

Land and Other Legislation Amendment Bill 2014

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Andrew Cripps MP, Minister for Natural Resources and Mines

Title of the Bill

The short title of the bill is the *Land and Other Legislation Amendment Bill 2014* (the Bill).

Objectives of the Amendments

The objectives of the amendments are:

- to ensure the amendments to the *Nature Conservation Act 1992* (Nature Conservation Act) (Part 8 of the Bill) commence at the same time as the rolling term lease provisions being introduced to the *Land Act 1994* (Land Act) by clause 46 of the Bill;
- to extend the coverage of the definition of forest products in Schedule 3 of the *Forestry Act 1959* (Forestry Act) to forest consent areas and to provide an exemption to the definition of forest products in regard to grasses (indigenous or introduced) or crops grown on a forest consent area by the lessee or registered owner of the land containing the forest consent area;
- to ensure that an offer to convert a perpetual lease for tourism purposes on a regulated island to freehold land may be made by the chief executive under the Land Act only with the prior approval of the Governor in Council;
- to confirm that a constructing authority (where the constructing authority is not the Crown in right of the State) is liable to pay native title compensation when compulsorily acquiring native title rights and interests;
- to ensure that the *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas (Production and Safety) Act) provides petroleum and gas explorers an appropriate period of time to undertake genuine exploration activities (before being required to relinquish part of the area), that is reflective of the current industry conditions and best practice tenure administration;
- to ensure that under the Petroleum and Gas (Production and Safety) Act, petroleum and gas explorers are afforded the flexibility to be able to apply to amend their work

program or relinquishment conditions, where doing so would optimise the development and use of the State's petroleum resources – for example, to align tenure assessment requirements with project-based commercial arrangements;

- to ensure that under the Petroleum and Gas (Production and Safety) Act, the level of knowledge of petroleum required to be demonstrated in an application for a petroleum lease is sufficient for the application to be assessed, while not being unduly onerous for industry;
- to include new provisions that will make it clear that extraction activities being undertaken in a watercourse and on land adjoining the watercourse that were lawful under any enactment (e.g. *Water Act 2000* (Water Act) or *Sustainable Planning Act 2009* (Sustainable Planning Act)) immediately before the *Natural Resources and Other Legislation Amendment Act 2010* (Natural Resources And Other Legislation Amendment Act) amendments came into effect continue to be lawful to the low bank of the watercourse without the need for further authorisation;
- to ensure a consistent approach is being taken in regulating the take of water for certain low risk activities namely those listed in schedule 1 of the Water Regulation 2002 (Water Regulation). These low-risk activities are already exempt from requiring an entitlement to take water in watercourses, lakes or springs and the proposed amendment expands that to also apply to those subartesian area managed by the Water Regulation;
- to ensure water licences historically used to extract saline groundwater to operate aquaculture enterprises in the Water Resource (Pioneer Valley) Plan 2002 (Pioneer Water Resource Plan) area may continue to take saline groundwater to operate their business, even though they extract water from a seawater intruded part of the coastal aquifer system. There are two groundwater licences that meet these criteria.

Achievement of the Objectives

Amendment of commencement provisions

The amendment to clause 2 of the Bill achieves the policy objective of ensuring the amendments to Part 8 of the Bill commence at the same time as introduction of the rolling term lease provisions of the Land Act by requiring the amendments to the Nature Conservation Act to commence on a day to be fixed by proclamation.

Forest product definition

The amendment to clause 21 of the Bill will achieve the policy objective of properly providing for forest consent areas under the Forestry Act as a secure modernised means for the State to retain its ownership of the forest products on State land upon its conversion to freehold land as it extends the coverage of the definition of forest products to forest consent areas and to provide an exemption to the definition of forest products in regard to grasses (indigenous or introduced) or crops grown on a forest consent area by the lessee or registered owner of the land containing the forest consent area.

Freeholding of offshore tourism leases provision

The amendment to new subsection (1A) of section 168 of the Land Act, in clause 48 of the Bill, will confirm that an offer to convert a perpetual lease or term lease for tourism purposes on a regulated island to freehold land may be made by the chief executive under the Land Act only with the prior approval of the Governor in Council. Section 168 of the Land Act provides for the chief executive to give notice to an applicant of the decision made with regards to an application to convert the lease to a higher form of tenure. Section 166 provides for the lessee of a perpetual lease or a term lease to make an application to convert the lease to freehold land.

