



# Forestry Act 1959

Current as at [Not applicable]

## **Indicative reprint note**

This is an *unofficial* version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Forest Wind Farm Development Bill 2020. This indicative reprint has been prepared for information only—*it is not an authorised reprint of the Act.*

An enacted but uncommenced amendment included in the *Medicines and*

[Poisons Act 2019 No. 26](#) has also been incorporated in this indicative reprint.

The point-in-time date for this indicative reprint is the introduction date for the Forest Wind Farm Development Bill 2020—20 May 2020.

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Queensland

# Forestry Act 1959

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Not authorised—indicative only

**Not authorised—indicative only**

Forestry Act 1959

Contents

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## Forestry Act 1959

**An Act to provide for forest reservations, the management, silvicultural treatment and protection of State forests, and the sale and disposal of forest products and quarry material, the property of the Crown on State forests, timber reserves and on other lands; and for other purposes**

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### Part 1 Preliminary

**1 Short title**

This Act may be cited as the *Forestry Act 1959*.

**5 Definitions**

The dictionary in schedule 3 defines particular words used in this Act.

Forestry Act 1959

Part 2 Administration and functions

[s 17]

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## **Part 2 Administration and functions**

### **Division 1 Forest officers and plantation officers**

#### **Subdivision 1 Appointment**

##### **17 Appointment and qualifications**

- (1) The chief executive may appoint a person as a forest officer if satisfied the person has the necessary expertise or experience to be a forest officer.
- (2) The chief executive may appoint an employee of a plantation operator as a plantation officer, for a specified licence area, if satisfied the employee has the necessary expertise or experience to be a plantation officer.
- (3) An appointment under this section must be made by instrument in writing.

##### **17A Appointment conditions**

A forest officer or plantation officer holds office on any conditions stated in—

- (a) the officer's instrument of appointment; or
- (b) a signed notice given to the officer; or
- (c) a regulation.

##### **17B When officer stops holding office**

- (1) A forest officer or plantation officer stops holding office if—
  - (a) the term of office that is stated in a condition of office ends; or

- 
- (b) the office ends under another condition of office; or
  - (c) the officer resigns by giving the chief executive a notice signed by the officer.
- (2) Also, a plantation officer stops holding office if—
- (a) the person stops being an employee of a plantation operator; or
  - (b) the delegation of power under section 96B to the plantation operator is revoked.
- (3) This section does not limit the ways in which a forest officer or plantation officer stops holding office.
- (4) In this section—
- condition of office* means a condition on which the officer holds office.

## Subdivision 2 Identity cards

### 17C Issue of identity card

- (1) The chief executive must issue an identity card to each forest officer and plantation officer.
- (2) The identity card must—
  - (a) contain a recent photo of the person; and
  - (b) contain a copy of the person's signature; and
  - (c) identify the person as a forest officer or plantation officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

Forestry Act 1959

Part 2 Administration and functions

[s 17D]

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**17D Production or display of identity card**

- (1) When exercising a power in relation to a person in the person's presence, a forest officer or plantation officer must—
  - (a) produce the officer's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person.
- (2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the person's inspection at the first reasonable opportunity.

**17E Return of identity card**

If a person stops being a forest officer or plantation officer, the person must return the person's identity card to the chief executive within 21 days after the office ends, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**Subdivision 3 General powers**

**18 General powers of forest officers**

- (1) Any forest officer, in addition to such other powers and duties as from time to time devolve upon the forest officer under this Act, may—
  - (b) be accompanied and aided by any person the forest officer may think competent to assist the forest officer in making any inspection or examination; and
  - (c) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been or are being complied with by any person or in respect of any State forest, timber reserve, forest entitlement

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area, or any forest products or quarry material, the property of the Crown; and

- (d) question, with respect to matters under this Act, the owner or occupier of any place, every person whom the forest officer finds in any place, and every person who has been within the preceding 6 months employed in or on any place to ascertain whether this Act has been or is being complied with, and require any such person to answer the questions put and to sign a declaration of the truth of the person's answers; and
- (e) require the production of any licence, permit, or other authority granted or agreement or contract made under and for the purposes of this Act and of any book, notice, record, list, or writing which by this Act is required to be had or kept or which, in the forest officer's reasonable opinion, may be material to an inquiry under paragraph (c), and inspect, examine, and take copies of or extracts from the same; and
- (f) at any time, search and examine all containers, vehicles, vessels, or other receptacles for holding or transporting any forest products or quarry material or reasonably suspected so to be, and for that purpose the forest officer may require the owner or person in charge thereof to open any such container, vehicle, vessel, or other receptacle, as the case may be, and expose its contents to view; and
- (g) subject to subsections (1A) and (3), enter and inspect a place in which the forest officer reasonably suspects are forest products or quarry material got or interfered with or that the forest officer reasonably suspects have been got or interfered with in contravention of this Act; and
- (ga) if the forest officer finds forest products or quarry material mentioned in paragraph (g) in a place entered under that paragraph—
  - (i) seize, take away and detain the forest products or quarry material together with anything (an

- incidental thing*) including any document, equipment, gear, machinery, plant, vehicle or vessel, the officer reasonably suspects has been used or is intended to be used, in or in connection with, or is evidence of, the getting or interfering with the forest products or quarry material; and
- (ii) subject to sections 82D to 82F, secure anything seized until the end of proceedings for a contravention of this Act; and
- (h) exercise such other powers, functions and authorities as may be prescribed.
- (1A) The power to enter a place under subsection (1)(g) may be exercised—
- (a) for a place that is occupied land—only between sunrise and sunset or at any time with the consent of the owner or an agent or employee of the owner; or
- (b) otherwise—at any time.
- (1AA) The officer’s powers may be limited by—
- (a) the officer’s instrument of appointment; or
- (b) a signed notice given to the officer; or
- (c) a regulation.
- (2) **Forest officer may require name and address**
- Any forest officer who—
- (a) finds any person committing or who reasonably suspects any person of having committed an offence against this Act; or
- (b) is making inquiries or investigations with a view to establishing whether or not an offence against this Act has been committed by any person; or
- (c) is of the opinion that the name and address of any person is required for the purpose of giving effect to any provision of this Act, or for the purpose of enabling the

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forest officer to carry out his or her powers and duties under this Act;

may require such person to state the person's name and address, or name or address, and, if the forest officer has reasonable ground to suppose that the name and address, or name or address, given is false, may require evidence of the correctness thereof.

(3) **Entry into dwelling**

Before a forest officer enters any part of a place, which part is being used as a dwelling at the time the entry is to be made, the forest officer shall, save where the forest officer has permission of the occupier of that part to the entry, obtain from a justice a warrant to enter.

(3A) Subsection (3) does not apply in respect of the curtilage of any premises.

(4) A justice who is satisfied upon the complaint of a forest officer that there is reasonable cause to suspect—

- (a) that there are in any place forest products or quarry material; and
- (b) that such forest products or quarry material have been got or interfered with contrary in any respect to this Act;

may issue a warrant for the place for the purpose of a stated forest officer or any forest officer exercising a forest officer's powers.

(5) The warrant must state—

- (a) the place to which the warrant applies; and
- (b) that a stated forest officer or any forest officer, with necessary and reasonable help and force, may—
  - (i) enter the place and any other place necessary for entry to the place; and
  - (ii) exercise a forest officer's powers; and

- (c) particulars of the matters mentioned in subsection (4) that the justice considers appropriate; and
  - (d) the name of the person suspected of having contravened the Act unless the name is unknown or the justice considers it inappropriate to state the name; and
  - (e) the hours of the day or night when the place may be entered; and
  - (f) the justice's name; and
  - (g) the day and time of the warrant's issue; and
  - (h) the day, within 1 month after the warrant's issue, when the warrant ends.
- (6) In this section—
- occupied land** means land on which the owner is lawfully residing.
- owner**, of land, includes—
- (a) the lessee or licensee from the State of the land; or
  - (b) the person who has lawful control of the land, on trust or otherwise; or
  - (c) the person who is entitled to receive the rents and profits of the land.

**18A General powers of plantation officers**

- (1) A plantation officer may exercise power under this Act, including under a delegation, only for the licence area for which the plantation officer is appointed.
- (2) A plantation officer may—
  - (a) take away and dispose of a notice in the licence area that has not been authorised by the chief executive for the licence area; and
  - (b) require the production of any licence, permit, or other authorisation under which a person claims to be entitled

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to conduct an activity in the licence area that the person is conducting and inspect, examine, and take copies of the authorisation; and

- (c) require the name and address of a person the plantation officer finds committing, or whom the plantation officer reasonably suspects of having committed, an offence against this Act in the licence area.
- (2A) The officer's powers may be limited by—
- (a) the officer's instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (3) A person who fails to comply with a requirement lawfully given or made by a plantation officer under subsection (2) without a reasonable excuse commits an offence.
- Maximum penalty—100 penalty units.
- (4) A person who is required under subsection (2)(c) to state the person's name or address must not, without a reasonable excuse, state a false name or address.
- Maximum penalty—100 penalty units.
- (5) A person does not commit an offence against subsection (4) if the person is not proved to have committed the offence he or she was allegedly found committing or suspected of having committed.
- (6) Subsections (1) and (2) do not limit the powers of a forest officer under this Act.
- (7) In this section—
- commit***, an offence, includes attempt to commit an offence.
- licence area*** includes part of the licence area.
- State forest*** includes part of the State forest.

## Division 2                      Miscellaneous provisions

### 18C      **Plantation operator and plantation officer are persons performing duties under this Act only for particular provisions**

In this Act, a reference to a person performing duties under this Act includes a reference to a plantation operator or plantation officer when performing duties under this Act only in the following provisions—

- (a) section 39(2)(a);
- (b) section 69A(1)(c) as it applies to section 69D;
- (c) section 84(4);
- (d) section 86(1)(a) or (h);
- (e) section 95(a) or (b);
- (f) section 96.

### 19      **Retention of document produced to forest officer**

- (1) This section applies if a forest officer makes a requirement under section 18(1)(e) (the *requirement*) for the production of a document.
- (2) The document must be produced at the place and time stated in the requirement.
- (3) The place stated in the requirement—
  - (a) may be other than the place where the document is ordinarily kept; but
  - (b) must be reasonable in the circumstances of the making of the requirement.
- (4) The time stated in the requirement must be reasonable in the circumstances of the making of the requirement.
- (5) To avoid any doubt, it is declared that—

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- (a) the document must be produced in its original form; and
  - (b) the forest officer may keep possession of the document for the time the forest officer reasonably requires to exercise the forest officer's powers under section 18(1)(e).
- (6) The forest officer may continue to keep possession of the document after the forest officer has finished exercising the forest officer's powers under section 18(1)(e) if the forest officer is satisfied on reasonable grounds that continued retention of the document is necessary—
- (a) for the purpose of an inquiry under section 18(1)(c); or
  - (b) to preserve the document as evidence for a prosecution for a contravention of this Act.
- (7) Subsection (6)(a) does not authorise retention of the document after the end of—
- (a) the time reasonably necessary to complete the inquiry; or
  - (b) the first 6 months after the production of the documents.
- (8) Subsection (6)(b) does not authorise retention of the document after the end of—
- (a) if a prosecution for the contravention mentioned in subsection (6)(b) is started within the first 6 months after the production of the document—the prosecution for the contravention and any appeal from the prosecution; or
  - (b) if paragraph (a) does not apply—the 6 months mentioned in paragraph (a).
- (9) Until the document is returned, the forest officer must allow a person who would be entitled to possession of it, if it had not been retained by the forest officer, to inspect it and make copies of it.

**20 Retention of document produced to plantation officer**

- (1) This section applies if a plantation officer makes a requirement under section 18A(2)(b) (the *requirement*) for the production of a document.
- (2) The document must be produced at the place and time stated in the requirement.
- (3) The place stated in the requirement—
  - (a) may be other than the place where the document is ordinarily kept; but
  - (b) must be reasonable in the circumstances of the making of the requirement.
- (4) The time stated in the requirement must be reasonable in the circumstances of the making of the requirement.
- (5) To avoid any doubt, it is declared that—
  - (a) the document must be produced in its original form; and
  - (b) the plantation officer may keep possession of the document for the time the plantation officer reasonably requires to exercise the plantation officer's powers under section 18A(2)(b).
- (6) Until the document is returned, the plantation officer must allow a person who would be entitled to possession of it, if it had not been retained by the plantation officer, to inspect it and make copies of it.

**21 Officers not to trade in timber etc.**

- (1) No officer in the officer's personal capacity shall become in any way concerned or interested in any lease, permit, or licence, or other similar right or authority granted under this Act or under any enactment repealed by this Act or in any contract or agreement made under or for any of the purposes of this Act or in anywise participate or claim to be entitled to participate in the profit thereof or in any benefit or emolument arising therefrom.

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- (2) However, an officer may, with the consent in writing of the chief executive first had and obtained, purchase, on such terms as the chief executive deems fit, forest products and quarry material the property of the Crown for the officer's own personal use and enjoyment.
- (3) In this section—  
*officer* includes plantation officer.

## **Part 3                      Classification and reservation of State forests and timber reserves**

### **Division 1                      Classification of forest lands**

#### **23                      Classification of lands**

The chief executive shall from time to time cause to be made inspections and surveys of any lands within the State for the purpose of ascertaining whether or not such lands are suitable to be set apart under and for the purposes of this Act.

### **Division 2                      State forests**

#### **25                      Power to set apart and declare State forests**

The Governor in Council may, by regulation, set apart and declare as a State forest—

- (a) any Crown land; or
- (b) any land that is, or is part of, a timber reserve; or
- (c) any land that is, or is part of, a forest reserve under the *Nature Conservation Act 1992*.

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Part 3 Classification and reservation of State forests and timber reserves

[s 25A]

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*Note—*

See the *Nature Conservation Act 1992*, section 70G.

**25A Particular forest reserve land set apart and declared as State forest**

- (1) This section applies if forest reserve land is set apart and declared as a State forest.
- (2) The land ceases to be land in a forest reserve under the *Nature Conservation Act 1992*.
- (3) On the setting apart and declaring of the land as State forest—
  - (a) this Act applies to the land and its management; and
  - (b) the *Nature Conservation Act 1992*, section 70G does not apply to the land.
- (4) This section applies despite the *Nature Conservation Act 1992*, section 70G(4).
- (5) To remove any doubt, it is declared that the setting apart and declaration of the land as a State forest does not extinguish or affect native title or native title rights and interests in relation to the land.
- (6) In this section—

*forest reserve land* means land that—

  - (a) is, or is part of, a forest reserve under the *Nature Conservation Act 1992*; and
  - (b) is land to which the *Nature Conservation Act 1992*, section 70G applies.

**26 Restriction on alienation etc.**

- (1) The setting apart and declaration of a State forest by or under this Act shall not be revoked in whole or in part except under the authority of and in accordance with the provisions of subsection (2) or section 32.

- (1A) No land comprised in a State forest shall be excluded therefrom, leased, or dealt with otherwise howsoever except under the authority of and in accordance with the provisions of this Act.

*Note—*

*See the [Petroleum and Gas \(Production and Safety\) Act 2004](#), section 437A(1) for the creation of an easement for the holder of a pipeline licence under that Act over land that is a State forest.*

*Notes—*

*1 See the [Petroleum and Gas \(Production and Safety\) Act 2004](#), section 437A(1) for the creation of an easement for a pipeline licence holder under that Act over land that is a State forest.*

*2 See also the [Forest Wind Farm Development Act 2020](#) for the giving of an access licence under that Act, or a lease under the [Land Act 1994](#), for land that is a State forest.*

(2) **Revocation of declaration**

The setting apart and declaration by or under this Act of land as a State forest may be revoked in whole or in part in the following manner—

- (a) the Governor in Council shall cause to be laid on the table of the Legislative Assembly a proposal for such revocation;
  - (b) after such proposal has been laid before the Legislative Assembly, the Governor in Council, on a resolution whereof not less than 14 days notice shall have been given being passed by the Legislative Assembly that such proposal be carried out, shall, by regulation, revoke such setting apart and declaration in accordance with that resolution.
- (3) Subsection (2) does not apply to a regulation that merely—
- (a) sets apart and declares a State forest and an area of Crown land, or a timber reserve, as a State forest; or
  - (b) sets apart and declares contiguous State forests as a single State forest; or
  - (c) divides a State forest into 2 or more State forests.

**27 Amalgamation etc. of State forests**

The Governor in Council may, by regulation—

- (a) set apart and declare a State forest and an area of Crown land, or a timber reserve, as a State forest; or
- (b) set apart and declare contiguous State forests as a single State forest; or
- (c) divide a State forest into State forests.

**28 Power to set apart and declare timber reserves**

(1) The Governor in Council may, by regulation made before 30 June 2014—

- (a) set apart any Crown land as a timber reserve; or
- (b) set apart a timber reserve and an area of Crown land as a timber reserve; or
- (c) set apart contiguous timber reserves as a single timber reserve.

(3) The setting apart by or under this Act of any land as a timber reserve shall not be rescinded or amended, in whole or in part, except under the authority and in accordance with the provisions of subsection (4) or section 32.

(3A) However, the setting apart of a timber reserve or part thereof under this Act as a State forest, shall without further or other authority revoke accordingly the whole or that part of the setting apart under this Act of the land as a timber reserve.

(4) **Revocation of timber reserves**

Where the Governor in Council is satisfied that, having due regard to the objects and purposes of this Act, it is expedient to revoke in whole or in part the setting apart of any land as a timber reserve, then the Governor in Council may, by regulation, revoke wholly or in part such setting apart as a timber reserve.

**32 Land for tourist purposes or use as road**

- (1) A regulation may revoke, in whole or in part, the setting apart and declaration of land as a State forest or timber reserve.
- (2) In recommending the Governor in Council make the regulation, the Minister must—
  - (a) be satisfied, having regard to the purposes of this Act and the public interest, it is desirable to make land in the State forest or timber reserve available for—
    - (i) providing accommodation or recreational facilities for encouraging or promoting the tourist industry; or
    - (ii) opening as a road, or applying the land for use as a road, for public use; and
  - (b) have regard to access and other matters relating to the proper management of the remaining land in the State forest or timber reserve.
- (3) Land excluded from a State forest or timber reserve under subsection (1)—
  - (a) is unallocated State land; and
  - (b) must be dealt with in a way consistent with the purpose for which the land was excluded.

**32AA Chief executive to lodge document for setting apart and declaration or change**

- (1) This section applies if a regulation is made under this part for—
  - (a) the setting apart and declaration of a State forest or timber reserve; or
  - (b) the revocation, amalgamation or other change to a State forest or timber reserve.

Forestry Act 1959

Part 3A State plantation forest

[s 32A]

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- (2) The chief executive must lodge for registration with the chief executive (lands) a document evidencing the setting apart and declaration, revocation, amalgamation or other change.
- (3) The document must—
  - (a) be lodged as soon as practicable after the regulation is made; and
  - (b) comply with any requirements of the chief executive (lands).
- (4) If a revocation, amalgamation or other change to a State forest or timber reserve affects a part of a lot within the meaning of the *Land Act 1994*, the document lodged must be accompanied by a plan of subdivision for the change.

## **Part 3A State plantation forest**

### **32A Declaration of land as State plantation forest**

- (1) A regulation may declare a stated area of land that is a State forest to be a State plantation forest.
- (2) If land that is State plantation forest stops being a State forest or part of a State forest, the declaration of the land as a State plantation forest is taken to have been revoked.
- (3) To remove any doubt, it is declared that the declaration of land as a State plantation forest does not affect the status of the land as State forest.

### **32B Particular areas of conservation value to be removed from State plantation forest**

Each area of land in the State plantation forest specified for a locality mentioned in column 1 of the following table in a plan mentioned in column 2 of the table stops being State plantation forest on the day specified for the area in column 3 of the table.

Column 1 Locality	Column 2 Plan	Column 3 Day area stops being State plantation forest
Palen Creek	Lots A,B & C on PLP0200	1 July 2030
Palen Creek	Lot A & B on PLP0359	1 July 2030
Mount Mee	Lot J on PLP0893	1 July 2040
Yurol	Lot I on PLP0952	1 July 2030
Brooweena	Lot N on PLP1294	1 July 2030
Bulburin	Lot A on PLP0391	1 July 2030
Wongabel	Lots A, B, C & D on PLP0191	1 July 2050
Goodnight Scrub	Lots A, B, C, D, E, F, G & H on PLP0169	1 July 2030

*Editor's note—*

Copies of plans mentioned in this table may be obtained for a fee at the head office of the department in Brisbane when it is open for business.

### 32C Quarrying in State plantation forest

- (1) The chief executive may not get or authorise a person ~~(other than a plantation licensee or plantation sublicensee)~~ to get a total of 5000t or more of quarry material, in a year, from an area within a State plantation forest.
- (2) This section does not apply in relation to a person who is—
- (a) a plantation licensee; or
  - (b) a plantation sublicensee; or
  - (c) the proponent for a development agreement under the Forest Wind Farm Development Act 2020 if the quarry material is taken from project area A.

## **Part 4                    Management of State forests, timber reserves and forest entitlement areas**

### **Division 1                Management generally**

#### **33            Cardinal principle of management of State forests**

- (1) The cardinal principle to be observed in the management of State forests shall be the permanent reservation of such areas for the purpose of producing timber and associated products in perpetuity and of protecting a watershed therein.
- (2) The chief executive must ensure each State forest is used and managed in the way the chief executive considers appropriate to achieve the purposes of this Act, having regard to—
  - (a) the benefits of permitting grazing in the area; and
  - (b) the desirability of conservation of soil and the environment and of protection of water quality; and
  - (c) the possibility of applying the area to recreational purposes.

