 61SY (Discharging or satisfying an enforcement warrant)

New section 61SY permits the registration of a discharge or satisfaction of an enforcement warrant.

New section 61SZ (Transfer of plantation licence sold in execution)

New section 61SZ addresses the effect of selling a plantation licence under a registered enforcement warrant.

New section 61T (Effect on enforcement warrant of transfer after sale by mortgagee)

New section 61T addresses the interaction between a mortgage registered over a plantation licence or plantation sublicence and an enforcement warrant relating to a plantation licence or plantation sublicence that is registered after the mortgage. This is to give registered mortgagees of plantation licences and plantation sublicences protection against unsecured creditors, by recognising that enforcement warrants do not apply to registered mortgagees of plantation licences or plantation sublicences.

New Division 9 – Powers of attorney

New section 61TA (Power of attorney)

New section 61TA allows for documents to be registered in the register of plantation licences to be executed under a registered power of attorney.

The power of attorney must be registered under the Land Title Act and may be revoked under the Land Title Act. Accordingly, section 61TA will operate as a deeming provision that allows registration of a power of attorney under the Land Title Act to be sufficient for the purposes of the Forestry Act.

New Division 10 – Caveats

New Subdivision 1 – Caveats – general

New section 61TB (Requirements of caveats)

New section 61TB sets out the requirements for caveats over plantation licences other than caveats prepared and registered by the Chief Executive (lands).

The interest claimed in relation to a plantation licence may include an interest in a plantation sublicence.

New section 61TC (Lodging caveat)

New section 61TC identifies persons who are permitted to lodge a caveat over a plantation licence or plantation sublicence. Examples of persons claiming a registrable interest for the purposes of section 61TC(1)(a) would include a proposed transferee of a plantation licence, an unregistered mortgagee or a grantee of an option to purchase a plantation licence.

However, to lodge a caveat, the caveator must have a registrable interest. For example, a transfer, mortgage or sublicence of a plantation licence requires mortgagee consent and therefore that consent must have been obtained to the dealing before a caveatable interest arises.

Subsection 61TC(2) makes it clear that an equitable mortgagee can only lodge a lapsing caveat.

New section 61TD (Notifying caveat)

New section 61TD requires the Chief Executive (lands) to notify each person whose interest or right to registration of a document is affected by the caveat.

New section 61TE (Effect of lodging caveat)

New section 61TE deals with the effect of lodging a caveat, which prevents dealings with documents affecting plantation licences or plantation sublicences only.

New section 61TF (Withdrawing caveat)

New section 61TF permits a caveator to withdraw a lodged caveat by lodging a request to withdraw it.

New section 61TG (Lapsing of caveat)

New section 61TG provides for the lapsing of certain caveats if the caveatee adheres to the prescribed procedure and the caveator then does not start proceedings as required in subsection (4).

New section 61TH (Removing caveat)

New section 61TH permits an application by a caveatee to the Supreme Court to remove a caveat lodged under this division and permits the Supreme Court to make the order.

New section 61TI (Cancelling caveat)

New section 61TI permits the Chief Executive (lands) to cancel a caveat in certain circumstances.

New section 61TJ (Further caveat)

New section 61TJ prevents a further caveat being lodged, without the leave of a court, by the same caveator (other than the Chief Executive (lands)) on the same or substantially the same grounds as an earlier caveat.

New section 61TK (Notices to caveator)

New section 61TK provides for the service of notices on caveators.

New Subdivision 2 – Caveats – chief executive (lands)

New section 61TL (Chief executive (lands) may prepare and register caveat)

New section 61TL permits the Chief Executive (lands) to prepare and register caveats in favour of a person in the circumstances set out in the section.

New Division 11 – Relationship with other laws

New section 61TM (Relationship with Property Law Act 1974)

New section 61TM provides that certain provisions of the *Property Law Act 1974* do not apply to a mortgage of a plantation licence or plantation sublicence. The purpose of this section is to avoid any future doubt about whether the provisions excluded by this section apply with respect to a mortgage of a plantation licence or plantation sublicence. The excluded provisions also reflect the difference in the nature of a mortgage under the *Property Law Act 1974* (which is effective on registration) and a mortgage of a plantation licence or plantation sublicence (which is effective on execution). As mortgages under the *Property Law Act 1974* take effect as statutory charges, the *Property Law Act 1974* sets out provisions which might otherwise be found in a mortgage document.

New section 61TN (Relationship with Personal Property Securities Act 2009 (Cwlth))

New section 61TN addresses the relationship between the Forestry Act and the *Personal Property Securities Act 2009*. As expressly provided for under the *Personal Property Securities Act 2009*, the section includes a declaration that none of a plantation licence, a plantation sublicence or any other right, licence or authority granted by or under the Forestry Act are personal property for the purposes of the *Personal Property Securities Act 2009*. This declaration is for the avoidance of doubt, as both a plantation licence and a plantation sublicence confer an interest in land.

New Division 12 - General

New section 61TO (Withdrawing lodged document before registration)

New section 61TO permits the Chief Executive (lands) to withdraw or permit a document to be withdrawn where he/she is of the view that the order of lodgement of documents does not give effect to the intention expressed in the document or the document is a document that should not have been lodged.

New section 61TP (Chief executive may call in document for correction or cancellation)

New section 61TP permits the Chief Executive (lands) to call a document in for correction or cancellation.

New section 61TQ (Requisitions)

New section 61TQ permits the Chief Executive (lands) to issue requisitions about lodged documents and to refuse to deal with a document lodged or deposited (and any document depending on it for registration) until the requisition is complied with.

New section 61TR (Rejecting document for failure to comply with requisition)

New section 61TR permits the Chief Executive (lands) to reject a document (and any document(s) depending on that document for registration) where a requisition is not complied with. The rejected document will lose its priority but may be relodged after the requisition has been complied with.

New section 61TS (Entitlement to search the register)

New section 61TS permits persons to search the register and obtain copies of certain particulars or documents in certain circumstances for a fee prescribed by regulation.

New section 61TT (Evidentiary effect of certified copies of documents)

New section 61TT provides that a certified copy of the particulars recorded in the register is evidence of the particulars recorded where that copy is obtained under section 61TS(1)(b) of the Forestry Act.

New section 61TU (Service)

New section 61TU addresses the service of notices required or permitted to be served under the Forestry Act.

New section 61TV (Protection from liability)

New section 61TV protects the Chief Executive (lands) and persons performing functions of the Chief Executive (lands) under a delegation from civil liability in certain circumstances.

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

Clause 46 replaces the heading of Part 7 of the Forestry Act with "Part 7 Fires on State forests, timber reserves and forest entitlement areas".

New Part 7 Fires on State forests, timber reserves and forest entitlement areas

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

Clause 47 renumbers section 61Q of the Forestry Act as section 61TW.

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

Clause 48 amends section 62 of the Forestry Act. The nature of this provision is to prohibit the lighting etc. of fires on State forest and other forest reserves other than under an authority given under part 7 of the Fire Act. It is proposed that a plantation licensee or any plantation sublicensee will be treated similarly to other occupiers of land for the purposes of part 7 of the Fire Act. That is, subject to satisfying the criteria therein, the plantation licensee or plantation sublicensee may obtain an authority under part 7 of the Fire Act. Consequently, the prohibition in subsection 62(1)

will have no application to the plantation licensee or plantation sublicensee while ever such an authority is in place.

It is not proposed that the plantation licensee will have powers under the Act in addition to those derived from an authority given under part 7 of the Fire Act in respect of the lighting of fires on its licence area. Consequently, the reference in this section to "a person performing duties under this Act" will not include the plantation licensee, plantation sublicensee, plantation manager or any plantation officer. See clause 20, section 18C.

The offence under section 62(1) may still be committed in the licence area by a third party. Should this occur, the plantation licensee or a plantation sublicensee may suffer damage as a result of the offence. The amendments to subsection 62(2), together with subsection 88(3) (as amended) enables a plantation officer or another person authorised by the Chief Executive (which can include the plantation licensee or a plantation sublicensee) to bring a prosecution for an offence under the Forestry Act, as a result of which damage suffered by the plantation licensee or plantation sublicensee may be recovered from the offender.

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

Clause 49 amends section 63 of the Forestry Act. This section imposes a positive obligation on holders of leases, licences, permits and other authorities or rights and privileges in respect of State forest and other forest reserve to make all reasonable provision for fire prevention, detection, control and extinguishment, make appropriate notifications on becoming aware of any fire on, or which threatens, State forest or other forest reserve, and do everything reasonably within its power to extinguish such a fire.

It is appropriate that the plantation licensee and any plantation sublicensee should have similar, but not identical, obligations. These will be set out in new section 63A. Consequently, new subsection (5) of section 63 provides that section 63 does not apply to a plantation licensee, a plantation sublicensee or any manager, supervisor or other person acting in the general management or control of the business of the plantation sublicensee.

Because the licence area is a subset of State forest, a third party holder or their agent may have notification and extinguishment obligations under this section in respect of the licence area. It is not proposed to change the nature of those arrangements. However, a new subsection 63(1B) will require the forest officer or other person who first receives a notification about a fire on

or threatening the licence area to notify the plantation licensee and any plantation sublicensee for that area.

Insertion of new s 63A (Duty of plantation licensee etc.)

Clause 50 inserts a new section 63A in the Forestry Act to set out appropriate obligations of the plantation licensee or plantation sublicensee in respect of fires on the licence area or surrounding State forest. These obligations do not extend to entering a nearby non-licence area to endeavour to extinguish the fire. This is because it is intended that specific protocols between the plantation licensee or plantation sublicensee, the State and the commissioner of the Queensland Fire and Rescue Service (in the form of a related agreement as contemplated by new Part 6D of the Forestry Act) will govern the circumstances in which the plantation licensee or plantation sublicensee may enter a non-licence area to prevent, control and extinguish fire.

It is appropriate that the plantation licensee or plantation sublicensee make notifications of fires in circumstances similar to those of existing licensees, permit holders, etc. Consequently, new subsection 63A(3) obliges a plantation licensee or plantation manager to immediately notify a forest officer of certain fires burning on State forest outside the licence area if the plantation licensee considers it is unlawfully lit or out of control, outside State forest which may threaten the State forest, or on the licence area which may spread to the surrounding State forest.

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

Clause 51 amends section 64 of the Forestry Act such that the section will not apply to a plantation licensee, plantation sublicensee or a plantation licence or plantation sublicence. The provisions in the plantation licence and related agreements deal comprehensively with the consequences of breach of the law, including the Fire Act, part 7 and section 62 or 63 of the Forestry Act. It is therefore not appropriate for this provision to apply to a plantation licensee or plantation sublicensee or to a plantation licence or plantation sublicence.

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

Clause 52 amends section 65 of the Forestry Act to provide (via a note) that a plantation operator or plantation officer is not a person performing duties under the Act for the purposes of the whole of section 65. Thus, the plantation licensee does not have powers of entry over land neighbouring the licence area under subsection 65(1). As an occupier of land, the plantation licensee or any plantation sublicensee will derive powers of entry onto lands within 1.6 km from the licence area for extinguishment purposes from section 68 of the Fire Act. In addition, it is intended that protocols between the plantation licensee, the State and the commissioner of the Queensland Fire and Rescue Service (in the form of a related agreement as contemplated by new Part 6D of the Forestry Act) will govern the circumstances in which the plantation licensee or a plantation sub-licensee may enter a non-licence area to control and prevent fire. Further, the plantation licensee is not entitled to an indemnity under subsection 65(1A), and is not able to recover expenses under subsection 65(2), because that subsection only allows recovery for expenses incurred by a person performing duties under the Forestry Act.

The licence area is not excluded from the land upon which persons performing duties under the Act (including forest officers) may enter. The plantation licensee or a plantation sublicensee may also be liable as an occupier of the licence area under subsection 65(2).

Subsections 65(3) and 65(3A) have been moved to new section 65A and restated in language consistent with modern drafting practice. The reason for relocating these provisions is that they do not relate to extinguishing fires on lands *adjoining* State forest etc., but rather relate to extinguishing fires *on* State forests etc.

The amendments to subsection 65(4) correct an erroneous reference to "bush fire brigade" (the term used in the Fire Act is "rural fire brigade"). As outlined above, a plantation licensee, plantation sublicensee, plantation manager or plantation officer is not a person performing duties under Forestry Act for the purposes of section 65 and so is not deemed to be a first officer of a rural fire brigade under subsection 65(4).

Insertion of new ss 65A (Recovery of expenses incurred in extinguishing fires on State forests) and 65B (Recovery of expenses incurred in extinguishing fires in licence areas)

Clause 53 inserts new sections 65A and 65B in the Forestry Act. New section 65A restates subsections 65(3) and 65(3A) of the Forestry Act (prior to their deletion) in more modern language. Although the licence area is a subset of State forest, new section 65A does not create a right of recovery by the plantation licensee or plantation sublicensee because they are not persons performing duties under the Act for this section.

Section 65A will allow the State to recover from the plantation licensee or plantation sublicensee as an occupier of the licence area should the other elements of the section be satisfied. Should the State incur expenses in extinguishing a fire in a licence area which originated outside State forest, timber reserve or forest entitlement area, the State can recover under this section (because the licence area is a subset of State forest).

New section 65B (Recovery of expenses incurred in extinguishing fires in licence area)

New section 65B creates a statutory right of recovery in favour of the plantation licensee or plantation sublicensee for expenses incurred in extinguishing unauthorised fires which start outside the licence area. Recovery is limited to "reasonable" expenses. A statutory right of recovery is appropriate in the circumstances because the scheme of the Forestry Act and the Fire Act, so far as they apply to the licence area, is to make the plantation licensee primarily responsible for fire control and prevention on the licence area, and the expenses incurred by the plantation licensee in this regard may be significant.

The plantation licensee cannot recover these expenses from the State under this section. This does not limit the right of the licensee to recover damages if it brought an action against the State.

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

Clause 54 inserts a new subsection (6) into section 69 of the Forestry Act to provide that the term "authority" does not include plantation licence or plantation sublicence. Section 69 provides for the cancellation of a licence or permit under the Act where there has been a breach by a holder of the licence or permit of the Fire Act. The provisions in the plantation licence

and related agreements deal comprehensively with the consequences of breach of law, including the Fire Act, Part 7 and Part 7 of the Forestry Act. It is therefore not appropriate for this provision to apply to a plantation licence or plantation sublicence. It will continue to apply to leases, licences, permits and other agreements, authorities and contracts granted over the licence area under sections 35, 55, 56 and 73(2), including FPQ sales permits, and those granted and administered by the plantation licensee or plantation sublicensee as the delegate of the Chief Executive (lands) under section 96B.

Replacement of s 69E (Chief executive must consult with plantation licensee or plantation sublicensee if considering exercising power in relation to a licence area)

Clause 55 replaces existing section 69E (which is being omitted as it refers to Part 6C of the Forestry Act, which is to be repealed) with a new section 69E. New section 69E provides that the Chief Executive is required to consult with the plantation licensee, and any plantation sublicensee, prior to granting or making a permit, licence, lease or other authority or an agreement of contract under the Forestry Act (relevant authorisation) over the licence area. However, the section does not apply where the Chief Executive acts through a delegate for the licence area appointed under new section 96B.

The Forestry Act does not restrict the Chief Executive's ability to grant or make relevant authorisations over the licence area, however this amendment is intended to ensure that the interests of the plantation licensee are not prejudiced.

Examples of circumstances where the Chief Executive may wish to grant or make a relevant authorisation over the licence area other than through a delegate appointed under new section 96B include in relation to licences to take quarry material and permits for sporting and other events which traverse both State forest and a licence area (eg. a car rally or bicycle race). Activities of this kind have the potential to disrupt plantation forestry operations and cause damage to infrastructure such as roads. In consulting with the plantation licensee or plantation sublicensee, the Chief Executive is required to consider the impact on the plantation licensee or plantation sublicensee, and applicant's capacity to reimburse the cost of any damage. The new section also enables the plantation licensee and plantation sublicensee to recover damages from a holder of a relevant authorisation who damages the licence area.

Amendment of s 72 (Wild stock)

Clause 56 inserts references to plantation officers into section 72 of the Forestry Act, with the result that both forest officers and plantation officers can exercise power under the section (however plantation officers can only exercise powers within the licence area for which the plantation officer is appointed).

Amendment of s 73 (Unlawfully using State Forests etc.)

Clause 57 adds a new subsection (3) into s 73 (under which certain activities are unlawful on State forest) to provide that a licensee exercising delegated power under this section must advise an applicant of its ability to apply for a review of a decision under section 83A of the Forestry Act.

Amendment of s 74 (Unauthorised building etc. within State forests)

Clause 57A amends section 74(1) and (3) to permit a plantation officer to bring proceedings to remove unauthorised structures in the State forest.

Amendment of s 75 (Removal of trespassers)

Clause 58 amends section 75 of the Forestry Act to provide that the term "forest officer" includes a plantation officer to permit a plantation officer to apply to a Magistrate for an order to remove trespassers from any State forest, timber reserve or forest entitlement area.

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

Clause 59 amends section 76(1A) of the Forestry Act to prevent a Minister from excluding or limiting a plantation licensee's or plantation sublicensee's access to its licence area.

Amendment of s 79 (Subpurchase)

Clause 59A amends section 79 of the Forestry Act to provide that that section does not apply to a purchaser of natural resource product from a plantation licensee or plantation sublicensee. The effect of section 79 is to deem a "subpurchase" of forest products got under a permit, licence or other right or authority under the Forestry Act to be purchased on the same terms and conditions as the permit or licence etc. This is not appropriate for

purchasers from a plantation licensee or plantation sublicensee. Their customer contracts will simply take effect in accordance with their terms.

Amendment of s 80 (Accounts of forest products)

Clause 60 inserts a new subsection (3) into section 80 of the Forestry Act to provide that section 80 does not apply to a plantation licensee or plantation sublicense. Section 80 concerns the Chief Executive's rights to inspect the books and accounts purchasers of forest products or quarry material. This provision is inconsistent with the plantation licensee's exclusive rights to get and deal with natural resource products in the licence area.

Insertion of new s 83A (Particular decisions subject to review)

Clause 61 inserts a new section 83A providing for a procedure for certain decisions, made by a delegate of the Chief Executive under section 96B of the Forestry Act, to be reviewed. A reviewable decision for the purposes of this review is a decision in relation to the exercise of a power under sections 35, 55, 56 and 73(2). These are the powers under which the delegate may grant a range of permits, licences and other authorities under the Forestry Act. The new section provides that a person dissatisfied with a reviewable decision may apply to Chief Executive for a review on the merits of that decision to be conducted.

In the case of decisions regarding authorities that are granted under sections 35 and 55 (which relate to the getting of forest products or involve an occupation right for commercial purposes) the Chief Executive may delegate the conduct of the review under section 96B to a senior person employed by the plantation licensee or sublicensee who has the appropriate commercial expertise to review the decision.

In the case of decisions regarding authorities that are granted under sections 56 or 73(2), which are primarily recreational in character, it is more appropriate for the review to be conducted by an officer of the Chief Executive (rather than a delegate under section 96B).

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

Clause 62 amends section 84 so that it contemplates a plantation officer. This section provides that where an officer has:

- issued a notice;
- given an order;
- given a direction;
- made a request; or
- taken an action,

under the Forestry Act, that officer or another officer who has like powers under the Forestry Act may at any time withdraw, revoke or vary the relevant action.

Amendment of s 88 (Offences generally)

Clause 63 inserts into section 88 of the Forestry Act references to plantation licensees and plantation sublicensees. This general offence provision deals with (amongst other things) the State's right to compensation where an offence has been committed, as well as the prosecutorial rights of a forest officer (and now a plantation officer in certain circumstances).

New section 88A (Recovery of monies by plantation licensee or plantation sublicense)

Clause 64 inserts new clause 88A which enables a plantation licensee or plantation sublicensee to recover certain fees or amounts that are owing to the State under the Act and capable of being recovered by the plantation licensee or plantation sublicensee directly from the debtor. Section 96B(6) provides for the retention by the plantation licensee or plantation sublicensee of certain revenue such as permit and licence fees.