Constructing authority liable to pay native title compensation for compulsory acquisition

The amendment achieves the policy objective of confirming that a constructing authority is liable to pay native title compensation for compulsory acquisition of native title rights and interests by amending section 144 of the *Native Title (Queensland) Act 1993* (Native Title (Queensland) Act) to specifically provide that if native title rights and interests are compulsorily acquired by a person (an acquirer) that is not the State (the Crown in right of the State), then the acquirer is liable to pay any compensation to the native title holders. This is consistent with a constructing authority's responsibility for any payment of compensation when acquiring non-native title rights and interests.

The Commonwealth *Native Title Act 1993* (Native Title Act) permits the State to pass on the compensation liability for the compulsory acquisition of native title rights and interests to another person under a law of the State, where the act of compulsory acquisition is 'attributable to the State'.

The Commonwealth Native Title Act defines an 'act attributable to the State' as an act done by the Crown in right of the State, the Parliament or Legislative Assembly of the State, or any person under a law of the State.

Where the person compulsorily acquiring native title is a constructing authority other than the State (the Crown in right of the State), such as a local government or an electricity entity under the *Electricity Act 1994* (Electricity Act), the compulsory acquisition is 'attributable to the State' as the acquisition is done under a law of the State, such as the *Acquisition of Land Act 1967* (Acquisition of Land Act) or other compulsory acquisition Act.

In this situation, liability for compensation is determined by the Commonwealth Native Title Act and relies on whether a law of the State provides that a person other than the Crown in any capacity is liable to pay the compensation for the compulsory acquisition of native title rights and interests. If a law of the State does not provide for this, then the State is liable to pay the compensation. There is no law in Queensland which currently does this.

The amendment to the Native Title (Queensland) Act will now be the law which confirms that a constructing authority, where it is not the State (the Crown in right of the State), is liable for native title compensation for the compulsory acquisition of native title rights and interests.

Two year extension of work program and two year deferral of relinquishment day for Authorities to Prospect (ATPs)

The amendment to the Petroleum and Gas (Production and Safety) Act achieves the policy objective of ensuring that the length of time within which current petroleum and gas explorers have to undertake genuine exploration activities (before being required to relinquish part of the area) is reflective of best practice tenure administration and current industry requirements.

The amendment does this by providing that the current work program will be extended by two years and the relinquishment day will be deferred by two years: for ATPs granted for a term of 12 years in force before 1 July 2014; preferred tenderers for ATPs on foot before 1 July 2014 - when granted; and for ATPs that are granted in response to a call for tender that is open before 1 July 2014.

ATPs granted for a period of less than 12 years would need to apply to the Minister in the approved form to extend both the term of the authority and the period of the work program by two years. The relinquishment day for the authority would be deferred by two years also. An extension under this amendment could not extend beyond the 12 year period for the authority to prospect. It would be taken that work program (prior to the extension) is adjusted to allow for activities to be undertaken during the extended remaining period of the work program.

The amendment will mean that current four -year work programs will be extended by two years to six years. The requirement to relinquish part of the area of the ATP will be deferred for two years to correspond with the work program period extension. This ensures explorers have more time to undertake exploration activities and evaluate the prospectivity of the ATP area, before being required to surrender a part of it. The amendment brings Queensland in line with most other jurisdictions in Australia, thereby improving Queensland's ability to compete for limited exploration investment expenditure.

Providing flexibility to amend the work program or relinquishment condition of an ATP

The amendment to the Petroleum and Gas (Production and Safety) Act achieves the objective of ensuring that ATP holders are afforded the flexibility to be able to apply to amend the work program or the operation of the relinquishment conditions where doing so would be considered to optimise the development and use of the State's petroleum resources. The amendment does this by inserting a new provision which enables ATP holders to apply to amend either or both of their work program or relinquishment conditions. The applicant would need to state the circumstances that justify the special amendment (outside of the standard conditions and arrangements).

The amendment will provide, for example, the ability for a holder of multiple ATPs in a project to seek approval to apply the relinquishment conditions of one ATP to another ATP within an approved project-grouping and/or spread the work program commitments across a number of ATPs within an approved project-grouping. In deciding whether to approve an application of this nature, the Minister would have regard to whether the proposed amendment optimised the development and use of the State's petroleum resources.

