Natural Resources and Other Legislation Amendment Bill (No. 2) 2010

Explanatory Notes

General Outline

Short Title

The short title of the bill is the Natural Resources and Other Legislation Amendment Bill (No.2) 2010.

Policy Objectives

The objectives of the Bill are to:

- amend the *Environmental Protection Act 1994* (Environmental Protection Act) to:
    - prohibit the use of certain chemicals to stimulate the fracturing of coal seams and other geological structures; and
    - improve notice requirements of incidents that may cause serious or material environmental harm to affected landholders;
- amend the *Petroleum and Gas (Production and Safety) Act 2004* and *Petroleum Act 1923* (Petroleum Legislation) to improve notice requirements of authorised activities to affected landholders;
- amend the *Nature Conservation Act 1992* (Nature Conservation Act) and the *Vegetation Management Act 1999* (Vegetation Management Act) to streamline the regulatory process for landholders by enabling a number of statutory approvals for multiple land management purposes to be obtained under a single process;
- amend the *Alcan Queensland Pty. Limited Agreement Act 1965* and *Commonwealth Aluminium Corporation Pty. Agreement Act 1957* to define the water rights of Rio Tinto Aluminium Limited in order to ensure consistency with contemporary water resource management principles;

- amend the *Alcan Queensland Pty. Limited Agreement Act 1965, Commonwealth Aluminium Corporation Pty. Limited. Agreement Act 1957, Holidays Act 1983* and the Environmental Protection Act to facilitate a proposed restructure of Rio Tinto Aluminium Limited; and
- amend the *Geothermal Energy Act 2010* (Geothermal Energy Act) and *Mineral Resources Act 1989* (Mineral Resources Act) to achieve legislative consistency with all the other resource Acts in terms of the Government's new land access framework; and
- amend the *South Bank Corporation Act 1989* to include within the commercial precinct at South Bank, two parcels of land on the corner of Grey and Vulture Streets which are intended to be included in the South Point development between Tribune, Grey and Vulture Streets.

Reason for the Policy Objectives

Environmental Protection Act 1994

Hydraulic fracturing (fraccing) is the process of creating cracks in underground coal seams to increase the flow and recovery of gas or oil out of a well. In the coal seam gas (CSG) industry, fraccing involves pumping a fluid mainly made up of water and inert solids (proppants), such as sand or ceramic beads, into the coal seam. The solids prop open the minute cracks to allow the gas to escape.

In the CSG industry in the United States, some companies are using certain petroleum hydrocarbons containing benzene, toluene, ethylbenzene or xylene (B-TEX) in fraccing fluids. These chemicals have been linked to environmental harm, such as contamination of groundwater and are potentially harmful to human health. There are currently no restrictions on the types of chemicals that may be used in fraccing in Queensland. Amendments to the Environmental Protection Act are required to prohibit the use of B-TEX chemicals in fraccing activities.

Under section 320 of the Environmental Protection Act, a person who becomes aware that an act or omission is causing or threatens to cause serious or material environmental harm must notify the Department of Environment and Resource Management (DERM) as soon as practicable after the incident. This requirement does not include any obligation to notify affected landholders. Amendments are needed to improve transparency for landholders where there is an environmental incident of this nature. Additionally, while it is likely that the requirement would

encompass an incident which causes interconnectivity between two aquifers, it needs to be made clear that this is the case.

The maximum penalty for failure to notify in this section is currently 100 penalty units which does not reflect the seriousness of the offence, particularly as failure to notify can increase the likelihood of a major environmental incident. The maximum penalty is too low to provide an adequate incentive to notify given that, if the incident leads to prosecution, the penalty could be much higher. Accordingly, a higher maximum penalty needs to be set.

Petroleum and Gas (Production and Safety) Act 2004* and *Petroleum Act 1923

Currently, a petroleum tenement holder must give notice to the Department of Employment, Economic Development and Innovation (DEEDI) and DERM prior to undertaking certain authorised activities, such as drilling and seismic surveys. Notices may also be required after these activities are completed. However, there is no requirement to give notice to the landholder on whose land these activities are taking place. Amendments to the Petroleum Legislation are required to improve transparency for affected landholders.

Streamlining Land Management Approvals – *Nature Conservation Act 1992* and *Vegetation Management Act 1999*

OnePlan is part of the Government's Blueprint for the Bush. OnePlan provides a framework for streamlining and simplifying regulatory requirements for landholders through existing property level planning, farm management and best management practice systems. The amendments to the Nature Conservation Act and the Vegetation Management Act will implement an element of the OnePlan objectives, progressing the Government's commitment to regulatory simplification.

The clearing of native vegetation is regulated through the Nature Conservation Act and Vegetation Management Act. Biodiversity protection is the purpose of the Nature Conservation Act and part of the purpose of the Vegetation Management Act. Under the Nature Conservation Act, a permit is required for clearing 'least concern' plants which, due to the location of the plants or the purpose of the vegetation clearing activities, may be exempt from the permit requirements under the Vegetation Management Act.

The need for approval for taking 'least concern' plants under the Nature Conservation Act restricts several necessary clearing activities, including managing state land and undertaking day-to-day land management activities such as weed control and encroachment. The amendments will remove the regulatory overlap between these two Acts, by enabling a landholder undertaking vegetation clearing activities to take a 'least concern' protected plant where the vegetation clearing activity falls within an exemption under the Vegetation Management Act.

Currently, where a landholder undertakes vegetation clearing activities which involve taking protected plants, separate approvals are required under both the Nature Conservation Act and Vegetation Management Act. The amendments will allow a landholder to take an endangered, vulnerable, near-threatened or least concern plant as part of a vegetation clearing activity where a development approval for vegetation clearing has been obtained under the *Sustainable Planning Act* 2009 and where the taking of the plant has been assessed against a regional vegetation management code or concurrence agency policy. The regional vegetation management codes under the Vegetation Management Act will be amended to incorporate a new performance requirement and acceptable solutions to reflect the considerations of protected plants under the Nature Conservation Act.

These amendments will streamline the regulatory burden on landholders undertaking land management activities by removing the duplication in the approval requirements.

The need to approve the taking of protected plants under the Nature Conservation Act restricts vegetation clearing activities which may be necessary to ensure the safety of persons and property in emergency situations, such as in response to a fire. The amendments will enable a person to take a protected plant in response to a present or imminent threat to human life or property. The amendment is necessary to ensure that persons do not refrain from taking such actions out of fear of prosecution under the Nature Conservation Act and that persons who do take such actions are not liable to prosecution under that Act.

The Vegetation Management Act currently enables a regional vegetation management code to provide for the protection of the habitat of native wildlife prescribed under the Nature Conservation Act. It is necessary to enable regional vegetation codes to also provide for the protection of protected plants and animal breeding places, in a manner which is consistent with the Nature Conservation Act, to ensure that the policy

objectives of that Act are reflected in the process for assessing development applications for vegetation clearing. It is expected that the proposed amendment will increase knowledge of, and compliance with, the Nature Conservation Act among rural landholders and proponents, and provide for more streamlined approval processes.

Rural landholders in Queensland can enter into land stewardship agreements such as a nature refuge agreement and land management agreement, to make long term commitments to protect natural values and manage land condition on their properties. The agreements involve regular reporting and audits to ensure that the commitments are met. Environmental risk management plans have similar requirements under the Environmental Protection Act.

Landholders may be required to undertake vegetation management activities in order to fulfil their commitments under a nature refuge agreement or an environmental risk management plan. In a number of circumstances, landholders are required to obtain separate statutory approvals to undertake these activities.

The amendments would enable a landholder to undertake regulated vegetation management activities without the need to obtain separate approvals, provided the activities are undertaken in accordance with the requirements approved in a land stewardship agreement or existing regulatory planning document. This alternative pathway will reduce the regulatory burden on landholders and provide an additional incentive for landholders to enter into land stewardship agreements with the Government, to achieve positive environmental outcomes.

Many rural land management issues are best managed on a multi-property or landscape scale rather than at an individual property level. Existing frameworks such as regulatory plans and natural resource management group initiatives provide for rural land management planning at these scales, but do not authorise landholders to undertake the land management activities considered in the plan. The area management plan framework, established by the Bill, will provide a mechanism for approving identified natural resource management plans to authorise certain low risk activities.

The area management framework will enable rural landholders whose land falls within the boundaries of an area management plan, to undertake certain low risk vegetation management activities (such as weed management, encroachment and fodder harvesting) in accordance with the plan, without the need to obtain a separate approval. This alternative

pathway would reduce the regulatory burden on landholders, facilitate holistic, multiple-property planning and allow certain land management issues to be dealt with at a commensurate scale.

Rio Tinto Special Agreement Acts - relocation of water rights amendments

To ensure consistency with contemporary water resource management principles and facilitate the implementation of the Wenlock Wild River Declaration, amendments are proposed to the *Alcan Queensland Pty. Limited Agreement Act 1965* and *Commonwealth Aluminium Corporation Pty. Limited. Agreement Act 1957* (Agreement Acts) and the Water Act. The amendments specify Rio Tinto Aluminium Limited's water rights under the Agreement Acts as limited to a total of 90,000ML in the Wenlock Basin wild river area and provide for the progressive relocation of these water rights into the Water Act framework.

The amendments provide certainty for the future allocation of water within the Wenlock Basin wild river area, and are consistent with Government policy to, where practical and with agreement, have the Water Act as the single framework for the sustainable allocation of water. This has previously been achieved with the *Mount Isa Mines Limited Agreement Act 1985*.

Amendments to the *Alcan Queensland Pty. Limited Agreement Act 1965; Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957; Environmental Protection Act 1994;* and the *Holidays Act 1983*

The processes for authorising the variation of agreements under the Agreement Acts are being amended to ensure those Acts accord with the fundamental legislative principles prescribed in the *Legislative Standards Act 1992*.