#### **34            Use of State forests**

- (1) The chief executive in addition to all other powers conferred by this Act may from time to time for the purposes of the use and management of State forests—
  - (a) determine and cause to be put into operation the silvicultural system most suitable to the circumstances of any State forest; and
  - (b) make surveys including aerial and assessment surveys; and
  - (c) subject to the provisions of subsection (2), determine, in relation to the period specified in the determination, the

maximum quantities of forest products of any kind or description which may be removed from any State forest or State forests during such period without impairing the permanent productive capacity of the State forest or State forests in question, and any such determination may from time to time be altered, varied or rescinded; and

- (d) make roads and tracks thereon; and
  - (e) undertake and carry out nursery operations thereon; and
  - (f) undertake, carry out and maintain thereon protection works of every kind and description whatsoever; and
  - (g) purchase, hire or rent plant, equipment, means or rights of access, or any other thing which the chief executive deems necessary; and
  - (h) construct, build, erect, operate, or place thereon buildings, structures and other improvements (including but without limiting the generality hereof bridges, fences, fire lookouts, fire sheds, garages, houses, jetties, nurseries, offices, ranches, radio stations, storerooms, water supplies, wharves, workshops, workers' accommodation and telephone lines) and may furnish, equip, repair, improve and maintain the same; and
  - (i) let or lease any buildings, structures or other improvements thereon on such terms and conditions as the chief executive deems fit; and
  - (j) promote and encourage the use of a State forest or any part or parts thereof for recreational purposes.
- (2) Any determination thereof by the chief executive of the maximum quantities of forest products of any kind or description which may be removed from any State forest or State forests during any specified period or any alteration, variation or rescission of any such determination shall be subject to the approval of the Minister.
- (2A) Upon the approval of any such determination, or any alteration or variation thereof, forest products of any kind or

description specified in the determination shall not during the period specified therein be removed from the State forest or State forests in question in excess of the maximum quantities thereof specified in the determination or, in the case of any alteration or variation thereof as aforesaid, in the determination as so altered or varied.

- (2B) Subsections (1)(a) and (c), (2) and (2A) do not apply to natural resource product in a licence area.
- (3) Notwithstanding any lease, licence, permit or other right or authority (other than a plantation licence) granted under this or any other Act, the chief executive may within any State forest from time to time construct, carry out, improve, maintain, operate, protect, control, and otherwise manage any silvicultural or other works of any description whatsoever which the chief executive considers necessary or desirable for the proper utilisation and management of the State forest or to carry out the objects and purposes of this Act (whether in relation to the State forest or not).

### **34AA Regulation of use of State forests etc. by notices**

- (1) This section applies to the whole or a part of a State forest, timber reserve or forest entitlement area (a *relevant area*).
- (1A) The chief executive may, in relation to the relevant area, display notices for the purpose of regulating or prohibiting—
  - (a) the use of the relevant area by people; or
  - (b) vehicles or a specified class of vehicles using the relevant area; or
  - (c) animals or a specified class of animals being brought into the relevant area; or
  - (d) lighting, keeping or using a fire, or a particular type of fire, in—
    - (i) a State forest or timber reserve; or

- 
- (ii) a particular part of a State forest or timber reserve; or
  - (e) using stoves, barbecues, lamps, lanterns or other appliances in—
    - (i) a State forest or timber reserve; or
    - (ii) a particular part of a State forest or timber reserve; or
  - (f) entering a dam, lake or watercourse in a State forest or timber reserve; or
  - (g) going onto a bed or bank of a dam, lake or watercourse in a State forest or timber reserve.
- (2) Without limiting the generality of subsection (1A), the chief executive may authorise the display of regulatory notices in the form of official traffic signs.
- (3) A regulatory notice—
- (a) may be displayed within, or near the entrances to, the relevant area to which the notice relates; and
  - (b) must specify or indicate a particular requirement or particular requirements to be complied with by persons entering, or in, the relevant area; and
  - (c) may expressly state that a contravention of a requirement contained on the notice constitutes an offence against this Act.
- (4) A regulatory notice referred to in subsection (2) is, for the purposes of subsection (3)(b), taken to contain the direction or indication given by the corresponding official traffic sign.
- (5) A person must not knowingly or recklessly contravene or fail to comply with a requirement contained on a regulatory notice.
- (6) Evidence that a regulatory notice was displayed at a place referred to in subsection (3)(a) is evidence that the notice was so displayed with the authority of the chief executive.

**34AB Displaying information notices with regulatory notices**

- (1) This section applies if the chief executive displays a regulatory notice, other than an official traffic sign, in a State forest, timber reserve or forest entitlement area (a *relevant area*).
- (2) A *regulatory notice* is—
  - (a) a notice under section 34AA that does not include a statement mentioned in section 34AA(3)(c); or
  - (b) a notice under section 34G(1).
- (3) The chief executive must display another notice (a *forest information notice*) stating that the contravention of a requirement in a regulatory notice is an offence.
- (4) The forest information notice must be displayed near each entrance to the relevant area.
- (5) The chief executive may display a forest information notice at any other place that the chief executive considers appropriate.
- (6) The chief executive must take reasonable steps to ensure a forest information notice—
  - (a) continues to be displayed while the regulatory notice is displayed; and
  - (b) is properly maintained.
- (7) The chief executive may include in a forest information notice any information about the relevant area that the chief executive considers appropriate.

**34A Specialised management within State forests**

The Governor in Council may, by regulation—

- (a) declare the whole or a part of a State forest, other than a State plantation forest, to be a feature protection area, scientific area or State forest park; or
- (b) declare a part of a State forest, other than a State plantation forest, to be a forest drive.

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**34B Application of Transport Operations (Road Use Management) Act 1995 and Heavy Vehicle National Law (Queensland)**

For the *Transport Operations (Road Use Management) Act 1995* and the *Heavy Vehicle National Law (Queensland)*, a feature protection area, scientific area, State forest park or forest drive is taken not to be a public place.

**34C Feature protection area**

The chief executive—

- (a) must ensure a feature protection area is used and managed so that the features thereof which gave rise to its declaration as such under this Act continue to exist; and
- (b) may provide roads and paths for the purpose of enabling persons generally to travel to, within and from a feature protection area; and
- (c) may provide picnic and other facilities for the use of persons generally within a feature protection area.

**34D State forest park**

The chief executive—

- (a) must ensure a State forest park is used and managed with a view to maintaining its forest setting; and
- (b) shall provide roads and paths for the purpose of enabling persons generally to travel to, within and from a State forest park; and
- (c) shall provide such recreational facilities as to the chief executive seem appropriate in a State forest park; and
- (d) may cause to be erected and maintained at each entrance to and also within a State forest park such number of signs as to the chief executive seem desirable showing

details of the recreational activities for which facilities are available within the park.

**34E Scientific area**

- (1) The chief executive—
  - (a) must ensure a scientific area is used and managed to preserve it as a sample of the natural environment of the State forest concerned; and
  - (b) may permit persons, who in the chief executive's opinion are suitably qualified, to study the nature and environment of a scientific area; and
  - (c) may carry out or allow to be carried out in any scientific area any works which the chief executive considers necessary or desirable.
- (2) Permission given pursuant to subsection (1)(b) shall be in writing and may be given subject to such provisions, reservations and conditions as the chief executive considers appropriate.
- (3) A person who contravenes or fails to comply with a provision, reservation or condition of a permit given to the person pursuant to subsection (1)(b) commits an offence.

**34F Forest drive**

The chief executive—

- (a) shall provide upon a forest drive a road for the purpose of enabling persons generally to travel along the route of the forest drive; and
- (b) may provide on a forest drive such facilities as to the chief executive seem desirable for the use and enjoyment of persons generally; and
- (c) may cause to be erected and maintained within a State forest such number of signs as to the chief executive

seem desirable with a view to informing persons generally of the existence and route of a forest drive.

**34G Regulating movement of vehicles on feature protection areas etc.**

- (1) The chief executive may, by erecting a notice or notices on or adjacent to any feature protection area, State forest park or forest drive, regulate and prohibit the movement of vehicles thereon.

*Note—*

Also see section 34AA for the regulation of vehicles in State forests etc.

- (1A) A notice erected under subsection (1) may be in the form of an official traffic sign and, in such a case, is taken to contain a provision that is the same as the direction or indication given by the corresponding official traffic sign.
- (2) A person who fails to comply with or contravenes a provision of a notice mentioned in subsection (1) commits an offence.
- (2A) Evidence that a notice was erected on or adjacent to a place referred to in subsection (1) is evidence that the notice was so erected by the chief executive.
- (3) Section 73(1)(e) does not apply to a person who traverses a State forest or part thereof that is a feature protection area, State forest park or forest drive.
- (4) A person shall not on any feature protection area, State forest park or forest drive—
- (a) drive or ride a vehicle—
- (i) in any manner that would cause that vehicle to swerve, veer or turn violently without reasonable cause;
- (ii) at such speed or in such other manner as may endanger himself or herself or endanger or inconvenience any other person;

- (iii) in such a manner that an unreasonable amount of damage (having regard to the conditions existing at the time) is caused to any part of the feature protection area, State forest park or, as the case may be, forest drive;
- (b) use a vehicle in such a manner as is likely to cause annoyance to any person.

### 34H Camping notices

- (1) The chief executive may display a camping notice in a State forest (other than a State plantation forest) near each entrance to the State forest.
- (2) A *camping notice* is a notice that states the following—
  - (a) the State forest, or a part of the State forest, is for the period specified in the notice—
    - (i) an e-permit camping area; or
    - (ii) a self-registration camping area;
  - (b) the procedures, in general terms, to be followed by a person intending to camp in the area;
  - (c) the conditions applying to a person camping in the area;
  - (d) the penalty for camping in the area without a permit;
  - (e) the location of the permit distribution points (if any) for the area.
- (3) Also, if the notice is for a self-registration camping area, the notice must state the fee (the *camping fee*) prescribed by regulation as payable for camping in the area.
- (4) The chief executive may also display another notice at or near an e-permit camping area or self-registration camping area that states conditions applying to a person camping in the camping area that are additional to the conditions stated in the camping notice.

**34I Camping forms for self-registration camping areas**

- (1) The chief executive must provide camping forms, and a sealed secure container (a *camping fee container*) in a conspicuous and easily accessible place in a self-registration camping area.
- (2) A *camping form* is a form that states the procedures, in general terms, to be followed by a person intending to camp in the self-registration camping area.
- (3) A camping form must include—
  - (a) a detachable section (a *camping tag*) that has a space for a person who is granted a camping permit to write—
    - (i) the person's name; and
    - (ii) an identifying number for the camping permit; and
  - (b) a detachable envelope (a *camping fee envelope*) that includes a section to allow a person to pay camping fees by credit card.

**34J Camping tags for e-permit camping areas**

- (1) The chief executive must make camping tags available at a conspicuous and easily accessible place (a *permit distribution point*) near an e-permit camping area.
- (2) Each camping tag must contain a space for a person who is granted a camping permit to write—
  - (a) the person's name; and
  - (b) an identifying number for the camping permit.
- (3) The chief executive must—
  - (a) publish, on the department's website, the location of the permit distribution points; and
  - (b) for a camping permit applied for by phone—ensure the person to whom the camping permit is granted is advised of the location of the permit distribution points.

## Division 2 Particular provisions about permits

### Subdivision 1 General

#### 35 Granting of permit for land within State forest or timber reserve

- (1) With respect to any land comprised in any State forest or timber reserve the chief executive may from time to time grant, subject to such provisions, reservations and conditions as the chief executive thinks fit—
  - (a) permits to occupy for a term fixed by the chief executive (*occupation permits*); or
  - (b) camping permits; or
  - (c) permits to graze stock (*stock grazing permits*) for a term fixed by the chief executive that—
    - (i) generally—is no more than 10 years; or
    - (ii) if the permit is for land in an SEQFA forest reserve—ends no later than 31 December 2024; or
  - (d) permits for apiary sites for a term fixed by the chief executive (*apiary permits*).
- (2) If the term of a stock grazing permit, other than a stock grazing permit for land in an SEQFA forest reserve, has been fixed at less than 10 years the chief executive may, from time to time, extend the same for such term as the chief executive thinks fit but so that the term originally fixed and any extension or extensions thereof shall not, in the aggregate, exceed 10 years.
- (2A) If a plantation licensee, plantation sublicensee, plantation manager or plantation officer (the *decision maker*) exercising power delegated to the decision maker under section 96B makes a decision under subsection (1) or (2), the decision maker must advise the applicant for the permit or the extension of the permit that the applicant may apply for a

review of the decision under section 83A within 28 days if the applicant is dissatisfied with the decision.

- (3) The chief executive may extend the term of a stock grazing permit granted over land in an SEQFA forest reserve for a term that ends no later than 31 December 2024.
- (4) Despite subsections (1) to (3), no permit to which this section relates shall be granted or extended or subjected to any provision or condition unless the chief executive is satisfied that the objects of this Act would not be thereby prejudiced or opposed.
- (5) **Special leases of land within State forests**

A term lease under the *Land Act 1994* may be granted over land in a State forest and for the purpose of this subsection such land shall be deemed to be land reserved and set apart for public purposes, and the provisions of that Act so far as they are not inconsistent with so much of this Act as relates to State forests shall extend and apply to all such special leases accordingly.

- (6) However, the term lease must not be granted and, if granted, must not be extended or renewed, unless the chief executive is satisfied the objects of this Act would not be prejudiced or opposed by the lease, including any conditions to be included in the lease.
- (6A) If a term lease granted under subsection (5) is a rolling term lease under the *Land Act 1994*, its term may be extended under that Act only with the agreement of the chief executive and only after the chief executive considers the extension under subsection (6).
- (7) In this section—

***SEQFA forest reserve*** means a forest reserve under the *Nature Conservation Act 1992* the dedication of which was in force immediately before the commencement of this definition.

**35A When camping permit is taken to have been granted**

- (1) This section applies if a person applies for a camping permit—
  - (a) over the internet, using a website authorised by the chief executive; or
  - (b) over the phone, using a phone number authorised by the chief executive; or
  - (c) by filling in a camping form (*self-registration*) for a self-registration camping area.
- (2) If a person applies over the internet, the camping permit is taken to have been granted when the identifying number for the permit is displayed on the website.
- (3) If a person applies over the phone, the camping permit is taken to have been granted when the person is advised over the phone of the identifying number for the permit.
- (4) If a person applies by self-registration, the camping permit is taken to have been granted when—
  - (a) the person fills in a camping form for the self-registration camping area, in the way stated on the form; and
  - (b) the person—
    - (i) puts the camping fee, either in cash or a cheque, in the camping fee envelope together with the part of the form designed to accompany the camping fee; or
    - (ii) fills in the credit card payment section of the camping fee envelope; and
  - (c) if the person pays by cash or cheque, the person seals the envelope; and
  - (d) the person puts the envelope in the camping fee container.
- (5) However, if—

- (a) a person pays for a camping permit by cheque, and the cheque is dishonoured; or
- (b) a person pays for a camping permit by credit card, and the person's financial institution does not authorise the payment;

the camping permit is taken not to have been granted.

### **35B Chief executive must issue camping tags**

- (1) This section applies if a person applies directly to the chief executive for a camping permit and the chief executive grants the person a permit under section 35.
- (2) The chief executive must issue the person a camping tag for use with the permit when the permit is granted.

### **35C Number of people, period and conditions of camping permit**

- (1) A camping permit for an e-permit camping area or self-registration camping area is taken to be granted to a person for—
  - (a) the number of people, and the number of days, stated by the person when applying for the permit; and
  - (b) the period when the area that is the subject of the permit is an e-permit camping area or self-registration camping area.
- (2) However, the number of people and period for the camping permit is taken to be not more than—
  - (a) the maximum number of people stated on a camping notice for the e-permit camping area or self-registration camping area; and
  - (b) 30 days or, if the camping notice states a shorter period, the shorter period.

(3) The camping permit is subject to the conditions stated in the camping notice and any additional conditions notice.

(4) In this section—

*additional conditions notice* means a notice under section 34H(4).

**36 Dealings with respect to timber reserves**

(1) Subject to this Act, a lease or permit may be granted under the *Land Act 1994* with respect to any timber reserve or any part thereof.

(2) For the purpose of the grant, extension or renewal of any lease authorised by this section the land to be made subject to such lease, extension or renewal shall be deemed to be land reserved and set apart for public purposes and for the purpose of the grant, extension or renewal of any licence authorised by this section the land with respect to which the licence is to be granted, extended or renewed shall be deemed to be Crown land.

(3) A lease mentioned in subsection (1) may be granted, extended or renewed subject to conditions.

(4) If a term lease granted under subsection (1) is a rolling term lease under the *Land Act 1994*, its term may be extended under that Act only with the agreement of the chief executive.

**37 Particular authorities over State forest, timber reserve or forest entitlement area**

(1) The Governor in Council or the chief executive may impose provisions, reservations or conditions on the grant of a mining lease, exploration permit, mineral development licence, authority to prospect or petroleum lease under the Mining Acts, a geothermal tenure under the Geothermal Act or a GHG authority under the GHG storage Act.

(2) In the case of any such lease, permit licence or authority over the whole or a part of a State forest, timber reserve or forest

entitlement area (a *relevant area*) the lease, permit licence or authority may be so granted subject to such provisions, reservations and conditions (including conditions as to securing payment to the chief executive for any loss and any damage to the relevant area and to any works thereon the property of the State) as the Governor in Council or the chief executive, as the case may be, may fix for the purpose of the protection of the State and of the relevant area and all works thereon (if any) the property of the State.

- (2A) The Governor in Council or the chief executive, as the case may be, may, in addition to or in lieu of fixing any such conditions, require such sum to be deposited with the chief executive as will, in the Governor in Council's or chief executive's opinion, be sufficient to meet all loss or damage to the relevant area and to all works thereon (if any) the property of the State by reason of the grant of the lease, permit licence or authority.
- (2B) The lessee or holder of any such lease, permit, licence or authority over a relevant area or any part thereof shall be liable to the State for any loss and any damage to the relevant area and to any works thereon vested in or under the control of the State by reason of the grant of the lease, permit, licence or authority and such loss or damage or loss and damage may be recovered by the State by action as for a debt in any court of competent jurisdiction or as otherwise prescribed.
- (3) The lessee or holder of any such lease, permit licence or authority over a relevant area or any part thereof shall be liable to pay to the chief executive the royalty, stumpage or other fees or charges payable in respect of any timber cut or interfered with in or on the area of any such lease, permit licence or authority, notwithstanding that such timber may have been utilised for the purposes of such lease, permit licence or authority and notwithstanding any provisions of the Mining Acts, the Geothermal Act and the GHG storage Act to the contrary.
- (4) The Mining Acts, the Geothermal Act and the GHG storage Act shall be read subject to the provisions of this section.

- (5) Subsections (2B) and (3) do not limit—
- (a) the matters for which compensation is payable; or
  - (b) the amount of compensation payable; or
  - (c) the persons to whom compensation is payable;
- under the Mining Acts and the GHG storage Act.

**39 Interfering with forest products on State forests etc.**

- (1) A person shall not interfere with, or cause to be interfered with, any forest products on any State forest, timber reserve or forest entitlement area except under the authority of and in compliance in every respect with the requirements of—
- (a) a lease, licence, permit, agreement or contract granted or made under this Act, the *Land Act 1994*, the Mining Acts, the Geothermal Act or the GHG storage Act; or
  - (b) a permit to light a fire on a licence area under the *Fire and Emergency Services Act 1990*, section 65.

Maximum penalty—

- (a) for a first offence—1000 penalty units; and
  - (b) for a subsequent offence—3000 penalty units.
- (2) This section does not apply to—
- (a) a person performing duties under this Act acting in the administration of this Act; or
  - (b) a person acting under a plantation licence, plantation sublicense or related agreement or in accordance with an agreement entered into with a plantation licensee or plantation sublicensee.

**39A Forest entitlement areas and forest consent areas**

- (1) The cardinal principle to be observed in the administration of forest entitlement areas and forest consent areas shall be the utilisation and management of such areas for the production

of indigenous timber and associated products in perpetuity and the chief executive must ensure forest entitlement areas and forest consent areas are used and managed in such manner as appears to the chief executive most appropriate to achieve that purpose and, in doing so, the chief executive shall endeavour to have the person with whom there subsists at the material time an agreement made pursuant to this section participate in the protection and silviculture treatment of the timber thereon under the supervision of the chief executive.