Changing the level of knowledge required to apply for a Petroleum Lease (PL)

The amendment achieves the policy objective of ensuring that under the Petroleum and Gas (Production and Safety) Act, the level of knowledge required to be demonstrated in an application for a petroleum lease is sufficient for the application to be assessed, while not being unduly onerous for industry. The amendment achieves this by providing that the requirements for making a PL application and granting a PL are to include a statement by a suitably qualified person that the proposed area contains commercial quantities of petroleum.

Water Act– Insertion of new transitional provision relating to non-tidal ambulatory boundaries

The amendment achieves the policy objective of ensuring extraction activities being undertaken in a watercourse and on land adjoining the watercourse that were lawful under any enactment (e.g. *Water Act 2000* or *Sustainable Planning Act 2009*) immediately before the NROLA 2010 amendments came into effect continue to be lawful without the need for further authorisation down to the low bank of the watercourse. The amendment does this by inserting a new provision that authorises extraction to the low bank and at the same rate as was previously authorised. Extraction is authorised for a further period of five years.

NROLA 2010 amended the *Water Act 2000* (Water Act) to introduce a feature based methodology to clarify the lateral extent of the State’s management powers in non-tidal watercourses.

NROLA 2010 also made amendments to the *Land Act 1994* (Land Act), *Survey and Mapping Infrastructure Act 2003* (SMIA) and *Water Act 2000* (Water Act) to introduce a feature based methodology to resolve uncertainty in the location of ambulatory boundaries adjoining tidal and non-tidal waters (other than lakes) in the SMIA.

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

Given these Court decisions, prior to the NROLA 2010 amendments, the true identification of the boundary had to be made by reference to the (original) instrument of grant, together with then provisions of the Water Act. A number of court cases, including *Cornerstone Properties Ltd v Caloundra City Council & Anor* [2004] QPEC 44 stated that ‘Lines on maps, if subordinated by description of the natural feature, are merely secondary guides which are capable of correction from time to time’. Accordingly, the fact that a survey plan, or re-survey plan, of a piece of land shows the “boundary” of the land, adjacent to a watercourse, in a particular position, was not conclusive as to the actual boundary.

Accordingly, upon commencement of NROLA, subject to limited exceptions, the ambulatory boundary of all lots of land became the feature as identified on the then current plan of survey or, if no feature is identified, in accordance with non-tidal boundary (watercourse) location criteria specified in the *Survey Mapping and Infrastructure Act 2003*.

At commencement of the legislative changes, new criteria were imposed for determining the outer limits of State jurisdiction under the Water Act. The amendments, in some cases, extended the State’s jurisdiction over a watercourse into parts of privately owned land not

previously under the State's jurisdiction for the purposes of the Act. This involved the application of Water Act requirements to land not previously subject to those requirements, for example, a requirement to obtain an allocation notice to take quarry material from a watercourse in some circumstances.

The impacts of these jurisdictional and boundary amendments was intended to be ameliorated by transitional provisions inserted in the Water Act which, on a temporary basis, extended the authority of existing licences and permits for activities to land that, on the commencement of the new Act, became land under the jurisdiction of the department as a watercourse.

Under the transitional provisions, if, as a result of the amendments, that part previously outside the watercourse was then deemed to be within the watercourse, the person undertaking the activity in that part was required to apply for an appropriate authorisation under the Act to continue. This section automatically extended, for a six-month period after commencement, any existing authorisation of activity in a watercourse to cover the part of the activity that did not previously require an authorisation. In the event that the application could not be approved, the person was able to request, on hardship grounds, to progressively phase out the activity within the watercourse over a period, not exceeding five years.

It has become apparent that, whilst reviewing and scoping the work which will be required for a review of ambulatory boundary rules that, given the highly complex changes made, the transitional provisions included in the *Natural Resources and Other Legislation Amendment Act 2010* will be inadequate.

This transitional provision was inadequate because in many cases authorities existed prior to the 2010 amendments, such as a development approval, that were all that was legally required. For land adjoining a watercourse, the 2010 amendments could well have led to further authorities being required under the Water Act.

Additionally, authorities that were in place prior to 2010 were likely to have authorised activity for a specific lot. But this is problematic because it was unclear where the boundary of lots lay.

To rectify this uncertainty, the amendment will confirm the validity of activity undertaken under the authority and provide certainty to business by confirming that the extent of the area where extraction was authorised has been and will continue for the next five years to be the low bank of the watercourse.