The Agreement Acts are currently inconsistent with fundamental legislative principles. They have insufficient regard to the institution of Parliament, in that they allow the amendment of those Acts by regulation, rather than under an Act.

The Bill authorises variations to the Alcan Queensland Pty. Limited Agreement to ensure the principal agreement recognises the successors and assigns of Alcan Queensland Pty. Limited and Commonwealth Aluminium Corporation Pty. Limited. This will be needed should the proposed restructure take place.

The Bill authorises variations to the Commonwealth Aluminium Corporation Pty. Limited Agreement which are required to allow the transfer of the rights and obligations under the agreement to RTA Weipa, while at the same time allowing Rio Tinto Aluminium Limited to retain some benefits under that agreement. These will be needed should the proposed restructure take place.

The Bill amends the Environmental Protection Act to allow Agreement Acts companies to transfer a transitional Environmental Authority (a transitional authority (SAA)) they hold, to wholly-owned subsidiaries. This is needed because the Environmental Protection Act currently prevents the transfer of a transitional authority (SAA), even to a subsidiary company.

This amendment will enable Rio Tinto Aluminium Limited to transfer its transitional authority (SAA) for the Weipa bauxite mining lease to RTA Weipa. It might also benefit other Agreement Act mining companies in the future.

The Bill inserts a definition of "Comalco Limited" in the *Holidays Act 1983* which includes that company's successors and assigns. This will be needed once the proposed restructure takes place.

Geothermal Energy Act 2010* and *Mineral Resources Act 1989

Amendment to the Geothermal Energy Act and the Mineral Resources Act is required to facilitate a smoother transition to the new land access framework for the mineral exploration sector when these provisions commence. The amendments to the abovementioned Acts also ensure legislative consistency across all the State's resource legislation in respect of the new land access framework and create certainty for all stakeholders about how the framework is to be applied.

South Bank Corporation Act 1989

Amendment of the *South Bank Corporation Act 1989* is required to increase the area of the commercial precinct at South Bank to ensure that all land intended to make up the South Point development can ultimately be placed under the ownership of South Bank Corporation and be subject to the same lease arrangements.

How the Policy Objectives will be achieved

Environmental Protection Act 1994

The policy objectives are achieved by amending the Environmental Protection Act to:

- create a mandatory condition on current Chapter 5A environmental authorities (petroleum, gas, greenhouse gas sequestration and geothermal activities) that prohibits the use of restricted stimulation fluids, which are fluids which contain petroleum hydrocarbons containing benzene, toluene, ethylbenzene or xylene (BTEX) or chemicals which are likely to produce BTEX as they break down;
- expand current notice requirements for serious and material environmental harm incidents to require that the person responsible for the incident notify any affected occupiers as well as DERM within 24 hours or as soon as practicable after becoming aware of the incident;
- insert an additional section to require notification of DERM and any affected occupier of land where activities cause unauthorised interconnectivity between two aquifers; and
- increase the maximum penalty for failure to notify from 100 penalty units to 500 penalty units.

Streamlining Land Management Approvals – *Nature Conservation Act 1992* and *Vegetation Management Act 1999*

The policy objectives are achieved by amending the Nature Conservation Act to:

- allow a person to take a plant which is prescribed as 'least concern' under the Nature Conservation Act where the plant is taken under a vegetation clearing activity which is 'not assessable development' under the *Sustainable Planning Regulation 2009* (Sustainable Planning Regulation). This exemption will not apply to specified 'not assessable development' activities which are not within the scope of land management activities ordinarily undertaken by a landholder.
- allow a person to take an endangered, vulnerable, near-threatened or least concern plant in the following circumstances:
    - where a development approval for work that includes vegetation clearing under the Vegetation Management Act has been issued

and the taking of the plant was assessed under a regional vegetation management code or concurrence agency policy; or

- where the person has entered into a Land Management Agreement under the *Land Act 1994* and the taking of protected plants has been considered and authorised under that agreement.

- allow a person to take an endangered, vulnerable, near-threatened or least concern plant in the following circumstances:
  - in response to a present, or imminent threat to human life or property;
  - where a person is conducting an activity under sections 53, 68 or 69 of the *Fire and Rescue Service Act 1990* (Fire and Rescue Act); and
  - where a person is authorised under sections 63 or 65 of the Fire and Rescue Act to light a fire to reduce a hazardous fuel load.

The policy objectives are also achieved by amending the Vegetation Management Act to:

- enable the regional vegetation management codes to provide for the protection of plants and animal breeding places prescribed as 'protected' under the Nature Conservation Act; and
- create an alternative approval framework for regulated vegetation management activities by:
  - allowing the chief executive to accredit an existing regulatory planning document as an area management plan for the life of the document or 10 years, whichever is less; and
  - allowing the chief executive to approve a draft area management plan as an area management plan for a period of up to 10 years.

Vegetation management activities undertaken in accordance with an area management plan will be 'not assessable development' under the Sustainable Planning Regulation.

Rio Tinto Special Agreement Acts - relocation of water rights amendments

The policy objective is to be achieved by amending the agreements in the *Alcan Queensland Pty. Limited Agreement Act 1965* (Alcan Agreement Act), *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* (Comalco Agreement Act) and amending the Water Act to:

- provide for the water rights under the Agreement Acts in the Wenlock Basin to be relocated from the Alcan Agreement Act and the Comalco Agreement Act into the water allocation and management framework under the Water Act;
- provide for the entity to continue to hold the authority to take water under the Agreement Acts until replaced by the grant of water licences under the Water Act;
- allow for the chief executive to grant appropriate water licences to take or interfere with water in accordance with an agreed volume;
- support amendments to the Water Act through specific amendments to the Agreements under the Alcan Agreement Act and the Comalco Agreement Act.

Amendments to the *Alcan Queensland Pty. Limited Agreement Act 1965; Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957; Environmental Protection Act 1994;* and the *Holidays Act 1983*

The policy objective is to be achieved by amending the *Alcan Queensland Pty. Limited Agreement Act 1965; Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957;* Environmental Protection Act *and the Holidays Act 1983* to:

- amend the process for authorising the variation of agreements under the *Alcan Queensland Pty. Limited Agreement Act 1965* and the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, by requiring that variations be authorised under those Acts in future;
- authorise the State to enter into proposed agreements to vary the Alcan Queensland Pty. Limited Agreement and the Commonwealth Aluminium Corporation Pty. Limited Agreement;
- ensure that a transitional authority (SAA) may be transferred to a wholly-owned subsidiary of the authority holder; and
- insert a definition of "Comalco Limited" in the *Holidays Act 1983* which includes that company's successors and assigns.

Amendments to the *Geothermal Energy Act 2010* and *Mineral Resources Act 1989*

With the exception of one of the amendments to the Mineral Resources Act, all are consistent with provisions contained in the Geothermal Energy

Act. These amendments will secure legislative consistency across the resources sector in relation to land access provisions. The nature of these amendments are as follows:

- a statutory obligation to consult with landholders about access and compensation;
- a statutory obligation to not unnecessarily interfere with lawful existing land uses when undertaking authorised activities;
- a provision that makes it an offence to obstruct the lawful undertaking of authorised activities under a Mineral Resource Act tenure;
- inclusion of consequential damages and accounting, valuation and legal costs as a compensatable effect; and
- provisions limiting the civil liability of landholders in respect of authorised activities being carried out on their land.

The abovementioned exception relates to an amendment to the Geothermal Energy Act which ultimately amends the Mineral Resources Act.

Due to the magnitude of the legislative and procedural changes for the mineral and coal exploration sector, particularly with respect to the requirement to negotiate up-front conduct and compensation agreements with landholders, there is likely to be a concentration of negotiation activities in a short timeframe. This has the potential to detrimentally impact on current exploration programs should the agreement process with landholders be protracted.

The operational effect of the amendment is to extend the timeframe before the holder of an exploration permit or mineral development licence holder is required to negotiate an agreement about conduct and compensation with landholders so long as the permit holder is operating under a current notice of entry at the time of commencement of the legalisation.

Amendments to the *South Bank Corporation Act 1989*

Two parcels of land that are intended to be included in the South Point development, on the corner of Grey and Vulture Streets, are not currently in the South Bank commercial precinct. The amendment will facilitate the development of the site by ensuring all of the intended South Point development lands fall within the same lease arrangements.

Alternatives to 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

Environmental Protection Act 1994

The amendments to the Environmental Protection Act build on existing requirements and processes. Accordingly, they will be funded from existing resources.

Streamlining Land Management Approvals – *Nature Conservation Act 1992 and Vegetation Management Act 1999*

The streamlining of the regulatory processes will impose minimal additional cost on government in implementing the provisions. Any such cost will be absorbed within existing departmental budgets.

Rio Tinto Special Agreement Acts - relocation of water rights amendments

There are no additional costs associated with implementing these amendments.

Amendments to the *Alcan Queensland Pty. Limited Agreement Act 1965*; *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*; *Environmental Protection Act 1994*; and the *Holidays Act 1983*

There are no additional costs associated with implementing these amendments.

Amendments to the *Geothermal Energy Act 2010* and *Mineral Resources Act 1989*

There are no additional costs associated with implementing these amendments.

Amendments to the *South Bank Corporation Act 1989*

There are no additional costs associated with implementing these amendments.

Consistency with Fundamental Legislative Principles

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

Environmental Protection Act 1994

Whether legislation has sufficient regard to the rights and liberties of individuals

Clause 17 increases the penalty for section 320 of the Environmental Protection Act from 100 penalty units to 500 penalty units. This is justified on the grounds that failure to give notice can significantly increase the risk of a serious or irreversible incident. The current penalty of 100 penalty units does not provide a sufficient incentive to report an environmental incident if a person fears liability or prosecution may result.