- (2) In addition to all other powers conferred on the chief executive by this Act, for the purpose of using and managing a forest entitlement area or forest consent area the chief executive—
- (a) shall have free right of access including ingress, egress and regress, for the chief executive or persons performing functions under this Act or persons authorised by the chief executive to and from the area including rights of ingress, egress and regress in, into, over, upon, along, across and out of the area and such other part of the freeholding lease or deed of grant concerned as are agreed to by the lessee or owner of the land or, failing such agreement, as will cause in the opinion of the chief executive as little damage as possible to the land and as little inconvenience as possible to the lessee or owner thereof;
  - (b) may—
    - (i) determine and cause to be put into operation the silvicultural system most suitable in the chief executive's opinion to the circumstances of the area;
    - (ii) make or cause to be made surveys (including aerial surveys and assessment surveys) of the area;
    - (iii) determine the quantities and kinds of forest products that may be got, sold or removed from the area and the times at which the same may be got, sold or removed;

- (iv) control, manage, work and protect the area and control, manage, work, protect, get, sell and remove forest products therein or thereon, and authorise other persons to do any of such things;
  - (v) determine and implement methods of managing, working, getting, selling or removing forest products in or on the area;
  - (vi) make on the area and on land in respect of which the chief executive has free right of access under paragraph (a) fire breaks and such formed and unformed tracks, bridges, culverts and other works as are necessary for the management, protection and getting of forest products in or on the area;
  - (vii) undertake, carry out and maintain on the area fencing and protection works of every kind and description;
- (c) may—
- (i) make an agreement with the lessee or owner of land that is or includes the area or with any person approved by the lessee or owner whereby the contracting party may participate in the protection and silvicultural treatment of the timber on the area, under the supervision of the chief executive, on the terms and conditions agreed to, which terms and conditions may provide for a sharing by the State and the contracting party of the proceeds of the sale of forest products in or on the area;
  - (ii) permit the contracting party to make and effect improvements and works of development in the area with the approval of the chief executive first had and obtained and on such terms and conditions as the chief executive considers appropriate;
  - (iii) permit the contracting party to do in the area such things as the chief executive approves and on such terms and conditions as the chief executive considers appropriate;

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- (iv) permit the destruction by the contracting party of such trees in the area as the chief executive determines on such terms and conditions as the chief executive considers appropriate;
- (d) may, by agreement with the contracting party, cancel an agreement made pursuant to this section and make further such agreements with the person who was such contracting party and with 1 or more other persons being in each case the lessee or owner of land that is or includes the area or any part thereof or a person approved by the lessee or owner so that each further agreement relates to a part of the area;
- (e) may cancel an agreement made with any person pursuant to this section by notice in writing given to the contracting party or in any other manner authorised by this Act, if the contracting party commits an offence or permits the commission of an offence against any provision of this Act, or fails to perform or comply with any term or condition of the agreement that binds the person whereupon (without prejudice to the operation of section 58) the rights, privileges and liabilities of the contracting party in respect of the area, that attached by reason of the person being a party to the agreement, shall cease, save for a liability on account of anything done or omitted by the person or on the person's behalf before the cancellation of the agreement.
- (3) The rights of a contracting party under an agreement made under this section and the obligation of a contracting party to perform such an agreement—
- (a) shall not attach to the land of which the contracting party is lessee or owner and shall not pass with such land;
- (b) shall not survive the contracting party;
- (c) shall not be capable in law of being assigned and any purported assignment thereof shall be void;

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- (d) shall cease upon the contracting party being made bankrupt or otherwise taking advantage of the law relating to bankruptcy.
- (4) An agreement under subsection (2)(c)(i) that applies to a forest consent area applies subject to the forest consent agreement for the forest consent area.

**39B Rights and liabilities of contracting party in respect of forest entitlement areas and forest consent areas**

A contracting party—

- (a) shall comply with all requirements of the chief executive in respect of the control, management, working and protection of the forest entitlement area or forest consent area, or part thereof, to which the agreement made with him or her pursuant to section 39A relates, and of the control, management, working, protection, getting, removal and sale of forest products therein or thereon;
- (b) where the agreement made with the contracting party pursuant to section 39A provides for the contracting party sharing in the proceeds of sale of any forest products in or on the forest entitlement area or forest consent area to which the agreement relates, shall not be entitled to any amount on account of such proceeds until the forest products concerned have been sold and the proceeds of sale are in the hands of the State;
- (c) subject to section 39A(3), shall have the rights and liabilities conferred or imposed on the contracting party by the agreement made with the contracting party pursuant to section 39A for as long as the agreement subsists.

**39C Interpretation**

In sections 39A and 39B—

*contracting party* means every party to a subsisting agreement made under section 39A in relation to a forest entitlement area or forest consent area, or any part thereof, or in relation to the management, control or use of such an area or part, or in relation to the forest products therein or thereon, being a person with whom the chief executive has made the agreement.

## **Subdivision 2 Particular provisions for commercial activity permits**

### **40A Application to renew permit**

- (1) A person who holds a commercial activity permit may apply to the chief executive, before the permit expires, to renew the permit.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) include the information (if any) prescribed by regulation.
- (3) The application must be accompanied by the fees, prescribed by regulation, for the application and the permit.
- (4) If a person applies to renew a commercial activity permit in accordance with subsections (1) to (3), the permit continues in force until whichever of the following happens first—
  - (a) the application is decided;
  - (b) the application is withdrawn;
  - (c) 3 months has elapsed after the day when the permit would otherwise have expired;
  - (d) the permit is suspended or cancelled.

**40B Amending conditions of permit**

- (1) The chief executive may amend or omit a condition of a commercial activity permit, when the permit is renewed—
  - (a) at the request of the permit holder; or
  - (b) on the chief executive's own initiative.
- (2) However, the chief executive may amend a condition, subject to section 40C(3)(b), only if the chief executive reasonably considers the amendment is necessary—
  - (a) to provide for the safety of people or property; or
  - (b) to provide for the proper management of the area to which the permit relates; or
  - (c) because the permit holder did not comply with a condition of the existing permit; or
  - (d) to conserve or protect forest products or other cultural or natural resources of the area to which the permit relates.

**40C Deciding application to renew permit**

- (1) The chief executive may grant an application to renew a commercial activity permit (an *existing permit*) if—
  - (a) the chief executive is not aware of information that would prevent the applicant from being granted a new commercial activity permit; and
  - (b) the chief executive is satisfied the permit holder has in relation to the existing permit—
    - (i) given the chief executive the information prescribed by regulation; and
    - (ii) paid the fee for the existing permit or agreed to pay the fee by instalments and has complied with the agreement.
- (2) Subsection (1)(b) does not apply to an application for an existing permit for filming or photography.

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- (3) If the chief executive grants the application—
- (a) the chief executive must give the applicant a renewed commercial activity permit that is effective from the day after the permit would otherwise have expired; and
  - (b) the renewed commercial activity permit must not authorise the person to carry out any of the following—
    - (i) activities not authorised under the existing permit;
    - (ii) activities at locations not authorised under the existing permit;
    - (iii) activities to a scale (such as in relation to numbers of people, vehicles, structures or animals) that is greater than the scale of activities authorised under the existing permit.
- (4) If the chief executive refuses to grant an application to renew a commercial activity permit, the chief executive must give the applicant a notice stating—
- (a) the reasons for the refusal; and
  - (b) that the refusal does not stop the applicant from applying for a new commercial activity permit.

#### **40D Combined commercial activity permits**

The chief executive may issue a document that combines a commercial activity permit with either or both of the following—

- (a) a commercial activity permit granted under the *Nature Conservation Act 1992*;
- (b) a commercial activity permit granted under part 4 of the *Recreation Areas Management Act 2006*.

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[s 43]

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**Part 6**                      **Control and disposal of forest products and quarry material and provisions about permits, licences etc.**

**Division 1**                **Application of pt 6**

**43**            **Application of pt 6 to forest products from a licence area**

This part does not affect the rights of a plantation licensee or plantation sublicensee to deal with natural resource product, or to get and use quarry material, under part 6D or a plantation licence or plantation sublicense.

**44**            **Construction of other Acts etc.**

- (1) Unless otherwise indicated or provided, the provisions of every other Act or law (except the *River Improvement Trust Act 1940*), and every provision (excepting this part) of this Act shall be read and construed and shall have operation and effect, subject to this part.
- (2) Furthermore every lease, licence, permit or other authority granted under any Act, whether before, on, or after the commencement of this Act, in relation to any Crown holding or any lease or other entitlement granted under the Mining Acts, the Geothermal Act or the GHG storage Act shall be read and construed so as not to limit the operation and effect of, but so as to be subject to, this part.
- (3) However, no provision of a permit or licence under this part shall authorise or be deemed to authorise the destruction of any tree contrary to any prohibition against its destruction imposed by or pursuant to the *River Improvement Trust Act 1940*.

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**Division 2                      Control and disposal generally****45            Forest products etc. which are the property of the Crown**

- (1) Except where otherwise expressly provided by some other Act and without prejudice to the powers of any local government had and exercisable in respect of forest products or quarry material on any road under its control which powers howsoever shall not be taken to authorise or empower the local government to sell, without the consent of the chief executive, any such forest products and quarry material, it is hereby declared that in addition to all forest products on State forests and timber reserves, the following shall at all times be presumed to be the absolute property of the Crown, unless and until the contrary is proved—
- (a) all forest products and quarry material on all Crown lands;
  - (b) all forest products and quarry material on all lands granted in trusts or reserved for or dedicated to public purposes (including all roads save State-controlled roads under the *Transport Infrastructure Act 1994*);
  - (d) all quarry material—
    - (i) other than topsoil, in all leases, containing an entitlement to a deed of grant in fee simple, held under the *Land Act 1994* if granted after 31 December 1991, unless the lessee was the owner of that material at that time; and
    - (ii) in all deeds of grant containing a reservation of quarry materials under the *Land Act 1994*;
  - (e) all forest products and quarry material on all forest entitlement areas and on all Crown holdings at all times;
  - (ea) all forest products on all forest consent areas at all times;
  - (f) all forest products or quarry material on lands the property of the Crown comprised in any lease or other

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Part 6 Control and disposal of forest products and quarry material and provisions about permits, licences etc.  
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- entitlement granted under the Mining Acts, the Geothermal Act or the GHG storage Act;
- (g) commercial species of timber on a lease subject to an agreement between the Minister and a lessee for commercial timber on the land under the *Land Act 1994*.
- (2) Subsection (1) does not affect the operation of the *Mineral Resources Act 1989*, section 236.

#### 45A Owner of quarry material

A lessee is to be taken to be the owner of quarry material in respect of a lease granted under the repealed *Land Act 1962*—

- (a) on an application, under the repealed *Land Act 1962*, section 139 received before 5 February 1990; or
- (b) on an application, under the repealed *Land Act 1962*, section 191 received before—
  - (i) 5 February 1990; or
  - (ii) 3 October 1991, in respect of a lease issued or a lease converted from a special lease issued—
    - (A) under the repealed *Land Act 1962* and under an arrangement under the repealed *Industrial Development Act 1963*, section 9; or
    - (B) before the commencement of the repealed *Industrial Development Act 1963*—under a recommendation of the Minister administering industrial development; or
- (c) on an application, under the repealed *Land Act 1962*, section 207 received before—
  - (i) 5 February 1990; or
  - (ii) 3 October 1991, in respect of a lease issued—
    - (A) under the repealed *Land Act 1962* and under an arrangement under the repealed *Industrial Development Act 1963*, section 9; or

- (B) before the commencement of the repealed *Industrial Development Act 1963*—under a recommendation of the Minister administering industrial development; or
- (C) subject to a condition relating to the freeholding of the lease.

#### 46 Sale of forest products or quarry material

- (1) The chief executive may from time to time under, subject to, and in accordance with the provisions of this part sell, on behalf of the Crown, any forest products or quarry material the absolute property of the Crown save forest products on protected areas.
- (1A) Such a sale may be made to such persons at such prices or at such rates and on such terms and subject to such conditions and reservations as the chief executive thinks fit, and unless otherwise prescribed the sale may be by auction, tender, or other method of sale.
- (2) It shall be deemed to be a condition of every sale by the chief executive on behalf of the Crown of any forest products or quarry material on any land that the purchaser shall not get from the land the forest products or quarry material the subject of the sale, or any part thereof, except under the authority of and in compliance in every respect with the requirements of a sales permit for getting the forest products or quarry material.

#### 46A Sale of fossils and quarry materials to fossicker

- (1) This section applies to a person fossicking under a licence under the *Fossicking Act 1994* on a State forest, timber reserve or forest entitlement area (*forest land*) where fossicking is permitted under the Act.
- (2) If the person collects not more than 1m<sup>3</sup> of fossils or quarry materials in a year, the State is taken to have sold the fossils or quarry materials to the person at no cost.

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- (3) No royalty is payable for fossils or quarry materials mentioned in subsection (2).

**47 Sale of forest products on Crown holdings or mining leases etc.**

The Minister may give directions to the chief executive with respect to the selling or getting of—

- (a) forest products or quarry material on or in any Crown holding; or
- (b) forest products on or in any lease granted under the Mining Acts, the Geothermal Act or the GHG storage Act; or
- (c) quarry material reserved in a deed of grant; or
- (d) quarry material in a freeholding lease; or
- (e) commercial species of timber subject to an agreement between the Minister and a lessee for commercial timber on the land under the *Land Act 1994*.

**48 Getting or selling forest products**

The chief executive may cause to be got and sold or otherwise disposed of, any forest products which are the absolute property of the Crown, other than forest products situate on a protected area, and for these purposes a person performing duties under this Act—

- (a) may enter and re-enter the land on which such forest products are situate; and
- (b) establish and carry on thereon such operations and works as the chief executive thinks fit; and
- (c) convey or cause to be conveyed any forest products to any place the chief executive considers suitable for their better disposal.

**49 Power to purchase forest products**

The chief executive may from time to time enter into contracts with owners of land whereon forest products or quarry material are not the absolute property of the Crown for the purchase by the chief executive of any forest products or quarry material on that land and may get, or enter into such contracts or other arrangements as the chief executive thinks fit for the getting of, such forest products or quarry material on and from that land by such means as the chief executive considers proper.

**50 Contracts for the supply of forest products**

The chief executive may from time to time enter into contracts, subject to such provisions and conditions as the chief executive thinks fit, for the supply by the chief executive of any forest products or quarry material.

**51 Power to purchase etc. plant etc.**

- (1) The chief executive may from time to time purchase, hire or rent any plant, equipment, means or rights of access, or other thing the chief executive deems necessary for the purpose of the getting and proper marketing of any forest products or quarry material, and, subject to any contract in respect thereof, may hire or otherwise make any such thing available for public use.

- (2) **Power to construct roads**

The chief executive may from time to time construct, improve, maintain or protect, or cause to be constructed, improved, maintained or protected, roads or other means of access necessary for the proper marketing of forest products or quarry material.

**52 Power to subsidise road works**

- (1) The chief executive may from time to time authorise the subsidisation of any department of the government, any local government, or any person, to the extent the chief executive thinks fit in the construction, improvement, maintenance, operation, or protection of roads or other means of access necessary for the proper marketing of any forest products or for the management of any State forest or timber reserve.
- (2) Any such subsidy may take the form of a money grant or authority to get any forest products or quarry material as specified in such authority free of charge or at concessional rates or any combination of these.

**53 Interference with forest products on Crown holdings and particular entitlements**

- (1) A person must not—
  - (a) destroy a tree, or get other forest products or quarry material, on a Crown holding; or
  - (b) destroy a tree, or get other forest products or quarry material, on any lands, the property of the Crown, that are included in a lease or other entitlement granted under the Mining Acts, the Geothermal Act or the GHG storage Act; or
  - (c) destroy commercial species of timber on a lease subject to an agreement between the Minister and a lessee for commercial timber on the land under the *Land Act 1994*; otherwise than in accordance with a permit, lease, licence, agreement or contract granted or made under this Act, the *Land Act 1962*, the Mining Acts, the Geothermal Act, the GHG storage Act or another Act.

Maximum penalty—

- (a) for a first offence—1000 penalty units; and
- (b) for a subsequent offence—3000 penalty units.

- (2) Subsection (1) does not apply if—
  - (a) the person is acting under the *Biosecurity Act 2014*; and
  - (b) that action destroys the tree or gets the other forest products; and
  - (c) the tree, or other forest products, is restricted matter.
- (3) Where on any Crown holding the destruction of any tree or the getting of any other forest products or, as the case may be, any quarry material, is prohibited by this section, then the selector, lessee, or, as the case may be, holder of that Crown holding who allows or permits that prohibited act to be done shall be deemed for the purposes of this section to have done that act and proceedings may be taken against the person and the person shall be liable as if the person had destroyed that tree or got those other forest products or that quarry material, as the case may be, whether or not proceedings are taken against any other person for destroying that tree or getting such other forest products or quarry material.

### **53A Interfering with forest products on forest consent area**

- (1) A person must not interfere with, or cause to be interfered with, any forest products on any forest consent area other than—
  - (a) under the authority of an Act or law; or
  - (b) under the authority of a permit, lease, licence or agreement granted or made under this Act.

Maximum penalty—

  - (a) for a first offence—1000 penalty units; or
  - (b) for a subsequent offence—3000 penalty units.
- (2) Subsection (1) does not apply if—
  - (a) the person is acting under the *Biosecurity Act 2014*; and
  - (b) that action interferes with, or causes to be interfered with, the forest products; and

- (c) the forest products are restricted matter.

**54 Interfering with forest products on Crown lands etc.**

- (1) A person shall not interfere with, or cause to be interfered with, any forest products, any quarry material, or any earth or soil—
  - (a) on any Crown land; or
  - (b) on any land reserved for or dedicated to public purposes (including any road, save a State-controlled road under the *Transport Infrastructure Act 1994*);except—
  - (c) under the authority of any other Act or law; or
  - (d) under the authority of and in compliance in every respect with the requirements of a permit, lease, licence, agreement or contract granted or made under this Act.

Maximum penalty—

- (a) for a first offence—1000 penalty units; and
  - (b) for a subsequent offence—3000 penalty units.
- (2) Subsection (1) does not apply if—
    - (a) the person is acting under the *Biosecurity Act 2014*; and
    - (b) that action interferes with, or causes to be interfered with, the forest products; and
    - (c) the forest products are restricted matter.
  - (3) Nothing in this section shall derogate from or otherwise affect any of the provisions of the *Transport Infrastructure Act 1994*.

**54A Interfering with quarry material in deeds of grant or freeholding leases**

- (1) A person must not, without lawful authority, interfere with quarry material in the land contained in—

- (a) a deed of grant that contains a reservation of quarry materials under the *Land Act 1994*; or
  - (b) a freeholding lease.
- (2) However an owner may use quarry material taken from a deed of grant or a freeholding lease for use on the grant or lease.

#### **54B Removal of forest products**

- (1) All forest products and quarry material obtained under the authority of an agreement, contract, permit, licence, or authority granted or made under this Act shall be removed from the area to which the agreement, contract, permit, licence, or authority applies during the currency of such agreement, contract, permit, licence, or authority, on such conditions (if any) as the chief executive may deem fit to impose and are specified in the agreement, contract, permit, licence, or, as the case may be, authority.
- (1A) However, the chief executive may grant an extension or further extension of the time as aforesaid for the removal of the forest products or quarry material in which event the same shall be removed before that extended time expires.
- (2) Any forest products and quarry material not removed as required by subsections (1) and (1A) shall be deemed to be forfeited to the Crown.
- (3) A person shall not without the written authority of a forest officer remove from any land any forest products or quarry material got under the authority of any agreement, contract, permit, licence, or other right or authority granted or made under this Act without previously paying the proper royalty, stumpage or other fees or charges (if any) payable in respect thereof.
- (4) All forest products and quarry material sold, cut, or got, upon which any purchase moneys, royalties, stumpages or charges are payable under this Act, shall, until payment thereof, remain the property of the Crown, and may be seized and detained or removed by any forest officer until such purchase

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moneys, royalties, stumpages and charges have been paid, and in default of payment within 1 month of seizure may, by direction of the Minister, be disposed of.

- (5) The Crown's interest under subsection (4) in forest products and quarry material—
- (a) is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies; and
  - (b) has priority over all security interests in relation to the forest products and quarry material.
- (6) In this section—
- security interest* has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 12.

### Division 3 Particular provisions about permits

#### 55 Licences to get forest products etc.

- (1) Licences may be granted by the chief executive under, and in accordance with this Act in respect of any land comprised in—
- (a) any State forest or timber reserve; or
  - (b) any Crown land; or
  - (c) any land reserved for or dedicated to public purposes (including any road, save a State-controlled road under the *Transport Infrastructure Act 1994*); or
  - (d) any Crown holding;
- for all or any of the following purposes—
- (e) to get timber for fuel;
  - (f) to cut and split slabs, fencing material, and shingles;
  - (g) to get quarry material;

- (h) such other purposes as may be prescribed.
- (1A) Subsection (1)(d) does not apply to material that is owned by the lessee and mentioned in subsection (1)(e), (f), (g) or (h).
- (1B) The chief executive may grant licences for the purpose of getting quarry material from—
- (a) deeds of grant that contain a reservation of quarry materials under the *Land Act 1994*; or
  - (b) freeholding leases.
- (2) If a plantation licensee, plantation sublicensee, plantation manager or plantation officer (the **decision maker**) exercising power delegated to the decision maker under section 96B makes a decision under subsection (1), the decision maker must advise the applicant for the licence that the applicant may apply for a review of the decision under section 83A within 28 days if the applicant is dissatisfied with the decision.
- (3) **Licence fees**
- Every such licence shall be granted subject to such terms and conditions as the chief executive deems fit and shall state the purpose for which it is granted and shall be granted subject to the payment by the licensee of such fees, or other moneys as may be prescribed in relation to the materials obtained thereunder and the class to which the licence belongs.