Exemption for low-risk activities to take subartesian water

The amendments will remove regulation for those low-risk activities listed in schedule 1 of the Water Regulation thereby reducing processing timeframes, system administration and reduce regulatory burden on departmental clients.

Authorisation of pre-existing aquaculture enterprises under the Pioneer Water Resource Plan

This amendment will ensure that both licences associated with taking groundwater to operate an aquaculture enterprise, prior to the 2009 amendment of the Pioneer Water Resource Plan to manage groundwater, will be exempted from the clause (Pioneer Water Resource Plan s49D(1)c) prohibiting the take of groundwater with an electrical conductivity greater than 1500 microsiemens per centimetre (this is a measure used to detect saline groundwater).

Alternative Ways of Achieving Policy Objectives

Amendment of commencement provisions

There is no alternative way to achieve the objective of making the amendments to the Nature Conservation Act (Part 8 of the Bill) commence on a day to be fixed by proclamation.

Forest product definition

There is no alternative way to achieve the objective of properly providing for forest consent areas under the Forestry Act and to provide an exemption to the definition of forest products in regard to grasses (indigenous or introduced) or crops grown on a forest consent area by the lessee or registered owner of the land containing the forest consent area.

Freeholding of offshore tourism leases provision

There is no alternative way to achieve the objective of ensuring that notice of an offer to convert a perpetual lease for tourism purposes on a regulated island to freehold land is subject to prior approval by the Governor in Council.

Constructing authority liable to pay native title compensation for compulsory acquisition

There is no alternative other than legislative amendment to a State law to confirm that a constructing authority (where the constructing authority is not the Crown) is liable to pay native title compensation when compulsorily acquiring native title rights and interests. The need for a state law to deal with this issue is set out in section 24MD(4)(b)(i) of the Commonwealth Native Title Act.

Two year extension of work program and two year deferral of relinquishment day for Authorities to Prospect (ATPs)

There are no self-regulatory, co-regulatory or non-regulatory options for implementing this extension of time because the proposed changes relate to an existing framework set by primary legislation.

Providing flexibility to amend the work program or relinquishment condition of an ATP

There are no self-regulatory, co-regulatory or non-regulatory options for implementing this extension of time because the proposed changes relate to an existing framework set by primary legislation.

Changing the level of knowledge required to apply for a Petroleum Lease (PL)

There are no self-regulatory, co-regulatory or non-regulatory options for implementing this extension of time because the proposed changes relate to an existing framework set by primary legislation.

Water Act – Insertion of new transitional provision relating to non-tidal ambulatory boundaries

There is no alternative way of ensuring extraction activities being undertaken in a watercourse and on land adjoining the watercourse that were lawful under any enactment (e.g. Water Act or Sustainable Planning Act) immediately before the Natural Resources and Other Legislation Amendment Act amendments came into effect continue to be lawful without the need for further authorisation.

Exemption for low-risk activities to take subartesian water

An alternate way to achieve the water entitlement exemptions for low-risk activities was to separately amend the Water Regulation. In order to make the regulatory framework as consistent as possible it was necessary to make these amendments concurrently with the exemptions proposed for the works approvals under the Sustainable Planning Act. Any delay in the amendments would result in inconsistency in water resource management and result in an unnecessary regulatory burden being applied to the department's clients.

Authorisation of pre-existing aquaculture enterprises under the Pioneer Water Resource Plan

The only way to achieve the policy objective is by amending the definition of "Authorisation 16" in the Pioneer Water Resource Plan

Estimated Cost for Government Implementation

Amendment of commencement provisions

The administrative cost of implementing the amendment will be minimal and will be met from existing Departmental resources

Forest product definition

The administrative cost of implementing the amendment will be minimal and will be met from existing Departmental resources.

Freeholding of offshore tourism leases provision

The administrative cost of implementing the amendment will be minimal and will be met from existing Departmental resources

Constructing authority liable to pay native title compensation for compulsory acquisition

The administrative cost of implementing the amendment will be minimal and will be met from existing Departmental resources.

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The administrative cost of implementing the amendment will be minimal and will be met from existing Departmental resources

Changing the level of knowledge required to apply for a Petroleum Lease (PL)

The administrative cost of implementing the amendment will be minimal and will be met from existing Departmental resources

Water Act – Insertion of new transitional provision relating to non-tidal ambulatory boundaries

The administrative cost of implementing the amendment will be minimal and will be met from existing Departmental resources.