Amendment of s 91 (Power to waive proceedings)

Clause 65 inserts a new subsection into section 91 of the Forestry Act. New subsection (1AA) provides that section 91 does not apply to natural resource product in a licence area. Section 91 sets out the Chief Executive's powers in relation to the recovery of money in connection with damage or loss suffered in relation to forest products or quarry material interfered with in contravention of the Forestry Act. The power is not appropriate for natural resource product in a licence area post-restructure, as:

- the plantation licensee will have an exclusive right to natural resource product in the licence area, and therefore the Chief Executive would not be seeking to recover loss in relation to such product; and
- the plantation licensee has other avenues through which it can seek to recover loss or damages in respect of natural resource product in the licence area (see new section 88A).

Amendment of s 95 (Facilitation of proof)

Clause 66 amends section 95 of the Forestry Act in order to remove references to documents created by FPQ and FPQO. This section will take effect on the date the plantation licence is entered into under new section 61QA of the Forestry Act.

Insertion of new s 96AA (Delegation by Minister)

Clause 67 inserts new section 96AA in the Forestry Act to permit the delegation of the Minister's functions and powers under Parts 6D and 6E to the Chief Executive administering the Forestry Act.

Amendment of s 96A (Delegation by chief executive)

Clause 68 amends section 96A to insert "general" in the heading of the section in order to distinguish this section from the specific powers of delegation in section 96B of the Forestry Act.

Insertion of new ss 96B – 96E

Clause 69 inserts new sections 96B, 96C, 96D and 96E into the Forestry Act.

New section 96B (Delegation by chief executive – State plantation forests)

Section 96B permits the Chief Executive to delegate the Chief Executive's functions under certain sections in the Forestry Act to a plantation licensee, plantation sublicensee, plantation manager, plantation officer or a registered mortgagee (or enforcing party appointed by a registered mortgagee where relevant). The delegated functions include the functions or powers to appoint plantation officers, to erect regulatory and information notices, to grant permits under the Forestry Act (other than permits for the

sale of natural resource products) and to exercise powers with respect to permits. The exercise of functions and powers delegated in accordance with this section is restricted to the licence area.

The Chief Executive may delegate powers under section 56 to the plantation licensee, a plantation sublicensee, a plantation manager or a plantation officer under new section 96B for forest products, but only in respect of the licence area. However, the delegation does not include the function of granting sales permits for natural resource products, such as plantation timber, reflecting the intention that, post-restructure, the plantation licensee or plantation sublicensee will enter into customer contracts on a purely contractual basis, and not as "sales permits" under the Forestry Act.

The plantation licensee is permitted to retain fees and other amounts payable under the licences and permits previously granted by FPQ and transferred to the licensee and for new licences and permits to be granted over the licence area by the licensee under delegated authority.

New section 96C (Delegation by chief executive – lands)

Section 96C provides for the Chief Executive (lands) to delegate his or her functions under the Forestry Act to an appropriately qualified public service officer.

New section 96D (Delegation by FPQ and head of FPQO)

Section 96D permits FPQ and/or the head of FPQO to delegate his or her functions to:

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

This section will permit the "business-as-usual" operations of FPQ and FPQO to continue during the period between the transfer of assets and liabilities to a new company, FPQ Pty Ltd, and the completion of the sale.

New section 96E (Protection from liability)

New section 96E provides for the protection of a plantation officer from liability where the plantation officer has acted, or omitted to act, honestly

and without negligence. Where civil liability does not attach to the plantation officer, it will attach to the plantation licensee or the plantation manager.

Amendment of s 97 (Regulation-making power)

Clause 70 omits section 97(4) of the Forestry Act. Since the Bill repeals the *Forestry Plantations Queensland Act 2006,* this subsection is no longer required.

Replacement of pt 10 heading (other transitional provisions)

Clause 71 amends the heading of Part 10 of the Forestry Act to create a new division in the part relating to transitional provisions inserted in the Forestry Act by the *Forestry Plantations Queensland Act 2006.* New division 2 of part 10 (added by clause 72 below) relates to transitional provisions inserted by this Bill.

Insertion of new pt 10, div 2

Clause 72 inserts a new Division 2 into the transitional provisions in Part 10 of the Forestry Act. This new part contains savings provisions to provide for the continuing validity of the acts of FPQ and FPQO, and provisions for certain declared areas within SPF, following commencement of the Forestry Act.

New Division 2 Natural Resources and Other Legislation Amendment Act 2010

New section 118 (Definitions for subdiv 1)

New section 118 provides definitions for the transitional provisions in subdivision 1 of Division 2.

New section 119 (Appointment of officers)

New section 119 provides that a forest officer employed by FPQO who is transferred or seconded to a declared entity under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* is taken to be a plantation officer for the licence area from the date the declared entity

becomes a plantation licensee, plantation sublicensee or plantation manager.

New section 120 (Provision for s 34AA or 34AB (Regulation of use of State forests by notices and display in State forests of information notices in conjunction with regulatory notices)

New section 120 provides that a notice erected by FPQ under sections 34AA or 34AB which is in effect immediately before commencement is taken to be a sign erected by the Chief Executive and continues to have effect.

New section 121 (Provision for s 34A (Specialised management within State forests))

New section 121 provides that where a feature protection area or scientific area under old section 34A continues to be SPF after commencement, the area continues to be a feature protection area or scientific area and the Governor in Council may continue to exercise power under old section 34A to revoke or amend a declaration in relation to those areas.

New section 122 (Provision for s 34G (regulating movement of vehicles on feature protection areas etc.))

New section 122 provides that a notice erected by the Chief Executive or FPQ under section 34G(1) (which deals with regulation and prohibition of movement of vehicles in feature protection areas, State forest parks and forest drives) which is in effect immediately before commencement is taken after commencement to have been erected by the Chief Executive, and continues to have effect.

New section 123 (Provision for s 34H (Self-registration camping areas))

New section 123 provides that a notice erected by the Chief Executive or FPQ under section 34H (which deals with self-registration camping areas) which is in effect immediately before commencement is taken after commencement to have been erected by the Chief Executive, and continues to have effect.

New section 124 (Provision for s 35 (Granting of permit for land within State forest))

New section 124 provides that a permit granted by FPQ under section 35 that is in force immediately before commencement continues in effect after commencement, and is taken from commencement to have been granted by the Chief Executive.

New section 125 (Provision for s 55 (Licences to get forest products etc.))

New section 125 provides that a licence granted by FPQ under section 55 that is in force immediately before commencement continues in effect after commencement, and is taken from commencement to have been granted by the Chief Executive.

New section 126 (Provision for s 56 (Permits etc.) – general)

New section 126 provides that a permit, licence, lease or another authority, or an agreement or contract, granted by FPQ under section 56 other than an FPQ sales permit, that is in force immediately before commencement continues in effect after commencement, and is taken from commencement to have been granted by the Chief Executive.

New sections 127 & 128 (Provision for s 56 (Permits etc.) - administering party for FPQ sales permits and application of relevant provisions for FPQ sales permits)

New section 127 inserts a new provision for section 56 which preserves FPQ sales permits as if they were granted by or made by the Licensee.

New section 128 inserts a new provision for section 56 which concerns FPQ sales permits. This section is intended to deal with the dual legal characteristics of these sales permits, namely as both a general law contract and as a statutory permit. They are general law contracts in that the commercial terms were negotiated at arms length between the parties. They are also sales permits since they may have been simultaneously issued as a permit under section 56 of the Forestry Act. The sections grant to a plantation licensee a set of powers under the Forestry Act including powers under section 58(1) and 58(1B) to the exclusion of the Chief Executive of the Department by appointing the plantation licensee as an

administering authority for these and other provisions solely in relation to these sales permits.

Two control mechanisms are proposed to constrain the exercise of the powers to terminate under section 58(1) and 58(1B) of the Forestry Act. Firstly, where a FPQ sales permit contains terms and conditions permitting termination under the general law, the plantation licensee may only terminate the statutory permit under section 58, if it is also permitted to terminate the sales permit/commercial agreement under the general law. Secondly, where a sales permit is more akin to a statutory permit than a commercial agreement and does not contain terms and conditions permitting termination under the general law, the plantation licensee may exercise its powers under section 58 to terminate the sales permit. However this is a decision that can be reviewed by the Chief Executive under the Forestry Act.

New section 129 (Provision for s 73 (Unlawfully using State forests etc.))

New section 129 provides that a permit granted by FPQ under section 73(2) that is in force immediately before commencement continues in effect after commencement, and is taken from commencement to have been granted by the Chief Executive.

New section 130 (References to FPQ)

New section 130 provides generally that a reference to FPQ, the Chief Executive of FPQ, or the Head of FPQO in relation to SPF or part of SPF may be taken as a reference to the plantation licensee or a plantation sublicensee, if the context permits.

New section 131 (Dissolution of corporation sole under the Forestry Plantations Queensland Act 2006)

New section 131 provides for the dissolution of FPQ, following the completion of the restructure. This section will take effect on a date to be fixed by proclamation.

New section 132 (Amendment of regulations by the 2010 Amendment Act does not affect powers of Governor in Council)

New section 132 provides that the amendment of the regulations to the Forestry Act, namely the *Forestry Regulation 1998* and the *Forestry (State Forests) Regulation 1987* by the *Natural Resources and Other Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend those regulations or repeal them.

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

Clause 73 omits Schedule 1 of the Forestry Act, which sets out the distribution of functions between FPQ and the Head of FPQO. This section will take effect on a date to be fixed by proclamation.

Amendment of sch 3 (Dictionary)

Clause 74 amends schedule 3 (dictionary) of the Forestry Act to delete certain definitions and to include definitions of accepted representations, chief executive (fire), compensation event, enforcement warrant, enforcing party, fire commissioner, forest officer, licence, licence area, mortgage, mortgagee, original plantation licence, plantation forestry, plantation licence, plantation licence sketch plan, plantation licensee, plantation manager, plantation officer, plantation operator, plantation sublicence, plantation sublicensee, reasonably believes, reasonably suspects, register, registered, register of plantation licences, registry, related agreement, relevant State land, requisition, show cause notice, show cause period, sketch plan and State plantation forest.

Part 8 Amendment of Forestry Regulation 1998

Regulation amended

Clause 75 provides that part 8 of the Bill amends the *Forestry Regulation 1998*. The Regulation is being amended by primary legislation, rather than by an amending regulation, in order to meet the required timeframes for the restructure.

Amendment of s 3 (Powers of forest officers in recreation areas)

Clause 76 amends section 3 of the Regulation to give plantation officers the ability to direct a person to leave a recreation area.

Amendment of s 7 (Fire control in recreation areas)

Clause 77 amends section 7 of the Regulation and establishes an offence of lighting a fire in a recreation area (other than in a fire place or barbeque provided by the Chief Executive). However, it is not an offence if the person lights or uses a fire in a barbeque, stove or other appliance specially constructed for containing a fire, and the use of the barbeque, stove or other appliance is agreed to by a forest officer. Clause 77 provides that a plantation officer may also agree to the lighting of a fire.

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

Clause 78 amends section 23 to provide that a forest officer has the power to give directions in relation to the use of vehicles in State forests. Clause 78 extends this power to plantation officers.

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

Clause 79 amends section 24 to provide that a forest officer has the power to give directions in relation to the operation of vessels in State forests. Clause 79 extends this power to plantation officers.

Insertion of new s 32A

Clause 80 inserts new section 32A in the Regulation to provide that the areas of State forest described in schedule 4A are declared to be SPF. This is because the *Forestry Plantations Queensland Act 2006* will be repealed, and as such SPF will need to be declared under the Regulation rather than under the *Forestry Plantations Queensland Regulation 2006*.

Omission of s 33 (Forest drives)

Clause 81 omits section 33 of the Regulation which declares certain areas of State forest (listed in schedule 4 to the Regulation) to be forest drives. At the commencement, there will be no areas declared to be forest drives. The provision in the Act enabling an area to be declared as a forest drive by

regulation (section 34A) will remain, but will no longer apply to SPF. It should be noted that the revocation of forest drive classification does not affect the rights of members of the public to drive on roads within the former forest drive area. The only effect is that the specific provisions in sections 34F and 34G will cease to apply to the area.

Amendment of s 34 (Plan references)

Clause 82 inserts a reference to "PLP" (plantation licence plan) in paragraph (a) of section 34 of the Regulation. This paragraph provides that "FTY" (forestry) and "FSM" (forestry special management) plans are available from the department administering the Forestry Act.

Replacement of sch 4 (State forest parks)

Clause 83 amends schedule 4 to the Regulation to:

- revoke State forest park classification in respect of two areas, SFP9 on plan FSM37 (known as Pechey) and SFP7 on FSM35 (known as East Nanango); and
- replace the State forest park reference with an updated reference in respect of two areas, SFP4 on plan FSM32 (known as Coochin Creek) and SFP23 on plan FSM80 (known as Charlie Moreland) to reflect minor changes to the boundaries of these areas. From commencement, the Coochin Creek State forest park will be the area referred to as SFP24 on plan FSM32, and the Charlie Moreland State forest park will be the area referred to as SFP25 on plan FSM80.

In each case, the areas excised from State forest park are to retain their State forest classification and be included in the SPF land declared under new schedule 4A to the Regulation. These changes to the estate reflect the outcome of a process to match the boundaries of SPF to existing plantation forestry activity, correct anomalies and generally ensure that the SPF estate is sufficiently defined to enable the plantation licence to be granted.

Insertion of new sch 4A

Clause 84 inserts new schedule 4A into the Regulation for the purposes of new section 32A. The plans referred to in this schedule are the updated plantation licence plans derived from the process described above.

Omission of sch 5 (Forest drives)

Clause 85 omits schedule 5 of the Regulation which lists areas declared to be forest drives under section 33.

Part 9 Amendment of Forestry Plantations Queensland Act 2006

Act amended

Clause 86 provides that part 9 of the Bill amends the *Forestry Plantations Queensland Act 2006*. The amendments effected by part 9 (other than clauses 87 and 94) commence when the first plantation licence is entered under new section 61QA of the Act, and have the effect of omitting those provisions of the Act which confer plantation forestry related functions and powers on FPQ and FPQO. After the first plantation licence is entered, these functions and powers will either revert to the Chief Executive administering the Act, or will be performed by the plantation licensee, plantation sublicensee or plantation manager.

Residual provisions of the Act will remain in effect to enable FPQ to complete any required "winding up"-type activities before the Act is repealed under clause 249 of the Bill.

Omission of s 4 (Declaration of land as State plantation forest)

Clause 87 omits section 4 of the *Forestry Plantations Queensland Act 2006* which provides for the declaration of State forest land as SPF. Such declarations will now occur under new section 32A of the Act .

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

Clause 88 omits section 9 of the Act. Section 9 is a clarifying provision to the effect that the only powers FPQ may exercise in relation to a SPF are the powers conferred on it under the Act and FPQ's profit á prendre. This section will have no further practical application once the first plantation licence is entered under new section 61QA of the Act.

Amendment of s 12 (Functions of FPQ)

Clause 89 amends section 12 of the Act, which sets out the functions of FPQ, by omitting those plantation forestry related functions which will cease to apply once the first plantation licence is entered under new section 61QA of the Act. In relation to the omission of subsection 12(2), which requires FPQ to manage the SPF consistent with best practice principles for sustainable management of plantation forestry, it should be noted that a similar obligation is imposed on the plantation licensee under new section 61QE and the definition of "plantation forestry" in new section 61Q of the Act.

Omission of ss 35 and 36

Clause 90 omits sections 35 and 36 of the Act. Section 35 deals with compensation payable by the State to FPQ where SPF classification is revoked over land. Section 36 compels FPQ to enter into an agreement with the State about the State's access to SPF, and FPQ's access to State land. In each case, appropriate equivalent arrangements will apply as between the State and the plantation licensee or any plantation sublicensee under new part 6D of the Forestry Act.

Omission of s 39 (Application of mineral resources legislation)

Clause 91 omits section 39 of the Act which declares that FPQ does not have rights to mineral resources on SPF. This clarifying provision is no longer required once FPQ no longer has an interest in the SPF land.

Insertion of new pt 5, div 1 hdg

Clause 92 inserts a new division heading into the *Forestry Plantations Queensland Act 2006*.

New Division 1 – Forestry Plantations Queensland Act 2006 No. 16

Omission of s 61 (Relevant proceedings)

Clause 93 omits section 61 of the Act, which is a transitional provision for the creation of FPQ in 2006. This provision is not suitable for application after the restructure of FPQ.

Insertion of new pt 5, div 2

Clause 94 provides that certain buildings and structures situated on SPF that were transferred to FPQ when FPQ was created, or constructed by FPQ since 1 May 2006, are taken to be the personal property of FPQ (and are not fixtures owned by the State). The section only applies to land which remains SPF after the changes effected by this Bill.

New Division 2 – Natural Resources and Other Legislation Amendment Act 2010

Amendment of sch 2 (Dictionary)

Clause 95 removes the definitions of "community service obligation", "natural resource product", "State forest" and "State plantation forest" from schedule 2 (dictionary) to the Act. These definitions were only used in the provisions which are repealed by clauses 87 to 91.

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

Regulation amended

Clause 96 provides that part 10 of the Bill amends the *Forestry (State Forest) Regulation 1987*. This Regulation is the regulation under which unallocated State land is declared to be State forest. Only State forest can be declared to be SPF and included in the licence area.

Amendment of schedule (State forests)

Clause 97 amends the schedule to the Regulation to add a reference to a closed road at South Nanango, with the effect that the unallocated State land comprising the closed road is added to the area of the existing State forest which it borders. This area is also included in the SPF land declared under the *Forestry Regulation 1998*.

Part 11 Amendment of Land Act 1994 commencing on assent

Act amended

Clause 98 provides that this part 11 amends the Land Act.

Amendment of s 15 (Leasing land)

Clause 99 removes section 15(6) as this provision was in conflict with section 153 that states that a lease must state the purpose for which it was issued. All leases issued under the Land Act must state the purpose of the lease.

Amendment of s 18 (Exchanging land)

Clause 100 sets out that an application must be received for an exchange of land. This provision is consistent with other provisions in the Act that require an application to be made.

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

Clause 101 amends section 48 to allow that a land management plan approved by the Minister for a reserve is noted or recorded in the appropriate land registry.

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

Clause 102 amends section 61 to allow for the terms of trustee leases and trustee subleases over operational deeds of grant in trust (DOGIT) to be for a maximum term of up to 100 years. This provision is in recognition of the emerging need for trustees of operational DOGIT's to involve the private sector in the provisions of not only services but essential community infrastructure that significantly improves the community's access to services on these operational DOGIT's.

Insertion of new Ch 4, pt 1,div 2A, hdg

Clause 103 inserts a Chapter 4, part 1, new division 2A heading, "Leases for significant development", after section 128 of the Act

Replacement of s 129 (Lease for significant development)

Clause 104 replaces section 129 with new sections 129 and 129A.

New section 129 Lease for significant development

New section 129 clarifies that a lease for significant development can be obtained with or without competition.

New section 129A Further dealings with lease land on completion of significant development

New section 129A ensures that a lease that is granted for a significant development is no longer than the term considered appropriate for completion of the proposed extensive development. The significant development lease may be granted subject that all or part of the lease land will be freeholded or further leased upon satisfaction of the fact that the lessee has completed the extensive developments required under the conditions of the lease and that the Minister is satisfied that the lessee is entitled to a grant of a deed or a further lease in accordance with the conditions of the lease. The purpose of the initial lease will be shown as significant development lease and the conditions of the lease must relate to the development and not the management of the developed land.

If the land the subject of significant development lease is further leased the term of the lease may be up to 100 years and will be for the operation and use of the completed development. The new lease will be for the purpose of the completed development and will not be called a significant development lease.