## 56 Permits etc.

- (1) Subject to this Act, the chief executive shall have power and authority to grant to or make with any person, exclusively or in common with others, permits (including permits that allow a person to search for quarry material), licences, leases, or other authorities, and agreements or contracts under and for the purposes of this Act and to extend any of the same from time to time and every permit, licence, lease, authority, agreement or contract shall be granted or made or extended subject to the payment by the permittee, licensee, lessee or, as

the case may be, the person with whom the agreement or contract is made of such charges, rents, purchase moneys, royalties, stumpages, fees or other moneys, and to such provisions, conditions and reservations as may be prescribed or, in so far as not prescribed, as the chief executive may determine.

- (2) However, no permit, licence, lease, other authority or agreement or contract shall be so granted or made if it is inconsistent with any existing permit, licence, lease, other authority, or agreement or contract granted or made by the chief executive in respect of the same land.
- (3) Unless otherwise prescribed, every proposed permit, licence, lease, and other authority, and every proposed agreement or contract, under this Act may be by auction, tender or other method of sale as decided by the chief executive.
- (4) Subsection (5) applies if a plantation licensee, plantation sublicensee, plantation manager or plantation officer (the *decision maker*) exercising power delegated to the decision maker under section 96B makes a decision under this section.
- (5) The decision maker must advise the applicant for the permit, licence, lease, or other authority, or agreement or contract (each an *authorisation*) or the extension of the authorisation that the applicant may apply for a review of the decision under section 83A within 28 days if the applicant is dissatisfied with the decision.
- (6) In this section, a reference to an authority, agreement or contract does not include a plantation licence or plantation sublicensee.

## 57 Power of entry under licence or permit

- (1) A permit or licence under this Act shall confer on the permittee or, as the case may be, licensee, subject to this Act and to the conditions and reservations subject to which the permit or licence is granted, rights to enter (with such agents, assistants, plant, vehicles, animals, and equipment as are

necessary for the purpose for which the permit or licence is granted) upon the land in relation to which that permit or licence is granted and upon any other Crown land or land comprised in a Crown holding in, into, over, upon and out of which it is necessary to pass for the purpose of exercising or enjoying the aforesaid rights of entry upon the land in relation to which the permit or licence is granted and to carry out on the land in relation to which the permit or licence is granted, all operations necessary for the purpose for which the permit or licence is granted.

(1A) Such rights to enter shall include such right of ingress, egress, and regress in, into, over, upon and out of as may be necessary in the circumstances.

(1B) However, the permittee or licensee shall be liable in damages for any injury done by the permittee or licensee or any of his or her agents or assistants to any cultivated land, crops, or other improvements whatsoever the property of any other person on any land over or on which the permittee or licensee so enters or passes.

(2) **Power to direct route for entry**

The selector, lessee, or holder of the land, other than the land in relation to which the permit or licence is granted, may give directions regarding the route or track by or over which the permittee or licensee shall pass for the purpose of exercising the right of entry conferred by this section in relation to such land, and the permittee or licensee shall comply in all respects with any directions so given unless or until the direction is altered, varied or cancelled by a determination of the Minister under subsection (3).

(3) **Minister to determine dispute**

The Minister shall have power to determine the question whether or not entry upon the land in question is necessary for the purposes of giving effect to this section, and, if the Minister decides that question in the affirmative, or if the matter of the necessity of entry is not in dispute, the question

as to the route or track by or over which the right of entry shall be exercised.

- (4) The Minister, if the Minister determines that entry is necessary upon the land in question, may require the right of entry be exercised subject to such conditions and reservations the Minister deems proper and by or over such route or track as the Minister may direct.
- (5) The Minister, if the Minister determines the route or track by or over which the right of entry over the land in question shall be exercised, may require such right be exercised subject to such conditions and reservations as the Minister deems proper.
- (6) The Minister's determination of any such question shall be final and the terms thereof shall be complied with in all respects by the parties to the dispute.

**58 Power to cancel, suspend, permit, licence etc.**

- (1) Every permit, licence, lease, or other authority, and every agreement or contract granted or made under this Act shall be deemed to be granted or made subject to the power of the chief executive to cancel or suspend, according to the chief executive's discretion, that permit, licence, or other authority, or to forfeit that lease, or to cancel that contract or agreement on the failure by the holder of the permit, licence, or lease or other authority, or, as the case may be, the person with whom the agreement or contract is made, or the assignee of any such person, to comply with any provision of this Act or of the *Fire and Emergency Services Act 1990*, chapter 3, part 7, or with any provision, condition, or restriction subject to which the same was granted or, as the case may be, made.
- (1A) The fixing of any condition for any agreement, contract, permit, licence, lease, or other authority with respect to payment for money due to the State whether in respect of the sale of any forest products or quarry material or in respect of any royalty or stumpage on any forest products or quarry material or as compensation for any loss or any damage

resulting from the acts or omissions of the permittee, licensee, lessee or holder or, as the case may be, the person with whom the agreement or contract is made or the assignee of any such person or otherwise howsoever, or any failure to observe or enforce that condition or any part thereof shall not prejudice or otherwise affect the recovery by the State of all money owing to the State by that permittee, licensee, lessee or holder or, as the case may be, the person with whom the agreement or contract is made or the assignee of any such person and with respect to which that condition was fixed.

(1B) **Cancellation or suspension of agreements etc.**

The chief executive may forfeit any lease, or cancel or suspend any agreement, contract, permit, licence, or other authority granted or made under this Act for failure by the holder of that lease, permit, licence, or other authority or, as the case may be, the person with whom the agreement or contract is made or the assignee of any such person to comply with any provision, condition, or restriction subject to which the same was granted notwithstanding that such holder or, as the case may be, the person with whom the agreement or contract is made or the assignee of any such person has not been proceeded against for any offence constituted by such failure.

(2) **Power to suspend conditions of agreements**

The chief executive may, in the case of any agreement, contract, permit, licence, lease, or other authority granted or made under this Act, suspend on such conditions and for such periods as may be prescribed, or in so far as are not prescribed as the chief executive may determine, the obligations of the holder or, as the case may be, the person with whom the agreement or contract is made or the assignee of any such person thereof to observe any provisions or conditions subject to which the same is or is deemed to be granted or made, except the obligation for payment of any moneys thereunder.

(3) **Suspension of agreements etc. during fire hazard**

Where the chief executive is of the opinion that a state of high fire hazard exists in the whole or part of any State forest, the chief executive may, by notice in writing, suspend for such period as the chief executive deems expedient, any agreement, contract, permit, licence, or other authority made or granted under this Act in relation to the State forest or part thereof in question.

(3A) Notwithstanding the provisions of subsection (4), the period during which such agreement, contract, permit, licence, or other authority would ordinarily remain in force shall be extended for a period equal to the period of such suspension.

(4) **Effect of suspension of agreement etc.**

Suspension under this Act of any agreement, contract, permit, licence, or other authority—

- (a) shall, whilst such agreement, contract, permit, licence, or other authority is so suspended, have the same effect as the cancellation thereof; and
- (b) (if the period of such suspension is less than the period during which that agreement, contract, permit, licence, or other authority ordinarily would have remained in force) shall not, unless the chief executive otherwise directs, upon the termination of that suspension, extend the period during which that agreement, contract, permit, licence, or other authority thereafter remains in force beyond the period during which that agreement, contract, permit, licence, or other authority would have remained in force if it had not been suspended.

(5) **Rights to cease on forfeiture**

On forfeiture of a lease or cancellation of an agreement, contract, permit, licence, or other authority, the lease, agreement, contract, permit, licence, or other authority affected thereby and, unless otherwise determined by the chief executive, all rights, interests, and privileges thereunder shall absolutely cease and determine.

**(6) Cancellation, suspension may be published in gazette**

Without limiting the mode of forfeiting a lease or cancelling or suspending an agreement, contract, permit, licence, or other authority, any lease may be forfeited and any agreement, contract, permit, licence, or other authority may be cancelled or suspended by notice published in the gazette.

**(7) No compensation on forfeiture**

When under this Act a lease is forfeited or an agreement, contract, permit, licence, or other authority is cancelled or suspended, the person to or with whom that lease, agreement, contract, permit, licence, or other authority was granted or made shall not be entitled to claim or receive any compensation in respect of such forfeiture, suspension, or cancellation, or any expense the person may have incurred in acting or with a view to taking action under that lease, agreement, contract, permit, licence, or authority.

(8) Subsection (7) does not prevent the payment of compensation for suspension or cancellation of a sales permit in particular circumstances if the permit provides for compensation to be paid in the circumstances.

(9) In this section, a reference to an authority, agreement or contract does not include a plantation licence or plantation sublicense.

**59 Transfer of permits etc.**

(1) No lease, agreement, contract, permit, licence, or other authority granted or made under this Act shall be assigned or transferred, except with the consent in writing of the chief executive.

**(2) Surrender of permits etc.**

The chief executive may accept a surrender, on such conditions as the chief executive may determine, of any lease, agreement, contract, permit, licence, or other authority granted under this Act.

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- (3) In this section, a reference to an agreement, contract or other authority does not include a plantation licence or plantation sublicence.

**60 Failure to comply with provisions of lease etc.**

- (1) Any person who fails to comply in any respect with any provision, condition, or restriction subject to which any lease, agreement, contract, permit, licence, or other authority is granted or made under this Act shall be guilty of an offence against this Act.
- (2) This section shall be in addition to and not in diminution of or in substitution for any other provision of this Act.
- (3) However, this section does not apply to—
- (a) a camping permit; or
  - (b) a plantation licence or plantation sublicence.

*Note—*

For camping permits, see section 35(1)(b).

**Part 6A Quarry material in deed of grant or freeholding lease**

**61B Interpretation**

In this part—

*permit* means—

- (a) a permit for the sale of quarry material in a deed of grant or freeholding lease; or
- (b) a licence to remove quarry material in a deed of grant or freeholding lease.

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**61C Entitlement under permit**

- (1) A permit does not authorise a person to enter the surface of land of an owner that is—
- (a) within 200m laterally of—
    - (i) a dwelling house, or other building (not of a temporary nature) on that land, principally used for accommodation of persons or the conduct of business; or
    - (ii) a building (not of a temporary nature) on that land used for community, sporting or recreational purposes or as a place of worship; or
  - (b) within 100m laterally of—
    - (i) a principal stockyard or a dam, bore or artesian well of that owner or other artificial water storage of that owner connected to a supply of water; or
    - (ii) a cemetery or burial place;

except with the written consent of the owner of the land lodged with the chief executive.

- (2) In this section—

***building*** means a fixed structure that is wholly or partly enclosed by walls and is roofed.

***dwelling house*** means a fixed structure that is wholly or partly enclosed by walls and is roofed.

**61D Withdrawal of consent**

Consent mentioned in section 61C may only be withdrawn by the giving of written notice to—

- (a) the holder of the permit; and
- (b) the chief executive.

**61E Provision of security**

- (1) A permit must not be granted until the applicant deposits the security (if any) determined by the chief executive to ensure compliance with the permit and this Act.
- (2) The security must cover any damage to land or improvements that may be caused by a person acting under the authority of the permit.
- (3) The owner of land may apply in writing to the chief executive to rectify the damage mentioned in subsection (2) that has been caused by activity allegedly authorised under a permit in respect of the land.
- (4) If the chief executive is satisfied (whether or not on an application referred to in subsection (3)) that damage mentioned in subsection (2) has been caused by a person purporting to act under the authority of a permit, the chief executive must require the person to take all action necessary to rectify the damage.
- (5) The chief executive may, at any time (whether during or after the term of a permit and whether or not the chief executive cancels the permit), use the whole or part of the amount of the security deposited in respect of the permit—
  - (a) to rectify any damage mentioned in subsection (4); or
  - (b) towards payment of amounts (including penalties) owing to the Crown under this Act or for a breach of any of the conditions of the permit or of this Act.
- (6) If, at any time (whether during or within 28 days after the term of a permit)—
  - (a) the amount or part of the amount deposited under this section is used as provided by subsection (5); or
  - (b) the chief executive considers that, because of the damage caused or likely to be caused by a person purporting to act under the authority of the permit or for any other reason, a further amount of security should be deposited in respect of the permit;

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the chief executive must, by written notice, require the holder or former holder of the permit to deposit the further security within the time specified in the notice.

- (7) The chief executive may accept a bond or guarantee by, or other financial arrangement with, a financial institution, insurance company or another credit provider approved by the chief executive, or another form of security acceptable to the chief executive, as the whole or part of the security to be deposited under this section.
- (8) It is a condition of a permit that the holder must deposit security or further security from time to time in accordance with requirements made under this section.
- (9) Subject to subsection (5), if a permit has ended or been terminated, the chief executive must refund to the holder of the permit (or as the holder in writing directs) any security deposited, and not used as provided by subsection (5), less any amount determined by the chief executive to be used after—
  - (a) the receipt by the chief executive of written agreement by the owners of all occupied land so specified; or
  - (b) the expiration of 28 days from the date of expiration or termination of the permit, whichever first occurs.
- (10) For the purposes of subsection (9)(a), if more than 1 person is the owner of a parcel of land, the agreement of 1 such person is, in the absence of evidence to the contrary, taken to be the agreement of those persons.
- (11) If the chief executive accepts a bond or guarantee by, or another financial arrangement with, a financial institution, insurance company or another credit provider as security under this section, an amount payable to the holder under subsection (9) is to be refunded to the financial institution, insurance company or credit provider and not to the holder of the permit to which the security relates.
- (12) In this section—

*credit provider* see the National Credit Code.

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**61F Compensation**

- (1) Despite section 61E, the Crown or an owner is entitled to recover in the Land Court compensation in respect of damage or injury suffered or loss incurred because of a person acting or purporting to act under the authority of a permit.
- (2) Amounts paid under section 61E in respect of rectification of damage the subject of the proceeding must be taken into account in assessing compensation.
- (3) The holder of a permit is not liable under this section in respect of damage or injury or loss caused by a person who is not authorised by the holder to be on the land the subject of the permit.

**61G Prior notice of entry to be served**

- (1) The holder of a permit is to notify the owner of occupied land (other than a reserve for a road) of the holder's intention to enter the land at least 7 days before initial entry is made under the authority of a permit.
- (2) The owner of the land may, by an endorsement on the application for the permit or the permit, agree to a shorter period of notice.

**61H Appeal to Land Court**

- (1) The Land Court is authorised to hear and determine matters under this part.
- (2) Application may be made to the Land Court for it to settle the amount of compensation payable to an owner of the land for—
  - (a) deprivation of possession of the surface of land; and
  - (b) diminution of the value of land or improvements; and
  - (c) diminution of the use made, or that may be made, of land or improvements; and

- (d) severance of part of land from other parts or from other land; and
- (e) surface rights of access; and
- (f) loss or expense because of the grant or renewal of a permit.

### 61I Appeal against Land Court's determination

The *Land Act 1962*, section 44, as continued by the *Land Act 1994*, applies to a party aggrieved by a determination of the Land Court made under section 61H.

## Part 6B Agreements about forest products

### 61J Definitions for pt 6B

In this part—

*existing lease* see section 61JA.

*forest consent agreement* means an agreement under section 61JA.

*forest consent area* means the area identified in a forest consent agreement as a forest consent area under this Act.

*lease land*, for a lease, means the land the subject of the lease.

### 61JA Forest consent agreements

- (1) The lessee of a lease (the *existing lease*) that is to be converted under the *Land Act 1994* to a freeholding lease or a deed of grant, and the chief executive for the State, may enter into an agreement that identifies an area that is the whole or part of the lease land for the existing lease as a forest consent area.

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Part 6B Agreements about forest products

[s 61JB]

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- (2) A forest consent agreement may provide for rights and obligations of any kind in relation to the use and management of, including access to, forest products on the forest consent area.
- (3) A forest consent agreement, when registered as a profit a prendre under 61JB(1), has effect as an agreement and as a profit a prendre—
  - (a) even if there is no consideration for the agreement; and
  - (b) even though forest products mentioned in the agreement remain the property of State.

*Note—*

See section 45(1)(ea).

**61JB Registration of forest consent agreement as profit a prendre**

- (1) A forest consent agreement must be registered as a profit a prendre.
- (2) The profit a prendre must first be registered over the existing lease by the chief executive (lands).

*Note—*

For the subsequent issue of any freeholding lease or deed of grant, see the *Land Act 1994*, section 172(5) that provides for the issue of new tenures subject to all registered interests.

- (3) The forest consent agreement continues in force as an agreement until the profit a prendre is released or removed.

*Note—*

See the *Land Act 1994*, section 373O and the *Land Title Act 1994*, section 97L.

- (4) If the forest consent agreement stops being in force—
  - (a) the forest consent area stops being a forest consent area under this Act; and
  - (b) all forest products on the forest consent area are no longer the property of the State and become the property

of the lessee of the freeholding lease, or the registered owner under the deed of grant, for the land that included the forest consent area.

- (5) If the chief executive agrees to release the profit a prendre, the chief executive's agreement may be made conditional on the other party to the forest consent agreement paying the State the value of forest products on the forest consent area as decided by the chief executive.

## Part 6C Carbon abatement products

### Division 1 Preliminary

#### 61K Definitions for pt 6C

In this part—

*carbon abatement product* means all or any of the following—

- (a) living biomass;
- (b) dead organic matter;
- (c) soil;
- (d) carbon sequestration by, and carbon stored in, a carbon abatement product mentioned in paragraphs (a) to (c).

*owner*, of land, means—

- (a) if the land is registered in the freehold land register—the registered owner of the land; or
- (b) if the land is vested in fee simple—the vested person for the land; or
- (c) if the land is the subject of a lease other than a State lease under the *Land Act 1994*—the lessee of the land; or

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Part 6C Carbon abatement products

[s 61L]

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- (d) if the land is a reserve under the *Land Act 1994*—the trustee of the reserve; or
- (e) if the land is the subject of an occupation licence under the *Land Act 1994*—the licensee.

**61L Chief executive may keep guidelines**

- (1) The chief executive may keep guidelines about the making of an application under this part.
- (2) The *Land Act 1994*, section 420B applies to the chief executive for the guidelines—
  - (a) as if a reference to the chief executive in that section were a reference to the chief executive administering this Act; and
  - (b) with other necessary changes.

**Division 2 Applying for and obtaining right to deal with carbon abatement products**

**61M Applying for right**

- (1) The owner of land may apply to the chief executive to be granted a right to deal with carbon abatement product on the land.
- (2) The application must be in the approved form.

**61N Deciding application**

- (1) The chief executive must decide whether to approve the application.
- (2) In deciding the application, the chief executive must consider whether the land the subject of the application will, or is likely

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to, be used or dealt with under this Act in a way that is inconsistent with the grant of the proposed right.

- (3) The chief executive may grant the application subject to conditions.

### **61O Notice of decision**

- (1) As soon as practicable after deciding the application, the chief executive must give written notice of the decision to—
- (a) the applicant; and
  - (b) if the chief executive approves the application—
    - (i) for an application relating to land registered in the freehold land register—the registrar of titles; or
    - (ii) for an application relating to land registered in the land registry under the *Land Act 1994*—the chief executive (lands).
- (2) The notice must state—
- (a) the decision; and
  - (b) if the chief executive refuses the application, or approves the application with conditions not agreed to in writing by the applicant—
    - (i) the reasons for the decision; and
    - (ii) that the applicant may seek an internal review of the decision; and
    - (iii) how the review is started.

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[s 61P]

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### **Division 3                      Internal reviews of decisions on application**

#### **61P      Applying for internal review**

- (1) The applicant may apply to the Minister for an internal review of the chief executive's decision.
- (2) The application must—
  - (a) be made within 42 days after notice of the decision was given to the applicant, or any longer period allowed by the Minister; and
  - (b) be written; and
  - (c) include details of the grounds on which the applicant seeks review of the decision.

#### **61PA    Decision on reconsideration**

- (1) After reviewing the decision (the *original decision*), the Minister must make a further decision (the *review decision*) to confirm the original decision or substitute a new decision.
- (2) The Minister must immediately give written notice of the review decision to—
  - (a) the applicant; and
  - (b) if notice of the original decision was given to the registrar of titles or chief executive (lands) and the review decision is to substitute a new decision—
    - (i) for an application relating to freehold land—the registrar of titles; or
    - (ii) for an application relating to land registered in the land registry under the *Land Act 1994*—the chief executive (lands).

## Part 6D Plantation forestry

### Division 1 Preliminary

#### 61Q Definitions for pt 6D

In this part—

*compensation event* see section 61RH(1).

*plantation forestry*, in relation to a licence area, means—

- (a) the production, on the licence area on an ongoing basis, of natural resource product in the form of plantation timber for commercial purposes; and

*Examples—*

- planting, maintaining and felling trees for sale
  - selling carbon storage or carbon sequestration rights in plantation timber
  - selling rights to harvest timber
- (b) the management of the licence area in a way consistent with sustainable management practices for plantation forests that are generally accepted in the Australian plantation forestry industry at the relevant time.

*relevant State land* means all land (including roads and reserves), other than freehold land or land contracted to be granted in fee simple by the State.

### Division 2 Plantation licences

#### 61QA Agreements to deal with natural resource product etc.

- (1) The Minister may grant a corporation the right to deal with natural resource product on specified State plantation forests or specified parts of State plantation forests for the purpose of plantation forestry and for incidental purposes under this Act

by entering into an agreement (*plantation licence*) with the corporation (*plantation licensee*).