Exemption for low-risk activities to take subartesian water

There is no cost for government associated with this amendment.

Authorisation of pre-existing aquaculture enterprises under the Pioneer Water Resource Plan

There is no cost to government related to this amendment.

Consistency with Fundamental Legislative Principles

Amendment of commencement provisions

The amendment to clause 2 of the Bill is consistent with fundamental legislative principles.

Forest product definition

The amendment to clause 21 of the Bill is consistent with fundamental legislative principles.

Freeholding of offshore tourism leases provision

The amendment to clause 48 of the Bill is consistent with fundamental legislative principles. A lessee may apply to convert a perpetual lease or term lease to freehold land but the lessee does not have a right to an offer to convert the lease to freehold land. Section 167 of the Land

Act lists the issues the chief executive must consider before making an offer to convert the lease to freehold land. If such consideration supports the current lease is the most appropriate tenure for the land, the application will be refused. If such consideration supports all or part of the current lease would be more appropriately held under a higher form of tenure, the chief executive will make an offer to the lessee to convert all or part of the lease to the higher form of tenure. Because tourism leases on regulated islands are on islands considered unique by the Government and the public, the prior approval of the Governor in Council must be obtained before the chief executive may advise the lessee of the decision made to convert such a lease to freehold land.

Constructing authority liable to pay native title compensation for compulsory acquisition

The amendment is consistent with fundamental legislative principles.

Two year extension of work program and two year deferral of relinquishment day for Authorities to Prospect (ATPs)

This amendment is consistent with fundamental legislative principles. It could be argued that an extension of time to complete a current work program prevents other competitor explorers from gaining access to the ground. Countering this position is the clear signal being sent to the petroleum and gas sector in Queensland during uncertain market conditions. It demonstrated that the government values the current commitment these companies have made to the development of the sector and their plans for production of petroleum and gas. The extension of time supports these efforts at this critical time.

These amendments will provide greater flexibility to petroleum and gas companies in making decisions and enhance investment opportunities in the State.

Providing flexibility to amend the work program or relinquishment condition of an ATP

This amendment is consistent with fundamental legislative principles. Current industry issues with the legislation include: tenure terms being too short, inflexible relinquishment requirements that hinder genuine exploration efforts, work program inflexibility and difficulties with production lease commencement dates.

These amendments will provide immediate relief to the gas industry by increasing the current work program period, suspending current relinquishment obligations and providing flexibility to change relinquishment and work program commitments. This flexibility is required to allow for natural justice in circumstances, such as market conditions, which are beyond the control of the petroleum and gas exploration sector.

Changing the level of knowledge required to apply for a Petroleum Lease (PL)

This amendment is consistent with fundamental legislative principles. This brings the requirement for the application of a Petroleum Lease under the Petroleum and Gas (Production and Safety) Act in line with the requirements for the application of a Mining Lease under the *Mineral Resources Act 1989*.

Water Act – Insertion of new transitional provision relating to non-tidal ambulatory boundaries

The amendment retrospectively validates quarrying activity that would otherwise been in breach of the *Water Act 2000* (Water Act). However, this retrospectivity is justified because the transitional provisions included in the Water Act as part of the NROLA 2010 ambulatory boundary rule changes were inadequate.

In many cases authorities existed prior to the 2010 amendments, such as a development approval, that were all that was legally required. For land adjoining a watercourse, the 2010 amendments could well have led to further authorities being required under the Water Act.

Additionally, authorities that were in place prior to 2010 were likely to have authorised activity for a specific lot. However this is problematic because it was unclear where the boundary of lots lay.

Exemption for low-risk activities to take subartesian water

Yes, these amendments are consistent with fundamental legislative principles.

Authorisation of pre-existing aquaculture enterprises under the Pioneer Water Resource Plan

The amendments are consistent with of the application of fundamental legislative principles. In relation to natural justice, the amendment will have a positive effect on the rights of the licencees to which the definition relates (water licences 85040L and 408846). Licence 85040L was already provided for in the existing water resource plan, however licence 408846 was not.

Consultation

Amendment of commencement provisions

No consultation has been carried out on the amendment.