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

Clause 105 relocates and renumbers section 131 in chapter 4, part 1, division 2, as section 127A. This amendment is consequential to the insertion of a new division 2A, "Leases for significant development" into the Act.

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

Clause 106 inserts a new chapter 4, part 3, division 1A heading, "Length of term on issue of term lease".

Amendment of s 155 (Length of term leases)

Clause 107 amends section 155 to clarify the requirements for issuing leases over rural leasehold land for terms that are longer than 30 years. Generally, the pre-requisite for an extended term is that the lease land must be in good condition. Additional conditions relating to nature conservation and indigenous access and use agreements apply for lease terms of 40 or more years. Further guidance is also provided for the grant of a lease for a term of up to 75 years.

The clause also amends section 155 to clarify that a term lease may be granted for the development and operation of a lease for a significant development or for the operation and management of the completed development. This amendment is to clarify another amendment in the Act which states that if a lease was issued to allow for a development to commence then on completion of that development and provided that the proponent had complied with all the conditions of the lease then a further long term lease could be granted to operate the completed development i.e. a short term lease may be granted to allow development of a tourist resort and on completion of the development of the resort a further long term lease would be granted to allow for the operation of the resort.

Replacement of ss 155A and 155B

Clause 108 replaces sections 155A (Extending particular term leases for a term of up to 40 years) and 155B (Extending particular term leases for a term of up to 50 years) with new sections 155AA to 155BA to provide further clarification on the requirements for extending leases over rural leasehold land. The amendments also ensure consistency of approach in lease extension dealings, encourage lessees to continually strive for good land management outcomes where droughts etc. may otherwise inhibit their capacity to return the lease land to good condition within a 10-year timeframe and provide lessees with sufficient time to demonstrate satisfactory compliance with a land management agreement.

New section 155AA (Particular term leases may be extended)

New section 155AA clarifies issues with existing sections 155A and 155B by providing for extensions of certain rural leasehold land for which there is a land management agreement and no more than 80% of the existing term of the lease has expired and after no less than 5 years have passed since the lease was entered into or a land management agreement for the lease was first registered, whichever is the later—unless special circumstances apply.

New section 155A (Extending particular term leases for a term of up to 40 years)

New section 155A clarifies issues in the existing section 155A, namely the new section clarifies that —

- the section applies to leases with terms of more than 20 years but less than 40 years;
- the one-off extension may be granted where the Minister is satisfied that the lease land is brought to good condition and the lessee has complied with a land management agreement; and
- the extension can be made for a period of not more than 10 years and must not extend the term of the lease beyond 40 years.

The clarification ensures that lease with terms of between 31 and 39 years are covered by legislation and removes any potential for leaseholders to resort to land degradation in order to seek eligibility for maximum lease terms or extensions.

New section 155B (Extending particular term leases for a term of up to 50 years)

New section 155B clarifies issues in the existing section 155B, namely the new section clarifies that —

- the section applies to leases with terms of up to 50 years, providing appropriate cover for leases with terms of between 41 and 49 years;
- if an extension has not previously been issued under section 155A and the lease satisfies the requirements of both sections 155A and 155B, two extensions of up to 10 years each may be issued simultaneously under section 155B (as if they were being issued under sections 155A and 155B respectively); and

- the extension must not take the term of the lease beyond 50 years.

These clarifications provide greater certainty and ensure that all leases covered by the Delbessie Agreement are treated consistently and have equal opportunities to achieve the intended outcomes and benefits.

New section 155BA (Extending particular term leases for a term of up to 75 years)

New section 155BA provides for a one-off extension of certain rural leases where the term of the lease was originally granted for between 50 and 75 years or has been extended under section 155B.

The Minister may extend the lease for a period of not more than 25 years where the land management agreement contains a commitment by the Minister to extend the lease and:

- the lease land is in good condition; and
- all or part of the lease land is land that is declared as an area of international conservation significance under the *Cape York Peninsula Heritage Act 2007*; and
- all or part of the land is the subject of a nature conservation agreement or conservation covenant; and
- an indigenous land use agreement relating to the land has been entered into; and
- the nature conservation agreement, or conservation covenant, and indigenous land use agreement are acceptable to the Minister; and
- the Minister is satisfied that the lessee has complied with the land management agreement, nature conservation agreement or conservation covenant, and indigenous land use agreement; and
- that the extension is appropriate having regard to the size of the declared area.

If an extension has not previously been issued under sections 155A or 155B and the lease satisfies the requirements of sections 155A, 155B and 155BA, up to three extensions may be issued simultaneously under section 155BA (as if they were being issued under sections 155A, 155B and 155BA respectively, but within the maximum amounts permitted by the relevant section).

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

Clause 109 amends section 155C to reflect the new section 155BA.

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

Clause 110 replaces section 155D of the Act (Power to reduce term of extended lease) with new sections 155D to 155DA to:

- Clarify that the conditions which qualified a lease over rural leasehold land for a term of more than 30 years or an extension must remain in place for the particular term or lease extension to continue.
- Provide for the consistent and equitable treatment of leases where terms or extensions are reduced because one or more of the requirements which formed the basis for the particular term of the lease being granted have ceased to exist.
- Clarify the requirements for reducing the terms of certain leases over rural leasehold land where the extended term was issued under section 155.
- Extend the Minister's powers to cover leases issued under section 155 as well as those extended under new section 155BA.

New section 155D (Power to reduce term of lease because of land condition)

New section 155D provides for the consistent and equitable treatment of leases where terms or extensions are reduced because at the time the term lease was issued or extension was granted:

- the lease land was in good condition but is no longer in good condition; or
- a conservation agreement or covenant was in place but has since ceased to exist; or
- an indigenous access and use agreement was in place but no longer exists; or
- a declaration of international conservation significance under the *Cape York Peninsula Heritage Act 2007* which affected part or all of the lease land has been lifted; and

- any of these were a specific requirement for the grant of the particular term of the lease or lease extension.

New section 155DA (Notice of intention to reduce term)

New section 155DA provides for a lessee to be notified in writing of the proposed exercise of the power to reduce the term of the lease and the lessee may make a submission in response if

- the term of a lease other than an extension granted under section 155A, 155B or 155AB is being reduced, in other words, those issued under section 155 (4) to (7); and
- the Minister proposes to reduce the term of the lease by an amount that is more than it was extended.

Amendment of s 155E (Provisions about reduction)

Clause 111 amends section 155E of the Act (Provisions about reduction) to extend the requirement that a lessee, in certain cases, must be notified in writing of the proposed exercise of a power to reduce the term of the lease and the lessee may make a submission in response to decisions by the Minister under new sections 155D or 155DA.

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

Clause 112 inserts a new Chapter 4, part 3, division 1D, "Relationship with the Dividing Fences Act 1953".

Amendment of s 158 (Application for new lease)

Clause 113 amends section 158 (Application for new lease) consequential to the insertion by this Bill of new sections 155A, 155B and 155BA.

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

Clause 114 amends section 159A so that if when assessing a renewable application it is assessed that a more appropriate tenure than a lease is applicable but the condition of lease would prevent the lease being converted to freehold, the lease may still be converted to freehold if the assessment deems that that condition is no longer appropriate. As the leased land is being assessed in the present, a previous condition that may

have been appropriate in the past when the lease was first issued but which is now no longer appropriate should not prevent the lease being dealt as if the application was for conversion of tenure and not as a renewal of lease.

Amendment of s 162 (Issuing of new lease)

Clause 115 provides that, at renewal, the purpose of the old lease can be determined with reference to the category and conditions of the old lease if the purpose was not stated previously or is obscure.

Amendment of s 166 (Application to convert lease)

Clause 116 amends section 166 to reflect the new section 155BA.

Amendment of s 169 (Conditions of freehold offer)

Clause 117 clarifies that a deed of grant cannot issue until all the requirements of the offer have been satisfied which includes the full payment of the purchase price.

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

Clause 118 clarifies that a land management agreement is required for new leases that result from subdivisions if a land management agreement existed for the lease land prior to the subdivision or if the lease is for rural leasehold land, has a term of more than 20 years and the land is 100 ha or more.

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

Clause 119 clarifies that a land management agreement is be required for a new lease that results from an amalgamation if there is a land management agreement for any of the existing leases and if the amalgamated lease is for over rural leasehold land, the lease has a term of 20 years or more and the land is 100 ha or more.

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

Clause 120 amends section 176W consequential to the insertion by this Bill of new sections 155A, 155B and 155BA.

Amendment of s 183 (Rent payable generally)

Clause 121 amends section 183 so as to allow that for certain categories of tenures the rent for that whole category or sub-category can be set at a fixed amount in lieu of calculating the rental using a percentage rate. This clause is consistent with the Government's commitment that rents for charities and small sporting and recreational clubs would be set at an amount lower than the minimum rentals that apply for private benefit tenures. This new provision would also allow for rentals to be set for Telecommunication tenures.

Amendment of s 183A (Set rents)

Clause 122 allows that in exceptional circumstances a regulation will prescribe that a annual rent or whole of term rent can be set for a specific lease which is less than the minimum rent prescribed in the regulation for a lease in that category. This provision is necessary for those instances where an entity may take over the management of a significant infrastructure on behalf of the State and therefore should only be subject to a nominal rental.

Insertion of new s 201A

Clause 123 clarifies that a land management agreement is mandatory for certain term leases over rural leasehold land.

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

Clause 124 clarifies that a land management agreement may be required for the lease land for which a remedial action notice has been issued.

Amendment of s 234 (When lease may be forfeited)

Clause 125 amends section 234 to state that it is a court of competent jurisdiction such as the Supreme Court and not the Land Court that would

determine that a lease has been obtained by fraud. As a higher court has already deemed that a lease was obtained by fraud there is no need to forward the matter to the Land Court to decide whether the lease may be forfeited.

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

Clause 126 amends the heading of chapter 5, part 4, division 2A consequential to amendment to section 234. This amendment is a consequential amendment following on from the amendment to section 234.

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

Clause 127 renumbers the subsections of section 238 (application to the court for forfeiture as a consequence of the amendment to section 234.

Amendment of s 239 (Designated person's options if court decides on forfeiture)

Clause 128 makes minor amendments to section 239 (designated person's options if court decides on forfeiture) as a consequence of the amendment to section 234.

Amendment of s 240E (Sale by lessee)

Clause 129 makes minor amendments to section 240E (Sale by lessee) as a consequence of the amendment to section 238.

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

Clause 130 makes minor amendments to section 240F (Sale by mortgagee instead of forfeiture) as a consequence of the amendment to section 238.

Amendment of s 240G (Application)

Clause 131 amends section 240G (Application) as a consequence of the amendment to section 238.

Amendment of s 240J (Application of sdiv 4)

Clause 132 makes minor amendments to section 240J (application of sdiv 4) as a consequence of the amendment to section 234.

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

Clause 133 makes minor amendments to section 240N (advice about entering transition to sale agreement) as a consequence of the amendment to section 234.

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

Clause 134 makes minor amendments to section 240P (Auction or sale of lease) as a consequence of the amendment to section 239.

Amendment of s 275 (Registers comprising land registry)

Clause 135 amends section 275 of the Land Act to include a register of State forests in the land registry

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

Clause 136 amends section 276 of the Land Act to require the chief executive to keep and maintain a register of State forests.

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

Clause 137 amends section 288A to extend the operation of subsection (2) to the lodgement of an instrument of amendment of a mortgage. In some cases, an amendment of mortgage is registered when indebtedness under a mortgage is increased beyond that originally provided for in the mortgage, rather than entering into a new mortgage. (Section 343 provides for registration of an instrument of amendment of mortgage.) This amendment is in line with the amendment of section 11A of the Land Title Act.

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

Clause 138 updates a reference in section 288C to a provision of the Land Title Act.

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

Clause 139 amends section 290I to insert an omitted word in subsection (2) in line with an amendment of section 49E of the Land Title Act.

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

Clause 140 amends section 294I to clarify that, where a vacant lot subject to a building management statement (BMS) is to be removed, consent need not be given by the mortgagees of all the lots subject to the BMS but only by the mortgagee of the lot to be removed. This amendment is made for consistency with the amendment of section 54H of the Land Title Act.

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

Clause 141 amends section 327 by omitting "deed of grant" and inserting "freehold" in its place. This amendment is necessary as there are other forms of freehold land other than a deed of grant i.e. land vested in fee simple is not covered by the definition of a deed of grant. The definition of freehold land under schedule 6 of the Land Act includes land held in the freehold land register and other land granted or vested in fee simple. The definition of deed of grant under schedule 6 of the Land Act is "land granted in fee simple by the State" or "the document evidencing the grant, including an indefeasible title under the Land Title Act. As the department accepts surrenders of other forms of freehold land that has been granted or vested in fee simple other than deed of grants the reference to deed of grant is being replaced by the broader term of freehold.

Amendment of s 327B (Applying to surrender)

Clause 142 amends section 327B in accordance with clause 141 by omitting "deed of grant" and inserting "freehold" in its place.

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

Clause 143 amends section 331 in accordance with clause 141 by omitting "deed of grant" and inserting "freehold" in its place.

Amendment of s 373A (Covenant by registration)

Clause 144 inserts a new subsection (2A) in section 373A to allow a covenantor and a covenantee to be the same person.

This clause also amends section 373A(9)(a) to clarify, in accordance with the original intent of this provision, that a covenant cannot be used to prescribe standards for landscaping and gardens and for the construction of structures such as retaining walls that cannot be described as "buildings". These amendments are in line with the amendment of section 97A of the Land Title Act.

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

Clause 145 amends section 373E of the Act (Application of div 8B) to clarify that a lessee may, subject to the provisions of the part, register a profit a prendre in relation to carbon sequestration and to clarify the link between this Division and Part 6B of the Forestry Act.

Part 6B of the Forestry Act is intended to enable lessees who own the trees as improvements to enter into natural resource agreements about the ownership, use and economic benefit of natural resource products (e.g. carbon). The only mechanism by which such agreements by lessees can be registered is under Chapter 6, Part 4, Division 8B of the Land Act, which allows the registration of profits a prendre under the Land Act. However, it is not currently clear that Division 8B covers carbon related agreements.

Accordingly section 373E is amended to omit reference to "natural resource" and replace it with reference to a "natural resource product". The term "natural resource product" is the term inserted into the Forestry Act in 2001 to cover not only parts of the tree, but also carbon stored in a tree or vegetation, or carbon sequestration by a tree or vegetation.

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

Clause 146 amends section 373F of the Act (definitions for div 8B) to insert definitions for "carbon sequestration", and "natural resource product. The amendments are intended to clarify that a lessee may, subject to the

provisions of the part, register a profit a prendre in relation to carbon sequestration and to clarify the link between this Division and Part 6B of the Forestry Act.

Part 6B of the Forestry Act is intended to enable lessees who own the trees as improvements to enter into natural resource agreements about the ownership, use and economic benefit of natural resource products (e.g. carbon.

Amendment of s 374 (Details of trust must be given)

Clause 147 amends section 374 to update the requirements for the provision of documents evidencing a trust. This amendment is in line with the amendment of section 110 of the Land Title Act.

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

Clause 148 amends section 374A to include reference to instruments other than transfers by which a trustee may become registered as holder of an interest in a lease or sublease. This amendment is in line with the amendment of section 109 of the Land Title Act.

Amendment of s 375 (Document of transfer to trustee)

Clause 149 amends section 375 to update the requirements for the provision of documents evidencing a trust. This amendment is in line with the amendment of section 110 of the Land Title Act.

Amendment of s 389J (Further caveat)

Clause 150 amends section 389J to clarify that this section does not apply to lodgement of a caveat by the Chief Executive under section 389L(1). This amendment is in line with the amendment of section 129 of the Land Title Act.

Amendment of s 392 (Delegation by Minister)

Clause 151 amends section 392 to reflect the new section 155BA and clarifies that the Minister may delegate decision-making on such matters as the offer of an extension, land condition assessment, land management agreements and indigenous access and use agreements.

Insertion of new ch 9, pt 1H

Clause 152 inserts a new chapter 9, part 1H, "Transitional Provisions for Natural Resources and Other Legislation Amendment Act 2010".

New section 521U Definitions for pt 1H

New section 521U provides definitions for the new chapter 9, part 1H, "Transitional Provisions for Natural Resources and Other Legislation Amendment Act 2010"

New section 521V (Existing term leases applications)

New section 521V provides that the amendments to existing section 155 apply to term leases over rural leasehold land issued, and an application for a term lease made but not decided, on or after 1 January 2008.

New section 521W (Existing extension applications)

New section 521W provides that the amendments to existing sections 155A and 155B apply to an application for a lease extension made but not decided before the commencement.

New section 521X Application of s 155D to existing leases

New section 521X provides that, from the commencement, section 155D applies to leases granted under previous section 155 or extended under previous section 155A or 155B.

New section 521Y (Application of s 201 to existing leases)

New section 521Y provides that new section 201A does not apply to leases entered into before the commencement."

Amendment of sch 2 (Original decisions)

Clause 153 makes minor amendments to Schedule 2 (Original decisions) consequential to the amendment to section 239 of the Act made by this Bill.

Amendment of sch 6 (Dictionary)

Clause 154 amends Schedule 6 (Dictionary) to insert definitions that will clarify that a lessee may, subject to the provisions of the part, register a profit a prendre in relation to carbon sequestration and to clarify the link between this Division and Part 6B of the Forestry Act.

Part 6B of the Forestry Act is intended to enable lessees who own the trees as improvements to enter into natural resource agreements about the ownership, use and economic benefit of natural resource products (e.g. carbon.

Part 12 Amendments of Land Act 1994 commencing by proclamation

Act amended

Clause 155 provides that this part amends the Land Act.

Replacement of s 5 (Land to which Act applies)

Clause 156 replaces section 5 of the Land Act to remove reference to the term "high-water mark" as the central concept for determining the location of a boundary of land adjoining tidal water. The term "high-water mark" is retained in relation to other provisions in the Act.

Under the Act, the high-water mark is defined as "the ordinary high-water mark at spring tides". The need to replace this term as the central concept for determining tenure boundaries arose from a Court interpretation of high-water mark as "mean high water springs". This decision allowed landholders to extend their land closer to the water than originally intended. Moving ambulatory boundaries closer to tidal water has raised issues including, but not limited to, foreshores being taken into private ownership.

Replacement of ch 1, pt 4 hdg (Land near high-water mark)

Clause 157 omits the heading "Land near high-water mark" and replaces it with "Tidal and non-tidal boundaries and associated matters". This change is consequential to the removal of "high-water mark" from section 5 of the

Act. The amendment also reflects the inclusion of non-tidal tenure boundaries in the Land Act and SMIA rather than the Water Act.

Amendment of s 8 (Definitions for pt 4)

Clause 158 omits some existing definitions within section 8 and inserts new definitions within the Land Act relevant to the new tidal and non-tidal boundary scheme.

Replacement of ss 9 and 10

Clause 159 omits existing sections 9 and 10 of the Land Act which deal with land below high-water mark owned by the State and accretions owned by the State respectively and replaces them with new sections 9 and 10.

New section 9 (Land adjacent to tidal boundary owned by the State)

New section 9 deals with land that is adjacent to a tidal boundary or a right line tidal boundary, and is on same side of the tidal boundary as the tidal water. The term "other land", includes "land below the high-water mark" and land between the high-water mark and tidal boundary.

The section also refers to "relevant land", which is land with a boundary formed by high-water mark before the commencement of this section.

"Other land"

- belongs to the State, unless it is inundated land or there is a pre-existing registered interest over it;
- belonging to the State may be dealt with as unallocated State land;
- belongs to the State even when a registered owner owns land on both sides of it; and
- does not pass out of State ownership by acts of occupation, use or removal of material.

The section states that if before commencement, the line of the high-water mark shifted by gradual and imperceptible degrees, then the shift was a shift in the boundaries of the relevant land.

In this section, provisions applying to "other land" which is also "land below the high-water mark" operate prospectively and retrospectively,

while provisions relating to "other land" which is not below the high-water mark, operate prospectively only.