Streamlining Land Management Approvals – Nature Conservation Act 1992 and Vegetation Management Act 1999

Whether legislation has sufficient regard to the rights and liberties of individuals

Clause 47 amends the Vegetation Management Act to create an offence where a person relying on an area management plan to undertake vegetation clearing activities fails to provide the chief executive with an area management clearing notification.

It is necessary to provide for a penalty as the provision of a clearing notification is an important component of verifying whether a person purporting to clear vegetation under the authority of an area management plan has undertaken the clearing activities in accordance with the conditions set out in the plan.

Whether legislation has sufficient regard to the rights and liberties of individuals

Clause 48 amends the Vegetation Management Act to enable an authorised officer to enter a place if a person proposing to clear vegetation under an area management plan at that place has given the chief executive a clearing notification for that place.

This provision is necessary to provide a means of verifying that a person clearing vegetation under an area management plan has complied with the requirements of that plan.

This provision only applies where a person has given the chief executive a clearing notification for that place. By giving the chief executive a clearing notification for that place, the person is giving implied consent to the entry of an authorised officer on that place.

Whether legislation is consistent with the principles of natural justice

Clause 49 amends the Vegetation Management Act to enable a person to apply to the chief executive for an internal review of a decision made in relation to an area management plan. However a person who is dissatisfied with a review decision made in relation to an area management plan will not be entitled to apply to Queensland Civil and Administrative Tribunal for a review of the review decision.

An area management plan is an alternative approval pathway through which vegetation clearing activities can be undertaken. A decision not to approve an area management plan will not abrogate other avenues through which a person can seek approval to undertake vegetation clearing activities.

For example, a person who is dissatisfied with a decision made in relation to an area management plan is still entitled to submit a development application for vegetation clearing through the Integrated Development Assessment System (IDAS) process under the *Sustainable Planning Act 2009*. Under that Act, a person who is dissatisfied with a decision in relation to a development application for vegetation clearing may appeal to the Planning and Environment Court.

Amendments to the *Alcan Queensland Pty. Limited Agreement Act 1965; Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957; Environmental Protection Act 1994; and the Holidays Act 1983.*

Whether legislation has sufficient regard to the institution of Parliament

Under the *Alcan Queensland Pty. Limited Agreement Act 1965* and the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*, variations of the Alcan Agreement and the Comalco Agreement respectively must currently be authorised by regulation.

The Bill resolves potential fundamental legislative principles issues by amending the *Alcan Queensland Pty. Limited Agreement Act 1965* and the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* to ensure they have sufficient regard to the institution of Parliament, in that

they allow the amendment of those Acts (through the variation of the agreements) by Act, rather than by regulation.

Amendments to the *Geothermal Energy Act 2010* and *Mineral Resources Act 1989*

The amendments have been drafted with regard to fundamental legislative principles, as defined in the *Legislative Standards Act 1992*.

An amendment to the Mineral Resources Act may be regarded as breaching fundamental legislative principles. However, any such breach can be justified on the grounds of meeting overall policy intent of the legislation and in particular, the protection of landholders from civil liability for claims, damage and harm of others due to activities carried out under a tenure is critical given the potential risks and impact on the landholder of having activities conducted on their land.

Whether legislation has sufficient regard to the rights and liberties of individuals

Clause 32 arguably breaches fundamental legislative principles on the basis that it affects the rights of others; particularly if they lack redress against the tenure holder. However, the protection of landholders from civil liability for claims, damage and harm of others due to activities carried out under tenure is critical particularly given the potential risks and impact on the landholder of having activities conducted on their land.

Consultation

Streamlining Land Management Approvals – *Nature Conservation Act 1992* and *Vegetation Management Act 1999*

Community and Industry

The Queensland Farmers Federation (QFF) and AgForce Queensland were consulted in regard to the proposed regulatory amendments. The Regional Groups Collective (RGC) and the Queensland Murray Darling Committee (QMDC) were consulted in regard to approving particular vegetation clearing activities through sub-catchment plans.

The World Wildlife Fund (WWF), Queensland Conservation Council (QCC) and Wildlife Preservation Society (WPS) were consulted in regard to approving area management plans for vegetation management activities for a period of up to ten years.

Government

Consultation was undertaken within DERM to identify streamlining opportunities and develop the amendments proposed in this submission.

Consultation was undertaken with the Department of Premier and Cabinet (DPC), and agencies responsible for administering legislation that may impact on rural landholders.

Biosecurity Queensland and the Local Government Association of Queensland (LGAQ) were consulted in regard to the pest management plans under the LPA. The Department of Infrastructure and Planning (DIP) was consulted in regard to the amendments to the Sustainable Planning Regulation which are required to give effect to the area management plan framework.

Rio Tinto Special Agreement Acts - relocation of water rights amendments

Community and Industry

DERM has consulted with Rio Tinto Aluminium Limited on the amendments to Special Agreement Acts to facilitate the relocation Rio Tinto Aluminium Limited's water rights into the Water Act framework.

Government

Consultation on the policy development was undertaken with DPC, Queensland Treasury (QT) and DEEDI.

Amendments to the *Alcan Queensland Pty. Limited Agreement Act 1965; Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957; Environmental Protection Act 1994; and the Holidays Act 1983.*

Community and Industry

Rio Tinto Aluminium Limited has been consulted in the development of the amendments.

Amendments to the *Geothermal Energy Act 2010* and *Mineral Resources Act 1989*

Community and Industry

Consultation has been undertaken with the Queensland Resources Council (QRC), the Australian Petroleum Production and Exploration Association (APPEA), QFF and AgForce Queensland.

Amendments to the *South Bank Corporation Act 1989*

Community and Industry

The South Bank Corporation has been consulted in the development of the amendments.

Results of consultation

Streamlining Land Management Approvals – *Nature Conservation Act 1992* and *Vegetation Management Act 1999*

Community and industry

QFF, AgForce Queensland, RGC and QMDC are supportive of the proposal. WWF, QCC and WPS are supportive of the proposal because it will facilitate long term property planning.

Government

The agencies consulted support the proposed changes

Rio Tinto Special Agreement Acts - relocation of water rights amendments

Community and Industry

Rio Tinto Aluminium Limited has provided written agreement to the amendments.

Government

DPC, QT and DEEDI are supportive of the Bill.

Amendments to the *Alcan Queensland Pty. Limited Agreement Act 1965; Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957; Environmental Protection Act 1994; and the Holidays Act 1983.*

Community and Industry

Rio Tinto Aluminium Limited has been consulted about all amendments and has agreed to the proposed variations being authorised by the Bill.

Amendments to the *Geothermal Energy Act 2010* and *Mineral Resources Act 1989*

Community and Industry

The QFF and AgForce have agreed not to oppose the amendment relating to the extension of the transition period for the mineral exploration sector. The QRC is supportive of the transition provision. All stakeholders are supportive of the other amendments which will create legislative consistency across the relevant resource Acts.

Amendments to the *South Bank Corporation Act 1989*

Community and Industry

The South Bank Corporation has been consulted during the development of the amendments and agrees to the proposed variation being authorised by the Bill.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides that the Act may be cited as the *Natural Resources and Other Legislation Amendment Act (No. 2) 2010.*

Commencement

Clause 2 provides for the commencement of the various sections of this Bill.

Part 2 Amendment of *Alcan Queensland Pty. Limited Agreement Act 1965*

Act amended

Clause 3 provides that this part of the Bill amends the *Alcan Queensland Pty. Limited Agreement Act 1965*.

Amendment of s 2 (Execution of agreement authorised)

Clause 4 replaces a reference to the schedule with "schedule 1". This means the agreement originally authorised by the Act will now be located in schedule 1 of the Act.

Amendment of s 4 (Variation of agreement)

Clause 5 replaces existing subsections (1) to (3) with new subsections (1) to (3).

New subsection (1) provides that the agreement may only be varied by further agreement between the State and the company to the agreement under the authority of an Act.

New subsection (2) provides that unless a variation to the agreement is made according to new subsection (1), the variation is of no effect.

New subsection (3) requires the Minister to notify the date of each further agreement by gazette notice.

Insertion of new s 4C

Clause 6 provides that the existing agreement may be varied by a further agreement that corresponds to the proposed further agreement in the new schedule 2.

Amendment of the schedule (The Agreement)

Clause 7 subsection (1) omits the existing schedule heading and inserts new heading "Schedule 1, The Agreement".

Subsection (2) amends the renumbered schedule 1 by omitting "Editor's note" and inserting "note".

Insertion of new schs 2 and 3

Clause 8 inserts a new schedule 2 and 3 after the renumbered schedule 1. Schedule 2 contains a proposed further agreement.

Schedule 3 contains a proposed further agreement between the State of Queensland and Alcan South Pacific Pty. Ltd. The proposed further agreement amends the Principal Agreement to the extent of the authorisation provided to the Company under the Alcan special agreement Act to take or interfere with water in the Wenlock Basin wild river area and applies to water other than artesian water or subartesian water connected to artesian water.

The proposed further agreement operates to separate the Company's rights to take or interfere with water in the Wenlock Basin wild river area from the general authorisation to take or interfere with water provided under the Principal Agreement. Effectively, this proposed further agreement will operate, in conjunction with the new chapter 8, part 3C of the *Water Act 2000* (Water Act), to facilitate the relocation of the water rights in the Wenlock Basin wild river area from the Alcan special agreement Act and separately, the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* (Comalco special agreement Act) to the Water Act.