Forest product definition

No consultation has been carried out on the amendment, however its necessity was in part suggested in a submission from Agforce Queensland Industrial Union of Employers (Agforce) received on the Bill by the State Development, Infrastructure and Industry Committee as part of its public enquiry into the Bill and it was subsequently recommended by the Committee.

Freeholding of offshore tourism leases provision

No consultation has been carried out on the amendment.

Constructing authority liable to pay native title compensation for compulsory acquisition

No consultation has been carried out on the amendment.

Two year extension of work program and two year deferral of relinquishment day for Authorities to Prospect (ATPs)

The need for this amendment was revealed through the extensive consultation processes underway through the Modernising Queensland Resources Acts Program, the Ministerial Advisory Committee on Exploration and the ResourcesQ workshops throughout the state.

Providing flexibility to amend the work program or relinquishment condition of an ATP

The need for this amendment was revealed through the extensive consultation processes underway through the Modernising Queensland Resources Acts Program, the Ministerial Advisory Committee on Exploration and the ResourcesQ workshops throughout the state.

Changing the level of knowledge required to apply for a Petroleum Lease (PL)

The need for this amendment was revealed through the extensive consultation processes underway through the Modernising Queensland Resources Acts Program, the Ministerial Advisory Committee on Exploration and the ResourcesQ workshops throughout the state.

Water Act – Insertion of new transitional provision relating to non-tidal ambulatory boundaries

No consultation has been carried out on the amendment.

Exemption for low-risk activities to take subartesian water

Consultation was undertaken during the development of the list of low-risk activities listed in schedule 1 of the Water Regulation as a part of the *Land, Water and Other Legislation Amendment Act 2013* (Land, Water and Other Legislation Amendment Act). The application of the proposed exemptions was presented in a broad sense and so it is highly likely that there would be stakeholder expectation that these low-risk activities would apply to surface and groundwater unless regulated by a water resource plan. Support was expressed for the amendments made by Land, Water and Other Legislation Amendment Act.

The key water stakeholders consulted as a part of developing the low-risk activities listed in schedule 1 include: Agforce, Queensland Farmers Federation, Queensland Resources Council, Australian Petroleum Product and Exploration Association Ltd, Local Government Association of Queensland, SunWater and SEQ Water.

Authorisation of pre-existing aquaculture enterprises under the Pioneer Water Resource Plan

The Department of Natural Resources and Mines has been consulting with the holder of licence 408846 in relation to providing opportunity to be able to extract saline groundwater for their aquaculture enterprise. There is low risk of negative impacts due to the relatively low volumes and proximity to the estuarine waters of Sandy Creek.

The subsequent draft Pioneer Valley Resource Operations Plan (ROP) amendment will implement the groundwater provisions of the water resource plan and include water sharing rules for these two licences as well as the majority of other groundwater entitlements. Public consultation will be undertaken and submissions on the draft ROP provisions, including

water sharing arrangements for these licences, will be considered when preparing the final ROP amendment.

NOTES ON PROVISIONS

Amendment of commencement provisions

Clause 1 amends clause 2 of the Bill so that Part 8 of the Bill (the amendments to the Nature Conservation Act) commence on a date to be fixed by proclamation. Part 8 of the Bill will commence on the same day as clause 46 of the Bill, which introduces the rolling term lease provisions to the Land Act.

Forest product definition

Clause 2 amends clause 21 to make provision in the Bill for the additional amendments to Schedule 3 (Dictionary) of the Forestry Act. Initially the Bill provided for the insertion of the required definitions of existing lease, forest consent agreement, forest consent area and lease land. The Bill now also provides for amendment to the definition of forest products, which is a term already included in Schedule 3 (Dictionary) of the Forestry Act.

Clause 3 amends clause 21 to confirm that the definition of forest products also applies to a forest consent area, as it already does to a State forest, timber reserve or forest entitlement area. The amendment also provides an exemption to grasses (indigenous or introduced) or crops grown on a forest consent area by the lessee or owner of the land containing the forest consent area. This exemption, which currently applies to a forest entitlement area, allows the lessee or owner of the land containing the forest consent area to use the grasses (indigenous or introduced) or crops grown on a forest consent area by the lessee or owner of the land containing the forest consent area.

Land Act- Freeholding of offshore tourism leases provision

Clause 4 amends subsection (1A) of section 168 of the Land Act, in clause 48 of the Bill, so that notice of an offer to convert a perpetual lease or term lease for tourism purposes on a regulated island to freehold land is subject to prior approval by the Governor in Council.