The common law term "the ordinary high-water mark at spring tides" has the same meaning as Mean High Water Springs.

Diagram 1 Vesting of land with a tidal boundary immediately after commencement.

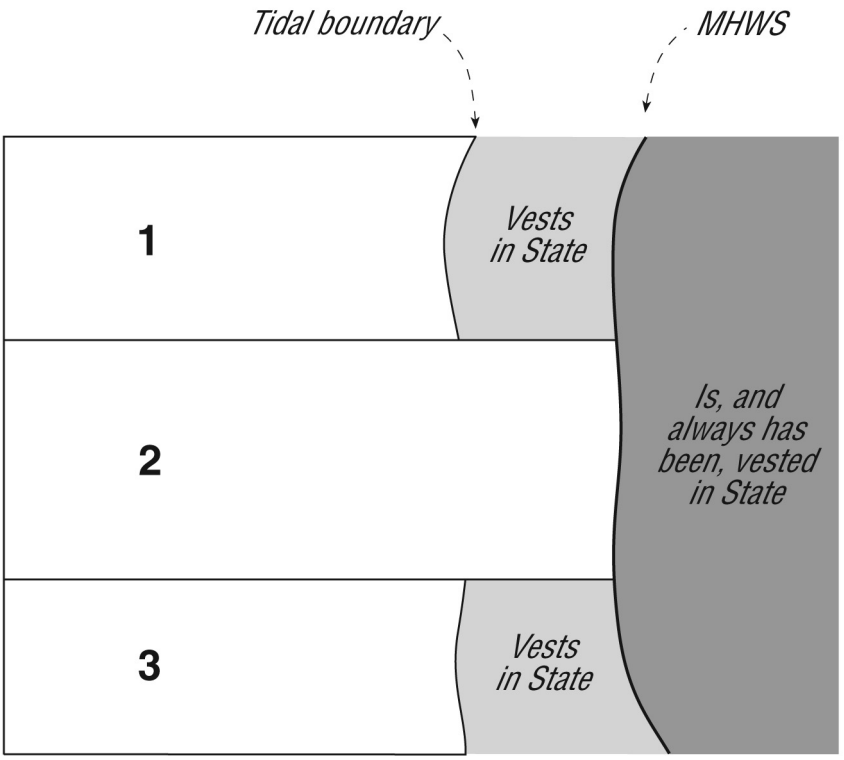


Diagram 1 illustrates the situation immediately after commencement. The current plan of survey for lots 1 and 3 depicts a natural feature as the high-water mark boundary, while the current plan of survey for lot 2 depicts the line of Mean High Water Springs.

At law, because of the operation of new part 7, division 2, subdivision 2, of the SMIA, the tidal boundaries of lots 1 and 3 in Diagram 1 are now

located at the natural feature adopted in the current plan, whereas the boundaries were previously at the line of high-water mark, which the Land Act defined as Mean High Water Springs. In Diagram 1, the land between the tidal boundary for lots 1 and 3 and the line of Mean High Water Springs vests in the State from the date of commencement. As it is prospective only, and the land was previously incorporated in a registered interest, any native title rights that might otherwise have subsisted in this land had been extinguished when the land was originally granted as freehold.

In Diagram 1, the boundary of lot 2 remains at Mean High Water Springs, until the owner seeks a resurvey pursuant to new part 7, division 2, subdivision 3, of the SMIA.

New section 10 (Land raised above high-water mark by works)

New section 10 provides that land in the ownership of the State that becomes raised above the high-water mark because of the carrying out of works, remains in State ownership and may be dealt with as unallocated State land.

The elevation of the land must be as a result of the carrying out of works on or in proximity to the land.

This provision does not apply to reclaimed land. Reclaimed land is specifically dealt with in Section 127 of the Land Act.

Amendment of s 13 (Power to deal with land below high-water mark)

Clause 160 amends the heading of section 13 of the Land Act to reflect dealings with land seaward of a tidal boundary or right line tidal boundary rather than dealings below high water mark.

The amendments to section 13 are consequential to the shift in concept from land below high-water mark to land seaward of a tidal or right line boundary.

New subsection (2) confirms that land on the seaward side of a tidal boundary or right line tidal boundary may be granted in fee simple where that land is the subject of reclamation mentioned in section 127 of the Land Act.

Insertion of new ch 1, pt 4, div 3

Clause 161 inserts a new division 3 after existing section 13, to provide for the tenure of land in non-tidal boundary watercourses and lakes.

New Division 3 – The non-tidal environment

New section 13A (Land adjacent to non-tidal boundary (watercourse) or non-tidal boundary (lake) owned by State)

New section 13A transfers watercourse tenure matters from section 21 of the Water Act to the Land Act. It should be noted that section 21 of the Water Act is continued by amendments to the Water Act for the purposes of matters arising before the commencement of the amendments such that the beds and banks of all watercourses and lakes forming all or part of the boundary of land are, and always have been, the property of the State.

New section 13A provides that for land with a non-tidal boundary (watercourse), adjoining land on the watercourse side of the boundary is owned by the State. Similarly, the State owns land adjoining the non-tidal boundary (lake) on the lakeside of the boundary. State ownership of the watercourse is not affected by the alienation of land with a watercourse boundary.

This provision retains the riparian rights granted in subsection 20(3) of the Water Act, which enables the registered owner adjoining the watercourse to exercise certain rights over land in the boundary watercourse, including the right to graze their stock and to bring action against a trespasser, as if the owner were the registered owner of the area.

Owners (and the owner's family, executive officers, employees and agents) may exercise a right of access for themselves and their stock over the State land in the watercourse that adjoins their land.

Note that the owner may exercise their rights only to the extent that it does not interfere with the State's use of the adjacent land for a purpose under the Water Act. The owner may not take action in trespass against a person acting on behalf of the State.

New section 13B (Power to declare and deal with former watercourse land)

New subsection 13B provides for a situation where the original location of a watercourse changes and the watercourse land is no longer part of a functioning watercourse.

At common law, where the location of a watercourse that forms a boundary of land changes suddenly (i.e. not gradually or imperceptibly as is the common law test), either by human intervention or natural forces, that boundary fixes in the position it was located prior to the sudden change. At that point the boundary is no longer formed by the watercourse and becomes a fixed boundary.

The clause provides that, if the criteria provided are met, the Chief Executive administering the Water Act may declare land to be former watercourse land. The land may then be further dealt with as if it were unallocated State land, except that the public auction, tender or ballot requirements of the Land Act do not apply.

Before making the declaration, the Chief Executive responsible must consult with owners of any land adjoining the watercourse and the Chief Executive must be satisfied that:

- no person holds a registered interest in the watercourse land;
- the physical location of the watercourse has changed;
- the boundary fixed on application of the ambulatory boundary principles;
- the watercourse land is no longer part of a functioning watercourse; and
- over the long term it is unlikely that the watercourse land will again become part of a functioning watercourse.

An owner applying for land in a former watercourse must provide sufficient evidence to the Chief Executive that would satisfy the Chief Executive that the watercourse land is no longer part of a functioning watercourse.

Amendment of s 14 (Governor in Council may grant land)

Clause 162 amends section 14 so that it takes account of the substitution of the concept of the tidal boundary for the high-water mark in describing

which land the Governor in Council may grant. It also inserts a new sub-section (5) that confirms that land on the seaward side of a tidal or right line boundary may be granted in fee simple if it has been reclaimed under section 127 of the Land Act.

Amendment of s 15 (Leasing land)

Clause 163 amends section 15 so that it takes account of the substitution of the concept of the tidal boundary for the high-water mark in describing which land the Governor in Council may lease.

Amendment of s 86 (Public notice of proposed surrender)

Clause 164 amends section 86 of the Act, which enables the Minister to accept the surrender of land mentioned in the division (other grants for public purposes) if the Minister is satisfied, amongst other matters that notice of the intention to surrender has been adequately advertised. The amendment deletes reference to advertising in a newspaper, consequential to the insertion by clause 175 of this Bill of a new Division 6 that will generically deal with the giving of public notices under the Act.

Amendment of s 113 (Public notice of availability to be given)

Clause 165 amends section 113 of the Act, which requires the Minister to advertise the intention to make an interest in land available by auction, tender or ballot, to deletes reference to advertising in a newspaper, consequential to the insertion by clause 175 of this Bill of a new Division 6 which will generically deal with the giving of public notices under the Act.

Amendment of s 116 (Interests in land may be sold after auction)

Clause 166 amends section 116 of the Act which requires that if an interest in land is not sold at public auction, the interest may be sold by, inter alia, advertising the reduced reserve in the newspaper in which the auction was advertised, by deleting reference to advertising in a newspaper, consequential to the insertion by clause 175 of this Bill of a new Division 6 which will generically deal with the giving of public notices under the Act.

Amendment of s 126 (Strategic port land)

Clause 167 amends section 126 so that it takes account of the substitution of the concept of the tidal boundary for the high-water mark in describing how the State may deal with strategic port land.

Amendment s 178 (Permits below high-water mark)

Clause 168 amends section 178 so that the heading and provision takes account of the substitution of the concept of the tidal boundary for the high-water mark in describing the giving of permits for land seaward of a tidal or right line tidal boundary.

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

Clause 169 amends section 240P, of the Act which states requirements that apply for the sale of a lease by the Chief Executive by deleting reference to advertising in a newspaper, consequential to the insertion by clause 175 of this Bill of a new Division 6 which will generically deal with the giving of public notices under the Act.

Amendment s 358 (Changing deeds of grant – change in description or boundary of land)

Clause 170 removes section 358 (2)(b) as the provision is redundant. The location of an ambulatory boundary changes at law through gradual or imperceptible degrees due to accretion or erosion. It is not necessary for a new deed of grant to be issued to include accretion within the land, even if the cumulative effect of the accretion is significant. Nevertheless, the removal of this provision does not prevent a new deed of grant being issued under the amended provision.

Amendment of s 359 (Correcting or cancelling deeds of grant)

Clause 171 amends section 359 of the Act, which provides for the correction or cancellation of deeds of grant, by deleting reference to advertising in a newspaper, consequential to the insertion by clause 175 of this Bill of a new Division 6 which will generically deal with the giving of public notices under the Act.

Amendment of s 360 (Governor in Council may change free holding leases

Clause 172 omits section 360(1)(c) of the Act, which empowers the Governor in Council to change a free holding lease where the boundaries of the lease land have significantly changed, because of erosion or by gradual and imperceptible degrees. The provision is not required because such a situation is already covered under section 360(1)(a), under which the Governor in Council may change a free holding lease where, on resurvey of the lease land, the boundaries of the land do not agree with the boundaries described in the lease or appropriate plan, and no doubt exists about the boundaries of the land.

Amendment of s 360C (Applying to amend description of lease)

Clause 173 amends section 360C of the Act, which enables a lessee to apply to amend the description of a lease to omit a reference to section 360(1)(c). That section is omitted by clause 172 of this Bill.

Amendment of s 393 (Delegation by chief executive)

Clause 174 amends section 393 so that it takes account of the substitution of the concept of the tidal boundary for the high-water mark in describing how the Chief Executive may delegate his or her powers to deal with strategic port land.

Insertion of new ch 7, pt 1, div 6

Clause 175 inserts a new chapter 7, part 1, division 6 into the Act dealing with public notices other than gazette notices.

New Division 6 (Public notices other than gazette notices)

New section 403C - Publication of particular public notices on department's website

New section 403C requires an official to publish a public notice (other than a gazette notice) required under this Act on the Department's web site for a total of at least 10 business days. The new section does not prevent the official from also giving the notice in another way the official considers appropriate, having regard to the target audience for the notice.

This new section replaces more prescriptive requirements in other sections of the Act that do not allow for consideration of the most cost effective way to fulfil the purpose of the publication or advertisement.

Amendment of s 431C (Further evidentiary aids)

Clause 176 amends section 431C of the Act (Further evidentiary aids) which provides that a certificate purporting to be signed by the Chief Executive stating certain matters is evidence of the matter. The section is amended to enable a certificate stating the day, or during a stated period that a stated notice was published on the department's website.

This amendment is consequential the insertion of new section 430C which requires an official to publish a public notice required under this Act on the Department's web site for a total of at least 10 business days.

Omission of ch 7, pt 3B (Tidal boundary plans of subdivision)

Clause 177 omits chapter 7 part 3B of the Land Act dealing with tidal boundary plans of subdivision. This part was inserted in the Land Act in 2005 to implement a stay on the registration of tidal boundary plans of subdivision. The stay was put in place in November 2005 in recognition of concerns over resurveys of tidal land boundaries closer to the water, in line with the Svendsen decision, into areas generally regarded as public beach land.

These provisions can now be repealed.

Insertion of new ss 521Z and 521ZA

Clause 178 inserts new sections 521Z and 521ZA into the Land Act which provides transitional provisions for the *Natural Resources and Other Legislation Amendment Act 2010*.

New section 521Z (Continuing application of no compensation provision)

New section 521Z continues the application of the repealed section 431NG after the repeal of chapter 7, part 3B put in place in November 2005 in recognition of concerns over resurveys of tidal land boundaries closer to the water, in line with the Svendsen decision, into areas generally regarded

as public beach land. New section 521Z continues the exclusion of compensation arising from the operation of part 3B.

New section 521ZA (Lease or permit)

New section 521ZA addresses the situation where two adjoining lots share a high-water mark boundary. The landward lot is the "primary land", and the seaward lot is the "relevant land". Where both primary land and relevant land is in the same ownership and the ambulatory boundary is relocated after commencement, the area of the relevant land increases to the extent that the area of the primary land decreases, so that the two lots remain contiguous and their total area remains the same.

Amendment of sch 2 (Original decisions)

Clause 179 inserts into Schedule 2, for the purposes of section 423, a decision about the granting of an application to have land declared as former watercourse land. The effect of the inclusion of the decision in Schedule 2 is to identify that a person who has a right to appeal against the decision may apply to the Minister for a review of the decision.

Amendment of sch 6 (Dictionary)

Clause 180 omits a number of definitions that no longer apply, and inserts a number of new definitions relating to tidal and non-tidal boundaries.

Part 13 Amendment of Land Title Act 1994

Act amended

Clause 181 provides that this part amends the Land Title Act.

Amendment of s 9A (Land title practice manual)

Clause 182 amends subsection 9A(2) of the Act to include, as new paragraph (ba), a reference to directions given by the chief executive under section 61RW of the Act. This will allow the manual of land title practice to include provisions relating to the register of plantation licences.

Amendment of s 11A (Original mortgagee to confirm identity of mortgagor)

Clause 183 amends section 11A to extend the operation of subsection (2) to the lodgement of an instrument of amendment of a mortgage. In some cases, an amendment of mortgage is registered when indebtedness under a mortgage is increased beyond that originally provided for in the mortgage, rather than entering into a new mortgage. (Section 76 provides for registration of an instrument of amendment of mortgage.)

Amendment of s 18A (Pre-examination of plans)

Clause 184 amends section 18A to update a term relating to local government processes.

Replacement of s 49DA (Creation of common property)

Clause 185 replaces section 49DA to clarify that the provision only applies in the case of progressive subdivision of a lot or lots in a community titles scheme to create lots and/or common property in accordance with the community management statement for the scheme. Section 49DA was never intended to have a broader application to subdivisions in other circumstances.

Amendment of s 49E (Division of lot on standard format plan of subdivision)

Clause 186 amends section 49E to insert an omitted word in subsection (2).

A further amendment inserts an omitted word in subsection (2).

Amendment of s 54B (Circumstances under which building management statement may be registered)

Clause 187 amends section 54B to correct a perceived inconsistency between the terms of section 54A(5) and section 54B(2). Where a lot, to which a building management statement (BMS) applies, is subdivided by a building format plan, pursuant to section 54A(5) the BMS applies to the new building format lots and common property created.

Amendment of s 54H (Extinguishing a building management statement)

Clause 188 amends section 54H to clarify that, where a vacant lot subject to a building management statement is to be removed, consent need not be given by the mortgagees of all the lots subject to the BMS but only by the mortgagee of the lot to be removed.

Amendments in 2005 allowed a BMS to apply to a vacant lot in certain circumstances to facilitate staged developments, where it is intended that the vacant lot will be part of the development. If it is later decided that the planned development will not go ahead on the vacant lot, it will need to be removed from the BMS, which currently requires consent from the registered owners and mortgagees of all the lots subject to the BMS. If community titles schemes have been established on the other lots to which the BMS applies, the bodies corporate for the community titles schemes can consent on behalf of the owners (section 54I(b)), however there may be a large number of different mortgagees of the lots in the community titles schemes.

Amendment of s 97A (Covenant by registration)

Clause 189 amends section 97A in three respects. Firstly, a new subsection (2) is inserted to allow a covenantor and a covenantee to be the same person. In some circumstances land is sold or transferred by the State or a local government subject to a condition that the purchaser registers a covenant under section 97A, for example, a covenant requiring that the land be used for a particular purpose. It is desirable that a covenant can be registered prior to such a sale instead of providing for this under a contract of sale.

Secondly, subsection (3)(c) is extended to allow registration of a covenant over a freehold lot to "tie" ownership of the lot to a registered lease of another freehold lot. An example where this is desirable is where a freehold lot used for residential purposes has a mooring or car parking space associated with it, and that mooring or car parking space is a leased area (under a registered lease) of another freehold lot.

Thirdly, subsection (8) is amended to clarify, in accordance with the original intent of this provision, that a covenant cannot be used to prescribe standards for landscaping and gardens and for the construction of structures such as retaining walls that cannot be described as "buildings".

Amendment of s 109 (How trusts may be registered)

Clause 190 amends the heading of section 109 to reflect the substance of the section and to include reference to instruments other than transfers by which a trustee may become registered as holder of an interest.

Replacement of s 110 (Instrument of transfer to trustee)

Clause 191 amends section 110 to update the requirements for the provision of documents evidencing a trust.

Amendment of s 129 (Further caveat)

Clause 192 amends section 129 clarify that this section does not apply to lodgement of a caveat by the registrar of titles under section 17.

Amendment of s 130 (Compensation for improper caveat)

Clause 193 amends section 130 to clarify that this section does not apply in relation to lodgement of a caveat by the registrar of titles under section 17. A caveat may be lodged by a person claiming an interest in land under section 122. The intent of section 130, which provides for the payment of compensation and reverses the onus of proof is to discourage the lodgement of caveats under section 122 for improper purposes.

Amendment of s 154 (Lodging certificate of title)

Clause 194 amends section 154 to provide a further exception to the requirement to return a certificate of title upon lodgement of an instrument for registration. Where a lodged instrument relates to a registered lease and the registered owner is not a party and is not affected by the instrument, the requirement to return the certificate of title for cancellation causes inconvenience and unnecessary expense for the lodger.

Amendment of s 162 (Obligations of witness for individual)

Clause 195 amends section 162 to provide consistency in the terms used in this section.

Amendment of s 185 (Exceptions to s 184)

Clause 196 amends section 185 as a consequence of the amendment of section 11A.

Amendment of s 189 (Matters for which there is no entitlement to compensation)

Clause 197 amends section 189(1)(i) to clarify that the effect of this provision is to exclude compensation for continuing a registrar's caveat, as well as for lodging. This is consistent with the wording of section 130.

Amendment of s 189A (Limit on amounts recoverable by mortgagee)

Clause 198 amends section 189A to ensure that the limit imposed by this section on amounts recoverable by a mortgagee apply in all relevant circumstances. Section 189A was one of a number of provisions inserted into the Land Title Act by the *Natural Resources and Other Legislation Amendment Act 2005* for the purpose of protecting defrauded owners and limiting the compensation paid by the State in cases where the execution of a registered mortgage, securing a high interest loan, involved fraud against the registered owner. The amendment will ensure that in the circumstances set out in (1)(a) and (b), the limit on the amount recoverable under the mortgage for interest and costs will apply where a relevant mortgagee is entitled to payment of moneys secured by the mortgage other than through exercising mortgagee's power of sale.