The proposed further agreement amends the Principal Agreement by imposing conditions that limit the water rights, afforded to the Company under the Alcan special agreement Act, to take or interfere with water in the Wenlock Basin wild river area to a maximum volume of 90,000 million litres. This maximum volume is the sum of the water that may be taken or interfered with under both the Alcan special agreement Act and the Comalco special agreement Act.

The proposed further agreement clarifies that the location from which water may be taken or interfered with in the Wenlock Basin wild river area is restricted to within, or in the vicinity of, the bauxite field referred to in clause 28(a) of the Principal Agreement.

Part 3 Amendment of *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*

Act amended

Clause 9 provides that this part amends the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*.

Amendment of s 2 (Execution of agreement authorised)

Clause 10 replaces a reference to the schedule with a reference to "schedule 1". This means the agreement originally authorised by the Act will now be located in schedule 1 of the Act. A note is also added to the renamed schedule 1 to stating that that since the making of the agreement, Commonwealth Aluminium Corporation Pty. Limited has changed its name to Rio Tinto Aluminium Limited.

Amendment of s 4 (Variation of agreement)

Clause 11 replaces existing subsections (1) to (3) with new subsections (1) to (3).

New subsection (1) provides that the agreement may only be varied by further agreement between the State and other parties to the agreement under the authority of an Act.

New subsection (2) provides that unless a variation to the agreement is made according to new subsection (1), the variation is of no effect.

New subsection (3) requires the Minister to notify the date of each further agreement by gazette notice.

Insertion of new s 4C

Clause 12 provides that the existing agreement may be varied by a further agreement that corresponds to the proposed further agreement in the new schedules 2 and 3.

Amendment of schedule

Clause 13 renumbers the existing schedule to the Act as schedule 1.

Insertion of new schs 2 and 3

Clause 14 inserts new schedules 2 and 3 into the Act after schedule 1. Schedule 2 contains a proposed further agreement.

Schedule 3 contains a proposed further agreement between the State of Queensland and Rio Tinto Aluminium Pty. Limited and RTA Weipa Pty. Ltd. The proposed further agreement amends the Principal Agreement only to the extent of the authorisation provided to the Company under the Comalco special agreement Act to take or interfere with water in the Wenlock Basin wild river area and applies to water other than artesian water or subartesian water connected to artesian water.

The proposed further agreement operates to separate the Company's rights to take or interfere with water in the Wenlock Basin wild river area from the general authorisation to take or interfere with water provided under the Principal Agreement. Effectively, this proposed further agreement will operate, in conjunction with the new chapter 8, part 3C of the Water Act, to facilitate the relocation of the water rights in the Wenlock Basin wild river area from the Comalco special agreement Act and the *Alcan Queensland Pty. Limited Agreement Act 1965* (Alcan special agreement Act) to the Water Act.

The proposed further agreement amends the Principal Agreement by imposing conditions that limit the rights, afforded to the Company under the Comalco special agreement Act, to take or interfere with water in the Wenlock Basin wild river area to a maximum volume of 90,000 million litres. This maximum volume is the sum of the water that may be taken or interfered with under both the Comalco special agreement Act and the Alcan special agreement Act.

The proposed further agreement clarifies that the location from which water may be taken or interfered with in the Wenlock Basin wild river area is restricted to within, or in the vicinity of, the bauxite field referred to in clause 31(a) of the Principal Agreement.

Part 4 Amendment of *Environmental Protection Act 1994*

Act amended

Clause 15 provides that Part 4 of the Bill amends the *Environmental Protection Act 1994*.

Insertion of new s 312W (Statutory conditions of environmental authority (chapter 5A activities))

Clause 16 deems a condition on all existing and new Chapter 5A environmental authorities to prohibit the use of 'restricted stimulation fluids'. 'Restricted stimulation fluids' are fluids used for the purpose of stimulation, including fracturing (fraccing), which contain petroleum hydrocarbons containing benzene, toluene, ethylbenzene or xylene (B-TEX), or chemicals which are likely to produce B-TEX as they break down in the environment.

Existing environmental authorities do not currently contain any restrictions on the types of chemicals that may be used for stimulating (including fraccing) coal seams. The CSG industry in Queensland has confirmed that they do not currently use B-TEX chemicals in fraccing activities. This amendment is precautionary in nature and will ensure that these types of chemicals are not used in the future for stimulation including fraccing activities.

Amendment of s 320 (Duty to notify environmental harm)

Clause 17 requires a person to notify affected occupiers of land at the same time as notifying the administering authority if they become aware that serious or material environmental harm is caused or threatened. The notice is to be written and include the same information as the notice to the administering authority. Currently, any person carrying out an activity has a duty to notify the administering authority as soon as reasonably practicable if they become aware that serious or material environmental harm is caused or threatened. There is no formal requirement to notify the occupiers of the land that may be affected by an incident. This potentially results in a delay of notification of affected occupiers unless the person notifies them voluntarily.

This provision will ensure that affected occupiers receive timely notification. Additionally, the timing of the notification to both the

administering authority and the occupier is being clarified to be within 24 hours.

The occupier of the land that is, or is reasonably likely to be affected by the incident is not limited to the land on which the activity is taking place. It could include, for example, a neighbouring landholder who could be affected by a water contamination incident or air pollution incident.

The Department of Environment and Resource Management has experienced a number of situations where notification has not happened in a timely fashion or at all in accordance with this section. Accordingly, the maximum penalty for this section is being increased to 500 penalty units. This penalty is an interim amount between the existing maximum penalty of 100 penalty units and maximum penalties under section 480 for providing false and misleading information. This is justified on the grounds that failure to give notice can significantly increase the risk of a serious or irreversible incident. The current maximum penalty of 100 penalty units does not provide a sufficient incentive to report an environmental incident if a person fears liability or prosecution may result.

Insertion of new s 320A (Duty to notify of negative impact on, or interconnection with, aquifers)

Clause 18 requires a person to notify the administering authority and affected occupiers of land where carrying out Chapter 5A activities cause the interconnection with a non-approved aquifer or where operations cause a negative impact on aquifer water quality. This section applies where operations interconnect with an aquifer which is not approved to be interconnected (i.e. outside of the intended coal seam), or where operations cause a negative impact on aquifer water quality, and that impact is not approved by an environmental authority, transitional environmental program, or a code of environmental compliance. In those circumstances, any person carrying out the activity has a duty to notify the administering authority and affected occupiers within 24 hours of becoming aware of the event.

The occupier of the land that is, or is reasonably likely to be affected by the incident is not limited to the land on which the activity is taking place. It could include, for example, a neighbouring landholder who relies on the relevant aquifer.

Amendment of s 616D (Changing conditions of transitional authority (SAA))

Clause 19 makes a consequential amendment to section 616D of the Act, which is required as a result of the amendments made by Clause 20. It replaces a reference to section 616H(b) with a reference to new section 616H(1)(b).

Amendment of s 616H (Requirement to apply for new authority or amend etc. transitional authority (SAA))

Clause 20 renumbers existing subsections (a) to (c) as (1)(a) to (c) as a result of inserting a new subsection (2).

Existing subsection (c) is replaced and a new subsection (d) is inserted because of new section 616M(2), which enables the transfer of a transitional authority (SAA) to a wholly owned subsidiary without the authority ending.

In relation to the transfer of a transitional authority (SAA), the transfer is to be to an entity other than a wholly owned subsidiary of the holder of the authority within the meaning of the Corporations Act.

This amendment retains the requirement under section 616H for the holder of a transitional authority (SAA) to, within 3 years of the commencement of section 616H (i.e. by 21 May 2011), apply for an environmental authority (mining activities) for a level 1 mining project; or an amendment to the transitional authority (SAA) for converting it to an environmental authority (mining activities) for a level 1 mining project; the surrender of the transitional authority (SAA); or the transfer of the transitional authority (SAA).

Clause 20 also inserts a new subsection 616H(2). New subsection 616H(2) states that the transfer of a transitional authority (SAA) to a wholly owned subsidiary of the holder of the authority within the meaning of the *Corporations Act 2001* (Cth) does not constitute compliance with the obligation under section 616H(1).

This ensures the wholly owned subsidiary would still be required to meet the requirements to convert their transitional authority (SAA) by 21 May 2011.

Amendment of s 616M (End of transitional authority (SAA))

Clause 21 replaces the reference to section 616H with a reference to section 616H(1) as a consequence of amendments made by clause 20.

New subsection (2) provides the transitional authority does not end where a transitional environmental authority (SAA) is transferred under Chapter 5, Part 9 of the Act to a wholly owned subsidiary of the holder of the authority within the meaning of the Corporations Act. Under the Corporations Act, a wholly owned subsidiary is under the control of the original body. The subsidiary consists of members or nominees from the original body.

New subsection (3) provides that subsection (1) does not limit chapter 5, part 12 of the Act relating to the amendment, cancellation or suspension of environmental authorities.

By enabling a transitional authority (SAA) to be transferred to a wholly owned subsidiary, the subsidiary, when converting the transitional authority to an environmental authority, would not be required to undergo the public notice or Environmental Impact Statement requirements (as provided by sections 616P and 616T). This provides equivalent benefits to the holder of a transitional authority (SAA) and their wholly owned subsidiaries in relation to the conversion process.

Amendment of s 616N (Application of sdiv 5)

Clause 22 replaces the reference to section 616H(a) with a reference to 616H(1)(a) as a consequence of amendments made by clause 20.

Amendment of s 616R (Application of sdiv 6)

Clause 23 replaces the reference to section 616H(b) with a reference to 616H(1)(b) as a consequence of amendments made by clause 20.