Constructing authority liable to pay native title compensation for compulsory acquisition

Clause 5 amends clause 118 of the Bill to insert three new subsections into section 144 of the Native Title (Queensland) Act to confirm the circumstances under which the person who acquires the native title rights and interests where it is not the State (subsection (3B)), is liable to pay compensation for the compulsory acquisition of those native title rights and interests.

The reference to the “State” in these subsections, is a reference to the Crown in right of the State. The reference to “the person who acquires” in these subsections, includes a constructing authority.

The acquirer (or constructing authority) is not the State (the Crown in right of the State) where it is not the executive branch or legislative branch of the State. For example, in this context, where a local government body or an electricity entity under the Electricity Act compulsorily acquires native title, the compulsory acquisition will not be done by the Crown in right of the State.

The new subsections provide that the acquirer, where it is not the State, is liable to pay compensation (subsection (3B)) if the native title rights and interests in relation to the land are acquired under a compulsory acquisition Act (subsection (3A)(a)), and the holders of the rights and interests are entitled to compensation for the acquisition under the Commonwealth Native Title Act (subsection (3A)(b)).

The amendment also provides that if it is not reasonably practical for the holders of the native title rights and interests to otherwise recover the compensation, then the State is liable to pay the compensation when it is required to be paid (subsection (3C)). This assists where the constructing authority, for example, no longer exists.

The amendment includes a note referencing section 24MD(4)(b)(i) of the Commonwealth Native Title Act, which permits the State to pass on the compensation liability for the compulsory acquisition of native title rights and interests to a person other than the Crown in any capacity, under a law of the State, where the act of compulsory acquisition is ‘attributable to the State’.

Clause 6 inserts a number of new clauses into the Land and Other Legislation Amendment Bill 2014. These are described below:

Two year extension of work program and two year deferral of relinquishment day for Authorities to Prospect (ATPs) (New sections 63A, 63B, 63C, 63D and 63E)

New sections are inserted in the Petroleum and Gas (Production and Safety) Act to achieve the policy objective of ensuring that the length of time within which current petroleum and gas explorers have to undertake genuine exploration activities (before being required to relinquish part of the area) is reflective of best practice tenure administration and current industry requirements.

The amendment does this by providing that the current work program will be extended by two years and the relinquishment day will be deferred by two years for: for ATPs granted for a term of 12 years in force before 1 July 2014; preferred tenderers for ATPs on foot before 1 July 2014 - when granted; and for ATPs that are granted in response a call for tender that is open before 1 July 2014.

ATPs granted for a period of less than 12 years would need to apply to the Minister in the approved form to extend both the term of the authority and the period of the work program by two years. The relinquishment day for the authority would be deferred by two years also. An extension under this amendment could not extend beyond the 12 year period for the authority to prospect. It would be taken that work program (prior to the extension) is adjusted to allow for activities to be undertaken during the extended remaining period of the work program.

The amendment will mean that current four-year work programs will be extended by two years to six years. The requirement to relinquish part of the area of the ATP will be deferred for two years to correspond with the work program period extension. This ensures explorers have more time to undertake exploration activities and evaluate the prospectivity of the ATP area, before being required to surrender a part of it. The amendment brings Queensland in line with most other jurisdictions in Australia, thereby improving Queensland’s ability to compete for limited exploration investment expenditure.

Providing flexibility to amend the work program or relinquishment condition of an ATP
(New sections 107A, 107B, 107C and 107D)

The amendment to the Petroleum and Gas (Production and Safety) Act achieves the objective of ensuring that ATP holders are afforded the flexibility to be able to apply to amend the work program or the operation of the relinquishment conditions where doing so would be considered to optimise the development and use of the State's petroleum resources. The amendment does this by inserting a new provision which enables ATP holders to apply to amend either or both of their work program or relinquishment conditions. The applicant would need to state the circumstances that justify the special amendment (outside of the standard conditions and arrangements).

The amendment will provide, for example, the ability for a holder of multiple ATPs in a project to seek approval to apply the relinquishment conditions of one ATP to another ATP within an approved project-grouping and/or spread the work program commitments across a number of ATPs within an approved project-grouping. In deciding whether to approve an application of this nature, the Minister would have regard to whether the proposed amendment optimised the development and use of the State's petroleum resources.