Insertion of new s 196A

Clause 199 inserts a new section 196A into the Act (Publication of particular public notices on department's website) which requires an official to publish a public notice (other than a gazette notice) required under this Act on the Department's web site for a total of at least 10 business days. The new section does not prevent the official from also giving the notice in another way the official considers appropriate, having regard to the target audience for the notice.

Omission of pt 10A (Tidal boundary plans of subdivision)

Clause 200 omits part 10A from the Land Title Act. This part provided for the stay on the registration of tidal boundary plans of subdivision. The stay

was put in place in November 2005 in recognition of concerns over resurveys of tidal land boundaries closer to the water, in line with the Svendsen decision, into areas generally regarded as public beach land.

This new section replaces more prescriptive requirements in other sections of the Act which do not allow for consideration of the most cost effective way to fulfil the purpose of the publication or advertisement.

Insertion of new pt 12, div 5

Clause 201 inserts a new Division 5 which provides for transitional provisions for the *Natural Resources and Other Legislation Amendment Act 2010*.

New Division 5 Transitional provision for Natural Resources and Other Legislation Amendment Act 2010

New section 211 (Continuing application of no compensation provision)

New section 211 continues the application of the no compensation provisions under the stay on the survey of tidal boundaries, put in place in November 2005 in recognition of concerns over resurveys of tidal land boundaries closer to the water, in line with the Svendsen decision, into areas generally regarded as public beach land, by continuing the operation of repealed section 191F.

Amendment of sch 2 (Dictionary)

Clause 202 amends the dictionary in Schedule 2 of the Land Title Act, by omitting definitions previously required for the stay on registration of tidal plans of subdivision.

Part 14 Amendment of Mineral Resources Act 1989

Act amended

Clause 203 provides that part 14 of the Bill amends the *Mineral Resources Act 1989*.

Amendment of schedule (Dictionary)

Clause 204 inserts the plantation licensee, for the avoidance of doubt as to whether a plantation licensee would be an "owner" for the purposes of the Mineral Resources Act 1989, as a new category of "owner" into the definition in that Act. This will enable the plantation licensee along with the State, to be afforded the rights of an "owner" under that Act including those in relation to land access and compensation.

Part 15 Amendment of State Development and Public Works Organisation Act 1971

Act amended

Clause 205 provides that this part amends the *State Development and Public Works Organisation Act 1971*.

Amendment of sch 2 (Dictionary)

Clause 206 amends the dictionary to the Act to reflect the substitution of the tidal boundary for the concept of the high-water mark being made by this Bill.

Part 16 Amendment of Survey and Mapping Infrastructure Act 2003

Act amended

Clause 207 provides that this part amends the SMIA.

Amendment of s 6 (Survey standards)

Clause 208 amends section 6 to allow survey standards to be made about the exchange of survey information, including by electronic communication, between surveyors and the department.

Amendment of s 9 (When survey standards and survey guidelines have effect)

Clause 209 amends section 9 so that survey standards and survey guidelines can take effect on the same day.

Insertion of new s 25A

Clause 210 inserts a new section 25A into the Act that empowers the chief executive to direct a surveyor to take soil samples from land for the purposes of collecting relevant evidence under the multiple lot declaration (tidal) provisions or the multiple lot declaration (non-tidal) provision.

The surveyor may enter upon the land and while taking the soil sample, must not cause permanent damage to property on the land and otherwise must cause as little damage as possible.

Amendment of s 32 (Authority for cadastral surveyor to act for another in particular circumstances)

Clause 211 amends section 32 to allow a former cadastral surveyor (for instance, a retired surveyor) to authorise another cadastral surveyor to act in his or her stead for the purposes of amending a survey carried out by the former cadastral surveyor.

Amendment of s 51 (Survey control register)

Clause 212 omits a reference in subsection 51(2)(b) to section 69 and replaces it with a reference to section 139. The amendment is being made because this Bill inserts a new Part 7 into the SMIA (tidal and non-tidal boundaries and associated matters) and, through clause 214 (Renumbering of pts 7 and 8) of the Bill, renumbers existing parts and provisions accordingly.

Amendment of s 59 (Meaning of particular words used in describing an administrative area boundary)

Clause 213 amends section 59 to clarify that the definitions used in the context of administrative boundaries do not affect the meaning of the words used in determining tidal and non-tidal boundaries in Part 7 of the SMIA.

Renumbering of pts 7 and 8

Clause 214 renumbers parts 7 and 8 in line with the amendments to the SMIA.

Insertion of new pt 7

Clause 215 inserts a new part 7 after section 61 of the SMIA which provides for the location of tidal and non-tidal boundaries and associated matters.

New Part 7 (Tidal and non-tidal boundaries and associated matters)

New Division 1 – Preliminary

New section 62 (Definitions for pt 7)

New section 62 contains definitions for new part 7 of the SMIA to deal with the determination of tidal and non-tidal boundaries.

New section 63 (Meaning of watercourse for pt 7)

New section 63 provides for a definition of a watercourse for the purposes of defining watercourse boundaries.

Note that the relationship between a watercourse boundary and a tidal boundary is dealt with in subsection 70(2).

New section 64 (Application of ambulatory boundaries principles in pt 7)

New section 64 provides for the prospective and retrospective operation of the ambulatory boundaries principles on the natural feature that defines the boundary. "Ambulatory boundary principles" are defined in new section 62 to mean the common law principles applying changes to ambulatory boundaries.

The ambulatory boundary principles apply those existing common law principles in distinguishing between the effects of sudden change and gradual and imperceptible change on a boundary formed by water adjoining land, whether it is tidal or non-tidal.

New subsection 64(4) provides that the ambulatory boundary principles which were previously applied to the boundary between land and water are taken to apply to the natural feature.

New section 65 (Special provision for reserved plans of survey)

New section 65 provides for reserved plans of survey. Where a plan is certified to be a reserved plan of survey, it is treated as an old plan of survey for determining the location of a tidal boundary or a non-tidal boundary (watercourse) before the registration of the first new plan of survey.

A reserved plan of survey is a plan that has been prepared and registered for:

- a public purpose involving the disposal or dealing with land under the Land Act;
- a development approval under the *Sustainable Planning Act 2009* in force at commencement; or
- works directed or authorised under a regulation under the *State Development and Public Works Act 1971* to be undertaken or completed by an entity; and
- the Chief Executive (land) or the registrar of titles has satisfied themselves about the purpose of the plan and has certified the plan as being a reserved plan of survey.

New Division 2 Tidal Boundaries

New Subdivision 1 Preliminary

New section 66 (Non-application of subdivisions 2 to 4 to particular land)

New section 66 provides that certain categories of land are exempt from the application of new subdivisions 2 to 4. Therefore the boundaries of these areas do not change upon commencement or upon a resurvey.

Exempt land includes land with a "specified tidal boundary" (defined in new section 71), some indigenous lands, State forests, protected areas under the *Nature Conservation Act 1992* (NCA) and strategic port land. Therefore, the boundaries of these lots do not change upon commencement or upon a resurvey.

Land where the boundary has been specifically identified with a reference on the Deed of Grant to line such as "Mean High Water Springs" ("specified tidal boundary land") is exempt because the State specifically intended to recognise lots to that particular boundary. In these cases there was a specific intent by the State to have the boundary at that specified line, in contrast with general boundary descriptors such as "high-water mark".

Land protected under the NCA includes national parks (scientific), national parks, national parks (Aboriginal land), national parks (Torres Strait Islander land), national parks (Cape York Peninsula Aboriginal land), national parks (recovery), conservation parks, resources reserves and nature refuges.

This land is exempt as land under the NCA as it is dedicated for specific environmental and conservation purposes and as such these amendments are not intended to affect these categories of land.

However, the clause provides that, for the purposes of this Act, land comprised of a coordinated conservation area, wilderness area, World Heritage management area or international agreement area is not regarded as a protected area under the NCA. These areas are not areas concerned with land boundaries, rather they are "administrative areas" under the SMIA and as such any movement in an ambulatory boundary caused by this Bill will have no influence on these areas.

Strategic port land is also exempted from the new subdivisions. The commercial importance of ports, the day to day management by Port

Authorities and the long established understanding and recognition of their boundaries means that changes to their boundaries could put at risk the effective running of the ports.

Should land cease to be land protected by the NCA or declared as State forest or strategic port land, then the exemptions no longer apply.

New section 67 (Overview of sdivs 2 to 6)

New section 67 provides an overview of the new subdivisions 2 to 6.

Subdivision 2 provides the method for locating a tidal boundary after commencement of the new provisions and ending on the registration of the first new plan of survey. Unless an exception applies, the tidal boundary location is the natural feature adopted in the current applicable plan of survey.

Subdivision 3 provides for the location of a tidal boundary from registration of the first new plan of survey until the registration of a subsequent new plan of survey. Generally, the tidal boundary is located by the natural feature adopted in the first old plan of survey (the original survey of the land), that was an authoritative survey plan immediately prior to a new plan of survey registered after commencement.

Each of subdivisions 2 and 3 contain some exceptions to the basic rule for the location of the tidal boundary, including when a natural feature:

- cannot be located;
- has been obliterated;
- does not exist;
- is only one of multiple features which meet the criteria;
- is not shown on an old plan of survey; or
- there is no old plan of survey.

Subdivision 4 provides for the location at law of a tidal boundary of land from the registration of any subsequent new plan of survey for the land, relying on the feature adopted in the first new plan of survey for the land.

Subdivision 5 describes rules for determining the location at law of a tidal boundary of land where new source material is issued.

Subdivision 6 provides rules that clarify the existing law in relation to the landward (referred to as "esplanade boundaries") and seaward boundaries (the tidal boundaries) of esplanades.

New section 68 (Operation of sdivs 2 to 4)

New section 68 describes how the new subdivisions 2 to 4 work. The rules in subdivisions 2 to 4 prevail in the event of any inconsistency between the provisions and the location of the tidal boundary as:

- represented on the applicable plan of survey; or
- described in any source material for the land in force immediately before commencement.

New section 69 (Noting of advice about operation of sdiv 3 or div 3)

New section 69 provides a discretion to the chief executive (land) or the registrar of titles to annotate the freehold register or the leasehold register to identify land where subdivision 3 or a multiple parcel declaration would or is likely to result in a relocation of the tidal boundary away from its current location.

This provision will be used to annotate the freehold register for "extended land", identified by the Department, where the land was resurveyed to Mean High Water Springs or a feature approximating Mean High Water Springs, and the source material indicates that the land does not have a specified tidal boundary. This will serve as an alert to purchasers of such land that the boundary of the land may shift at its next resurvey.

No fee is payable in relation to the placing of a notation on a register pursuant to this section.

Whilst every effort will be made to annotate the register, it may be that there are some lots of "extended land" that the department has been unable to identify and accordingly new subsection 69(2) does not impose any obligation on the registrar, the Chief Executive or anyone else to take action allowed under subsection 69(2).

New Section 70 (Meaning of *tidal boundary* of land)

New section 70 defines a tidal boundary. Land has a tidal boundary if the land is identified, either expressly or by necessary implication with

reference to water that is subject to tidal influence. The source material may refer to a generalised tidal boundary identifier (e.g. high-water mark), a natural feature (e.g. the top of a bank running in proximity to the water's edge) or a body of tidal water (e.g. Pacific Ocean, Moreton Bay, Brisbane River). A tidal boundary cannot be represented as a right line boundary.

In most instances, a Deed of Grant describes the boundary to a location such as mean high water springs or at high-water mark. These terms have not been used consistently and as such confusion has arisen about where the tidal boundary is located. (see *Svendsen v State of Queensland* [1996] 1 Qd R 216).

This new section also deals with the relationship between tidal and non-tidal land. Land upstream of a downstream tidal limit declared under the Water Act does not have a tidal boundary, even if the source material is constructed in a way that implies that the land is bounded by tidal water.

New section 71 (Meaning of *specified tidal boundary)*

New section 71 provides that land has a specified tidal boundary if the land has a tidal boundary and the source material refers to a specific boundary identifier (e.g. Mean High Water Springs, or ordinary high-water mark at spring tides). Under new section 66, land with a specified tidal boundary is exempt from the application of the new tidal boundary location provisions under the Bill. This is because the State has always known the precise location of the boundary of land with a specified tidal boundary.

A specified tidal boundary also includes land where action was taken under section 358 of the Land Act (or similar earlier legislation) to relocate a tidal boundary by the surrender of the original deed of grant and the issue of a new deed of grant after a resurvey.

New section 72 (Tidal boundary location criteria)

In certain circumstances, the determination of the location of a tidal boundary involves reference to a number of criteria. New section 72 provides the criteria that must be applied to locate a tidal boundary in these circumstances. The key objectives are to ensure:

- stability and sustainability;
- conservation and protection; and
- preservation of the public interest.

The criteria also provide a means of identifying the boundary when a natural feature cannot be adopted. In these instances the tidal boundary must be located on the landward side of any sandy beach, fore dune, sandy dune or active erosion area that does not have any natural vegetation.

New section 73 (Special regulation-making power to support tidal boundary location)

New section 73 provides for the making of a regulation to support the application of the provisions of this division. The regulations may, through text and diagrams, provide guidance how the provisions should be applied in varying tidal environments.

This section also prevents the invalidity of the regulation if it is capable of providing greater certainty than the new provisions relating to tidal boundaries provided for in the Act.

New section 74 (Special provisions for plans of survey approved under stay provisions)

New section 74 provides that a plan of survey approved during the tidal stay for registration will be treated as if it has been surveyed under the new rules. The natural feature or other thing depicting the high-water mark boundary on the plan of survey approved during the stay will be adopted as the tidal boundary. The provision excludes the operation of subdivisions 2 and 3, which means that a resurvey of the ambulatory boundary is not required in order to register a subsequent new plan of survey. This provision recognises the similarity between the new provisions and the criteria in operation during the stay.

New Subdivision 2 – Locating tidal boundaries at law until registration of first new plan of survey

New section 75 (Application of sdiv 2)

New section 75 provides that subdivision 2 applies after commencement of the new provisions and ends on the registration of the first new plan of survey.

New section 76 (Current adopted natural feature rule (tidal) provision

The new section 76 provides the rules for locating tidal boundaries at commencement.

The tidal boundary is the natural feature adopted in the plan of survey registered at commencement, together with any associated material for the plan. The natural feature may be, for example, the landward edge of mangroves, seaward edge of grassy dune, or the stable toe of a dune.

The tidal boundary is located at the natural feature, taking into account the application of the ambulatory boundary principles.

New subsection 76(2) provides that, for the purposes of this subdivision, the adoption of the line of intersection of a tidal plane with land is sufficient to achieve the adoption of the natural feature. The objective is to recognise as an existing registered interest the situation where land, described in the deed as extending to "high-water mark" has been resurveyed to "mean high water springs". Note that this section may be distinguished from subsection 80(2) (at first resurvey after commencement), in which the adoption of a line of intersection between a tidal plane and land is not sufficient for the adoption of a natural feature in the context of registering a new plan of survey.

The example following section 76(4) explains the changes in the location of the tidal boundary, for land where the deed of grant referred to the tidal boundary as the "high-water mark" and the plan of survey identified a natural feature which was not the line of intersection between a tidal plan and land. The natural feature adopted as the boundary on the plan may have been described as the top of a bank or the edge of a sandy beach. Immediately before the commencement of this division, the source material would have been interpreted as providing that the land extended to Mean High Water Springs. However, upon commencement, the tidal boundary is taken to be the natural feature as shown on the most recent registered plan of survey, which is the top of the bank or the edge of the sandy beach, even if this is in a more landward position than the line of Mean High Water Springs.

New section 77 (Current adopted natural feature rule (tidal) exception provision

New section 77 provides for the location of a tidal boundary, if the rules set out in section 76 do not apply or cannot be practicably applied.

The tidal boundary is located where it could most reasonably be expected to be located under Subdivision 3 (Locating tidal boundaries at law from registration of first new plan of survey) if the first new plan of survey were to be registered for the land. That is, the tidal boundary is where it would be located on resurvey, subject to the application of the ambulatory boundary principles.

New section 77 applies if the current adopted natural feature rule (tidal) in section 76 cannot be applied to locate a tidal boundary, because the old plan of survey that is registered or otherwise authoritative for the land adopted a natural feature, but it is either:

- not possible to match the plan with the evidence on the land; or
- the feature is not in its natural location, because of sudden change to the natural feature.

New Subdivision 3 – Locating tidal boundaries at law from first registration of first new plan of survey

New section 78 (Application of subdivision 3)

New section 78 provides that subdivision 3 applies on and from registration of a new plan of survey.

After commencement of the amendments a survey plan must not be registered unless it complies with subdivision 3 or it is a reserved plan of survey.

However, where land has been the subject of a multiple lot declaration pursuant to section 93, the boundary must be located at the declared line and the operation of the declaration may displace the operation of this subdivision.

New section 79 (Special requirement to support the operation of subdivision 3)

New section 79 sets out the requirement that the survey of a tidal boundary must, to the greatest practicable extent, be consistent with the location at law of the tidal boundary under Subdivision 3. This requirement applies also to a plan of survey lodged but not registered before commencement.

This subdivision operates to ensure a lot extended to Mean High Water Springs is surveyed using the rules as outlined in section 80 or one of the exceptions to the rule to locate the tidal boundary.

The provision sets out when a compiled plan may be used so that the tidal boundary need not be resurveyed.

A compiled plan as defined in the Act is a plan of survey that uses "compiled information" for all or part of the tidal boundary or non-tidal watercourse boundary. Note that it is a more restrictive definition than the term commonly used by the surveying profession which refers to a plan prepared using compiled information in relation to searchable, registered information and which is not limited to information about an ambulatory boundary. This section provides that compiled information may be obtained from the original plan of survey for the land that identified a natural feature.

The provision prohibits the use of compiled information obtained from a plan of survey where the tidal boundary was surveyed closer to the tidal water than the natural feature adopted on the original plan.

Note that while this provision enables all or part of a tidal boundary to be represented on a plan without a resurvey, the position of the boundary at law under this subdivision is not affected by the fact that the tidal boundary has not been resurveyed.

New section 80 (Original adopted natural feature rule (tidal))

New section 80 applies where:

- an old plan of survey, together with any associated material, clearly adopted a natural feature to represent the tidal boundary; and
- the old plan of survey was the first plan of survey to be registered or otherwise become authoritative and adopted a natural feature to represent the tidal boundary.

If these conditions are satisfied, the adopted natural feature becomes the boundary at law, taking into account the ambulatory boundary principles.

The section provides that the adoption of the line of intersection between a tidal plane and the land (e.g. mean high water springs) cannot be used as the natural feature for the location of the tidal boundary for the purposes of this section.

Although this line of intersection was recognised as a natural feature under subdivision 2 (from commencement), it is not recognised for plans registered after commencement. This ensures that any new survey undertaken adopts the original adopted natural feature, which in most cases, is located landward of mean high water springs. This protects and maintains public access to foreshores and prevents the foreshore being taken into private ownership.

For land granted to "high-water mark", if the original plan located the tidal boundary at a natural feature (e.g. the edge of a sandy beach), on resurvey, the tidal boundary is where the natural feature is now located, instead of mean high water springs.

This rule applies even though a court may otherwise have found that, at law, the boundary was in a different location. For example in the *Svendsen* case, the plan of survey showed the boundary at the line that the surveyor regarded as high-water mark, whereas the Court determined it to be at a different location.

New section 81 (First exception for the original adopted natural feature rule (tidal) (alternative natural feature exception))

New section 81 provides an alternative for the location of the tidal boundary of land that was freehold at the time of commencement of these provisions.

This new section only applies if there is more than one alternative natural feature that complies with the first four criteria as set out in new section 72 (tidal boundary location criteria).

The surveyor must provide sufficient information to demonstrate that an alternative natural feature exists which meets the first four tidal boundary location criteria, which includes satisfying a public interest test embedded in the third criterion. The surveyor must also consult with the registered owner of the land before using this approach in a plan lodged for registration.