Part 5 Amendment of the *Geothermal Energy Act 2010*

Act amended

Clause 24 provides that this part amends the *Geothermal Energy Act 2010.*

Amendment of s 464 (Insertion of new pt 19, div13, sdiv 2)

Clause 25 provides that the exemption from the requirement to be a party to a conduct and compensation agreement with an eligible claimant will apply to the holder of an exploration permit or mineral development licence if the holder has given a converted notice of entry, which is taken to

be a notice of entry for schedule 1 in the *Mineral Resources Act 1989* until the earlier of: the day that is 6 months after the anniversary of grant date for the exploration permit; or 1 September 2011. This will include any renewed term of the converted notice of entry made under the former section 164 of the *Mineral Resources Act 1989.*

It also clarifies that an entry notice given under former section 164 or 212 may be renewed under the former sections 164 or 212 and that these renewals are considered a converted entry notice for the purposes of new section 781(4). In relation to renewals, the amendment clarifies that the renewal may only be for preliminary activities or advanced activities stated an entry notice.

Amendment of s 465 (Insertion of new sch 1)

Clause 26 provides for the term 'compensatable effect' to include reasonable and necessary accounting, legal and valuation costs, recognising the fact that owners and occupiers of land should not have to incur the cost of engaging relevant professional advice to assist with the negotiation and preparation of an agreement with a exploration tenement holder to enable access to their land and facilitate appropriate compensation. The range of reasonable and necessary professional costs is effectively limited by this amendment to accountants, lawyers and valuers because the negotiation and preparation of a conduct and compensation agreement is predominantly about determining the quantum of compensation for the impact of the authorised activities: for example, seeking legal advice to review a draft conduct and compensation agreement or obtaining valuation advice to assess impact of authorised activities on property values.

The purpose of the inclusion of examples of negotiation in section 320(4)(b) is to ensure that the professional costs associated with attending the alternative dispute resolution or conference are included within the meaning of the term 'compensatable effect'.

The amendment broadens the definition of compensatable effect to put beyond doubt that compensation is payable by a mining tenement holder for consequential damages that the eligible claimant incurs because of a compensatable effect mentioned in schedule 1, section 13(4)(a) and 13(4)(b).

Part 6 Amendment of *Holidays Act 1983*

Act amended

Clause 27 provides that Part 6 amends the *Holiday Act 1983*.

Amendment of s 4 (Special holidays)

Clause 28 inserts a new subsection (7) which defines "Comalco Limited" to include its successors and assigns.

Part 7 Amendment of *Mineral Resources Act 1989*

Act amended

Clause 29 provides that this part amends the *Mineral Resources Act 1989.*

Insertion of new s 140A

Clause 30 provides that the holder of an exploration permit has a statutory obligation to consult with each owner and occupier of private and public land subject to the tenure. The amendment further provides that the subject of the consultation must be about: access to the land, the conduct of the authorised activities on that land and the issue of compensation liability to the owner or occupier.

Insertion of new s 193A

Clause 31 provides that the holder of a mineral development licence has a statutory obligation to consult with each owner and occupier of private and public land subject to the tenure. The amendment further provides that the subject of the consultation must be about: access to the land, the conduct of the authorised activities on that land and the issue of compensation liability to the owner or occupier.

Replacement of s 397

Clause 32 replaces the existing section 397 of the *Mineral Resources Act 1989* with a new provision, the purpose of which is to expressly provide that the civil liability for a claim based in tort for damages is limited for owners and occupiers of land the subject of a mining tenement. This

section is most likely to apply to claims for negligence by a third party. This section will apply when someone else carries out an authorised activity for the geothermal tenure or someone else carries out an activity on the land which is purportedly an authorised activity for the geothermal tenure, to claims related to the carrying out of the activity.

An owner's or occupier's tortious liability is limited to the extent to which the harm claimed was caused or contributed to by the owner or occupier.

The section provides that the terms claim, *damages* and *harm* mean the same as they do for the *Civil Liabilities Act 2003*.

New section 397A Duty to avoid interference in carrying out authorised activities

New section 397A requires a person carrying out authorised activities for a mining tenement to carry out these activities without unreasonably interfering with other activities being properly conducted by other persons. As authorised activities under a mining tenement may impinge on the rights of the other tenure holders, as well as landowners and occupiers, there is a need for the mining tenement holder to take all reasonable steps to minimise the effect of their activities on any other activity being undertaken by another person. For example, a person carrying out an authorised activity under a mining tenement must not unreasonably interfere with a grazier going about their day-to-day business.

New section 397B Obstruction of mining tenement holder

New section 397B prohibits a person, without reasonable excuse, from obstructing a mining tenement holder from the holder's right of access to land to carry out activities authorised under the mining tenement. Similarly, a person is prohibited from obstructing the tenement holder while the holder carries out activities authorised under the mining tenement. However, when entering land to conduct authorised activities, the mining tenement holder must comply with the relevant sections of the Act.

Part 8 Amendment of *Nature Conservation Act 1992*

Act amended

Clause 33 provides that this part amends the *Nature Conservation Act 1992*.

Amendment of s89 (Restriction on taking etc. particular protected plants)

Clause 34 sets out the circumstances in which a person other than an authorised person may take a protected plant that is in the wild.

Subsection (1)(a) enables a person to take a protected plant that is in the wild, other than in a protected area, if it is necessary and reasonable to take the plant to avoid or reduce an imminent risk of death or serious injury to a person. This subsection will only apply where the taking of the plant could not have reasonably been avoided or minimised.

The effect of this amendment is that a person will be able to deal with an endangered, vulnerable, near-threatened or least concern plant to the extent necessary to respond to an imminent threat to public safety.

This subsection is not intended to apply where the risk of death or serious injury is remote, such as a risk associated with a possible future event; rather, the risk must be existing and imminent. This subsection is also not intended to allow the clearing of plants comprising a flying-fox roost due to a perceived risk from spread of disease.

Additionally, this subsection is not intended to apply where a person, in avoiding or reducing the risk, could have reasonably minimised the taking of the plant or could have reasonably avoided taking the plant altogether. For example, a person would not enjoy the benefit of this subsection where, in responding to a risk of death or serious injury, that person completely removes a protected plant in circumstances where removing several branches of that plant would have been sufficient to avoid or minimise the risk.

Subsection (1)(b) enables a person to take a protected plant that is in the wild, other than in a protected area, if it is necessary and reasonable to take the plant to avoid an imminent risk of serious damage to a building, or structure or personal property. This subsection only applies if the damage

would otherwise cause significant economic loss and only *if* the taking of the plant could not have reasonably been avoided or minimised.

This subsection is not intended to apply where the risk of serious damage is remote, such as a risk associated with a possible future event; rather the risk must be existing and imminent.

This subsection is not intended to extend to circumstances where the imminent risk of damage could have reasonably been avoided by undertaking an activity other than taking a protected plant.

This subsection is not intended to authorise actions resulting or likely to result in damage to another person's property merely for the sake of preventing damage to one's own property.

For the purposes of this subsection, significant economic loss would usually be in the order of thousands of dollars or more, rather than hundreds of dollars or less.

Subsection (1)(c) enables a person to take a protected plant if taking the plant is, or is a necessary part of a measure that is authorised under the *Fire and Rescue Service Act 1990,* section 53(1) or 68(1)(c) or required under sections 53(2)(j) or 69(1) of that Act.

The effect of this amendment is that a person will be able to take a protected plant:

- where that person is an authorised fire officer and taking the protected plant is a reasonable measure to protect persons, property or the environment from danger caused by a fire or hazardous materials emergency; or
- where that person is an authorised fire officer and taking the protected plant is a reasonable measure to protect persons trapped in any premises or otherwise endangered.
- where required by an authorised fire officer to assist that officer in dealing with danger caused by a fire or hazardous materials emergency; or
- where that person is an occupier of land and believes on reasonable grounds that a grass fire burning within 1.6 kilometres of that land constitutes a fire risk and the taking of a protected plant is a reasonable measure to extinguish or control the fire; or
- where the commissioner requires the occupier of premises to take a protected plant for the purpose of reducing the risk of a fire occurring

on the premises or reducing potential danger to persons, the property or the environment in the event of a fire occurring on the premises.

Subsection (1)(d) enables a person to take a protected plant by lighting a fire that is authorised under the *Fire and Rescue Service Act 1990,* section 63(2)(j) or 65(2). This subsection applies only if lighting the fire is necessary to reduce a hazardous fuel load.

The effect of this amendment is that a person will be able to take a protected plant by lighting a fire if lighting a fire has been authorised under a notification by the commissioner; or lighting a fire has been authorised under a permit granted by the commissioner. However, this provision will only apply if lighting the fire is necessary to reduce a hazardous fuel load.

Subsection (1)(e) enables a person to take an endangered, vulnerable, near-threatened or least concern plant under a development approval for work that includes the clearing of native vegetation under the *Vegetation Management Act 1999,* provided that as part of the development approval, the taking of the plant was assessed under a regional vegetation management code or concurrence agency policy.

This provision is only intended to apply if the regional vegetation management code or concurrence agency policy, against which the development application was assessed, provides performance requirements for the taking of the protected plant.

A person will not be entitled to rely on a development approval for vegetation clearing to take a protected plant in circumstances where the plant has not been provided for in the regional vegetation management code or concurrence agency policy against which the development application is assessed.

Subsection (1)(f) enables a person to take a protected plant that is in the wild, other than in a protected area, if the taking of the protected plant is authorised under a land management agreement under the *Land Act 1994*.

The effect of this amendment is that a lessee of land who has entered into a land management agreement will be able to take a protected plant if the land management agreement authorises taking the protected plant.

Subsection (1)(g) enables a person to take a least concern protected plant that is in the wild other than in a protected area, if the development activity through which the plant is taken is not prescribed as a relevant development activity and the taking of the plant is not assessable development.