Changing the level of knowledge required to apply for a Petroleum Lease (PL) (New sections 124D and 124E)

In this amendment, Section 118(e) is amended to remove the requirement that when making an ATP-related application for a petroleum lease it must include evidence of certification by an entity the chief executive is satisfied is independent and appropriately qualified to certify that the resources and reserves. This provision has been replaced with the requirement that the applicant must provide a statement by a suitably qualified person that the proposed area contains commercial quantities of petroleum.

Section 121(1)(b)(ii) is amended to remove a requirement for the grant of a petroleum lease the leave being that 'the proposed area of the proposed petroleum lease, if the authorised activities relate to storage of petroleum or a prescribed storage gas – contains an adequately identified natural underground reservoir that is adequate for the proposed purpose of the lease'. This will be replaced with the requirement that 'if the authorised activities relate to petroleum production – contains commercial quantities of petroleum'.

Clause 7 inserts a new clause into the Land and other Legislation Amendment Bill 2014. This amendment will insert definitions into the Schedule 2 (Dictionary) of the Petroleum and Gas (Production and Safety) Act. These definitions relate specifically to the introduction of special statutory extension of work programs being the 2-year extension, and include:

- *2-year extension* means the extension by 2 years of an authority to prospect or a program period for a work program as provided for in chapter 2, part 1, division 3, subdivision 7.
- *12-year period*, for an authority to prospect, means—
 - a) the period of 12 years commencing on the grant of the authority to prospect; or
 - b) if it is a renewed authority as mentioned in section 85—the period of 12 years from when the authority to prospect originally took effect.
- *current work program*, for chapter 2, part 1, division 3, subdivision 7, includes a later work program that, before the commencement of the subdivision, had been lodged under section 79 and, after the commencement, approved.

- *extended remaining period*, for a work program, means the remaining time of the program period for the work program as extended under chapter 2, part 1, division 3, subdivision 7.
- *relinquishment requirements*, for an authority to prospect, means the requirements, including the relinquishment condition, applying under chapter 2, part 1, division 4, subdivision 2 about how much, and when, any part of the area of the authority to prospect must be relinquished.
- *special amendment* is where the holder of an authority to prospect may apply to the Minister to have the operation of their relinquishment requirements for the authority to prospect or their work program for the authority to prospect amended due to specific circumstances.
- *work program amendment provisions* relate to the provisions set out in chapter 2, part 1, division 3, subdivision 6 and relate to the special statutory extension of work programs.

Water Act – Insertion of new transitional provision relating to non-tidal ambulatory boundaries

Clause 8 inserts a new Chapter 2, Part 9, Division 6 into the Water Act. The new division makes it clear that extraction activities being undertaken in a watercourse and on land adjoining the watercourse:

- that were lawful under an authority issued under any enactment, for example the Water Act or the Sustainable Planning Act to the low bank of the watercourse from the commencement of at the time the (Natural Resources and Other Legislation Amendment Act) amendments came into effect; and
- continue to be lawful without the need for further authorisation.

Future extraction will be authorised from the same area and at the same rate that was previously authorised at for a period of five years from the time the amendment comes into effect.

Exemption for low-risk activities to take subartesian water

Clause 9 inserts clause 140A to amend the name of a subartesian area listed in schedule 11 of the Water Regulation from the ‘Great Artesian Basin subartesian area’ to the ‘Greater Western subartesian area’. This amendment supports the administrative renaming of the area to prevent confusion with the management of the Great Artesian Basin under the Water Resource (Great Artesian Basin) Plan 2006.

Clause 10 amends clause 141 to replace schedule 11 in the Water Regulation.

Clause 11 amends clause 142 to include a new definition in schedule 17 of the Water Regulation for ‘prescribed activity’.

Authorisation of pre-existing aquaculture enterprises under the Pioneer Water Resource Plan

Clause 12 amends schedule 10 (the “dictionary”) of the Pioneer Water Resource Plan.

The department is in the process of finalising a draft resource operations plan that will allow for trading of groundwater entitlements in the Pioneer Valley near Mackay. The draft plan

will also impose limitations on the use of water in areas where the aquifer is affected by seawater intrusion. This amendment will ensure that all pre-existing aquaculture enterprises in the area are able to continue to use saline groundwater as part of their operations.

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