If the alternative natural feature is adopted, then it forms the tidal boundary, taking into account any change after registration arising from the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries).

New section 82 (Second exception for the original adopted natural feature rule (tidal) (applied criteria exception))

New section 82 provides an exception to the original adopted natural feature rule. This applies when the old plan of survey and the associated material did not clearly adopt a natural feature as the location for the tidal boundary.

The section provides that the tidal boundary is the natural feature or anything else (for example a modification to the foreshore) that to the greatest practicable extent complies with the all the boundary location criteria under new section 72.

The section provides that the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries) may be considered when locating the tidal boundary.

The operation of subsection 82(2) is displaced if a single lot declaration is made about the location of the tidal boundary.

New section 83 (Third exception for the original adopted natural feature rule (tidal) provision (chief executive single lot declaration (tidal) exception))

New section 83 contains a head of power for the Chief Executive to declare the tidal boundary to be a natural feature or anything else. This operates as an exception to the original adopted natural feature rule in section 80.

A declaration may be made, if a first new plan of survey for the land has been lodged, or deposited with a view to subsequent lodgement; and

- the evidence on the old plan of survey of the adoption of a natural feature does not correspond with the evidence on the ground of a natural feature; or
- a natural feature was adopted on the original plan of survey, but it is now not possible to decide where the tidal boundary would have been if the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries) are taken into account; or
- for other circumstances not mentioned above, it is not practicable to apply the original adopted natural feature rule.

A declaration may also be made if it can be determined that the surveyor did not comply with the directions to surveyors current at the time that the old plan of survey was prepared, and a line other than a natural feature was adopted for representing the tidal boundary, so that the tidal boundary can be characterised as "misdescription".

The tidal boundary is the natural feature or anything else declared by the Chief Executive to be the boundary for the land, and the ambulatory boundary principles may be taken into account in determining the location of the boundary.

When a plan is lodged, or deposited with a view to future lodgement, the Chief Executive or registrar may defer dealing with the plan for a reasonable time to allow the Chief Executive to investigate whether a single parcel declaration should be made or not, and how it should be made.

The Chief Executive must:

- take reasonable steps to obtain the views of any registered owner or lessee of the land about the proposed declaration; and
- ensure that the location of the tidal boundary complies to the greatest practicable extent with the requirements of the first three tidal boundary location criteria.

The gazette notice may identify the location of the tidal boundary by incorporating a map or plan held by the Chief Executive.

Any boundary declared by the Chief Executive retains the characteristics of a tidal boundary, subject to gradual change.

A declaration decision may be subject to internal review and may be appealed.

New Subdivision 4 – Locating tidal boundaries at law from registration of subsequent new plan of survey

New section 84 (Application of sdiv 4)

New section 84 applies subdivision 4, which deals with the location at law of a tidal boundary, on and from the registration of a subsequent new plan of survey for the land.

The effect of this subdivision is that subdivision 3 is only applied once in relation to any land.

Note that if a multiple lot declaration is made in relation to the subject land, this rule may be displaced.

New section 85 (Special requirement to support the operation of subdivision 4)

New section 85 ensures that the representation of the tidal boundary on any further plan of survey prepared for the land coincides to the greatest practicable extent with the position of the tidal boundary at law, which is where the boundary was located when the first new plan of survey were registered.

The provision sets out when a compiled plan may be used for a subsequent new plan of survey so that the tidal boundary need not be resurveyed. A compiled plan as defined in the Act is a plan of survey that uses "compiled information" for all or part of the tidal boundary or non-tidal watercourse boundary. Compiled information is searchable, registered information.

Note that it is a more restrictive definition than the term commonly used by the surveying profession, which refers to a plan prepared using compiled information in relation to searchable, registered information and which is not limited to information about an ambulatory boundary.

This section provides that a compiled plan of survey may be used if the first new plan of survey was the result of a resurvey of the tidal boundary. In this case, the subsequent new plan of survey may use information from the new plan of survey.

A subsequent new plan of survey may be a compiled plan in relation to the tidal boundary or any part of it, if the first new plan of survey was also a compiled plan. In this case, the subsequent new plan of survey must use the same information used in the first new plan of survey.

Note that if a compiled plan is used for all or part of the tidal boundary, the position of the boundary at law under this subdivision is not affected by the fact that the tidal boundary has not been resurveyed.

New section 86 (First new plan of survey adopted feature rule (tidal))

New section 86 provides that any plan of survey registered after the first new plan of survey must adopt the natural feature or other thing on which the boundary in the first new plan of survey is based. The "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles

preserve common law rules for the movement of ambulatory boundaries) may be taken into account in determining the location of the boundary.

New Subdivision 5 – Locating tidal boundaries at law on bringing into existence of new source material

New section 87 (Application of sdiv 5)

New section 87 provides that subdivision 5 applies when new source material is brought into existence.

This may occur when previously leasehold land is converted to freehold, when land is granted after surrender, or when a lease or deed of grant for State land is issued for the first time.

New section 88 (Special requirement to support the operation of sdiv 5)

New section 88 ensures that the representation of the tidal boundary on any plan of survey and associated material for the land coincides to the greatest practicable extent with the position of the tidal boundary at law as provided for in this subdivision.

New section 89 (New source material adopted feature rule (tidal))

New section 89 provides that the rules in subdivisions 2 to 4 do not apply to the land for which new source material is brought into existence.

The section provides that the source material may identify a natural feature or other thing as the tidal boundary. If a natural feature is identified as the boundary, then the effect of gradual change on it after the creation of the source material may be taken into account in determining its location.

New subsection 89(3) provides that for land with new source material covered by this subdivision, a line of intersection of a tidal plane with land (such as Mean High Water Springs) may not be adopted as a natural feature unless the land is, or is about to become indigenous land or a protected area under the NCA.

New subdivision 6 - Esplanades

New section 90 (Boundary of land with excluded or dedicated esplanade – source material coming into force before commencement)

New section 90 clarifies the existing common law in relation to esplanades created by exclusion or esplanades created by reservation that have been dedicated, before the commencement of these amendments, and codifies long-standing surveying practice. It differentiates between the tidal boundary of the esplanade, and the esplanade boundary between the esplanade and the adjoining lot. This provision does not apply where the land is exempted by the operation of subdivision 1.

The source material for land immediately adjoining an esplanade by exclusion usually refers to the area of land included in the grant of the parcel, and nominates a specific area for the esplanade that has been excluded from the grant. In practice, the area of the esplanade by exclusion is calculated when the land is surveyed.

The rules in subdivisions 2 to 4 apply to the tidal boundary of the esplanade. The tidal boundary remains at the current adopted natural feature of the land until a new plan of survey is registered for the land. If there is an old plan of survey for the land which pre-dates the current registered plan, after resurvey and registration of the new plan of survey, the tidal boundary is located at the original adopted natural feature, or if one of the exceptions in subdivision 3 applies, at the line determined by that provision.

The esplanade boundary of the land is taken to have been fixed as if it were a right line boundary, on the issue of the source material or the dedication of the esplanade. It is located at the offset from the tidal boundary as provided in the source material and on the plan of survey.

The net effect of this is that the esplanade boundary may be curvilinear in form, is not depicted on a plan by annotating it with a bearing and a measurement, and the location of the boundary remains in its original location unaffected by gradual change. While the esplanade boundary is determined as an offset from the tidal boundary, any change in the location of the natural feature on which the tidal boundary is based, does not result in a corresponding shift of the esplanade boundary of the land. The result of these provisions is that if the esplanade has eroded, and even when part

of the adjoining parcel has eroded, the esplanade boundary of the adjoining parcel remains at its original location.

The section clarifies the situation where source material was issued without a survey of the tidal boundary. In this case, the esplanade boundary is at the offset stated in the source material from the location at law of the tidal boundary at the time that the source material came into force.

New section 91 (Boundary of land with excluded esplanade or dedicated esplanade – source material issued after commencement)

New section 91 clarifies the existing common law in relation to esplanades created by exclusion (the exclusion in the source material for a lot of land for an esplanade) or esplanades created by reservation that have been dedicated after these amendments commence. This provision does not apply where the land is exempted by the operation of subdivision 1.

Subdivision 5 applies to the location of the tidal boundary of an esplanade. At law, the tidal boundary is located at the natural feature or other thing referred to in the source material issued in relation to the land, taking into account gradual change.

The esplanade boundary of the land is located at the offset from the tidal boundary as provided in the source material and on the plan of survey, and it fixes as if it were a right line boundary. The esplanade boundary may be curvilinear in form, is not depicted on a plan by annotating it with a bearing and a measurement, and the location of the boundary remains in its original location unaffected by the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries). While the esplanade boundary is determined as an offset from the tidal boundary, any change in the location of the natural feature on which the tidal boundary is based, does not result in a corresponding shift of the esplanade boundary of the land. The result of these provisions is that if the esplanade has eroded, and even when part of the adjoining parcel has eroded, the esplanade boundary of the adjoining parcel remains at its original location.

The section also clarifies the situation where source material was issued without a survey of the tidal boundary. In this case, the esplanade boundary is at the offset stated in the source material from the location at law of the tidal boundary at the time that the source material or dedication comes into force.

New section 92 (Boundary of land subject to reservation of esplanade, before dedication)

New section 92 clarifies the existing law in relation to esplanades created by reservation where the esplanade has not been dedicated as a public road and where the land is not exempted by the operation of subdivision 1.

Land in this category mainly includes land where a plan of survey has not been registered, or where the depiction of the esplanade on the plan of survey does not meet the statutory requirements in either section 96 of the Land Act or section 362 in the *Land Act 1967* for the dedication of road by lodgement of a survey plan, and there is no separate dedication notice.

This section codifies long-standing surveying practice.

An esplanade by reservation is created when the source materials reserves a specified area from the grant of a parcel of land, with the purposes of the reservation being creation of an esplanade. This situation arises, because an esplanade is treated as a category of road in the Land Act. However, unlike a road reservation, the location of a reservation for an esplanade is known because of its relationship to the high-water mark.

If the source material for the land was issued before commencement, the tidal boundary for the land is determined by subdivisions 2 to 4 of the Act. That is, the current adopted natural feature rule (or its exception) applies to the tidal boundary until the registration of a new plan of survey, when the original adopted natural feature rule (or one of its exceptions) applies.

If the source material was issued after commencement, subdivision 5 applies to the location of the tidal boundary of the land.

New Division 3 – Miscellaneous issues in the tidal environment

New Section 93 (Multiple lot declaration (tidal) provision)

New section 93 enables the Chief Executive to make a declaration about the location of the tidal boundary for two or more lots of land. This power would be used in circumstances where development in an area, such as along the Brisbane river, have rendered it impossible to find any natural feature. Such a declaration may be made if:

- no plan of survey has been lodged or deposited with a view to lodgement;

- a new plan of survey for one of the lots has been lodged or deposited with a view to subsequent lodgement; or
- a new plan of survey has been registered for one of the lots.
- A declaration may be made by the Chief Executive only if:
- all of the land subject of the declaration was the subject of one old plan of survey where the tidal boundaries of the lots were formed by different lengths of the same natural feature adopted as the boundary; and
- because of obliteration of the natural feature, it was now not possible to make a meaningful correspondence between the old plan of survey and evidence of the natural feature on the ground of the relevant lots.

When the next new plan of survey is registered, the tidal boundary is at law the line on the ground that corresponds to the declared line. The location of the declared boundary is taken to be fixed as if it was a right line boundary, but the land retains a tidal boundary.

Before making a declaration, the Chief Executive must take reasonable steps to obtain the views of any lessee or registered owner, e.g. the person recorded in the freehold land register as the person entitled to the fee simple interest in the lot. The gazette notice may refer to a map or plan held by the Chief Executive for identifying the location of the tidal boundary. In making a declaration, the Chief Executive must have regard to all the evidence about the history of the location of the original adopted natural feature reasonably available to him or her. The Chief Executive must also, by referring to relevant evidence, ensure that the location of the tidal boundary in the declaration is:

- not closer to the tidal water than the last known location of the original adopted natural feature; and
- identical, in practical terms, to the last known location of the original adopted natural feature, before its obliteration by sudden change.

Relevant evidence means historical evidence that is reasonably available to the Chief Executive, and the results of analysis soil samples if these have been taken.

The land subject of the declaration is taken still to have a tidal boundary even though the boundary becomes fixed in its location. The Chief Executive may defer dealing with the plan for a reasonable period to allow

departmental investigations to take place before declaration of the boundary.

Division 2, subdivisions 3 and 4 (locating tidal boundaries at law from registration of first new plan of survey and subsequent plans of survey) do not operate to the extent that they are inconsistent with this section.

Note that a declaration decision under this section may be subject to internal review, and may be appealed.

New section 94 (No compensation for operation of div 2 or this division)

New section 94 provides that a person is not entitled to compensation from the State or anyone else under the SMIA, the Land Title Act compensation provisions, relief under the *Property Law Act 1974* or otherwise, for deprivation of an interest of any type in land, or for loss or damage of any kind arising from the operation of division 2 (tidal boundaries) or division 3 (miscellaneous issues in the tidal environment).

Subparagraph 94(a) rules out compensation arising from the relocation at law of a tidal boundary on commencement and on the first resurvey after commencement.

On commencement of the Bill the location of the ambulatory boundary (tidal and non-tidal) will be located at the feature shown on the current plan of survey. Before commencement, some landholders may have been entitled at common law to resurvey closer towards the sea or river, thereby increasing the size of their lot.

When a landowner with a tidal or non-tidal ambulatory boundary chooses to resurvey their lot after the commencement of the proposed amendments, the boundary may move, in some circumstances, to a different position than that shown on their current survey plan. This provision explicitly states that no compensation is payable will be included in the Bill. This survey will only be undertaken at the choice of the owner.

Subparagraph 94(b) rules out compensation arising from the keeping of registers by the Chief Executive or the registrar about the likely location of a tidal boundary arising from the operation of division 2, subdivision 3 or from a multiple lot declaration.

Whilst every effort will be made to ensure that notices are placed on title warning that the boundary may move on resurvey, it is not possible to be sure that every lot that may be affected has been identified.

The rationale for this approach to compensation is set out in the General Outline of the Explanatory notes, in the section titled "Consistency with Fundamental Legislative Principles".

New Division 4 – Non-tidal boundaries

New Subdivision 1 – Preliminary

New section 95 (Non-application of subdivisions 2 to 4 to particular land)

New section 95 provides that indigenous land, protected areas under the NCA, and State forests are exempt from the application of new subdivisions 2 to 4. Therefore, the boundaries of these areas do not change upon commencement or upon a resurvey.

Land protected under the NCA includes national parks (scientific), national parks, national parks (Aboriginal land), national parks (Torres Strait Islander land), national parks (Cape York Peninsula Aboriginal land), national parks (recovery), conservation parks, resources reserves and nature refuges.

This land is dedicated for specific environmental and conservation purposes and as such these amendments are not intended to affect these categories of land.

However, the clause provides that, for the purposes of this Act, land comprised of a coordinated conservation area, wilderness area, World Heritage management area or international agreement area is not regarded as a protected area under the NCA. These areas are not areas concerned with land boundaries, rather they are "administrative areas" under the SMIA and as such any movement in an ambulatory boundary caused by this Bill will have no influence on these areas.

Should land cease to be land protected under the NCA or declared State forests under the Forestry Act then the exception no longer applies.

New section 96 (Overview of subdivisions 2 to 6)

New section 96 provides an overview of the new subdivisions 2 to 6.

Subdivision 2 provides for the location of a non-tidal boundary (watercourse) between commencement of the new provisions and

registration of a new plan of survey. Generally, the non-tidal boundary (watercourse) location is the natural feature adopted in the current registered plan of survey although there are some circumstances where the boundary must be located using criteria set out in new section 100.

Subdivision 3 provides for the location of a non-tidal boundary (watercourse) of land from registration of the first new plan of survey (the first survey plan registered after commencement of this Act). Generally, this boundary is the natural feature that to the greatest practicable extent complies with the non-tidal boundary (watercourse) location criteria.

Subdivision 4 provides for the location of a non-tidal boundary (watercourse) of land from registration of any subsequent new plan of survey. This is generally at the natural feature adopted as the non-tidal boundary (watercourse) in the first new plan of survey for the land taking into account any subsequent gradual change of the feature.

Subdivision 5 provides for the location of a non-tidal boundary (watercourse) when new source material is issued in relation to the land.

Subdivision 6 provides for the location of a non-tidal boundary (lake) at any time. This subdivision duplicates the existing provisions in the Water Act which means that generally the boundary is the line of the outermost extent of the bed and banks of the lake. This new provision dealing with lakes is not intended to change the common law.

New section 97 (Operation of sdivs 2 to 4)

New section 97 provides that the operation of new subdivisions 2 to 4 about the location at law of a non-tidal boundary (watercourse) prevails in the event of any inconsistency between the provisions and the location of non-tidal boundary (watercourse) as:

- represented on the applicable plan of survey; or
- described in any source material immediately before the commencement of this division.

New section 98 (Noting of advice about operation of sdiv 3 or div 5)

New section 98 provides a discretion to the registrar of titles or the Chief Executive (land) to annotate the freehold register or the leasehold register to identify land where subdivision 3 or a multiple parcel declaration (see

new section 120) would or is likely to result in a relocation of the non-tidal boundary (watercourse) away from its current location.

No fee is payable in relation to making an annotation on the register as provided for in this section.

This section does not impose any obligation on the registrar or the Chief Executive to place a notation on the relevant register, or on anyone else to take action allowed under this section.

New section 99 (Meanings of *non-tidal boundary (lake)* and *non-tidal boundary (watercourse)*)

New section 99 provides definitions for a "non-tidal boundary (lake)" and "non-tidal boundary (watercourse)".

New section 100 (Non-tidal boundary (watercourse) location criteria)

New section 100 provides the criteria that must be satisfied to identify a non-tidal boundary (watercourse).

The non-tidal boundary (watercourse) must:

- be generally aligned with the path followed by the watercourse and be a naturally occurring feature; and
- not be a transient feature, such as a bar, an in-stream island or a sand or reed bank.

Subsection 100(3) requires that if the first two conditions can be satisfied, then the boundary must be one of the following:

- the top of a bank;
- a particular point of change in the grade of a landform;
- a naturally occurring change in vegetation; or
- another feature of sufficient substance.

If subsection 100(3) cannot be satisfied, then the boundary must be a depositional feature or scour mark.

If a depositional feature or scour mark cannot be identified, but it is possible to identify a non-tidal boundary on the opposite bank of the watercourse using these criteria, then the non-tidal boundary (watercourse)

is the line that runs along the same level as the boundary on the opposite side of the watercourse. This line is taken to be a natural feature for the purposes of part 7.

New section 101 (Special regulation-making power to support non-tidal boundary (watercourse) location

New section 101 provides for the making of a regulation to support the application of the provisions of this division. The regulations may, through text and diagrams, provide guidance on:

- applying the provisions of this division in varying environments and in watercourses or sections of watercourses with varying profiles;
- identifying the occurrence of depositional features of scour marks and illustrate how they may locate non-tidal boundaries (watercourse);
- understanding how a bench, bar, in-stream island sand or reed bank may be recognised; and
- understanding how an anabranch may be recognised.

This section also prevents the invalidity of the regulation if it is capable of providing greater certainty than the new provisions relating to non-tidal boundary (watercourse) provided for in the Act.

New Subdivision 2 – Locating non-tidal boundaries (watercourse) at law until registration of first new plan of survey

New section 102 (Application of sdiv 2)

New section 102 explains that this subdivision provides for the location at law of a non-tidal boundary (watercourse) in the period from the commencement of this new division and ending on the registration of the first new plan of survey for the land.

New section 103 (Current adopted natural feature rule (non-tidal) provision)

New section 103 provides that until the registration of the first new plan of survey after the commencement, the boundary at law is the natural feature adopted in the currently registered or authoritative plan of survey together

with any associated material for the plan of survey. The natural feature may be a scour mark, top of bank or the edge of useable land.