The effect of this amendment is that a person will be able to take a least concern protected plant where the plant is taken through a certain low risk vegetation clearing activity where the clearing activity is not assessable development.

This provision is intended to only apply to certain low risk vegetation clearing activities undertaken by landholders. The vegetation clearing activities which are prescribed in this Act as relevant development activities have been excluded from this provision because they are not activities which relate to land management undertaken by landholders. Including the prescribed relevant development activities in this provision would enable the least concern protected plants to be taken on a large scale, potentially undermining the object of this Act.

Subsection 1(h) enables a person to take a protected plant if the plant is taken under a conservation plan applicable to the plant; a licence permit or authority issued or given under a regulation; or an exemption under a regulation.

The exemptions under subsection 1(h) were already in force under the Act prior to the commencement of these amendments. The exemptions have been renumbered as a consequence of the insertion of the additional subsections.

Subsection (5) provides definitions of terms used in section 89. A notable definition is 'relevant development activity' which is defined as any of the following:

- A mining activity or a chapter 5A activity under the Environmental Protection Act; or
- Any aspect of development for geothermal exploration carried out under a geothermal exploration permit under the *Geothermal Exploration Act 2004;*
- An activity under the *Electricity Act 1994,* section 101 or 112A
- An electricity entity under that Act otherwise clearing, lopping or pruning trees under that Act.
- For State-controlled road under the *Transport Infrastructure Act 1994 –*
    - Road works carried out on the State-controlled road; or
    - Ancillary works and encroachments carried out under section 50 of that Act.

- Clearing for routine transport corridor management and safety purposes, on existing rail corridor land, new rail corridor land, non-rail corridor land or commercial corridor land (within the meaning of the *Transport Infrastructure Act 1994)* that is not subject to a commercial lease.

The effect of this definition is that subsection (1)(g) will not apply where the plant is taken under one of the activities listed in this definition. Although the clearing activities within this definition are prescribed under the *Sustainable Planning Regulation 2009* as not assessable development, they are not within the scope of land management activities which would ordinarily be undertaken by a landholder.

Part 9 Amendment of *Petroleum Act 1923*

Act amended

Clause 35 provides that this part amends the *Petroleum Act 1923*.

Amendment of s 76G (Power to require information or reports about authorised activities to be kept or given)

Clause 36 provides that notices required to be submitted to the chief executive under this section, must also be required to be given to each owner and occupier of land as required by regulation. It is expected that all notices currently prescribed under s76G(1)(b) will be required to also to be given to all owners and occupiers. This requirement will improve the information that landholders receive about activities being carried on their land by a petroleum tenure holder.

Insertion of new 76GA and 76GB

Clause 37 provides for when it may prove impracticable to give a notice to one or more owners or occupiers. In such cases, the chief executive may approve the petroleum tenure holder gives the notice by publication. This publication may relate to more than one notice. The chief executive must only approve the giving of the notice by publication if the chief executive is satisfied that the publication will adequately inform the owner and occupier of the land that is the subject of the authorised activities, 10 business days prior to the commencement of the authorised activity, where the notice is

required before that activity is carried out. Where the notice is for the completion of the activity, then the chief executive must be satisfied that the publication will adequately inform the owner and occupier of the subject land.

Section 76GB provides that notices lodged pursuant to section 76G(1)(b) must be provided by chief executive to the chief executive (environment) where prescribed by regulation. This ensures that the Department of Environment and Resource Management has adequate information about activities to enable the administration of the Environmental Protection Act but reduces the administrative burden on the tenure holder by allowing information sharing between government departments

Part 10 Amendment of *Petroleum and Gas (Production and Safety) Act 2004*

Act Amended

Clause 38 provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*

Amendment of s 553 (Power to require information or reports about authorised activities to be kept or given)

Clause 39 provides that notices required to be submitted to the chief executive under this section, must also be required to be given to each owner and occupier of land as required by regulation. It is expected that all notices currently prescribed under s553(1)(b) will be required to also to be given to all owners and occupiers. This requirement will improve the information that landholders receive about activities being carried on their land by a petroleum tenure holder.

Insertion of new 553A and 553B

Clause 40 inserts a new s553A (Giving copy of required notice by publication) to provide for when it may prove impracticable to give a notice to one or more owners or occupiers. In such cases, the chief executive may approve the petroleum tenure holder gives the notice by publication. This publication may relate to more than one notice. The chief executive must

only approve the giving of the notice by publication if the chief executive is satisfied that the publication will adequately inform the owner and occupier of the land that is the subject of the authorised activities 10 business days prior to the commencement of the authorised activity, where the notice is required before that activity is carried out. Where the notice is for the completion of the activity, then the chief executive must be satisfied that the publication will adequately inform the owner and occupier of the subject land.

Section 553B provides that notices lodged pursuant to section 76G(1)(b) must be provided by the chief executive to the chief executive (environment) where prescribed by regulation. This ensures that the Department of Environment and Resource Management has adequate information about activities to enable the administration of the Environmental Protection Act but reduces the administrative burden on the tenure holder by allowing information sharing between government departments.

Part 11 Amendment of *South Bank Corporation Act 1989*

Act amended

Clause 41 refers to the Act amended, namely, the *South Bank Corporation Act 1989*.

Amendment of Schedule 15, Part 1

Clause 42 (Commercial precinct) inserts a new plan which includes two parcels of land on the corner of Grey and Vulture Streets within the South Bank commercial precinct.

Part 12 Amendment of *Vegetation Management Act 1999*

Act Amended

Clause 43 refers to the Act amended, namely, the *Vegetation Management Act 1999.*

Amendment of s11 (Minister must make regional vegetation management codes)

Clause 44 provides that a regional vegetation management code may provide for the protection of a plant or the breeding place of an animal that is prescribed as endangered, vulnerable, near-threatened, rare or least concern wildlife under the *Nature Conservation Act 1992.*

Under the *Sustainable Planning Act 2009*, development applications for the clearing of vegetation are assessed against the regional vegetation management code for the area in which the development is proposed. Therefore, the effect of this amendment is to draw endangered, vulnerable, near-threatened, rare and least concerned plants and animal breeding places into the development assessment framework under the *Sustainable Planning Act 2009* and to streamline assessment of protected plants and vegetation under the *Nature Conservation Act 1992* and *Vegetation Management Act 1999* respectively.

Subsection (5) provides definitions for terms used in section 11. It is intended that for the purposes of this section, a 'plant' is a plant as defined under the *Nature Conservation Act 1992*. This definition is broader than the definition of 'vegetation' in the *Vegetation Management Act 1999* and includes grasses and non-woody herbages.

Amendment of s20AH (Deciding to show particular areas as remnant vegetation)

Clause 45 enables a chief executive, in accrediting a regional ecosystem or remnant map, to show an area on the map as remnant vegetation if the chief executive has been given an area management clearing notification for the area and the clearing vegetation in the area is for any of the following purposes –

- Fodder harvesting; or
- Thinning; or

- Clearing of encroachment; or
- Control of non-native plants or declared pests

The effect of this amendment is to ensure that areas subject to clearing for certain purposes will remain assessable under the vegetation management framework and be allowed to regenerate back to remnant vegetation. The intent of clearing for fodder, thinning and control of non-native plants or declared pests is to maintain the remnant status of the vegetation. It also ensures areas that are grassland regional ecosystems not dominated by woody vegetation will remain assessable after clearing for encroachment.

Amendment of s20CA (Process before making PMAV)

Clause 46 provides that where an owner of land applying for the making of a Property Map of Assessable Vegetation (PMAV), an area cannot be category X if clearing occurred under an area management clearing notification for the following purposes:–

- Fodder harvesting; or
- Thinning; or
- Clearing of encroachment; or
- Control of non-native plants or declared pests

The effect of this amendment is that an area cannot be made category X by the chief executive under a PMAV where vegetation clearing has been undertaken under an area management plan and is for one of the purposes above. The intent under the vegetation management framework is to keep these areas assessable when clearing for these purposes and therefore it is required that they are not allowed to become category X.

Insertion of new pt 2, div 5B (Area management plans)

Clause 47 sets out the definitions, procedural requirements and approval criteria for area management plans. The effect of Division 5B is that a landholder whose property is included in an area management plan will be able to undertake vegetation management activities in accordance with that plan, providing the procedural requirements have been met, without the need for obtaining a separate development approval under the *Sustainable Planning Act 2009.*

This exemption will be given effect through an amendment to Schedule 24 of the *Sustainable Planning Regulation 2009* to provide that vegetation clearing undertaken in accordance with an area management plan is not

assessable development. A person undertaking vegetation management activities will enjoy the benefit of this exemption only if the activities are undertaken in accordance with the area management plan.

New Subdivision 1 Preliminary

New subdivision 1 sets out the definition of an area management plan.

New Section 20I Definition for division 5B

New section 20I provides definitions of terms used in Division 5B. A notable definition is 'owner of land' which enlarges the existing definition of 'owner of land' for the purposes of Division 5B. This enlarged definition is intended to broaden the class of entities that can undertake vegetation management activities under an area management plan.

New Section 20J What is an area management plan

New section 20J provides that an area management plan is a draft management plan that has been approved under section 20J(1)(a) or an existing planning document that has been accredited under section 20J(1)(b).

A draft area management plan is a plan which does not have an existing statutory basis. An existing planning document is a plan or agreement that is made or entered into under an existing provision in another Act.

Subsections (2) and (3) provide that if an area management plan is amended under section 20ZB or 20ZC, the area management plan is the plan as amended.

The effect of this amendment is that where the chief executive has approved a draft area management plan or accredited an existing planning document, that plan or document is an area management plan.