- (2) Without limiting subsection (1), a plantation licence may contain terms dealing with the following matters—
- (a) the grant to the plantation licensee of an exclusive right to deal with, including get and sell, natural resource product in the licence area;
  - (b) the grant to the plantation licensee of a right to get and use quarry material from the licence area;
  - (c) the plantation licensee's right to enter and remain in, and use, the licence area;
  - (d) the plantation licensee's right to make roads and tracks in the licence area;
  - (e) the management of particular areas in the licence area, including by restricting or excluding the exercise of rights mentioned in paragraphs (a) and (b) in the areas;  
*Examples of particular areas—*
    - native forest areas that border plantation areas and protect them against fire
    - native forest areas and grassed areas that border and protect watercourses
    - unformed plantation forest roads
  - (f) the rehabilitation of land that is, or is to be, removed from the licence area.
- (3) The plantation licence is valid, binding and enforceable according to its terms despite not having been registered.
- (4) The Minister can not enter into more than 1 plantation licence over the same area.
- (5) No fee is payable under this Act in relation to a plantation licensee's right to get and use quarry material under its plantation licence.

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- (6) If, after a plantation licence is entered into, land forming part, or all, of the licence area for the plantation licence stops being State plantation forest, the land also stops being licence area.
  - (7) To remove any doubt, it is declared that a right of a plantation licensee to enter and remain in, and use, the licence area under a plantation licence is not a right of exclusive possession and, subject to this Act, is coextensive with the lawful rights of members of the public and others to enter and remain in, and use, the licence area.

#### **61QB Related agreements**

- (1) The chief executive or the fire commissioner (individually or in any combination) may enter into 1 or more agreements (*related agreements*) with a plantation licensee or a plantation sublicensee about operational and other matters relevant to the use, maintenance and management of the licence area.
- (2) Without limiting subsection (1), a related agreement may contain terms dealing with the following matters—
  - (a) fire control;
  - (b) pest control;
  - (c) constructing and maintaining roads and tracks in the licence area and other access roads;
  - (d) getting and using quarry material from the licence area;
  - (e) arrangements relating to access over relevant State land as mentioned in section 61QL.

#### **61QC Plantation licence is an interest in land**

It is declared that a plantation licence is in the nature of a profit a prendre and it and a plantation sublicense confer an interest in land.

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[s 61QD]

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### **61QD Sale of natural resource product**

A plantation licence or plantation sublicense may confer on a plantation licensee or plantation sublicensee a right to contract with other persons for the sale of natural resource product from the licence area.

### **61QE Statutory obligations**

- (1) Without limiting any other obligations of a plantation licensee under this Act, the plantation licence or a related agreement, the plantation licensee has the following obligations—
  - (a) to use the licence area for the purpose of plantation forestry;
  - (b) to not interfere with the lawful use of the licence area by members of the public and others unless it is reasonably required for the plantation licensee's use of the licence area for the purpose of plantation forestry or an incidental purpose.

*Examples of when interfering with use of the licence area might be reasonably required—*

    - to protect persons from injury when tree felling in the licence area
    - to protect an area of young trees at risk of damage because of careless behaviour or general use of the area
    - to protect unformed roads and tracks from traffic damage after heavy rain
- (2) The chief executive may require a plantation licensee to report to the chief executive at any time about the plantation licensee's obligations, or a particular aspect of the plantation licensee's obligations, under subsection (1).
- (3) Nothing in this section requires a plantation licensee to plant trees on an area shown in a plan mentioned in section 32B or on an unformed plantation forest road.

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**61QF Rights under a plantation licence**

- (1) A right conferred on a plantation licensee under this Act, the plantation licence or a related agreement may be exercised by the plantation licensee's employees, agents, contractors, customers and invitees.
- (2) Subsection (1) is subject to a contrary intention expressed or implied in this Act, the plantation licence or related agreement.
- (3) In this section—  
*right* does not include the performance of a function delegated under section 96B.

**61QG Appointment of plantation manager**

A plantation licensee may, with the Minister's written approval, appoint a person as the plantation manager for the licence area or a part of the licence area.

**61QH Acts and omissions of plantation sublicensee or plantation manager etc.**

- (1) Subsection (2) applies if any of the following persons does an act or makes an omission that if done or omitted to be done by a plantation licensee would be a contravention of an obligation of the plantation licensee under this Act, the plantation licence or a related agreement—
  - (a) a plantation sublicensee;
  - (b) a plantation manager;
  - (c) an employee, agent, contractor, customer or invitee of a plantation licensee, plantation sublicensee or plantation manager.
- (2) The act or omission is taken also to be the act or omission of the plantation licensee.

**61QI Plantation licence may be transferred**

- (1) A plantation licensee may transfer its rights and obligations under a plantation licence to another corporation (*new licensee*) only with the Minister's written approval.
- (2) A transfer of a plantation licence is effective, on its registration, to transfer the obligations of the plantation licensee under the plantation licence to the new licensee despite any rule of law to the contrary.
- (3) To remove any doubt, it is declared that part of a plantation licence can not be transferred.

*Note—*

See division 7 for provisions about the division of a plantation licence.

- (4) If the Minister decides to refuse to approve the transfer, the plantation licensee must be given a written notice of the decision and the reasons for it.

**61QJ Related agreements may be transferred**

- (1) A plantation licensee that transfers its rights and obligations under a plantation licence to another corporation (*new licensee*) as provided under section 61QI may also transfer a related agreement to the new licensee—
  - (a) with the chief executive's approval; and
  - (b) if permitted under the plantation licence and the related agreement.
- (2) A transfer of a related agreement in accordance with subsection (1) is effective to transfer the obligations of the plantation licensee under the related agreement to the new licensee despite any rule of law to the contrary.
- (3) If the chief executive decides to refuse to approve the transfer of a related agreement, the plantation licensee must be given a written notice of the decision and the reasons for it.

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**61QK Amending a plantation licence**

- (1) A plantation licence may be amended only with the Minister's written approval.
- (2) However, the amendment must not add a party to or remove a party from the plantation licence.
- (3) The Minister may—
  - (a) refuse to approve the amendment; or
  - (b) approve the amendment on the conditions the Minister considers appropriate; or
  - (c) approve the amendment unconditionally.
- (4) If the Minister decides not to approve the amendment, the Minister must—
  - (a) give the plantation licensee written notice of the decision and the reasons for the decision; and
  - (b) give any plantation sublicensee written notice of the decision.
- (5) An amendment of a plantation licence approved by the Minister must be registered.

**61QL Plantation licensee's rights of access over relevant State land**

- (1) The chief executive may grant to a plantation licensee the rights of access over relevant State land, and to State-owned infrastructure on relevant State land, that are necessary for the exercise of the plantation licensee's rights or to meet the plantation licensee's obligations under this Act, the plantation licence or a related agreement.

*Note—*

Access rights are also exercisable by a plantation sublicensee and employees, agents, contractors, customers and invitees of a plantation licensee or plantation sublicensee. See sections 61QF and 61QP.

- (2) The access right may be granted by licence or permit, or under a related agreement, or in any other way agreed by the chief executive and the plantation licensee.
- (3) In deciding the nature and extent of an access right over relevant State land, the chief executive must consider the following matters—
  - (a) whether there is a usable road giving practical access;
  - (b) the means of access before the land became a licence area;
  - (c) the use or proposed use of the relevant State land over which access is proposed;
  - (d) whether the licence area is completely or partly surrounded by the relevant State land through which access is to be given.
- (4) If the chief executive and the plantation licensee do not agree on the grant of reasonable access rights under this section, the plantation licensee's access rights are to be decided by the Minister.
- (5) An access right given to a plantation licensee under this section is binding on, and must be given effect by, all persons having an interest in the relevant State land over which the right is given.
- (6) Nothing in this section requires the chief executive or the Minister to grant rights of access over land that is part of relevant State land if the grant of the right would be inconsistent with the rights of the holder of an interest in the land previously granted by or for the State.

#### **61QM Unformed plantation forest roads**

- (1) An unformed plantation forest road is taken to be part of the State forest, State plantation forest and the licence area for this Act and the plantation licence until the road construction date for the unformed plantation forest road.

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- (2) The relevant road authority must give the chief executive at least 6 months written notice of its intention to use an unformed plantation forest road for road purposes and specify the date on which the construction of the road is to begin.
- (3) As soon as practicable after receiving notice under subsection (2), the chief executive must give written notice to the plantation licensee and any plantation sublicensee for the licence area of—
- (a) the road authority's intention to construct a road; and
  - (b) the date specified by the road authority as the date on which the construction of the road is to begin.
- (4) An unformed plantation forest road stops being part of the State forest, State plantation forest and the licence area for this Act on the road construction date.
- (5) For the definition *unformed plantation forest road*, a dedicated road is to be taken to be within the outer boundaries of a licence area if the dedicated road—
- (a) separates lands forming the licence area, or part of the licence area; or
  - (b) is surrounded by the licence area.
- (6) However, if a dedicated road continues beyond the licence area, the dedicated road is taken to be within the outer boundaries of the licence area only to the extent that it is within a notional boundary formed by a line drawn directly across the dedicated road at the extremities of the outer boundaries of the lands it separates.
- (7) In this section—

***dedicated road*** means land dedicated as a road under the *Land Act 1994*.

***road authority***, for an unformed plantation forest road, means—

- (a) if the unformed plantation forest road is a State-controlled road—the chief executive of the

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[s 61QN]

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department in which the *Transport Infrastructure Act 1994* is administered; or

- (b) otherwise—the local government for the local government area in which the unformed plantation forest road is situated.

**road construction date**, for an unformed plantation forest road, is the date specified in the written notice given to a plantation licensee and any plantation sublicensee under subsection (3)(b).

**unformed plantation forest road** means a dedicated road taken to be within the outer boundaries of a licence area that, immediately before the grant of a plantation licence for the licence area—

- (a) is not used by the public as a road; and
- (b) is planted with plantation timber or is otherwise used for plantation forestry.

**61QN Chief executive to identify unformed plantation forest roads for s 61QM**

- (1) The chief executive may, after a plantation licence is entered into, identify and record the boundaries of unformed plantation forest roads within the licence area for section 61QM.
- (2) The identification may be done in any way that is sufficient to identify the unformed plantation forest roads.
- (3) If an unformed plantation forest road is identified in a way that allows it to be included in the State digital cadastral dataset under the *Survey and Mapping Infrastructure Act 2003*, a digital graphic representation of the road and the other information required under section 46(1)(c) and (d) of that Act must be included in the dataset.
- (4) Until a digital graphic representation of the road and the other information is recorded in the State digital cadastral dataset, a declaration by the chief executive that land is or is not an

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unformed plantation forest road for section 61QM is evidence of the matter.

### Division 3                      Plantation sublicences

#### 61QO Approval

- (1) A plantation licensee may grant a corporation (*plantation sublicensee*) a sublicense of its plantation licence only under this Act.
- (2) The plantation licensee grants a sublicense under this Act by entering into an agreement (*plantation sublicense*) under which all of the plantation licensee's rights under its plantation licence in relation to all or part of the licence area are granted to the plantation sublicensee for a term of years that is less than the unexpired term of the plantation licence.
- (3) However, a plantation licensee may enter into a plantation sublicense only with the Minister's written approval.
- (4) The Minister may—
  - (a) refuse to approve a proposed plantation sublicense; or
  - (b) approve the entering into of the proposed plantation sublicense on the conditions the Minister considers appropriate; or

*Example of a condition—*

  - that the plantation sublicensee enter into a related agreement
  - (c) approve the entering into of the proposed plantation sublicense unconditionally.
- (5) If the Minister decides not to approve the entering into of the proposed plantation sublicense, the plantation licensee must be given written notice of the decision and the reasons for the decision.

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[s 61QP]

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### **61QP Rights under the plantation sublicense**

- (1) If a plantation sublicense is entered into with the Minister's approval, a right conferred on the plantation licensee under this Act, the plantation licence or a related agreement is also taken to have been conferred on, and may be exercised by, the plantation sublicensee.
- (2) Without limiting subsection (1), a right conferred on a plantation sublicensee under this Act, the plantation licence, the plantation sublicense or a related agreement may be exercised by the plantation sublicensee's employees, agents, contractors, customers and invitees.
- (3) Subsection (2) is subject to a contrary intention expressed or implied in the plantation licence, plantation sublicense or related agreement.
- (4) In this section—  
*right* does not include the performance of a function delegated under section 96B.

### **61QQ Appointment of plantation manager**

A plantation sublicensee may, with the Minister's written approval, appoint a person as the plantation manager for the licence area or part of the licence area.

### **61QR Plantation sublicense may be transferred**

- (1) A plantation sublicensee may transfer its rights and obligations under a plantation sublicense to another corporation (*new sublicensee*) only with the Minister's written approval.
- (2) A transfer of a plantation sublicense approved by the Minister must be registered.
- (3) A transfer of a plantation sublicense has effect, on its registration, to transfer the obligations of the plantation

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sublicensee under the plantation sublicense to the new sublicensee despite any rule of law to the contrary.

- (4) If the Minister decides to refuse to approve the transfer, the plantation sublicensee must be given a written notice of the decision and the reasons for it.

### **61QS Related agreements may be transferred**

- (1) A plantation sublicensee that transfers its rights and obligations under a plantation sublicense to another corporation (*new sublicensee*) as provided under section 61QR may also transfer a related agreement to the new sublicensee—
- (a) with the chief executive's approval; and
  - (b) if permitted under the plantation licence, the plantation sublicense and the related agreement.
- (2) A transfer of a related agreement in accordance with subsection (1) is effective to transfer the obligations of the plantation sublicensee under the agreement to the new sublicensee despite any rule of law to the contrary.
- (3) If the chief executive decides to refuse to approve the transfer of a related agreement, the plantation sublicensee must be given a written notice of the decision and the reasons for it.

### **61QT Amending a plantation sublicense**

- (1) A plantation sublicense may be amended only with the Minister's written approval.
- (2) However, the amendment must not add a party to or remove a party from the plantation sublicense.
- (3) The Minister may—
- (a) refuse to approve the amendment; or
  - (b) approve the amendment on the conditions the Minister considers appropriate; or

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[s 61QV]

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- (c) approve the amendment unconditionally.
- (4) If the Minister decides not to approve the amendment, the Minister must give the plantation licensee and plantation sublicensee written notice of the decision and the reasons for the decision.
- (5) An amendment of a plantation sublicense approved by the Minister must be registered.

## **Division 4                      Mortgages**

### **61QV Mortgages require Ministerial approval**

- (1) A plantation licensee or plantation sublicensee may grant a mortgage over its rights under a plantation licence or plantation sublicense only with the Minister's written approval.
- (2) A plantation licensee or plantation sublicensee that grants a mortgage over its rights in a plantation licence or plantation sublicense with the Minister's approval may also grant a mortgage over its rights in a related agreement to the mortgagee—
  - (a) with the chief executive's written approval; and
  - (b) if not prohibited by the related agreement.
- (3) If the Minister decides to refuse to approve the grant of a mortgage over the rights of a plantation licensee or plantation sublicensee under a plantation licence or plantation sublicense, the plantation licensee or plantation sublicensee must be given a written notice of the decision and the reasons for it.
- (4) If the chief executive decides to refuse to approve the grant of a mortgage over the rights of a plantation licensee or plantation sublicensee in a related agreement, the plantation licensee or plantation sublicensee must be given a written notice of the decision and the reasons for it.

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## Division 5                      Ownership of improvements

### 61QW Application of division

- (1) This division applies if—
  - (a) equipment or improvements are taken, constructed or placed on a licence area by the plantation licensee or plantation sublicensee; and
  - (b) the equipment or improvements were taken, constructed or placed on the land for the purpose of plantation forestry or an incidental purpose.
- (2) In this section—

*equipment* includes machinery and plant.

### 61QX Ownership of equipment and improvements

- (1) While the equipment or improvements are on the land, they are the property of the person who took, constructed or placed them on the land, unless that person otherwise agrees.
- (2) Subsection (1) applies despite—
  - (a) the equipment or improvements having become part of the land; or
  - (b) the sale or other disposal of the land.
- (3) This section applies despite—
  - (a) an Act or law of a State; or
  - (b) a contract, covenant or claim of right under a law of a State.

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[s 61QY]

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## Division 6 Cancellation

### 61QY Show cause notice for cancellation of plantation licence

- (1) This section applies if the Minister reasonably believes that a plantation licensee is contravening its obligations under section 61QE(1) in relation to the licence area or a part of the licence area.
- (2) The Minister may give the plantation licensee a notice (*show cause notice*)—
  - (a) stating—
    - (i) the Minister proposes to cancel the plantation licence for the licence area or part of the licence area; and
    - (ii) that no compensation will be payable in relation to the cancellation; and
  - (b) stating the reasons for the proposed cancellation; and
  - (c) if the Minister proposes to cancel the plantation licence for part of the licence area, identifying the part; and
  - (d) inviting the plantation licensee to show within a stated period of at least 90 days (*show cause period*) why the plantation licence for the licence area or part should not be cancelled.

### 61QZ Representations about show cause notice

- (1) The plantation licensee may make written representations to the Minister about the show cause notice within the show cause period.
- (2) The Minister must consider all written representations (the *accepted representations*) made under subsection (1).

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**61R Ending show cause process without further action**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the Minister believes that the plantation licensee is complying with its obligations under section 61QE(1).
- (2) The Minister must not take any further action about the show cause notice.
- (3) The Minister must also, as soon as practicable after coming to the belief, give notice to the plantation licensee that no further action is to be taken about the show cause notice.

**61RA Cancellation of plantation licence for licence area or part**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the Minister—
  - (a) still believes that the plantation licensee is contravening its obligations under section 61QE(1); and
  - (b) believes cancellation of the plantation licence for the licence area or part of the licence area is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The Minister may decide to cancel the plantation licence for the licence area or part.
- (4) If the Minister decides to cancel the plantation licence for the licence area or part, the Minister must advise the plantation licensee of the decision as soon as practicable after making it.
- (5) The Minister must lodge with the chief executive (lands) a cancellation of a plantation licence for the licence area or part.

*Note—*

The chief executive (lands) may require the lodgement of a sketch plan for the cancellation. See section 61RO(5).

- (6) The chief executive (lands) must register the cancellation on the register.

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[s 61RB]

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- (7) To remove any doubt, it is declared that if the plantation licence for a licence area or part of a licence area is cancelled, the area or part stops being licence area.

## **Division 7                      Surrender or division of plantation licence**

### **61RB Surrender of plantation licence or part of a plantation licence**

- (1) A plantation licensee may apply to the Minister to surrender a plantation licence or part of a plantation licence.
- (2) An application for surrender of a plantation licence or part of a plantation licence must be accompanied by the written consent of—
- (a) each registered mortgagee of the plantation licence and any plantation sublicense of the affected area; and
  - (b) any plantation sublicensee of the affected area.
- (3) The Minister may approve, or refuse, the application at the Minister's discretion.
- (4) Without limiting the Minister's discretion, the Minister may refuse the application until the affected area is rehabilitated to the Minister's satisfaction.
- (5) If the Minister approves the application, the plantation licensee must lodge with the chief executive (lands)—
- (a) a surrender of a plantation licence; and
  - (b) the written consent of all persons with a registered interest in the plantation licence.

*Note—*

The chief executive (lands) may require the lodgement of a sketch plan for the surrender of part of a plantation licence. See section 61RO(5).

- (6) In this section—
- affected area*** means—

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- (a) if the application relates to the surrender of a plantation licence—the licence area for the plantation licence; or
  - (b) if the application relates to the surrender of part of a plantation licence—the part of the licence area for the plantation licence that will be removed from the licence area if the application is approved.

### 61RC Application for division

- (1) A plantation licensee may apply (*application for division*) to the Minister for approval—
  - (a) to surrender part of its plantation licence (*original plantation licence*); and
  - (b) to be granted a right to deal with natural resource product, on the affected area, for the purpose of plantation forestry and for incidental purposes under this Act.

*Note for paragraph (b)—*

This right is granted by entering into an agreement with the Minister under section 61QA(1).

- (2) The application must be made in the approved form and be accompanied by—
  - (a) a statement of the plantation licensee's reasons for seeking the division; and

*Example of a reason—*

The plantation licensee wishes to be granted a new plantation licence for the affected area and to seek approval to transfer the new plantation licence for the affected area.

- (b) evidence that the affected area is sustainable as a commercially viable forestry plantation; and
  - (c) information identifying the affected area; and
  - (d) the written consent of all persons with a registered interest in the plantation licence.
- (3) In this section—

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*affected area*, in relation to an application for division, means the part of the licence area for the plantation licence that will be removed from the licence area if the application is approved.

**61RD Deciding the application**

- (1) The Minister must decide whether to approve the application for division.
- (2) In deciding the application, the Minister must be satisfied that—
  - (a) the affected area is sustainable as a commercially viable forestry plantation; and
  - (b) consents have been given by—
    - (i) each registered mortgagee of the plantation licence and any plantation sublicense of the affected area; and
    - (ii) any plantation sublicensee of the affected area.
- (3) The Minister must also consider—
  - (a) the public interest; and
  - (b) the extent to which the plantation licensee has complied with the original plantation licence.
- (4) The Minister can not approve the surrender under the application and refuse to grant the right under this Act as mentioned in section 61RC(1)(b).

**61RE Approving the application**

- (1) If the Minister approves the application for division, the agreement to be entered into under section 61QA(1) for the affected area must be on the same terms as the original plantation licence (other than the description of the licence area) unless otherwise agreed by the parties.
- (2) However, a proposed plantation licence for the affected area—

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- (a) must not be for a term of years longer than the unexpired term of the original plantation licence; and
  - (b) may include a provision linking it and the original plantation licence in the event of default or termination.
- (3) Subsection (1) does not apply in relation to any obligation that has been fully performed by the plantation licensee under the original plantation licence.