The non-tidal boundary (watercourse) is located at the natural feature, taking into account the application of the ambulatory boundary principles.

Subsection 103(2) provides that the natural feature may be a level of water flow, but it may not be the notional middle line of the watercourse.

This section reflects the policy intent, which is that other than by gradual change, no non-tidal boundary (watercourse) should move from the location as shown on the currently registered plan of survey. Because of this, a boundary based on the line of intersection of land with a particular level of water flow is regarded as a suitable natural feature in this subdivision. The location of the boundary does not change if the natural feature is subject to sudden change.

On the other hand, a plan of survey which shows the middle line separating the lands of owners on opposite sides of the watercourse is not sufficient for the adoption of a natural feature. Very few plans of survey show such boundaries, which were based on the old common law doctrine of "*ad medium filum aqua*". However, that common law doctrine was displaced in 1910 by passage of the *Rights in Water and Water Conservation and Utilization Act 1910*, and subsequent water legislation.

New section 104 (Current adopted natural feature rule (non-tidal) exception provision)

New section 104 provides for the location of a non-tidal boundary (watercourse), if the rule set out in new section 104 does not apply or cannot be practicably applied because there is an authoritative plan for the land that adopted a natural feature for the non-tidal boundary (watercourse), but either:

- it is not possible to match the plan with the evidence on the land; or
- the feature is not in its natural location, because of sudden change to the natural feature.

Examples of these circumstances that might make it impracticable to identify a natural feature, includes installation of walls, jetties, ramps, revetments or other structures.

The non-tidal boundary (watercourse) is located at the natural feature that to the greatest extent complies with the requirements of the non-tidal

boundary (watercourse) criteria, taking into account the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries).

If it is not possible to identify a natural feature that complies with the non-tidal boundary (watercourse) location criteria, then it is located where it would be expected to be located if the first new plan of survey were to be registered for the land.

New section 105 (No shift of boundary towards watercourse)

New section 105 provides that, in the event that the application of the current adopted natural feature (non-tidal) rule indicates that the boundary of a lot would be located closer to the opposite side of the watercourse than immediately before commencement, the boundary stays in the same place as its location at law immediately before commencement, subject to the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries).

The rationale for this provision includes:

- it would defeat the policy objectives for this Bill to compromise the integrity of the water course by enabling boundaries to be located further into the watercourse; and
- allowing a boundary to "move" further into the watercourse might have native title implications as it could convert State land into freehold.

New Subdivision 3 - Locating non-tidal boundaries (watercourse) at law from registration of first new plan of survey

New section 106 (Application of sdiv 3)

New section 106 provides that subdivision 3 applies on and from registration of a new plan of survey.

For example, this subdivision operates to ensure a lot with an "extended" boundary is resurveyed using the rules as outlined in new section 108 or one of the exceptions in sections 109 and 110 to locate the non-tidal boundary (watercourse). If a lot has been "extended" by resurvey into the

boundary watercourse since the original survey, the boundary may be located in a different place after the application of this rule.

If there is a multiple lot declaration relating to the land made pursuant to division 5, it may displace the operation of this subdivision in relation to that land.

New section 107 (Special requirement to support the operation of sdiv 3)

New section 107 sets out the requirement that representation of a non-tidal boundary (watercourse) on a plan of survey must be consistent to the greatest practicable extent with the location at law of the non-tidal boundary (watercourse) as provided for in Subdivision 3. This requirement applies to a plan of survey lodged but not registered before commencement.

A compiled plan may be a new plan of survey, if no part of the subdivision on the plan intersects with the boundary derived from an earlier plan, and the size and nature of the land and the length of the non-tidal boundary makes it impracticable to resurvey the boundary

Note that while this provision enables all or part of a non-tidal boundary (watercourse) to be represented on a plan without a resurvey, the position of the boundary at law under this subdivision is not affected by the fact that the tidal boundary has not been resurveyed.

New section 108 (Boundary location criteria rule (non-tidal) provision

New section 108 provides the rule for locating a non-tidal boundary (watercourse) on the first resurvey after commencement.

The new survey must place the boundary at the natural feature that, to the greatest practicable extent, complies with the requirements of the non-tidal boundary (watercourse) location criteria set out in section 100. The "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries) apply to the boundary.

If the resurvey according to this rule results in the non-tidal boundary watercourse being located closer to the middle of the watercourse than immediately before the registration of the first new plan of survey, then the non-tidal boundary remains in the same place as it was located immediately

before the registration of the first new plan of survey. The "ambulatory boundary principles" also apply to the subsequent position of a boundary determined in this way.

New section 109 (First exception for the boundary location criteria rule (non-tidal) provision (chief executive single lot declaration (non-tidal) exception))

New section 109 provides for the location at law of the non-tidal boundary (watercourse) if the Chief Executive has by gazette notice made a single parcel declaration about the location of the boundary. This operates as an exception to the boundary location rule (non-tidal) in section 108.

The non-tidal boundary (watercourse) is the natural feature or anything else declared by the Chief Executive to be the boundary for the land, and the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries) may be taken into account in determining the location of the boundary.

The Chief Executive may make a single parcel declaration only if a first new plan of survey for the land has been lodged or deposited with a view to subsequent lodgement, and it is not practicable to identify a natural feature (for example where extensive development has occurred) for the purpose of applying the boundary location criteria rule (non-tidal).

When a plan is lodged, or deposited with a view to future lodgement, the Chief Executive or registrar of title may defer dealing with the plan for a reasonable time to allow the Chief Executive to investigate whether a single parcel declaration should be made or not, and how it should be made.

The Chief Executive must:

- take reasonable steps to obtain the views of any registered owner or lessee of the land about the proposed declaration;
- ensure that the location of the non-tidal boundary (watercourse) complies to the greatest practicable extent with the requirements of the non-tidal boundary watercourse location criteria;
- consider all the reasonably available evidence about the history of the watercourse, and ensure that the single parcel declaration does not locate the boundary closer to the opposite side of the watercourse than the last known location of the boundary.

The gazette notice may identify the location of the non-tidal boundary (watercourse) by incorporating a map or plan held by the Chief Executive.

Note that a declaration decision under this section may be subject to internal review, and may be appealed.

New section 110 (Second exception for the boundary location criteria rule (non-tidal) provision (previous sudden change))

New section 110 provides a second exception to the boundary location criteria rule, when the natural feature adopted as the boundary was the subject of sudden change at any time before the registration of a new plan of survey. In this case, the non-tidal boundary (watercourse) is and remains where it was located immediately before the registration of the first new plan of survey. This is consistent with the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries).

New subdivision 4 – Locating non-tidal boundaries (watercourse) at law from registration of subsequent new plan of survey

New section 111 (Application of sdiv 4)

New section 111 applies subdivision 4, which deals with the location at law of a non-tidal boundary (watercourse), on and from the registration of a subsequent new plan of survey for the land. Note that the operation of this subdivision could be displaced by a multiple lot declaration (non-tidal) under division 5.

The effect of this subdivision is that subdivision 3 is only applied once in relation to any land.

New section 112 (Special requirement to support the operation of sdiv 4)

New section 112 ensures that the representation of the non-tidal boundary (watercourse) on any further plan of survey prepared for the land coincides to the greatest practicable extent with the position of the non-tidal boundary (watercourse) at law, which is where the boundary was located when the first new plan of survey was registered.

The provision sets out when a compiled plan may be used for a subsequent new plan of survey so that the non-tidal boundary need not be resurveyed. A compiled plan as defined in the Act is a plan of survey that uses "compiled information" for all or part of the non-tidal watercourse boundary. Compiled information is searchable, registered information.

A compiled plan of survey may be used if the first new plan of survey was the result of a resurvey of the non-tidal watercourse boundary. In this case, the subsequent new plan of survey may use information from the new plan of survey.

A subsequent new plan of survey may be a compiled plan in relation to the non-tidal watercourse boundary or any part of it, if the first new plan of survey was also a compiled plan. In this case, the subsequent new plan of survey must use the same information used in the first new plan of survey. Another requirement is that the location of the boundary on the new plan of subdivision must not intersect with the location at law of the boundary.

Note that if a compiled plan is used for all or part of the tidal boundary, the position of the boundary at law under this subdivision is not affected by the fact that the tidal boundary has not been resurveyed.

New section 113 (First new plan of survey adopted feature rule (non-tidal))

New section 113 provides that any plan of survey registered after the first new plan of survey must adopt the natural feature or other thing on which the boundary in the first new plan of survey is based. The ambulatory boundary principles may be taken into account in determining the location of the boundary if a natural feature constituted the boundary.

New Subdivision 5 – Locating non-tidal boundaries (watercourse) at law on coming into force of new source material

New section 114 (Application of sdiv 5)

New section 114 provides that subdivision 5 applies when new source material is brought into existence.

This may occur when previously leasehold land is converted to freehold, when land is granted after surrender, or when a deed of grant for State land is issued for the first time.

New section 115 (Special requirement to support the operation of sdiv 5)

New section 115 ensures that the representation of the non-tidal boundary (watercourse) on any plan of survey and associated material for the land coincides to the greatest practicable extent with the position of the non-tidal boundary at law as provided for in this subdivision

New section 116 (New source material adopted feature rule (non-tidal))

New section 116 provides that the rules in subdivisions 2 to 4 do not apply to the land.

The section provides that the source material may identify a natural feature or other thing as the non-tidal boundary (watercourse). If a natural feature is identified as the boundary, then the effect of the "ambulatory boundary principles" (defined in new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries) on it after the creation of the source material will be taken into account.

New Subdivision 6 – Locating non-tidal boundaries (lake)

New section 117 (Application of sdiv 6)

New section 117 provides that subdivision 6 applies to the non-tidal boundaries of lakes at any time.

Subdivision 6 is not intended to change the existing common law.

New section 118 (Special requirement to support the operation of sdiv 6)

New section 118 ensures that the representation of the non-tidal boundary (lake) on any plan of survey and associated material for the land coincides to the greatest practicable extent with the position of the non-tidal boundary (lake) at law as provided for in this subdivision.

New section 119 (Lake boundary rule)

New section 119 provides that the non-tidal boundary (lake) is the outermost extent of the bed and banks of the lake. In determining the location of the boundary, the "ambulatory boundary principles" (defined in

new section 62 of the SMIA, the principles preserve common law rules for the movement of ambulatory boundaries) may be taken into account.

New Division 5 – Miscellaneous issues in the non-tidal environment

New section 120 (Multiple lot declaration (non-tidal) provision)

New section 120 provides a head of power for the Chief Executive (land) to make a declaration about the location of the non-tidal boundary (watercourse) that affects each of two or more lots.

The Chief Executive may make multiple lot declaration (non-tidal) even if a new plan of survey has been lodged or deposited with a view to lodgement or 1 or more new plans of survey have been registered for the relevant land.

A declaration may be made by the Chief Executive only if:

- all of the land subject of the declaration was the subject of one old plan of survey where the non-tidal boundaries of the lots were formed by different lengths of the same natural feature adopted as the boundary; and
- because of obliteration of the natural feature, it was now not possible to make a meaningful correspondence between the old plan of survey and evidence of the natural feature on the ground of the relevant lots.

When the next new plan of survey is registered for a lot, the non-tidal boundary (watercourse) is at law the line on the ground corresponding to the declared line. The declared boundary is taken to be fixed as if it is a right line boundary. However, the land retains an ambulatory boundary.

Before making a declaration, the Chief Executive must:

- take reasonable steps to obtain the views of any lessee or registered owner, e.g. the person recorded in the freehold land register as the person entitled to the fee simple interest in the lot;
- consider all the relevant evidence to ensure that the single parcel declaration does not locate the boundary closer to the middle of the watercourse than the last known location of the boundary; and
- ensure that the location of the non-tidal boundary (watercourse) in the declaration is not closer to the non-tidal water than the last known

location of the original adopted natural feature, and identical, in practical terms, to the last known location of the original adopted natural feature, before its obliteration by sudden change.

The gazette notice may identify the location of the non-tidal boundary (watercourse) by incorporating a map or plan held by the Chief Executive.

The Chief Executive may defer dealing with the plan for a reasonable period to allow departmental investigations to take place before declaration of the boundary.

Division 4, subdivisions 3 to 4 do not operate to the extent that they are inconsistent with this provision.

Note that a declaration decision under this section may be subject to internal review, and may be appealed.

New section 121 – (No compensation for operation of division 4 or this division)

New section 121 provides that a person is not entitled to compensation from the State or anyone else under this Act, the Land Title Act compensation provisions, the *Property Law Act 1974* relief provisions or otherwise, for deprivation of an interest of any type in land, or for loss or damage of any kind, arising from the operation of division 4 (non-tidal boundaries) or division 5 (miscellaneous issues in the non-tidal environment).

In subparagraph 121(a) compensation is ruled out arising from the application of the:

- current adopted natural feature rule (non-tidal) and exceptions to it;
- original boundary location criteria rule (non-tidal) and exceptions to it; or
- a multiple lot declaration (non-tidal)

It is possible that the current adopted natural feature rule (non-tidal) could have the effect of locating the non-tidal boundary (watercourse) further from the water of the watercourse than its location at law immediately before the commencement. For example, the adopted natural feature could be the edge of useable land, while strictly speaking, the non-tidal boundary was a particular level of flow in the watercourse.

It is possible that that the boundary location criteria rule (non-tidal) could have the effect of locating the non-tidal boundary (watercourse) further from the water of the watercourse than its location at law as provided for under division 4, subdivision 3 (first survey after commencement). For example, on an application of the non-tidal boundary (watercourse) location criteria, the non-tidal boundary (watercourse) could be a scour mark, while strictly speaking, before the new plan of survey was registered, the non-tidal boundary (watercourse) was at a lower level, having been a particular level of flow in the watercourse.

In subparagraph 121(b), compensation is ruled out in relation to the maintenance or not of the registers maintained by the Chief Executive and registrar of titles in relation to any relation about the location of a non-tidal boundary (watercourse) or a multiple lot declaration.

New Division 6 – Review of declaration decisions and appeals

New Subdivision 1 – Right of appeal

New section 122 – Right of appeal

New section 122 provides a right of appeal to a registered owner or lessee who is given notice of a declaration decision. A declaration decision is a decision of the Chief Executive to declare a tidal or non-tidal (watercourse) boundary for a single lot or multiple lots under new sections 83, 94, 110 or 121.

New Subdivision 2 – Internal review of decisions

New section 123 – Appeal process starts with internal review

New section 123 provides that every appeal against a declaration decision must be, in the first instance by way of an application for internal review to the Minister.

New section 124 – Applying for review

New section 124 provides a period of 42 days in which a person may apply for a review of a declaration decision that may be extended by the Minister. The application for review must be in writing and state in detail the grounds on which the applicant seeks review of the decision.

New section 125 – Decision on reconsideration

New section 125 requires the Minister, after reviewing the decision appealed against, to make a further decision (the review decision), by notice in writing confirming, amending or substituting a new declaration decision. The Chief Executive must immediately give the applicant written notice of the review decision.

New Subdivision 3 – Appeals

New section 126 – Who may appeal

New section 126 enables a person who has applied for the review of a declaration decision and is dissatisfied with the review decision to appeal to the Land court against the decision.

New section 127 – Procedure for an appeal to the court

New section 127 details the procedure for an appeal to the Land court about a review decision on a declaration decision.

New section 128 – Powers of court on appeal

New section 128 provides that, on appeal, the Land court has the same powers as the Chief Executive and details the powers of the court on appeal.

New section 129 – Effect of decision on court of appeal

New section 129 sets out the effect of the decision of the Land court on appeal. If the court refers the matter back to the Chief Executive with directions, a new decision of the Chief Executive is not subject to review or appeal. If the court substitutes another decision, the substituted decision is taken to be the original declaration decision of the Chief Executive as if no application for review or appeal had been made.

New section 130 – Evidentiary provisions for appeal

New section 130 provides evidentiary provisions applicable to an appeal.

Insertion of new s 134 (Delegations)

Clause 216 inserts new section 134 which empowers the Chief Executive to delegate his or her functions under the Act to an appropriately qualified officer or employee of the department.

Amendment of schedule (Dictionary)

Clause 217 amends the dictionary by inserting a number of new definitions to deal with the tidal boundary and non-tidal boundary schemes. It also amends a section reference in the definition of an approved form.

Part 17 Amendment of Surveyors Act 2003

Act amended

Clause 218 provides that this part amends the *Surveyors Act 2003.*

Amendment of s 14 (Chairperson of board)

Clause 219 inserts extra provisions in section 14 to allow the Minister to appoint a member of the board to fill a vacancy in the office of chairperson (should such a vacancy occur during the currency of a chairperson's term of appointment).

Replacement of s 15 (Term of appointment)

Clause 220 replaces section 15 and makes the term of appointment of board members three years instead of two.

Amendment of s 19 (Vacation of office)

Clause 221 inserts a new provision which provides that if the board member appointed as a cadastral surveyor employed in the department leaves the department or, stops being a cadastral surveyor, his or her position on the board is taken to be vacated.

Amendment of s 36 (Eligibility for registration or registration endorsement—individuals)

Clause 222 amends section 36 by firstly removing one of the eligibility requirements for an individual seeking a consulting endorsement - which an individual intends to conduct a business providing surveying services. The act of the individual applying for a consulting endorsement is sufficient evidence of the intent to conduct a business. Furthermore an employee applying for a consulting endorsement cannot comply with this provision because it is the corporation he or she is employed by that is conducting a business.

Secondly, the eligibility requirement relating to professional indemnity insurance is expanded to cover the situation of an employee taking out insurance cover. If the employee is covered by his or her employer's insurance cover there is no need for him or her to take out individual cover.

Lastly, section 36 is amended by removing a transitional provision (a reference to a repealed Act) that is no longer relevant.

Amendment of s 38 (Eligibility for registration and registration endorsement—corporations)

Clause 223 amends section 38 by firstly removing one of the eligibility requirements for a corporation seeking registration as a surveyor with a consulting endorsement - which the corporation intends to conduct a business providing surveying services. The act of the corporation applying for registration is sufficient evidence of this.

Secondly, section 38 is expanded to include a requirement that a corporation seeking registration as a surveyor with a consulting endorsement employs, or has as one of its directors, an individual surveyor with a consulting endorsement. A similar requirement for corporations seeking other endorsements already exists and the new requirement will ensure a corporation has the necessary skills to conduct a surveying business.

Lastly, section 38 is amended by removing a transitional provision (a reference to a repealed Act) that is no longer relevant.

Amendment of s 45 (Procedural requirements for application)

Clause 224 amends section 45 to align the requirements for applications for a consulting endorsement with the amendments to section 36.

See discussion on amendments to section 36 for the reasons underpinning these amendments.

Amendment of s 46 (Additional requirements for application by corporation)

Clause 225 amends section 46 to align the requirements for application for registration of a corporation with the amendments to section 38.

See discussion on amendments to section 38 for the reasons underpinning these amendments.

Replacement of pt 12, hdg (Transitional provisions)

Clause 226 omits the heading to Division 1 (Transitional references) and inserts a new heading "Part 12 (Transitional and repeal provisions for Act No 70 of 2003)".

Replacement of pt 13, hdg (Repeal)

Clause 227 omits the heading Part 13 (Repeal) and inserts a new heading "Division 3 (Repeal)".

Insertion of new pt 13

Clause 228 inserts a new heading "Part 13 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2010".

New section 206 (Definitions for pt 13)

New section 206 provides definitions for the new part 13.

New section 207 (Existing application for registration or renewal by corporation)

New section 207 provides that an application made by a corporation for registration as a surveyor with a consulting endorsement before commencement will be decided by the rules applicable in force immediately before the commencement.

New section 208 (Continuation of board members)

New section 208 provides for continuation of board members appointed after 1 March 2010 but after the commencement. Upon commencement, the member is taken to be appointed until 1 March 2013. This section also provides for existing members of the board whose appointment would otherwise expire on 29 October 2010. These board members are taken to be appointed for a term that expires on 1 September 2011.