New section 20K What is an existing planning document

New section 20K provides that an existing planning document is a document that provides for clearing vegetation and is prescribed under a regulation or any of the following:

- A conservation agreement under the *Nature Conservation Act 1992*;
- An accredited environmental risk management plan under the *Environmental Protection Act 1994*;

- A plan for managing declared pests on State-controlled land under the *Land Protection (Pest and Stock Route Management) Act 2002*;
- A local government's pest management plan or stock route management plan under the *Land Protection (Pest and Stock Route Management) Act 2002*;
- A land management agreement under the *Land Act 1994*

Landholders are often required to undertake regulated vegetation clearing activities to achieve the objects of an existing planning document. Presently, a landholder whose property is included in an existing planning document is required to obtain a separate development approval under the *Sustainable Planning Act 2009* to undertake such clearing activities.

Enabling an existing planning document to be accredited as an area management plan is intended to streamline the regulatory burden on landholders and encourage uptake of existing planning documents. The provision will enable landholders whose property is included in an accredited existing planning document to undertake certain vegetation clearing activities in accordance with that document without the need for a separate development approval under the *Sustainable Planning Act 2009.*

New section 20L What is *restricted (fodder harvesting) land*

New section 20L defines 'restricted (fodder harvesting) land' as trust land or a road controlled by the State or a local government. This definition does not extend to include indigenous land.

This definition is intended to correspond with Schedule 24, Parts 5 and 6 of the *Sustainable Planning Regulation 2009.* This definition gives effect to the restriction for clearing vegetation for fodder harvesting on particular types of land provided for under section 20Q(3).

New Subdivision 2 Approval of plans and accreditation of planning documents

New Subdivision 2 sets out the procedural requirement and criteria for approving a draft area management plan or accrediting an existing planning document.

New section 20M Application for approval of draft plan or accreditation of planning document

New section 20M provides that an entity or group of entities may apply to the chief executive to approve a draft management plan or accredit an

existing planning document for the area. A fee, the quantum of which is prescribed under a regulation, is payable by the applicant upon application. The fee may be waived if chief executive considers the waiver is in the interest of the State.

The intention of this provision is to enable any person, group of persons or organisation, such as a regional Natural Resource Management group, to apply to the chief executive to approve a draft area management plan. The provision does not limit the size of the area that a draft area management plan can cover. Consequently, an area management plan may cover one or more properties.

However, the area within a draft plan or planning document must be connected, such as adjoining or linked parcels of land. A draft plan or existing planning document will not be approved or accredited if any areas within that plan or document are unconnected.

Additionally, the application must be signed by at least one of the applicants and demonstrate that reasonable steps have been taken to give notice of the draft management plan or existing planning document to each owner of land to which the plan or document relates. As per section 20I, the definition of the term 'owner of land', is expanded for the purposes of Subdivision 5B to include a broad range of interests in land.

The intention of this provision is to ensure, as far as reasonably practical, that owners of land to which a draft area management plan applies are aware of that draft plan. Whether the applicant has taken reasonable steps to give notice will depend on circumstances such as the number of properties covered by the draft management plan or existing planning document.

An owner of land that is included in an area management plan, is not obliged to undertake the vegetation management activities approved in the plan. The owner of the land will still be able to submit a development application for vegetation clearing through the Integrated Development Assessment System under the *Sustainable Planning Act 2009*. Therefore the applicant is not required to demonstrate that the owners' views have been incorporated into the draft plan.

Additionally, a landholder or group of landholders, whose land is covered by an approved area management plan, will also be able to submit a draft area management plan which covers only their land for approval by the chief executive.

Once approved by the chief executive, a draft area management plan is an area management plan. Consequently, a landholder whose land is covered by that plan may undertake vegetation clearing activities in accordance with that plan without the need for a separate development approval.

New section 20N Further information or documents for applications

New section 20N provides that the chief executive may ask the applicant for further information or a document if it is reasonably required to decide the application.

If the chief executive asks for further information or a document, the applicant must give the information or document within 30 days after the request is made or a longer period, if agreed to by the chief executive. The chief executive may stop considering the application until the information or document is given.

This provision is intended to afford some flexibility to applicants who submit an incomplete application, which the chief executive would otherwise refuse to approve or accredit.

New section 20O Deciding applications

New section 20O provides that the chief executive must decide an application for approval of a draft plan by either approving or refusing to approve the draft plan. The chief executive may approve the draft plan for the whole of the area covered by that plan or part of that area. In approving a plan, the chief executive may impose additional conditions on that plan. The additional conditions which the chief executive may impose in approving a draft area management plan are set out in section 20R.

The chief executive must decide an application for accreditation of an existing planning document by accrediting or refusing to accredit the document.

New section 20P Criteria for approving plans or accrediting planning documents

New section 20P sets out the criteria which must be met in order for the chief executive to approve a draft area management plan or accredit an existing planning document.

The application must be in the appropriate format.

The draft plan or planning document must include enough information to allow the chief executive to map the boundary of the area to which the plan

relates and, if the requirements for or restrictions on clearing vegetation relate to different areas within the plan, each of the areas.

The draft area plan or planning document must state the management intent and outcomes for vegetation management in the plan area, and the conditions for clearing vegetation to achieve those outcomes.

The draft plan or planning document can only provide for the clearing of vegetation for one or more of the following purposes:

- To control non-native plants or declared pests
- To ensure public safety
- To establish a fence, firebreak, road or vehicular track
- For fodder harvesting
- For thinning
- For clearing of encroachment

These purposes are considered relevant to the vegetation management activities ordinarily undertaken by landholders to manage their land. However, vegetation clearing for the purpose of fodder harvesting does not apply under this section to an area that is trust land under the *Land Act 1994,* a State controlled road under the *Transport Infrastructure Act 1994* or a road controlled by a local government under the *Local Government Act 2009.*

Additionally, a draft area management plan or existing planning document must not be inconsistent with the State policy or the regional vegetation management code for the area.

New section 20Q Mandatory condition on approval of draft plan or accreditation of planning document

New section 20Q sets out the conditions which are imposed on a plan which provides for clearing for either establishing a fence, firebreak, road or vehicular track (prescribed infrastructure) or for fodder harvesting.

This section provides that a landholder can clear vegetation under an area management plan to establish prescribed infrastructure only if it is necessary to establish that prescribed infrastructure *and* clearing to establish that prescribed infrastructure cannot be reasonably avoided or minimised.

Additionally, where a plan includes trust land, other than indigenous land, under the *Land Act 1994,* a State-controlled road or a road controlled by a local government, vegetation cannot be cleared on that land under a plan for the purpose of fodder harvesting.

New section 20R Imposing additional condition on approval of draft plan

New section 20R provides that in approving a draft area management plan, the chief executive may impose additional conditions on the plan to manage vegetation in a way that achieves the purposes of the Act or avoids inconsistency with the State policy or the relevant regional vegetation management code. Conditions which the chief executive may impose include conditions about the management intent, a management outcome or the clearing of vegetation.

New section 20S Other requirements for approving draft plan

New section 20S sets out requirements imposed upon the chief executive upon approval of a draft plan.

The chief executive must decide the period for which the plan will be in force. The period of an approved draft plan cannot exceed 10 years. If the plan is approved for part of the plan area, a period of less than 10 years, or subject to a condition, the chief executive must give the applicant an information notice about the decision and ensure the plan period, the approved area and any conditions are stated in the approved draft plan.

New section 20T Other requirements for accrediting existing planning document

New section 20T provides that upon accrediting an existing planning document, the chief executive must give the applicant written notice of the accreditation, stating, where applicable, the mandatory conditions.

New section 20U Refusing to approve plan or accredit planning document

New section 20U provides that in addition to section 20O(1)(b) and (3)(b), the chief executive may refuse to approve a draft plan or accredit an existing planning document where the chief executive:

- has requested further information or a document under section 20N(1) and the applicant has not given the chief executive the information or document within the period in section 20N(2)(a); or

- considers that approving the draft plan or accrediting the existing planning document is not in the interests of the State.

If an application is refused under this section, the chief executive must give the applicant an information notice about the decision.

New Subdivision 3 Keeping plans

New Subdivision 3 sets out the requirements for keeping a register of area management plans.

New section 20V Register of area management plans

New section 20V provides that the chief executive must keep a register of area management plans and sets out the particulars which must be kept in the register for each plan. The chief executive must publish the register, other than a person's name, on the department's website.

New Subdivision 4 Notifying clearing under plans

New Subdivision 4 sets out the requirements for giving a clearing notification under an area management plan and keeping a register of those notifications.

New section 20W Requirement to give clearing notification

New section 20W provides that a person who proposes to clear vegetation under an area management plan must give the chief executive an area management clearing notification.

This section sets out the particulars which must be included in a clearing notification such as the location and extent of the clearing and the purpose of the clearing.

New section 20X Offence to clear vegetation under plan without clearing notification

New section 20X provides that an owner of land must not clear vegetation, or allow vegetation to be cleared under an area management plan without first giving a clearing notification.

This section creates a penalty of up to 50 penalty units for a person who does not comply with this requirement.

New section 20Y Register of area management clearing notifications

New section 20Y provides that the chief executive must keep a register of area management clearing notifications and sets out the particulars that must be kept in the register for each notification. The chief executive must

publish the register, other than a person's name on the department's website.

New Subdivision 5 Duration of plans

New Subdivision 5 sets out the period for which an area management plan remains in force.

New section 20Z When area management plan ends

New section 20Z provides that an approved draft plan remains in force until the end of the period stated in it.

Subsection (2) provides that an accredited existing planning document remains in force until 10 years after the accreditation or when the existing planning document ceases to be in force, whichever is less.

New Subdivision 6 Amending plans

New Subdivision 6 sets out the circumstances in which an area management plan can be amended.