**61RF Notice of decision**

- (1) If the Minister decides to approve the application for division, the Minister must give the applicant written notice of the decision.
- (2) If the Minister decides to refuse the application, the applicant must be given a written notice of the decision and the reasons for it.

**61RG Minister and the plantation licensee may enter into new plantation licence etc.**

- (1) If the Minister approves the application for division, the Minister must, if requested by the applicant within 3 months after the approval is given, enter into an agreement as mentioned in section 61RC(1)(b) for the affected area (*new plantation licence*).
- (2) On entering into the new plantation licence—
  - (a) the affected area stops being part of the licence area of the original plantation licence; and
  - (b) the Minister and the applicant must do everything necessary to lodge for registration a surrender of a plantation licence for the affected area.
- (3) The Minister and the applicant may also amend a related agreement or enter into a new related agreement about operational and other matters relevant to the use and maintenance of the licence areas.

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- (4) The new plantation licence is subject to all relevant registered interests to which the affected area of the original plantation licence was subject with the same priorities.

## Division 8 Compensation

### 61RH Events that are compensation events

- (1) A plantation licensee and any plantation sublicensee (each a *claimant*) may claim compensation under this division for any of the following events (each a *compensation event*) happening in relation to the licence area for the plantation licence or plantation sublicense—
- (a) an unformed plantation forest road, taken to be part of the licence area for this Act under section 61QM, stops being part of the licence area on the road construction date nominated for the road by the chief executive under that section;
  - (b) the chief executive grants, makes or extends any of the following over the licence area or part of the licence area—
    - (i) a permit under section 35(1);
    - (ii) a licence under section 55(1);
    - (iii) a permit, licence, lease, or other authority, or an agreement or contract under section 56(1);
    - (iv) a permit under section 73(2);
  - (c) a term lease, as mentioned in section 35(5)—
    - (i) is granted over the licence area or part of the licence area under the *Land Act 1994*; or
    - (ii) having been granted as mentioned in subparagraph (i), is renewed or extended under that Act;

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- (d) subject to section 61RI, land forming part, or all, of the licence area stops being a licence area under section 61QA(6);
  - (e) an easement is created under an Act over land in the licence area;
  - (f) a collection authority is issued under the *Biodiscovery Act 2004* authorising its holder to take native biological material for biodiscovery from the licence area.
- (2) Compensation is payable under subsection (1)(b), (c), (e) and (f) only if the compensation event materially and adversely interferes with the claimant's ability to use the licence area for the purpose of plantation forestry.
  - (3) Also, compensation is not payable for a compensation event if the compensation event results from the exercise by a claimant, a plantation manager appointed by the claimant or a plantation officer employed by the claimant or the plantation manager of power delegated to the claimant, plantation manager or plantation officer under section 96B.
  - (4) Compensation can not be claimed or paid more than once in relation to the same matter.

*Example—*

A plantation licensee can not claim compensation under this Act and another Act or under this Act and a Commonwealth Act in relation to the same matter.

- (5) In this section—  
*create* includes grant, take and acquire.

### 61RI Events that are not compensation events

- (1) A plantation licensee or plantation sublicensee may not claim compensation under this division for any of the following events happening in relation to the licence area for the plantation licence or plantation sublicense—
  - (a) land forming part, or all, of the licence area stops being State plantation forest under section 32B;

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*Note—*

See also section 61QA(6).

- (b) the plantation licence for the licence area or part of the licence area is cancelled under section 61RA;
  - (c) the surrender of the plantation licence or part of the plantation licence under section 61RB.
- (2) Also, a plantation licensee or plantation sublicensee may not claim compensation under this division for the grant or extension of a licence under section 55(1), or a sales permit, over the licence area or part of the licence area if—
- (a) the licence or sales permit is held by the proponent for a development agreement under the *Forest Wind Farm Development Act 2020*; and
  - (b) the licence or sales permit is for the getting of quarry material from project area A.

**61RJ Chief executive to give notice of compensation events to the plantation licensee**

As soon as practicable after becoming aware of a proposed compensation event, or the happening of a compensation event, mentioned in section 61RH(1), the chief executive must give to the plantation licensee and any plantation sublicensee affected by the compensation event written notice of—

- (a) the proposed compensation event or compensation event; and
- (b) details of the extent to which the compensation event will affect, or affects, the licence area.

**61RK Compensation to be assessed under applied provisions of the Acquisition of Land Act 1967 in absence of agreement**

- (1) If the chief executive and the plantation licensee and any plantation sublicensee can not agree on an amount payable as

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compensation for a compensation event, compensation is to be assessed and decided under the *Acquisition of Land Act 1967*, part 4 (the **compensation provisions**) as applied under this section.

- (2) The compensation provisions apply as if—
  - (a) the State were the constructing authority; and
  - (b) a reference to land includes land in a licence area; and
  - (c) the plantation licensee and any plantation sublicensee were persons who have a right to claim compensation; and
  - (d) a reference to land taken were a reference to—
    - (i) if a licence area suffers a net reduction in size because of a compensation event—the land that stopped being part of the licence area because of the compensation event; or
    - (ii) otherwise—the land in the licence area directly affected by the compensation event; and
  - (e) a reference to the day the land was taken were a reference to the day the compensation event had effect in relation to the licence area; and
  - (f) a reference to the serving of a notice of intention to resume on the claimant were a reference to the giving of written notice under section 61RJ; and
  - (g) a reference to a gazette resumption notice were a reference to the document under which the licence area is, or is to be, reduced or affected by the compensation event.
- (3) In applying the compensation provisions, the compensation provisions must be read with any other necessary or convenient changes.
- (4) For the compensation provisions, an extract from the register is proof of the plantation licensee's or plantation sublicensee's interest in the land.

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- (5) If the compensation event is an event mentioned in section 61RH(1)(a), compensation must be assessed and decided under the compensation provisions having regard only to the market value of the natural resource product on the unformed plantation forest road on the nominated road construction date.

## **Part 6E                      Registration of interests in State plantation forests**

### **Division 1                      Preliminary**

#### **61RL    Definitions for pt 6E**

In this part—

*plantation licence sketch plan* means a plan prepared in accordance with directions under section 61RU(2)(b) identifying a licence area or part of a licence area.

*sketch plan* means a plantation licence sketch plan.

### **Division 2                      Register**

#### **61RM    Register of plantation licences**

The chief executive (lands) must keep a register of plantation licences.

#### **61RN    Form of register**

- (1) The chief executive (lands) may keep the register in the form (including in digital form) the chief executive (lands) considers appropriate.

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- (2) Without limiting subsection (1), the chief executive (lands) may change the form in which the register or part of the register is kept.

### **61RO Registration of documents**

- (1) A plantation licence must be registered in—
- (a) the register; and
  - (b) the register of State forests kept under the *Land Act 1994*.
- (2) If a plantation licence is affected by any of the following dealings, a document must be registered in the register to record the dealing—
- (a) an amendment of the plantation licence;
  - (b) a sublicense of the plantation licence;
  - (c) an amendment of the plantation sublicense;
  - (d) a transfer of the plantation licence;
  - (e) a transfer of a plantation sublicense;
  - (f) a transfer of a registered mortgage;
  - (g) a release of a registered mortgage;
  - (h) an amendment of a registered mortgage;
  - (i) a change in the priority of registered mortgages;
  - (j) a caveat in relation to the plantation licence;
  - (k) a surrender of a plantation licence;
  - (l) a cancellation of a plantation licence;
  - (m) a termination of a plantation licence;
  - (n) a termination of a plantation sublicense;
  - (o) an enforcement warrant.

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*Note—*

A dealing may be lodged for registration under this Act at any office where a dealing may be lodged for registration under the *Land Title Act 1994* when the office is open for business.

- (3) Also, if a plantation licence is affected by any of the following documents, the document may be registered in the register—
  - (a) a mortgage of a plantation licence;
  - (b) a mortgage of a plantation sublicense;
  - (c) another document required under an Act.
- (4) A document mentioned in subsection (2)(a), (b), (c), (d), (e), (f), (k), (l) or (m) or (3)(a) or (b) may be registered only if it is approved, or consented to, by the Minister.
- (5) If a dealing mentioned in subsection (2) relates to part of a licence area that is not already identified on a sketch plan, the person lodging the dealing for registration must also lodge a sketch plan identifying the affected part.

#### **61RP Particulars that must be recorded**

The chief executive (lands) must record in the register—

- (a) the particulars of each plantation licence lodged for registration; and
- (b) the particulars necessary to identify—
  - (i) each dealing affecting an interest in a plantation licence registered and when it was lodged and registered; and
  - (ii) the name of the person who holds, and the name of each person who has held, an interest in a plantation licence; and
  - (iii) all documents registered in the register and when they were lodged and registered; and
  - (iv) anything else required or permitted to be registered under this Act.

**61RQ Particulars that may be recorded**

The chief executive (lands) may record in the register anything the chief executive (lands) considers should be recorded to ensure the register is an accurate, comprehensive and useable record of plantation licences, relevant interests and dealings.

**61RR Procedures on lodgement and registration of document**

- (1) When a document is lodged with the chief executive (lands), the chief executive (lands) must note on the document—
  - (a) the date and time of lodgement; and
  - (b) an identifying reference.
- (2) When the document is registered, the chief executive (lands) must record the information mentioned in subsection (1)(a) and (b) in the register.

**61RS Chief executive (lands) may correct registers**

- (1) The chief executive (lands) must correct the register if—
  - (a) the chief executive (lands) is satisfied—
    - (i) the register is incorrect because the chief executive (lands) has incorrectly recorded a particular or registered a dealing; and
    - (ii) the correction will not prejudice the rights of the holder of an interest recorded in the register; or
  - (b) a court has ordered the correction.
- (2) The power of the chief executive (lands) to correct the register includes power to correct a particular in the register.
- (3) If the register is corrected, the chief executive (lands) must record in the register—
  - (a) the state of the register before the correction; and
  - (b) the time, date and circumstances of the correction.

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- (4) The register as corrected by the chief executive (lands) under this section has the same effect as if the relevant error had not been made.
- (5) For subsection (1)(a)(ii), the rights of the holder of an interest recorded in the register are not prejudiced if the holder acquired or has dealt with the interest with actual or constructive knowledge that the register was incorrect and how it was incorrect.

#### **61RT Documents form part of the register**

On registration of a document in the register, the document forms part of the register.

### **Division 3                      General requirements for documents in the register**

#### **61RU Form of documents**

- (1) A document lodged by a person must be lodged with the approved form.
- (2) The chief executive (lands) may—
  - (a) approve forms for use under this part; and
  - (b) give directions about particular requirements for sketch plans.

#### **61RV Execution of documents**

- (1) For a corporation, a document is validly executed if—
  - (a) it is executed in a way permitted by law; or
  - (b) the document is sealed with the corporation's seal in accordance with the *Property Law Act 1974*, section 46.
- (2) For an individual, a document is validly executed if—

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- (a) it is executed in a way permitted by law; and
  - (b) the execution is witnessed by a person mentioned in the *Land Title Act 1994*, schedule 1.
- (3) However, the chief executive (lands) may, in exceptional circumstances, register a document executed by an individual even though the execution was not witnessed or was not witnessed by a person mentioned in the *Land Title Act 1994*, schedule 1.
- (4) A document to transfer or create an interest in a plantation licence or plantation sublicense must be executed by—
- (a) the transferor or the person creating the interest; and
  - (b) the transferee or the person in whose favour the interest is to be created or a lawyer authorised by the transferee or the person.
- (5) A total or partial release of mortgage need only be signed by the mortgagee.
- (6) The witnessing of a document may be proved in any way permitted by law.
- (7) This section does not apply to a sketch plan.

**61RW Registered documents to comply with particular requirements**

- (1) A document may be registered only if—
- (a) the document is lodged with the approved form and correctly executed; and
  - (b) the document complies with the directions of the chief executive (lands) about—
    - (i) how the approved form must be filled in; and
    - (ii) how information to be included in or given with the document must be included or given; and

- (c) for a document relating to a transaction for which the Minister's approval or consent is needed—the Minister has given the approval or consent; and
  - (d) for a document relating to a plantation licence the subject of a registered mortgage—the mortgagee under the registered mortgage has given consent to the transaction to which the document relates; and
  - (e) for a document relating to a plantation sublicense the subject of a registered mortgage—
    - (i) the mortgagee under the registered mortgage has given consent to the transaction to which the document relates; and
    - (ii) if the plantation licence is also the subject of a registered mortgage—the mortgagee under that registered mortgage has given consent to the transaction to which the document relates.
- (2) A document that does not comply with a direction mentioned in subsection (1)(b) may be registered if the chief executive (lands) is satisfied it is reasonable to not require compliance.
- (3) Subsection (1)(d) or (e) does not apply to a caveat, a cancellation of a plantation licence, a termination of a plantation licence or plantation sublicense or an enforcement warrant.

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

The chief executive (lands) may refuse to accept for lodgement, or refuse to register, a document the chief executive (lands) reasonably suspects to be affected by fraud.

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## **Division 4                      Registration of documents**

### **61RY Right to have interest registered**

- (1) If a person lodges a document mentioned in section 61RO, the chief executive (lands) must register the document if—
  - (a) the document has been correctly executed; and
  - (b) the person lodges the document and all other documents needed by the chief executive (lands) to effect registration of the document; and
  - (c) the document appears on its face to be capable of registration; and
  - (d) the document contains, or is accompanied by, any written approval or consent required for its registration; and
  - (e) the person has otherwise complied with this part for the registration of the document; and
  - (f) the document is not inconsistent with another Act or law.
- (2) However, subsection (1) does not prevent the person from withdrawing the document before it is registered.

### **61RZ Registered document operates as a deed**

A registered document operates as a deed.

### **61S Order of registration of documents**

- (1) Documents relating to a plantation licence must be registered in the order they are lodged.
- (2) Subsection (1) is subject to section 61TO.

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**61SA Priority of registered documents**

- (1) Registered documents have priority according to when each of them was lodged and not according to when each of them was executed.
- (2) A document is taken to be lodged on the day and at the time endorsed on the document by the chief executive (lands) as the day and time of the lodgement unless the contrary is proved.
- (3) Subsection (1) is not affected by actual, implied or constructive notice.
- (4) Registered documents have priority over documents that are not registered and any interests claimed under documents that are not registered.

**61SB How a document is registered**

The chief executive (lands) registers a document in the register by recording in the register the particulars necessary to identify the document.

**61SC When a document is registered**

- (1) A document is registered when the particulars about the document are recorded in the register.
- (2) This section applies subject to section 61SD.

**61SD No registration in absence of required approval or consent of Minister**

- (1) A document is not registered, even though the particulars about the document are recorded in the register, if—
  - (a) under this Act, the Minister’s approval or consent, however described, is required for the document, including any aspect of the document, but the approval or consent has not been obtained; or

*Example—*

A mortgage of a plantation licence requires the Minister's consent to be registered. See section 61RO(4).

- (b) the terms of the document are inconsistent with the terms of any approval or consent, however described, given by the Minister in relation to the document, including any aspect of the document.
- (2) If under subsection (1) a document is not registered, the chief executive (lands) may correct the particulars included in the register in relation to the document.
- (3) Subsection (1) applies to an approval or consent, however described, in relation to a document, whether or not the approval or consent is required to be endorsed on the document.
- (4) If the Minister is a signatory to a document, the Minister is taken to have approved, or consented to, the document.

## **Division 5                      Consequences of registration**

### **61SE    Benefits of registration**

The benefits of this division apply to a document whether or not valuable consideration has been given.

### **61SF    Effect of registration on interest**

- (1) On registration of a document expressed to transfer or create an interest in a plantation licence or plantation sublicense—
  - (a) the interest is created or transferred in accordance with the document; and
  - (b) the interest is registered; and
  - (c) the interest vests in the person identified in the document as the person entitled to the interest.

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- (2) A person who holds an interest in a plantation licence or plantation sublicence holds the interest subject to—
  - (a) all other interests in the plantation licence or plantation sublicence previously registered; and
  - (b) all rights and interests registered in the register of State forests kept under the *Land Act 1994*.
- (3) Subsection (1)(a) and (c) does not apply to a mortgage.

#### **61SG Evidentiary effect of recording particulars in the register**

In all proceedings, the particulars of a registered document recorded in the register are conclusive evidence of—

- (a) the registration of the document; and
- (b) the contents of the document; and
- (c) all things stated or implied in it by this or another Act; and
- (d) when the document was lodged and registered.

### **Division 6 Transfers**

#### **61SH Registering a transfer**

In order to be registered, a transfer of a plantation licence or plantation sublicence must—

- (a) be validly executed; and
- (b) include particulars sufficient to identify the plantation licence or plantation sublicence to be transferred; and
- (c) otherwise comply with the requirements of this Act.

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## Division 7                      Mortgages

### 61SI    Registering a mortgage

- (1) In order to be registered, a mortgage must—
  - (a) be validly executed; and
  - (b) include a description sufficient to identify the plantation licence or plantation sublicense to be mortgaged; and
  - (c) include a description of the debt or liability secured by the mortgage; and
  - (d) otherwise comply with the requirements of this Act.
- (2) A notice to a registered mortgagee under this Act is sufficiently served if left at or sent to an address given for the registered mortgagee in the mortgage.
- (3) If a mortgagee is registered as a trustee, a document stating the details of the trust, or the document creating the trust, must be deposited with the mortgage, unless—
  - (a) a document has already been produced for the trust under section 61ST(2); and
  - (b) the details of the trust have not since changed.

### 61SJ    Original mortgagee to confirm identity of mortgagor

- (1) This section applies in relation to the grant of a mortgage of a plantation licence or plantation sublicense.
- (2) Before the mortgage is lodged for registration, the mortgagee under the mortgage (the *original mortgagee*) must take reasonable steps to ensure the person who executed the mortgage as mortgagor is identical with the person who is, or who is about to become, the plantation licensee or plantation sublicensee.
- (3) Without limiting subsection (2), the original mortgagee takes reasonable steps under the subsection if the original mortgagee complies with practices included in the manual of

land title practice under the *Land Title Act 1994*, section 9A(2)(ba) for the verification of identification of mortgagors.

- (4) The original mortgagee must, for 7 years after the mortgage is registered, and whether or not there is registered a transfer of the interest constituted by the mortgage—
- (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
  - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the original mortgagee in complying with subsection (2).

Maximum penalty—20 penalty units.

- (5) The chief executive (lands) may, whether before or after the registration of the mortgage, and whether or not there has been registered a transfer of the interest constituted by the mortgage, ask the original mortgagee—
- (a) to advise the chief executive (lands) about the steps taken by the original mortgagee under subsection (2); and
  - (b) to produce for the inspection of the chief executive (lands) the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).
- (6) The original mortgagee must comply with a request under subsection (5) unless the original mortgagee has a reasonable excuse.

Maximum penalty for subsection (6)—20 penalty units.

**61SK Mortgagee transferee to confirm identity of mortgagor**

- (1) This section applies to the transfer of the interest constituted by the mortgage of a plantation licence or plantation sublicence.
- (2) Before the transfer is lodged for registration, the transferee under the transfer (the *mortgage transferee*) must take

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reasonable steps to ensure the person who executed the mortgage as mortgagor was identical with the person who, when the mortgage was executed, was, or was about to become, the plantation licensee or plantation sublicensee.

- (3) Without limiting subsection (2), the mortgage transferee takes reasonable steps under the subsection if the mortgage transferee complies with practices included in the manual of land title practice under the *Land Title Act 1994*, section 9A(2)(c) for the verification of identification of mortgagors.
- (4) The mortgage transferee must, for 7 years after the transfer of the mortgage is registered, and whether or not there is registered a further transfer of the interest constituted by the mortgage—
  - (a) keep, in the approved form, a written record of the steps taken under subsection (2); or
  - (b) keep originals or copies of the documents and other evidence provided to or otherwise obtained by the mortgage transferee in complying with subsection (2).

Maximum penalty—20 penalty units.

- (5) The chief executive (lands) may, whether before or after the registration of the transfer of the mortgage, and whether or not there has been registered a further transfer of the interest constituted by the mortgage, ask the mortgage transferee—
  - (a) to advise the chief executive (lands) about the steps taken by the mortgage transferee under subsection (2); and
  - (b) to produce for the inspection of the chief executive (lands) the written record mentioned in subsection (4)(a) or the originals or copies mentioned in subsection (4)(b).
- (6) The mortgage transferee must comply with a request under subsection (5) unless the mortgage transferee has a reasonable excuse.

Maximum penalty for subsection (6)—20 penalty units.

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**61SL Releasing a mortgage**

- (1) If a release of a registered mortgage is lodged, the chief executive (lands) may register the release to the extent shown in the release.
- (2) On registration of a release of a registered mortgage, the mortgage is discharged, and the plantation licence or plantation sublicence is released from the mortgage, to the extent shown in the release.

**61SM Amending or transferring a mortgage**

- (1) A registered mortgage may be amended only by registering an amendment of the mortgage.
- (2) However, an amendment must not add a party to or remove a party from the mortgage.
- (3) A registered mortgage may be transferred only by registering a transfer of the registered mortgage.
- (4) A mortgage may be transferred by the mortgagee only with the Minister's written approval.