Amendment of sch 3 (Dictionary)

Clause 229 amends the dictionary of the Bill. The definition of professional misconduct is expanded so that it includes surveys carried out under supervision of a registrant, or a former registrant.

Part 18 Amendment of Torres Strait Islander Cultural Heritage Act 2003

Act amended

Clause 230 provides that this part amends the *Torres Strait Islander Cultural Heritage Act 2003*.

Amendment of s 34 (Native title party for an area)

Clause 231 amends the definition of the Torres Strait Islander native title party for an area to put beyond doubt the identity of the native title party for cultural purposes in the situation where there are two or more previously registered claimants for an area. The amendment will put this issue beyond doubt for all stakeholders.

Part 19 Amendment of Torres Strait Islander Land Act 1991

Act amended

Clause 232 provides that this part amends the *Torres Strait Islander Land Act 1991*.

Amendment of s 3 (Definitions)

Clause 233 amends the definitions in section 3 of the Act by omitting the definition of "beds and banks". The definition referred to the Water Act, *Schedule 4*. The changes made in this Bill to the criteria for determining the ambulatory boundary for non-tidal land mean that these terms are no longer relevant in determining the extent of the State's ownership of a watercourse and have been omitted from the Water Act.

Amendment of s 17 (Beds and banks of watercourses and lakes)

Clause 234 amends section 17 of the Act, which provides that watercourses are "available State land" (land in which no person other than the State has an interest) to remove the terms "beds and banks" of a watercourse. This amendment reflects the fact that changes made in this Bill to the criteria for determining the ambulatory boundary for non-tidal land mean that these terms are no longer relevant in determining the extent of the State's ownership of a watercourse.

Part 20 Amendment of Vegetation Management Act 1999

Act amended

Clause 235 provides that this part amends the *Vegetation Management Act 1999*.

Amendment of s 7 (Application of Act)

Clause 236 amends section 7 (1)(b) of the *Vegetation Management Act 1999* (VMA) to exempt additional national parks (national parks (Aboriginal land), national parks (Torres Strait Islander land) and national parks (Cape York Peninsula Aboriginal land)) from the VMA. These additional national parks are adequately protected, with vegetation clearing only allowable when it is conducted in accordance with the stringent management principles already in place under the Nature Conservation Act 1992. This amendment reduces regulatory duplication and ensures all national parks are uniformly exempt under the VMA. The structure of section 7(1)(b) has been modified, with previous reference to a protected area under section 28 of the Nature Conservation Act 1992 removed and instead, each section 28 protected area and the additional national parks are now inserted as a list.

Part 21 Amendment of Water Act 2000

Act amended

Clause 237 provides that this part amends the *Water Act 2000.*

Insertion of new ch 1, pt 1 hdg

Clause 238 inserts a new heading before section 1 of the Act, ""Part 1 Introduction".

Insertion of new ch 1, pt 2

Clause 239 inserts a new part 2 after section 4 of the Act. The part clarifies the definition of *watercourse* and related elements.

Part 2 Watercourses

New section 5 (Meaning of watercourse)

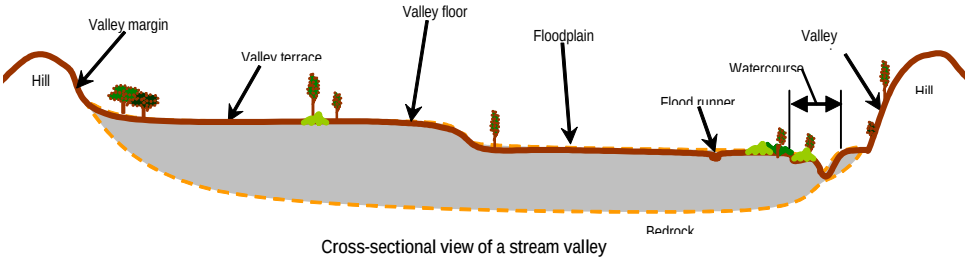
New section 5 replaces the existing definition of *watercourse* in Schedule 4 Dictionary. The main change is to clarify the lateral extents of the watercourse as being the 'outer' banks, previously referred to as 'high banks'.

The current definition of watercourse refers broadly to 'bed and banks', without clarifying which banks are included in the feature. In many circumstances, a watercourse channel will have several banks on each side of the bed, causing confusion as to the true lateral extent of the feature and associated jurisdiction.

The key elements of the new definition are:

- 'watercourse' is the channel of a river, creek or other stream between the outer banks laterally and between upstream and downstream limits longitudinally;
- a watercourse can be a natural channel or an artificial channel that has changed the course of the watercourse (eg a diversion); and
- a watercourse can contain certain elements such as bars, benches and in-stream islands, which differentiate it from a channel that merely carries low flows.
- a watercourse cannot be a drainage feature that does not have certain attributes in regard to sustainability of flow after rainfall events.

Diagram 2 –Location of watercourse in a valley setting.



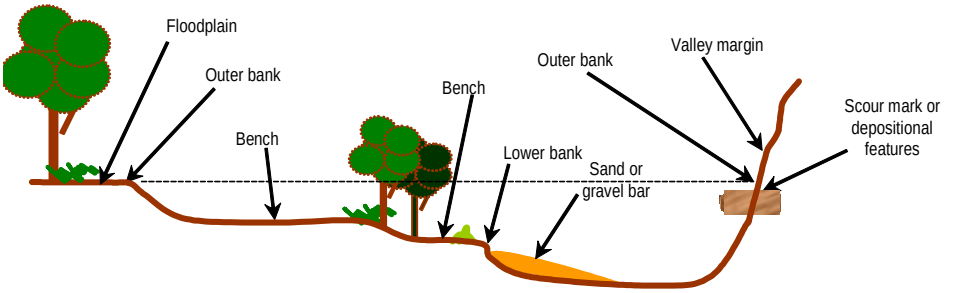
Cross-sectional view of a stream valley

New section 5A (Meaning of *outer bank)*

New section 5A defines the outer bank feature which is fundamental in determining the lateral extents of a watercourse. The definition refers to the watercourse's location within the valley setting, using adjacent floodplain and valley margin features to depict the lateral extent. This recognises that watercourses are landscape features measured at the valley scale, rather than as channels within a drainage feature. The key elements of the definition are:

- an 'outer bank' is where the channel meets any adjoining floodplain or (in the absence of an adjoining floodplain) where scour marks or depositional features indicate the highest elevation to which historic flows have reached.
- where there is a floodplain on one side and not the other, the elevation of the outer bank adjacent to the floodplain is used to identify the outer bank on the other side of the channel. This is irrespective of any scour marks or depositional features on the non-floodplain side.

Diagram 3 Valley setting showing outer bank.



Valley setting showing outer bank

New section 5B (Declaration of outer bank)

New section 5B provides power for the Chief Executive to declare by gazette notice a natural feature to be an outer bank for a specific length of watercourse in the following circumstances:

- where it is not reasonably practical to identify an outer bank by the methods given in section 5A.
- where an identified outer bank is considered to be inadequate for the exercise of jurisdiction and a more suitable location is justified.

Exercise of this power will allow jurisdictional certainty to be provided in these circumstances, thereby reducing conflict and concerns.

Omission of s 21 (Beds and banks forming boundaries of land are State property)

Clause 240 repeals section 21, which declares the bed and banks forming boundaries of land to be State property. This repealed provision is no longer required in the Water Act and has been placed in the Land Act, which now deals with watercourse tenure issues. A new section 1171 provides for continuation of this section for actions arising before the commencement of the amendments.

Amendment of s 279 (Ownership and management of certain quarry material)

Clause 241 makes minor amendments to section 279, which deals with the ownership and management of certain quarry material. Cross-reference to the Land Act is added in relation to quarry materials that are situated on State property within a watercourse.

Amendment of s 967 (Approval for development under Sustainable Planning Act 2009 is subject to approval under this Act)

Clause 242 amends section 967, which requires a development approval for taking from, or interfering with, a watercourse consequential to the change of definitions in the Act that determine the extent of the State's jurisdiction to manage a watercourse.

Insertion of new ch 8, pt 4B

Clause 243 inserts a new chapter 8, part 4B after section 1003A of the Act.

Part 4B Special provision for Condamine and Balonne Resource Operations Plan

New Section 1003B (Condamine and Balonne Resource Operations Plan amended)

New section 1003B provides for the finalisation of the Lower Balonne provisions for the Condamine and Balonne Resource Operations Plan (CB ROP). On commencement of this section, the CB ROP will be amended to include the deferred aspect. The deferred aspect relates to the provisions for the Lower Balonne Area, which were deferred from being made along with the other provisions of the CB ROP in December 2008. The term deferred aspect is defined for this section to mean the provisions for the CB ROP included in the document called 'Condamine and Balonne resource operations plan amendment incorporating the Lower Balonne area' approved by the Chief Executive on 5 March 2010. This document contains the provisions that will be incorporated into the CB ROP by this section.

This provision makes it clear that the amendment of the CB ROP under this section applies despite any other provision of the Water Act.

This new section also expressly states that the CB ROP as amended under this section is the resource operations plan for the *Water Resource (Condamine and Balonne) Plan 2004*. This provides consistency with the existing section 103 of the Water Act, which provides that on approval of a resource operations plan, the resource operations plan is the resource operations plan for the water resource plan it implements.

Subsection (4) makes it clear that the CB ROP, as amended under this section, can be amended, replaced or repealed under the relevant Water Act provisions for dealing with resource operation plans.

The terms ***CB ROP*** and ***deferred aspect*** are also defined for the purpose of this section.

Amendment of s 1006 (Declarations about watercourses)

Clause 244 amends section 1006 of the Act which provides that a regulation may declare, by reference to a natural or artificial feature or the boundary of a parcel of land, the downstream or upstream limit, or both, of a watercourse. The amendment inserts a new subsection (4) which provides that if the regulation purports to declare a limit of a feature that is not a watercourse, only that part of the regulation is void, leaving the remainder of the regulation valid.

Amendment of s 1014 (Regulation-making power)

Clause 245 amends section 1014 of the Act, the regulation making power consequential to the change of definitions in the Act that determine the extent of the State's jurisdiction to manage a watercourse.

Insertion of new s 1014A

Clause 246 inserts a new section after section 1014 of the Act.

New section 1014A (Special regulation-making power to support outer bank identification)

New section 1014A adds a special regulation making power to support the identification of outer banks. Given the complexity of specifying the lateral extents of watercourses in a range of stream and valley settings, the ability to use diagrams to supplement descriptions will substantially

enhance the interpretation and use of the new definitions. Such powers permit regulations to include words and diagrams that:

- guide the application of the Act definitions in varying environments and situations;
- give examples of scour marks and depositional features used to locate outer banks in certain circumstances;
- give examples of floodplains used to locate outer banks in certain circumstances; and
- give explanations of how beds, banks, bars, benches and in-stream island features can be identified

Insertion of new ch 9, pt 5, div 14

Clause 247 inserts a new division 14 after section 1170 of the Act.

Division 14 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2010

New section 1171 (Continuing application of s 21)

New section 1171 adds transitional arrangements to preserve the effect of section 21 (bed and banks forming boundaries of land to be State property) in actions arising before the commencement of the amendments.

New section 1172 (Transition for jurisdictional change for existing licence or permit)

New section 1172 relates to activities being undertaken in a watercourse and on land adjoining the watercourse, for example a riverine quarrying operation, at the time these amendments come into effect. That part of the activity within watercourse should be authorised under the Act (such as a licence or permit); whereas that part outside the watercourse would not have required such authorisation.

If, as a result of these amendments, that part outside the watercourse is then deemed to be within the watercourse, the person undertaking the activity is required to apply for an appropriate authorisation under the Act to continue. This situation could occur if an interpretation of the clarified

definition of watercourse extended the lateral extents of the watercourse, compared to the interpretation based on the previous definition.

This section automatically extends, for a six-month period after commencement of this section, the authorisation to cover the part of the activity that did not previously require an authorisation.

The new section also provides that during this period the person may apply to extend the authorisation to cover the activity outside the watercourse for a longer period. In the event that the application cannot be approved, the person may request, on hardship grounds, to progressively phase out the activity outside the watercourse over a period, not exceeding five years.

Amendment of sch 4 (Dictionary)

Clause 248 amends schedule 4 to remove and add definitions related to watercourses and their related elements.

Subclause (2) amends the dictionary by adding a number of definitions related to watercourses as follows:

- new definition of 'bar', which is a natural short-term accumulation of material (typically sand or gravel) within the stream bed, either beside the lower banks or behind in stream obstructions (such as rocks and debris logs). Bars are commonly altered and moved by shallow and moderately deep flows.
- new definition of definition of 'bed and banks' as it relates to a lake, to clarify their extents.
- new definition of 'bench', which is a natural accumulation of material within the stream channel, often forming the boundary (or lower bank) of the bed. Benches are relatively stable features, being commonly altered by moderately deep and deep flows.
- new definition of 'depositional feature', which is a natural accumulation of fine material within the stream channel during a flow event. These features can indicate the elevation of past flow events and be used to determine the location of the outer bank.
- new definition of 'downstream limit' to clarify the natural, artificial or declared location of the limit.
- new definition of 'drainage feature', which is a feature formed by a concentration of overland flow and flows only in direct response to rainfall. Examples include gullies and drainage depressions. Also, it

has no sustained flows, which would create and support a riverine environment. For a feature to be deemed to be a drainage feature, it must satisfy all three criteria. For example, a feature that has sustained flows but no evidence of a riverine environment (such as riparian vegetation) is not a drainage feature and may be a watercourse. Similarly, the absence of riparian vegetation along a feature does not preclude the feature from being a watercourse.

- new definition of 'floodplain' to clarify its use in determining the outer bank of an adjoining watercourse.
- new definition of 'in-stream island', which is a natural accumulation of material (typically sand or gravel) within the stream channel, often forming the boundary (or lower bank) of the bed. Instream islands are relatively stable features, being commonly altered by moderately deep and deep flows.
- new definition of 'scour mark', which is a natural mark made in a stream bank by the action of suspended sediments during flow events. Marks can indicate the elevation of past flow events and be used to determine the location of the outer bank.
- new definition of 'upstream limit' to clarify the natural or declared location of the limit.

Part 22 Repeal and consequential and other amendments

Act repealed

Clause 249 repeals the *Forestry Plantations Queensland Act 2006*. This clause will take effect on a date to be fixed by proclamation in order to allow for "winding up" type activities to be completed before the Act is repealed.

Regulation repealed

Clause 250 repeals the *Forestry Plantation Queensland Regulation 2006* which establish the State plantation forest for FPQ. This regulation will be repealed upon assent.

Acts amended

Clause 251 provides that the schedule amends the Acts it mentions.

Schedule Consequential amendments

The amendments effected by the schedule are as follows:

- *Aboriginal Cultural Heritage Act 2003*:

  Clause 1 inserts a new definition into the *Aboriginal Cultural Heritage Act 2003* to provide, for the avoidance of doubt, that the plantation licensee (or plantation sublicensee if applicable) is an "occupier" of land for the purposes of that Act. This will ensure the plantation licensee or plantation sublicensee is afforded the same notice and consultation rights in respect of activities relating to Aboriginal cultural heritage that other occupiers of land are afforded under that Act. The State will continue to be the "owner" of State forest land for the purposes of the Act.

- *Biodiscovery Act 2004*

  Clause 1 omits subsection 14(2A) of the *Biodiscovery Act 2004* (which effectively allows the chief plantation forestry officer to “veto” the granting of an application for a collection authority under the Act where the application relates to SPF) and inserts a new subsection 14(2A) which requires the Chief Executive to consult with the relevant plantation licensee or plantation sublicensee where an application for a collection authority relates to a SPF.

  Clause 2 makes additional amendments to section 14(5) of the Act to provide new definitions for the purposes of new section 14(2A).

- *Environmental Protection Act 1994*

  Clause 1 amends section 579 of the *Environmental Protection Act 1994* which provides that, in the event of damage or loss resulting from the presence on land of a person complying with an environmental requirement under that Act, the owner and occupier of the land are eligible to be compensated for that damage or loss. The amendment provides, for the avoidance of doubt, that the plantation licensee or plantation sublicensee is an occupier of land for the purposes of the provision, and therefore eligible to be compensated in respect of a compensatable effect suffered by the plantation licensee or plantation sublicensee. The section further provides that compensation will be payable between the plantation licensee or plantation sublicensee and the State (as owner of the land) as decided by a court of competent jurisdiction.

- *Geothermal Exploration Act 2004*

Clauses 1 to 3 add the plantation licensee as a category of "landholder" under the *Geothermal Exploration Act 2004*. This has the effect that the plantation licensee is afforded the rights held by other landholders to be notified in relation to tender and application processes for permits granted under the Act, and to be compensated for damage to property caused by activities authorised under the Act. The plantation licensee will be the "landholder" for land in the licence area in conjunction with the State, who is the landholder for State forest land for the purposes of the Act.

- *Public Service Act 2008*

  Clause 1 omits the reference to FPQ in schedule 1 of the *Public Service Act 2008* which lists public service offices and their heads. This amendment will take effect on a date to be fixed by proclamation (after FPQ is dissolved).

- *Queensland Heritage Act 1992*

  Clauses 1 to 3 provide that, for the purposes of the *Queensland Heritage Act 1992*, the "owner" of land that is the licence area is the State, the plantation licensee, and any plantation sublicensee. This amendment has the effect that the plantation licensee and plantation sublicensee, along with the State, will have the rights of an "owner" of land under the Act which are currently afforded under this Act to holders of similar occupation rights from the State, for example, holders of mining interests.

- *Recreation Areas Management Act 2006*

  Clauses 1 to 3 amend the *Recreation Areas Management Act 2006* in relation to two issues that are created by the grant of a plantation licence over State plantation forest. Under this Act, land other than "State land" may only be included in a recreation area if the "area land-holder" enters into a recreation area agreement with the State for its inclusion.

  Under the Act in its current form, the licence area falls within the definition of "State land", and can therefore be included in a recreational area by the State unilaterally. Further, neither the plantation licensee nor the plantation sublicensee falls within the definition of "area land-holder".

  The amendments remove land in the licence area from the definition of "State land", and expressly include the plantation licensee as an

"area land-holder" under the Act (along with the State). This will have the effect that land in the licence area cannot become a recreation area without a written agreement, and that the plantation licensee (along with the State) is the relevant land-holder from whom the agreement must be obtained.

The plantation sublicensee has not been included in the category of "area land-holder" under these amendments. This is because the existing categories of "area land-holder" in the Act do not extend to right-holders analogous to the plantation sublicensee, for example, lessees of freehold land and sub-lessees of leasehold land under the *Land Act 1994*.

- *Statutory Bodies Financial Arrangements Act 1982*

  Clause 1 omits subsection 6(1)(a) of the *Statutory Bodies Financial Arrangements Act 1982*, removing a reference to FPQ in that subsection. This amendment will take effect on a date to be fixed by proclamation (after FPQ is dissolved).

- *Water Act 2000*

  Clauses 1 to 3 insert the plantation licensee as a new category of "owner" of land into the dictionary in schedule 4 of the *Water Act 2000*. Under the Act, owners of land hold certain rights and obligations, including rights to hold water licences and to take water for domestic purposes, and obligations to comply with moratorium notices in respect of works for taking water. "Owners" of land are also eligible to be compensated for damage to property caused by an authorised officer exercising powers under that Act. Currently, the Act does not contemplate the plantation licensee as an "owner" of land. The amendments bring the plantation licensee into the contemplation of the Act. The State will continue to be an owner of State forest land, including the licence area, as the registered owner of that land.

  The plantation sublicensee has not been included the category of "owner" under these amendments. This is because the existing categories of "owner" in the Act do not extend to right holders analogous to the plantation sublicensee, e.g. lessees of freehold land and sub-lessees of leasehold land under the *Land Act 1994*.