New section 20ZA Definition for sdiv 6

New section 20ZA provides that for the purposes of Subdivision 6, an applicant is the person who first applied for the approval of the draft plan or accreditation of the existing planning document.

New section 20ZB Amendment by chief executive

New section 20ZB sets out the circumstances in which the chief executive may amend an area management plan.

The chief executive may amend an area management plan to correct a minor error or to make an insubstantial change.

The chief executive may amend an area management plan to avoid or prevent a present or future inconsistency with the State policy or the regional vegetation management code for the plan area.

This provision is intended to operate in circumstances where the State policy or regional vegetation management code is, or will be changed and as a consequence, an area management plan is, or will become, inconsistent with the policy or code. The intention of this provision is to provide the chief executive with the means of amending an area management plan to avoid an actual or anticipated inconsistency between that plan and the State policy or regional vegetation management code.

Where a plan is amended under this provision, the chief executive must ensure the amendment is clearly shown on the plan and give the person who first applied for the area management plan a copy of the amended plan and an information notice of the decision.

The chief executive may also amend an accredited planning document if, due to an actual or anticipated amendment to the existing planning document no longer satisfies or will no longer satisfy a criterion under section 20P(b)-(d). However, an amendment made under this provision may only relate to vegetation management under section 20P(b)-(d).

This provision is intended to operate in circumstances where, for example, due to an amendment of an existing planning document, that document as amended, no longer satisfies the management intent, outcomes or conditions stated in the accredited document.

New section 20ZC Amendment application for particular plans

New section 20ZC sets out the circumstances in which a person may apply to amend an approved draft plan, the procedural requirements that must be followed and the scope of amendments that can be made.

A person who first applied for an area management plan can apply for an amendment if a change of circumstances significantly affects the operation of the plan.

An application can be made to the chief executive to approve an amendment of an area management plan if there has been a change in circumstances that significantly effects the operation of that plan.

An application under this section must be consistent with the management intent and outcomes stated in the original plan and must not remove or restrict a requirement for vegetation clearing stated in the original plan. This is intended to avoid a situation where a landholder undertakes a vegetation clearing activity under an original plan which has been subsequently amended to remove that clearing activity.

An application under this section may propose to enlarge the area of the original plan by up to 10 percent but cannot extend the period for which the plan is force.

An application under this section must be accompanied by a draft amended plan and the fee prescribed under a regulation. However, the chief executive may waive the fee if it is interest of the State.

A number of provisions in Division 5B apply to an application under this section. In particular:

- The application must be signed by at least one of the applicants and demonstrate that reasonable steps have been taken to give notice of the draft amended plan to each owner of land in the area as set out under section 20M(2)
- Before deciding an application to amend a plan, the chief executive may request further information as set out under section 20M
- In deciding an application to amend a plan, the chief executive must approve, impose conditions or refuse to approve a plan as set out under section 20O.
- A draft amended plan must comply with the criteria set out under section 20P.
- Upon approval of a draft amended plan, the chief executive must, where applicable, give the applicant a copy of the amended plan and, where applicable, an information notice, as set out under section 20S(1)(c)(i), (2) and (3).
- The chief executive may refuse to approve a draft amended plan and, where applicable, must give the applicant an information notice as set out under section 20U.

Amendment of s30 (Power to enter places)

Clause 48 enables an authorised officer to enter a place if a person proposing to clear vegetation under an area management plan and has given the chief executive an area management clearing notification for the place.

The effect of this provision is to enable an authorised officer to conduct inspections on land upon which vegetation has been cleared under an area management plan to verify whether the vegetation has been cleared in accordance with an area management plan.

Amendment of s63A (Review decision)

Clause 49 provides that a review notice in relation to an original decision regarding an area management plan does not need to comply with the *Queensland Civil Administrative Tribunal Act 2009*, section 157(2).The effect of this amendment is that a review notice in relation to a original decision regarding an area management plan will not state that the

applicant has a right to have a decision reviewed by the Queensland Civil and Administrative Tribunal (QCAT).

Amendment of s63B (Who may apply for external review)

Clause 50 provides that a person who is dissatisfied with a review decision made in relation to an area management plan cannot apply to QCAT for a review of the review decision. The effect of this amendment is that an internal review decision made in relation to an area management plan cannot be reviewed by QCAT.

Amendment of s70AB (Copies of documents to be available for inspection and purchase)

Clause 51 provides that the chief executive must make copies of an area management plan available for public inspection and purchase, and must publish an area management plan on the department's website. An area management plan which is made available under this section must not show the name of a person.

Amendment of schedule (Dictionary)

Clause 52 provides for definitions of terms used under Division 5B.

Part 13 Amendment of *Water Act 2000*

Act amended

Clause 53 provides that this part amends the *Water Act 2000*.

Insertion of new ch 8, pt 3C (Authorities under particular special agreement Acts)

Clause 54 deals with authorities held under particular special agreement Acts.

New section 992G (Definitions for pt 3C)

New section 992G of the Water Act provides definitions for terms mentioned in the new part 3C that include:

- ***relevant company*** for a special agreement Act, means the entity that is authorised to obtain water under the agreement under the special agreement Act;

- ***special agreement Act*** to mean the *Alcan Queensland Pty. Limited Agreement Act 1965* and the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*;
- ***specified conditions*** to mean conditions stated in particular clauses of the agreements under the special agreement Acts;
- ***threshold limit*** to have the same meaning as threshold limit defined in the Wild Rivers Act;
- ***Wenlock Basin wild river area*** to mean the wild river area under the Wenlock Basin Wild River Declaration;
- ***Wenlock Basin Wild River Declaration*** means the wild river declaration called 'Wenlock Basin Wild River Declaration 2010' and approved by Governor in Council on 3 June 2010.

New section 992H (Application of pt 3C)

New section 992H of the Water Act clarifies that the part applies only to rights to take or interfere with water in the Wenlock Basin wild river area and only to the extent the relevant company is authorised under a special agreement Act to take or interfere with water in the area. The new section also provides that the operation of this part does not affect in any way the authority of the relevant companies under the special agreement Acts to take or interfere with water outside the Wenlock Basin wild river area or to take or interfere with artesian water or subartesian water connected to artesian water within the Wenlock Basin wild river area.

New section 992I (Continuation of authority and grant of water licence to replace authority)

New section 992I of the Water Act facilitates the progressive relocation of the water rights of the relevant companies from the relevant special agreement Acts into the water allocation and management framework of the Water Act.

Under this section the authority to take or interfere with water in the Wenlock Basin wild river area, under the special agreement Acts, will continue until the company is granted a water licence or licences to replace the authority. However, significantly before the company commences taking or interfering with water the company must hold a water licence granted under this section. To initiate the grant of a water licence under this section the company may give the chief executive notice of its proposal to take or interfere with water in the Wenlock Basin wild river area. Within 30 business days of receiving notice from the company under this section, the

chief executive must grant the company a water licence, with or without conditions and without the need for an application under section 206.

In granting the licence or licences, the conditions imposed by the chief executive must not be inconsistent with:

1. the specified conditions in the special agreement Acts, or

2. information about a threshold limit mentioned in section 11 of the Wenlock Basin wild river declaration, provided the information is not inconsistent with 1. above; or

3. an environmental impact statement or associated study or report that deals with the taking of or interfering with water in the Wenlock Basin, provided the environmental impact statement, study or report is not inconsistent with 1. and 2. above.

If the chief executive grants a water licence under this section, within 30 business days of granting the licence the chief executive must give the company a water licence in the approved form, together with an information notice about the granting of the licence.

A water licence granted under this section is taken to be a water licence under chapter 2, part 6 of the Act.

Whilst the new section refers to a singular water licence this may be taken to also mean the plural, in respect to both take and interference with water, as it is contemplated that multiple water licences may be granted progressively over time in order to fully replace the authority under the special agreement Acts.

This section applies despite section 1037A(3) and (4) of the Water Act and anything to the contrary in the special agreement Acts.

The section also provides a definition for the section of an *environmental impact statement* to mean an environmental impact statement prepared or finalised under:

(a) the *Environmental Protection Act 1994*; or

(b) the *Environment Protection and Biodiversity Conservation Act 19711999* (Cwlth); or

(c) the *State Development and Biodiversity Conservation Public Works Organisation Act 1999*.

New section 992J (Amendment of water licence that replaces authority)

New section 992J provides that the chief executive may, under sections 217 or 218, amend a water licence granted under section 992I provided the conditions of the amended licence are not inconsistent with:

1. the specified conditions in the special agreement Acts, or
2. information about a threshold limit mentioned in section 11 of the Wenlock Basin wild river declaration, provided the information is not inconsistent with 1. above; or
3. an environmental impact statement or associated study or report that deals with the taking of or interfering with water in the Wenlock Basin, provided the environmental impact statement, study or report is not inconsistent with 1. and 2. above.

The section applies despite section 217. The effect of this latter provision is that even if a licence granted under this part is inconsistent with a water resource plan or a resource operations plan, the licence cannot be amended to be consistent with a plan if the licence were then to be inconsistent with the matters mentioned under subsection (2) of this section .

This section also provides that the company may give the chief executive a notice proposing amendment of a licence granted under section 992I and, if given such a notice, the chief executive must amend the licence, provided the amendment would not be inconsistent with the matters mentioned under section 992J(2). If the chief executive decides to amend the licence, the chief executive must, within 30 business days of receiving the notice, give the company an amended licence and an information notice about the amendment. The chief executive may amend the licence under this process without an application being made under section 216.

Amendment of sch 4 (Dictionary)

Clause 55 inserts new definitions for *relevant company*, *special agreement Act*, *specified conditions*, *threshold limit*, *Wenlock Basin wild river area*, *Wenlock Basin Wild River Declaration*.