**61SN Amending priority of mortgages**

- (1) The priority of registered mortgages may be amended by registering a document amending priority.
- (2) The document amending priority must—
  - (a) state the order of priority of all affected registered mortgages; and
  - (b) be executed by all mortgagees affected by the amendment.
- (3) On registration of the document amending priority, the mortgages have priority in the order stated in the document.

**61SO Priority of advances**

A registered mortgage has the same priority in relation to all advances (including future advances), and the performance of all obligations, secured by the mortgage.

**61SP Transfer of mortgage does not affect priority**

If a registered mortgage is transferred, the transferred mortgage has the same priority immediately after the transfer as it had immediately before the transfer.

**61SQ Powers of registered mortgagee**

- (1) A registered mortgagee of a plantation licence or plantation sublicense may exercise any right, power or authority validly conferred on it under the mortgage if the plantation licensee or plantation sublicensee defaults under the mortgage.

*Example of powers that might be validly conferred under a mortgage—*

- power to enter into possession, assume control of or exercise power of sale of the plantation licence or plantation sublicense
  - power to appoint an enforcing party to enter into possession, assume control of or exercise power of sale of the plantation licence or plantation sublicense
  - power to engage, or permit the enforcing party to engage, 1 or more persons to perform some or all of the plantation licensee's or plantation sublicensee's obligations under the plantation licence or plantation sublicense
- (2) If the registered mortgagee or an enforcing party enters into possession or assumes control of the plantation licence or plantation sublicense, the registered mortgagee or enforcing party—
- (a) is subject to, and must perform, the obligations of the plantation licensee or plantation sublicensee under this Act, the plantation licence or plantation sublicense, or any related agreement; and
  - (b) may enforce the rights of the plantation licensee or plantation sublicensee under this Act, the plantation

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licence or plantation sublicense, or any related agreement.

**61SR Mortgagee exercising power of sale**

- (1) A registered mortgagee exercising power of sale over a plantation licence or plantation sublicense must obtain the Minister's approval to any transfer of the plantation licence or plantation sublicense.
- (2) A registered mortgagee transferring a plantation licence or plantation sublicense with the Minister's approval obtained under subsection (1) may also transfer a related agreement—
  - (a) with the chief executive's approval; and
  - (b) if permitted under the plantation licence and the related agreement.
- (3) A transfer of a related agreement in accordance with subsection (2) has effect to transfer obligations of the plantation licensee or plantation sublicensee under the agreement to the transferee despite any rule of law to the contrary.

**61SS Effect of transfer after sale under mortgage**

- (1) Subsection (2) applies if a transfer of a plantation licence or plantation sublicense executed by a registered mortgagee after the exercise of the power of sale under a registered mortgage is registered.
- (2) Registration of the transfer vests in the transferee the mortgagor's interest that is transferred, free from liability under the mortgage and any other mortgage registered after it and any other mortgage not registered under this Act.

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## Division 8                      Trusts

### 61ST Details of trust must be given

- (1) A corporation may be registered in the register as trustee of an interest in a plantation licence or plantation sublicense.

*Examples—*

- a mortgagee of a plantation licence may be registered as holding that interest as trustee
  - a plantation licensee may be registered as holding that interest as trustee
- (2) A certified copy of a document stating details of the trust, or a certified copy of the document creating the trust, must be lodged with the chief executive (lands) with the document creating the corporation's interest as a trustee.
- (3) If the details of the trust change, the trustee must lodge a certified copy of the document effecting the change with the chief executive (lands).
- (4) A document given to the chief executive (lands) under subsection (2) or (3) does not form part of the register.

## Division 9                      Enforcement warrants

### 61SU Definition for division

In this division—

***enforcement warrant*** means an enforcement warrant under—

- (a) the *Civil Proceedings Act 2011*, section 90; or
- (b) the *State Penalties Enforcement Act 1999*, section 63.

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**61SV Registering an enforcement warrant**

- (1) The chief executive (lands) may register a request to record an enforcement warrant only if an office copy of the warrant is lodged with the request.
- (2) In this section—  
*office copy* of an enforcement warrant under the *State Penalties Enforcement Act 1999* means a copy of the enforcement warrant issued by the registrar under that Act.

**61SW Effect of registering an enforcement warrant**

Until an enforcement warrant is registered—

- (a) it does not bind or affect a plantation licence or plantation sublicence, whether or not there is actual or constructive notice of the enforcement warrant; and
- (b) it binds or affects a plantation licence or plantation sublicence only if the enforcement warrant is executed and put in force within—
  - (i) 6 months after its lodgement; or
  - (ii) for an enforcement warrant under the *Civil Proceedings Act 2011*, section 90—the extended time allowed by the court that issued the enforcement warrant, if notified to the chief executive (lands).

**61SX Cancellation of registration of an enforcement warrant**

Registration of an enforcement warrant may be cancelled if a request to cancel it is lodged and the chief executive (lands) is satisfied the time, or extended time, for executing and putting the warrant into force has ended.

**61SY Discharging or satisfying an enforcement warrant**

Discharge or satisfaction of an enforcement warrant may be registered if a request to register it is lodged and the chief executive (lands) is satisfied the warrant has been discharged or satisfied.

**61SZ Transfer of plantation licence or plantation sublicense sold in execution**

- (1) If a plantation licence or plantation sublicense is sold under a registered enforcement warrant, the registrar of the relevant court may execute a transfer to the purchaser.
- (2) On registration of the transfer, the transferee becomes the plantation licensee or plantation sublicensee for the plantation licence or plantation sublicense subject to—
  - (a) registered mortgages and other registered interests; and
  - (b) unregistered mortgages notified by caveat lodged before registration of the enforcement warrant.
- (3) To remove any doubt, it is declared that a sale of a plantation licence or plantation sublicense under a registered enforcement warrant is subject to the requirements of this Act relating to consent to the transfer of a plantation licence or plantation sublicense.

**61T Effect on enforcement warrant of transfer after sale by mortgagee**

- (1) Subsection (2) applies if—
  - (a) a mortgage is registered over a plantation licence or plantation sublicense; and
  - (b) an enforcement warrant is later registered in relation to the plantation licence or plantation sublicense.
- (2) If the mortgagee of the plantation licence or plantation sublicense signs a transfer of the plantation licence or

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plantation sublicence after exercising the power of sale under the mortgage—

- (a) registration of the enforcement warrant does not prevent registration of the transfer; and
  - (b) on registration of the transfer, the chief executive (lands) must cancel registration of the enforcement warrant.
- (3) To remove any doubt, it is declared that a transfer of a plantation licence or plantation sublicence by a mortgagee exercising its power of sale is subject to the requirements of this Act relating to consent to the transfer of a plantation licence or plantation sublicence.

## Division 10 Powers of attorney

### 61TA Power of attorney

- (1) A power of attorney that allows dealings with an interest in a plantation licence or plantation sublicence under this Act must be registered in the powers of attorney register under the *Land Title Act 1994*.
- (2) A power of attorney registered under the *Land Title Act 1994*—
  - (a) is taken to be a power of attorney registered for this Act; and
  - (b) authorises the donee to deal with any interest in a plantation licence or plantation sublicence that may be dealt with by the donor under the power of attorney and this Act.

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## **Division 11            Caveats**

### **Subdivision 1        Caveats—general**

#### **61TB Requirements of caveats**

- (1) A caveat in relation to a plantation licence must be signed by or for the caveator.
- (2) The caveat must state—
  - (a) the name of the caveator; and
  - (b) an address where documents can be served on the caveator; and
  - (c) unless the chief executive (lands) dispenses with it, the name and address of—
    - (i) the plantation licensee or plantation sublicensee affected by the caveat; and
    - (ii) anyone else having the right to deal with the plantation licence or plantation sublicense affected by the caveat; and
  - (d) the plantation licence affected by the caveat; and
  - (e) the registrable interest claimed by the caveator; and
  - (f) the grounds on which the interest is claimed.
- (3) This section applies to caveats under this division other than a caveat prepared and registered by the chief executive (lands) under section 61TL(1).

#### **61TC Lodging caveat**

- (1) A caveat may be lodged by the following—
  - (a) a person claiming a registrable interest in a plantation licence or plantation sublicense;

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- (b) a person to whom an Australian court has ordered that an interest in a plantation licence or plantation sublicense be transferred;
  - (c) a person who has the benefit of a subsisting order of an Australian court in restraining a plantation licensee or plantation sublicensee from dealing with a plantation licence or plantation sublicense.
- (2) However a caveat may only be lodged by a mortgagee under an unregistered mortgage if it is a caveat to which section 61TG applies.

*Note—*

The chief executive (lands) may prepare and register a caveat under section 61TL(1).

- (3) An office copy of a court order mentioned in subsection (1)(b) or (c) must be deposited when a caveat is lodged under subsection (1).

#### **61TD Notifying caveat**

The chief executive (lands) must give written notice of lodgement of a caveat under this division to each person whose registered interest or whose right to registration of a document is affected by the caveat.

#### **61TE Effect of lodging caveat**

- (1) A caveat lodged under this division prevents registration of a document affecting the plantation licence or plantation sublicense over which the caveat is lodged from the date and time endorsed by the chief executive (lands) on the caveat as the caveat's date and time of lodgement.
- (2) Subsection (1) has effect for a caveat until the caveat is cancelled, rejected, removed or withdrawn.
- (3) However, lodgement of a caveat under this subdivision does not prevent registration of the following—

- 
- (a) a document stated in the caveat as a document to which the caveat does not apply;
  - (b) a document if the caveator consents to its registration;
  - (c) a document executed by a mortgagee whose interest was registered before lodgement of the caveat if the mortgagee has power under the mortgage to execute the document;
  - (d) a document of transfer of mortgage executed by a mortgagee whose interest was registered before lodgement of the caveat;
  - (e) another interest that, if registered, will not affect the interest claimed by the caveator.
- (4) The exceptions mentioned in subsection (3)(c) and (d) do not apply to a caveat lodged by the chief executive (lands).
- (5) Also, registration of a caveat under section 61TL(1) does not prevent registration of the following—
- (a) a document stated in the caveat as a document to which the caveat does not apply;
  - (b) a document if the chief executive (lands) consents to its registration.
- (6) Lodgement of a caveat does not create in the caveator an interest in the plantation licence or plantation sublicense affected by the caveat.

**61TF Withdrawing caveat**

A caveator may withdraw a caveat lodged under this division by lodging a request to withdraw it.

**61TG Lapsing of caveat**

- (1) This section does not apply to a caveat if—
- (a) it is lodged by the registered plantation licensee; or

- (b) the consent of the registered plantation licensee is deposited when the caveat is lodged; or
  - (c) an office copy of a court order mentioned in section 61TC(1)(b) or (c) is deposited when the caveat is lodged; or
  - (d) it is prepared and registered by the chief executive (lands) under section 61TL(1).
- (2) A caveatee of a caveat to which this section applies may serve on the caveator a notice requiring the caveator to start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat.
- (3) The caveatee must notify the chief executive (lands) within 14 days of service of the notice on the caveator.
- (4) If a caveator does not want a caveat to which this section applies to lapse, the caveator must—
  - (a) start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat—
    - (i) if a notice under subsection (2) is served on the caveator—within 14 days after the notice is served on the caveator; or
    - (ii) if a notice under subsection (2) is not served on the caveator—within 3 months after the lodgement of the caveat; and
  - (b) notify the chief executive (lands) within the 14 days or the 3 months that a proceeding has been started and identify the proceeding.
- (5) If the caveator does not comply with subsection (4), the caveat lapses.
- (6) The caveator is taken to have complied with subsection (4)(a) if a proceeding has been started in a court of competent jurisdiction to establish the interest claimed under the caveat before the caveat was lodged.

- (7) The chief executive (lands) may remove a caveat that has lapsed from the register.

**61TH Removing caveat**

- (1) A caveatee may at any time apply to the Supreme Court for an order that a caveat lodged under this division be removed.
- (2) The Supreme Court may make the order whether or not the caveator has been served with the application, and may make the order on the terms it considers appropriate.

**61TI Cancelling caveat**

- (1) This section does not apply to a caveat prepared and registered by the chief executive (lands) under section 61TL(1).
- (2) The chief executive (lands) may cancel a caveat if a request to cancel the caveat is lodged and the chief executive (lands) is satisfied—
  - (a) the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or
  - (b) the claim of the caveator has been settled by agreement or otherwise satisfied; or
  - (c) the nature of the interest claimed does not entitle the caveator to prevent registration of a document that has been lodged.
- (3) The chief executive (lands) must notify the caveator of his or her intention to cancel the caveat at least 7 days before cancelling it.
- (4) If a document that has been lodged will, on registration, give full effect to an interest claimed in a caveat, the chief executive (lands) may remove the caveat immediately before registering the document.

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**61TJ Further caveat**

- (1) This section applies if a caveat is lodged under this division (the *original caveat*) in relation to an interest.
- (2) A further caveat with the same caveator can never be lodged in relation to the interest on the same, or substantially the same, grounds as the grounds stated in the original caveat unless the leave of a court of competent jurisdiction to lodge the further caveat has been granted.
- (3) This section does not apply to a caveat prepared and registered by the chief executive (lands) under section 61TL(1).

**61TK Notices to the caveator**

- (1) A notice to a caveator under this subdivision is sufficiently served if left at or sent to the address mentioned in section 61TB(2)(b).
- (2) If the chief executive (lands) is satisfied a notice under this subdivision will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in a way stated in a written direction by the chief executive (lands).
- (3) If the chief executive (lands) is informed in writing, and is satisfied, the name or address of the caveator has changed, the chief executive (lands) must note on the caveat details of the new name or address.
- (4) A new name or address noted under subsection (3) becomes the name or address for service of a notice on the caveator.

**Subdivision 2 Caveats—chief executive (lands)**

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

- (1) The chief executive (lands) may prepare and register a caveat over a plantation licence in favour of a person.

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- (2) The chief executive (lands) may act under subsection (1) to prevent a dealing with a plantation licence that may prejudice—
- (a) the Commonwealth, a State or a relevant local government; or
  - (b) a person because of—
    - (i) misdescription of the plantation licence; or
    - (ii) fraud or forgery; or
  - (c) a person, other than a person mentioned in any of paragraphs (a) or (b), who has an interest in the plantation licence.
- (3) Also, the chief executive (lands) may act under subsection (1) to prevent a dealing with a plantation licence—
- (a) if the plantation licence is to be cancelled or terminated; or
  - (b) to give effect to an order of a court of competent jurisdiction directed to the chief executive (lands).
- (4) Subsection (2)(c) applies only if the chief executive (lands) is satisfied, because of the nature or urgency of particular circumstances, there is no practicable alternative to registering the caveat.
- (5) In this section—

***dealing***, with a plantation licence, does not include registering a document to cancel or terminate a plantation licence.

***relevant local government*** means the local government in whose local government area the licence area for the plantation licence or plantation sublicense is situated.

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## **Division 12                      Relationship with other laws**

### **61TM Relationship with Property Law Act 1974**

- (1) For parts 6D and 6E, the following provisions of the *Property Law Act 1974* do not apply to a mortgage of a plantation licence or plantation sublicense—
  - section 18 (Restrictions on operation of conditions of forfeiture)
  - section 79 (Variation of mortgage)
  - section 80 (Inspection and production of instruments)
  - section 81 (Actions for possession by mortgagors)
  - section 82 (Tacking and further advances)
  - section 83 (Powers incident to estate or interest of mortgagee)
  - section 85(1A) (Duty of mortgagee or receiver as to sale price)
  - section 86 (Effect of conveyance on sale)
  - section 87 (Protection of purchasers)
  - section 89 (Provisions as to exercise of power of sale)
  - section 91 (Amount and application of insurance money)
  - section 99 (Sale of mortgaged property in action for redemption or foreclosure)
  - section 100 (Realisation of equitable charges by the court)
  - section 101 (Facilitation of redemption in case of absent or unknown mortgagees).
- (2) The *Property Law Act 1974*, section 92(1A) applies to a mortgage under this Act as if a reference in that subsection to the Land Act or the Mineral Resources Act were a reference to this Act.

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

- (1) It is declared that the following are not personal property for the purposes of the *Personal Property Securities Act 2009* (Cwlth)—
  - (a) a plantation licence;
  - (b) a plantation sublicense;
  - (c) a right conferred on a plantation licensee or plantation sublicensee under this Act, a plantation licence or plantation sublicense, including a right to natural resource product or quarry material in a licence area;
  - (d) any other right, licence or authority granted under this Act.
- (2) Subsection (1) does not limit the application of the *Personal Property Securities Act 2009* (Cwlth), section 8(1)(f)(i) to a plantation licence or plantation sublicense.

**Division 13 General****61TO Withdrawing lodged document before registration**

- (1) If the chief executive (lands) is satisfied the order in which a document has been lodged in relation to other documents will not give effect to the intention expressed in it or a related document, or is a document that should not have been lodged, the chief executive (lands) may—
  - (a) withdraw the document; or
  - (b) permit the document to be withdrawn.
- (2) A document withdrawn by the chief executive (lands) under subsection (1)(a) remains in the register, unless the document is a document that should not have been lodged.
- (3) The chief executive (lands) may relodge a document that has been withdrawn by the chief executive (lands).

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- (4) On receiving a written application, the chief executive (lands) may permit the applicant to relodge a document that the chief executive (lands) has permitted to be withdrawn.
- (5) A document withdrawn under subsection (1) loses its priority under section 61SA and is taken to have been lodged on the day and at the time endorsed on it by the chief executive (lands) on its relodgement.

**61TP Chief executive may call in document for correction or cancellation**

The chief executive (lands), by written notice, may require a person to deposit a document for correction or cancellation.

**61TQ Requisitions**

- (1) The chief executive (lands), by written notice (*requisition*) given to a person who has lodged or deposited a document, or to another person who reasonably appears to the chief executive (lands) to be relevantly associated with the document, may require a person to—
  - (a) re-execute, complete or correct the document if it appears to the chief executive (lands) to be wrong, incomplete or defective; or
  - (b) produce to the chief executive (lands) stated information, or deposit a stated document, in support of the application to register a document.
- (2) The chief executive (lands) may require the document or information to be verified by statutory declaration or affidavit.
- (3) A requisition may state when, and the place where, it must be complied with.
- (4) The chief executive (lands) may extend the time for complying with a requisition.

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- (5) The chief executive (lands) may refuse to deal with a document lodged or deposited (and any document depending on it for registration) until the requisition is complied with.

**61TR Rejecting document for failure to comply with requisition**

- (1) If a requisition is not complied with by a person within the time stated or extended by the chief executive (lands), the chief executive (lands) may reject the document to which the requisition relates and any document depending on it for registration.
- (2) A rejected document loses its priority under section 61SA and must be returned by the chief executive (lands) to the person who lodged it.
- (3) A memorandum recording the rejection of a document may be endorsed on the rejected document or in a separate record kept in the register.
- (4) This section does not prevent relodgement of a rejected document after the requisition has been complied with.

**61TS Entitlement to search the register**

- (1) A person may, on payment of any fee prescribed under a regulation—
- (a) search and obtain a copy of—
- (i) the particulars recorded about a document registered in the register; or
- (ii) a registered document; or
- (iii) a document that has been lodged but is not registered (whether or not it has been cancelled); and
- (b) obtain a copy of the particulars recorded about a registered document, or a registered document, certified by the chief executive (lands) to be an accurate copy.

- (2) Subsection (1)(a)(iii) does not apply to a document destroyed by the chief executive (lands).
- (3) A search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, an office of the registry during office hours on a day the registry is open for business.
- (4) Also, a search under subsection (1) may be carried out at, or a copy mentioned in subsection (1) obtained from, the website of an entity engaged by the chief executive (lands) for the purpose of allowing persons to search the register or obtain copies of particulars, documents or other information kept in the register.
- (5) The chief executive (lands) may allow a person to carry out a search under subsection (1)(a) for—
  - (a) only part of the particulars recorded about a document; or
  - (b) only part of a document lodged or deposited with the chief executive (lands); or
  - (c) only part of the information about a document lodged or deposited with the chief executive (lands).
- (6) The chief executive (lands) may enter into an agreement with another department allowing the department to carry out a search, or obtain a copy, under this section without payment of the fee mentioned in subsection (1).
- (7) However, the chief executive (lands) may enter into an agreement under subsection (6) only if the chief executive (lands) is reasonably satisfied the information obtained from the search or the copy will not be—
  - (a) used for a commercial purpose, including, for example, the marketing or sale of the information or other information; or
  - (b) included in another database of information, in any form, other than with approval from the chief executive (lands).

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**61TT Evidentiary effect of certified copies of documents**

- (1) A document purporting to be a certified copy of the particulars recorded in the register is evidence of the particulars recorded.
- (2) A document purporting to be a certified copy of a registered document obtained under section 61TS(1)(b) is evidence of the registered document.

**61TU Service**

- (1) A notice required or permitted to be served on a person under this part (*relevant notice*) may be served on the person's agent.
- (2) The Supreme Court may order that a relevant notice required or permitted be served on a person under this Act be served in the way directed by the Supreme Court.
- (3) The Supreme Court may make an order under subsection (2) if, for example, the person—
  - (a) is not known; or
  - (b) can not be found and has no known agent; or
  - (c) is dead and has no personal representative.
- (4) The Supreme Court may dispense with service of a relevant notice if it is satisfied that it is appropriate to dispense with service of the notice.

**61TV Protection from liability**

- (1) This section applies to the chief executive (lands) and a person performing functions of the chief executive (lands) under a delegation.
- (2) A person to whom this section applies is not civilly liable for an act or omission done honestly and without negligence under this Act.

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[s 61TW]

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- (3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.
- (4) In this section—  
*function* includes power.

## **Part 7                      Fires on State forests, timber reserves, forest entitlement areas and licence areas**

### **Division 1                      Powers in relation to hazardous fire**

#### **61TW Powers of forest officers and plantation officers in relation to hazardous fire**

- (1) This section applies if—
  - (a) a forest officer reasonably believes a fire in a State forest, timber reserve or forest entitlement area is hazardous; or
  - (b) a plantation officer reasonably believes a fire in a licence area is hazardous.

*Example of basis for reasonable belief—*  
a prevailing strong wind appears likely to carry embers away from the fire
- (2) A fire is **hazardous** if the fire—
  - (a) is, or may become, a hazard to any area, person or property; or
  - (b) is not authorised under this Act.
- (3) The officer may—
  - (a) put out the fire; or
  - (b) direct a person who appears to the officer to be in charge of the fire—

- (i) to put out the fire, and not light another fire; or
  - (ii) to reduce the intensity of the fire.
- (4) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction—
- (a) immediately after the direction is given; or
  - (b) if the direction includes a time within which the person must comply, within that time.

Maximum penalty—165 penalty units.

## Division 2 Other matters relating to fire

### 61U Application of ss 62 to 62C

Sections 62(1) and (1A), 62A(2), 62B(2) and 62C(1) do not apply to a person who lights a fire—

- (a) that is authorised under the *Fire and Rescue Service Act 1990*, part 7; or
- (b) to perform a duty under this Act.

*Notes—*

- 1 A plantation operator or plantation officer is not a person performing duties under this Act for this section: see section 18C.
- 2 See the *Fire and Rescue Service Act 1990*, sections 65 and 66 for provisions about permits to light fires on land, including in a licence area.

### 62 Control of fires for burning off or clearing vegetation

- (1) A person must not light, maintain or use a fire in a State forest, timber reserve or forest entitlement area that is likely to burn off or clear any vegetation in the State forest, timber reserve or forest entitlement area.

Maximum penalty—165 penalty units.

- (1A) A person must not allow another person to light, maintain or use a fire in a State forest, timber reserve or forest entitlement area that is likely to burn off or clear any vegetation in the State forest, timber reserve or forest entitlement area.

Maximum penalty—165 penalty units.

- (2) Any person who is convicted of an offence against this section may on conviction, in addition to the penalty imposed, be ordered by the court to pay to the chief executive, a plantation licensee or plantation sublicensee in respect of any damage or injury and the costs of controlling and extinguishing any fire occasioned or caused by the commission of such offence, such amount as is fixed by the court after taking the evidence on oath of a forest officer or plantation officer as to the nature and extent of such damage or injury and costs of controlling or extinguishing the fire and, in default of payment thereof, such amount may be recovered in the same way as a pecuniary penalty.
- (3) The provisions of this section shall be in addition to and not in diminution of or substitution for the provisions of any other enactment of this Act.

**62A Additional control of fires in forest recreation areas**

- (1) This section applies to a feature protection area, forest drive or State forest park (a *forest recreation area*).
- (2) A person must not light, maintain or use a fire in a forest recreation area, other than in a fireplace or barbecue provided by the chief executive.

Maximum penalty—165 penalty units.

- (3) However, subsection (2) does not apply to a person lighting or using an approved appliance, or a smoking product, if the person takes reasonable steps to ensure—
- (a) the forest products or waters of the forest recreation area or adjacent areas, are not damaged; or

- (b) property in the forest recreation area or adjacent areas, other than property owned by the person, is not damaged.

*Example of a reasonable step taken by a person—*

- ensuring the appliance is not left unattended
- ensuring there is no overhanging vegetation
- ensuring there is no flammable material near the appliance or smoking product

- (4) In this section—

*smoking product* has the meaning given by the *Tobacco and Other Smoking Products Act 1998*, schedule, definition *smoking product*, paragraph (b).

## **62B Unattended fires**

- (1) This section applies to a person who—
- (a) lights or assumes control of a fire in a State forest, timber reserve or forest entitlement area, including in a barbecue or fireplace provided by the chief executive; or
  - (b) lights a fire to use an approved appliance.
- (2) The person must put the fire out before leaving the fire, unless the person has a reasonable excuse.
- Maximum penalty—165 penalty units.
- (3) However, subsection (2) does not apply if someone else assumes control of the fire before the person leaves the fire.

## **62C Unauthorised things relating to fires**

- (1) A person must not leave any of the following in a State forest, timber reserve or forest entitlement area—
- (a) a lit match, pipe, cigar, cigarette or tobacco;
  - (b) hot ashes;
  - (c) a burning or smouldering substance;

- (d) a substance or device that ignites on impact or by spontaneous combustion.

Maximum penalty—165 penalty units.

- (2) However, subsection (1) does not apply to a person—
  - (a) lighting or using an approved appliance; or
  - (b) lighting a fire—
    - (i) in a barbecue or fireplace provided by the chief executive; or
    - (ii) if a barbecue or fireplace is not provided by the chief executive—in a place that is at least 2m from flammable material.
- (3) A person must not put non-combustible material in a fire in a State forest, timber reserve or forest entitlement area.

*Examples of non-combustible material—*

a can, bottle, brick or piece of steel

Maximum penalty—20 penalty units.

**63 Duty of lessee of State forest etc.**

- (1) Every person holding any lease, licence, permit or other authority or entitled to any right or privilege under an agreement or contract granted or made under this or any other Act over or in respect of the whole or any part of any State forest, timber reserve or forest entitlement area or the forest products thereon (the *holder*), shall at the person's own cost and expense—
  - (a) at all times make all reasonable provision for preventing, detecting, controlling and extinguishing bush, grass, or other rural fires on the State forest, timber reserve or forest entitlement area or, as the case may be, part thereof, over or in respect whereof or the forest products thereon, the lease, licence, permit, authority, agreement or contract was so granted or made; and

(b) on becoming aware of any fire burning on the State forest, timber reserve or forest entitlement area, or as the case may be, part thereof as aforesaid, or burning elsewhere, which is likely to spread to such State forest, timber reserve or forest entitlement area, or as the case may be, part thereof (such not being a fire authorised under the provisions of the *Fire and Emergency Services Act 1990*, chapter 3, part 7), promptly do everything reasonably within his or her power to extinguish the fire whether or not there is immediate danger of it causing damage, and shall forthwith cause the nearest forest officer or person performing duties under this Act to be notified of the fire and of the measures taken by the person to extinguish the same, and if, at the time of so notifying the forest officer or person performing duties under this Act, the fire is not extinguished, the person shall continue so far as possible to control and endeavour to extinguish the fire until it is brought under control or extinguished or until the person obtains the approval of the forest officer or person performing duties under this Act to desist.

(1A) For the purposes of subsection (1)(b)—

**holder** shall include any agent, manager, supervisor or other person whomsoever acting in the general management or control of the business of the holder carried on, in or on the State forest, timber reserve or forest entitlement area, or part thereof as aforesaid (the **agent**).

(1B) A forest officer or person performing duties under this Act who is notified of a fire under subsection (1) must immediately notify a plantation licensee or plantation sublicensee for a licence area of the fire if the fire is likely to spread to the licence area.

*Note—*

A plantation operator or plantation officer is not a person performing duties under this Act for this section. See section 18C.

- (2) Any person refusing, neglecting or failing to comply with the provisions of this section shall be guilty of an offence against this Act and shall be deemed to have committed an offence.
- (3) **False statements as to whereabouts**

Any holder or agent who makes a false statement as to his or her whereabouts or makes a statement knowing the same to be false as to the whereabouts of any of the employees or agents of the holder at the time of the outbreak of any such fire shall be guilty of an offence against this Act.
- (4) Nothing contained in this section shall be read as to relieve any person from any liability or obligation to which the person may be subject under the person's lease, agreement, contract, permit, licence, other authority, or under any other Act or law, and the provisions of this section shall be read as in addition to and not in derogation from the provisions of any other Act.
- (5) This section does not apply to a plantation licensee or plantation sublicensee or any manager, supervisor or other person acting in the general management or control of the business of the plantation licensee or plantation sublicensee carried on in or on a licence area.

**63A Duty of plantation licensee etc.**

- (1) A plantation licensee must at the person's own expense, make all reasonable provision for preventing, detecting, controlling and extinguishing bush, grass, or other rural fires on the licence area.

Maximum penalty—100 penalty units.
- (2) A plantation licensee or plantation manager must, on becoming aware of a fire burning on the licence area that the plantation licensee or plantation manager reasonably believes to have been unlawfully lit or is out of control, immediately do everything reasonably within its power to extinguish the fire.

Maximum penalty—100 penalty units.

- (3) On becoming aware of a fire, a plantation licensee or plantation manager must immediately notify a forest officer of the fire—
- (a) if it is burning on State forest outside the licence area if the plantation licensee or plantation manager reasonably believes it to have been unlawfully lit or to be out of control; or
  - (b) if it is burning outside State forest and the plantation licensee or plantation manager reasonably believes it is likely to spread to the State forest; or
  - (c) if it is burning on the licence area, if the plantation licensee or plantation manager reasonably believes it is likely to spread beyond the licence area to the State forest outside the licence area.

Maximum penalty—100 penalty units.

- (4) In this section—

*plantation licensee* includes plantation sublicensee.

#### **64 Certain person to be incapable of holding permits etc.**

- (1) Where any person convicted of an offence against any provision of the *Fire and Emergency Services Act 1990*, chapter 3, part 7 or of section 62 or 63, was, at the time when the offence was committed, the holder of any permit, licence, or lease granted, or the person entitled for the time being to the benefit of any agreement or contract made, under the *Land Act 1994* or this Act over or in respect of the whole or part of any State forests, timber reserve or forest entitlement area or the forest products thereon, which permit, licence, lease, agreement or contract has, subsequent to such conviction, been forfeited or cancelled, the Minister may, by signed writing, direct that such person shall not be capable of holding any permit, licence or lease, or of entering into or being entitled to the benefits of any agreement or contract under the

*Land Act 1994* or this Act, over or with respect to the whole or part of any State forest, timber reserve or forest entitlement area whatsoever or the forest products thereon, for such period, not exceeding 5 years, as shall be specified in the direction.

- (2) A permit, licence or lease shall not be granted nor an agreement or contract made, under the *Land Act 1994* or this Act, over or with respect to the whole or part of any State forest, timber reserve or forest entitlement area whatsoever or the forest products thereon, to or with any person with respect to whom such a direction has been made or given, during the period for which the direction remains in force.
- (3) Any such direction may, at any time and from time to time, be varied, altered or rescinded by the giver thereof or the giver's successor in office.
- (4) This section does not apply to—
  - (a) a plantation licensee or plantation sublicensee; or
  - (b) a plantation licence or plantation sublicense.

**65 Control of fires on lands adjoining State forest etc.**

- (1) If a person performing duties under this Act discovers any fire burning within 3km of any State forest, timber reserve or forest entitlement area, and the person is of the opinion that such fire is likely to spread to and cause damage to the State forest, timber reserve or forest entitlement area, the person may (with such assistants, plant, vehicles, animals and equipment as are necessary for the purpose) enter upon the land on which such fire is burning and perform any acts necessary to control and extinguish the fire.

*Note—*

A plantation operator or plantation officer is not a person performing duties under this Act for the purpose of this section. See section 18C.

- (1A) No liability shall attach to the chief executive or any person performing duties under this Act in respect of any loss or damage to property occasioned by any person as aforesaid in

the exercise in good faith of the person's powers, pursuant to this section, in connection with any fire but any damage shall be deemed to be damage by a fire within the meaning of any policy of insurance against fire covering the damaged property and every such policy of insurance whether issued before or after the commencement of this Act shall notwithstanding anything therein contained be read and construed accordingly.

- (2) Where it is established that the owner or occupier of the land on which the fire originated, or the owner's or occupier's agent or employee, was responsible for the lighting of such fire and its lighting was not authorised under the *Fire and Emergency Services Act 1990*, chapter 3, part 7, then the State may recover from the owner or occupier of the land on which the fire originated, in any court of competent jurisdiction, all reasonable expenses incurred by a person performing duties under this Act in controlling and extinguishing such fire (including, but without limiting the generality hereof, salaries and wages of officers and employees and compensation for the use of plant, vehicles and equipment).
- (3) The provisions of subsection (2) shall be in addition to and not in diminution of or substitution for the provisions of any other enactment of this Act.
- (4) For the purpose of the exercise and performance by a forest officer or person performing duties under this Act of the powers, functions and authorities conferred upon the forest officer or person by this section, such forest officer or person shall be deemed to be the first officer of a rural fire brigade under and within the meaning of the *Fire and Emergency Services Act 1990* and shall have and may exercise all the powers, functions and authorities conferred upon the said first officer by the said Act.

**65A Recovery of expenses incurred in extinguishing fires on State forests**

- (1) Subsection (2) applies if—

- (a) a person performing duties under this Act has, within the boundaries of a State forest, timber reserve or forest entitlement area (the *relevant area*) extinguished or caused to be extinguished a fire burning within the relevant area; and
- (b) it is established that—
  - (i) the fire originated on land other than the relevant area; and
  - (ii) the owner or occupier of the land on which the fire originated, or his or her agent or employee, was responsible for the lighting of the fire; and
  - (iii) the lighting of the fire was not authorised under the *Fire and Emergency Services Act 1990*, chapter 3, part 7.

*Note—*

A plantation operator or plantation officer is not a person performing duties under this Act for the purpose of this section. See section 18C.

- (2) The State may recover from the owner or occupier of the land on which the fire originated, in any court of competent jurisdiction, all reasonable expenses incurred by a person performing duties under this Act in controlling and extinguishing the fire, including, for example—
  - (a) salaries and wages of officers and employees; and
  - (b) compensation for the use of plant, vehicles and equipment.
- (3) Subsection (2) does not limit the rights of the State, a plantation licensee or plantation sublicensee under any other provision of this Act or at law.

**65B Recovery of expenses incurred in extinguishing fires on State forests within licence areas**

- (1) Subsection (2) applies if—

- (a) a plantation licensee has, within a licence area, extinguished or caused to be extinguished a fire burning within the licence area; and
- (b) it is established that—
  - (i) the fire originated on land, other than a State forest, timber reserve or forest entitlement area, outside the licence area; and
  - (ii) the owner or occupier of the land on which the fire originated, or his or her agent or employee, was responsible for the lighting of the fire; and
  - (iii) the lighting of the fire was not authorised under the *Fire and Emergency Services Act 1990*, chapter 3, part 7.
- (2) The plantation licensee may recover from the owner or occupier of the land on which the fire originated, in any court of competent jurisdiction, all reasonable expenses incurred by the plantation licensee in controlling and extinguishing the fire, including, for example—
  - (a) salaries and wages of officers and employees; and
  - (b) compensation for the use of plant, vehicles and equipment.
- (3) Subsection (2) does not limit the rights of the State or plantation licensee under any other provision of this Act or at law.
- (4) In this section—
  - owner or occupier* does not include the State.
  - plantation licensee* includes plantation sublicensee.

## 68 Cooperative burnings

The chief executive may on any property, the nearest boundaries of which are within 3km of any State forest, timber reserve or forest entitlement area, join with the owner or occupier of such property, or render such assistance as the

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chief executive deems fit, in carrying out any burning operations which have been duly authorised under the *Fire and Emergency Services Act 1990*, chapter 3, part 7.

**69 Forfeiture of leases and the like and cancellation of agreements**

- (1) Where the Minister is satisfied that, by reason of the failure to comply with any of the provisions of the *Fire and Emergency Services Act 1990*, chapter 3, part 7 or this part by any person to whom has been granted, or who is the holder of, any lease, licence, permit, or other authority granted, whether before or after the commencement of this Act, under any Act over or in respect of the whole or part of any State forest or timber reserve, the continuance in force of that lease, licence, permit, or other authority is prejudicial to the objects of this Act and is detrimental to the public interest, the Minister may so advise the Minister administering the Act under which the lease, licence, permit, or other authority is granted.
- (2) Where a Minister has been so advised as aforesaid, the Governor in Council or other authority by whom the lease, licence, permit, or other authority is granted may, notwithstanding anything to the contrary contained in any Act, forfeit that lease or cancel or suspend that licence, permit, or other authority.
- (3) Where the Minister is satisfied that, by reason of a failure to comply with any provision of the *Fire and Emergency Services Act 1990*, chapter 3, part 7 or this part by any party to an agreement made with the Minister by the chief executive under section 39A, the continuance of that party's rights in respect of the forest entitlement area, or part thereof, to which the agreement relates is prejudicial to the objects of this Act and detrimental to the public interest the Minister may instruct the chief executive to cancel the agreement and the chief executive must cancel the agreement accordingly in the manner prescribed.

- 
- (3A) The power conferred by subsection (3) is in addition to any other power of cancellation conferred by this Act or had by any person.
- (4) Upon a cancellation of an agreement made under section 39A, whether the cancellation be effected pursuant to subsection (3) or pursuant to any other power conferred by this Act—
- (a) the Minister shall cause notice in writing of the cancellation to be given to every party to the contract (other than the chief executive) affected thereby;
  - (b) the obligation of every person with whom the chief executive has made the agreement affected by the cancellation to perform that agreement shall cease but without prejudice to any liability incurred by any such person on account of anything done or omitted before the cancellation.
- (5) Section 58(5) to (7) shall apply, with all necessary adaptations, to a forfeiture, cancellation or suspension effected under this section.
- (6) In this section—
- authority* does not include plantation licence or plantation sublicense.

## Part 7A                      Pollution and waste in State forests and timber reserves

### 69A      Application of ss 69C, 69D, 69E, 69F and 69H

- (1) Sections 69C, 69D(3), 69E, 69F(b) and 69H(1) do not apply to a person to the extent that the person's actions are—
- (a) allowed under an authority (such as an agreement, contract, permit, licence or lease) under this Act; or
  - (b) allowed under an agreement entered into with a plantation operator for a licence area, to the extent the

agreement is consistent with the licence, any sublicense, and any related agreement for the licence area; or

- (c) in the course of performing duties under this Act.
- (2) Sections 69C and 69D(3) do not apply to a person to the extent that the person's actions are in the course of performing duties under another Act.
- (3) Sections 69C, 69E and 69F(b) do not apply to a person to the extent that the person's actions are allowed under a lease under the *Land Act 1994*.

**69B Polluting water in State forests and timber reserves**

- (1) A person must not pollute a dam, lake or watercourse in a State forest or timber reserve.

Maximum penalty—50 penalty units.

- (2) Without limiting subsection (1), a person pollutes a dam, lake or watercourse if the person—
- (a) allows a domestic animal to swim in a dam, lake or watercourse; or
- (b) puts soap, detergent, shampoo, oil, grease or a harmful substance in a dam, lake or watercourse.

*Examples for paragraph (b)—*

- discharging waste from a vessel into a dam
- using shampoo to wash a domestic animal in a dam
- using detergent to wash a cooking utensil, vehicle or clothing in a lake.

**69C Misusing water**

- (1) A person must not—
- (a) take water from a dam, lake or watercourse in a State forest or timber reserve, other than—

- 
- (i) for personal use within the State forest or timber reserve; or
  - (ii) to water an animal that the person brought into the State forest or timber reserve; or
  - (b) dam or divert a watercourse in a State forest or timber reserve; or
  - (c) damage a water supply or storage facility in a State forest or timber reserve; or
  - (d) allow water from a water supply or storage facility in a State forest or timber reserve to run to waste.

Maximum penalty—50 penalty units.

- (2) In this section—

*water supply or storage facility* includes a dam, water pipeline, water pump and water tank.

#### **69D Entering a dam, lake or watercourse**

- (1) The chief executive may, by regulatory notice, prohibit any person—
  - (a) entering a dam, lake or watercourse in a State forest or timber reserve; or
  - (b) going onto a bed or bank of a dam, lake or watercourse in a State forest or timber reserve.
- (2) The chief executive may do so only if satisfied it is necessary to protect 1 or more of the following—
  - (a) the health or safety of people;
  - (b) the quality of the water in the dam, lake or watercourse;
  - (c) plants or animals.
- (3) A person must not contravene a regulatory notice under subsection (1).

Maximum penalty for subsection (3)—50 penalty units.

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Part 7A Pollution and waste in State forests and timber reserves

[s 69E]

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**69E Using herbicides, pesticides and other substances**

A person must not use a herbicide, pesticide or another harmful, offensive or noxious substance in a State forest or timber reserve.

Maximum penalty—120 penalty units.

**69F Burying or disposing of harmful, offensive or noxious substances etc.**

A person must not bury or otherwise dispose of the following in a State forest or timber reserve—

- (a) a harmful, offensive or noxious substance;
- (b) the carcass, offal or skeleton of an animal.

Maximum penalty—120 penalty units.

**69G Abandoning vehicles**

- (1) A person must not abandon a vehicle, or part of a vehicle, in a State forest or timber reserve.

Maximum penalty—120 penalty units.

- (2) A *vehicle* includes a vessel, aircraft, hot air balloon, hang-glider and paraglider.

**69H Abandoning waste materials or human waste**

- (1) A person must not abandon waste materials in a State forest or timber reserve.

Maximum penalty—120 penalty units.

*Examples of waste materials—*

building materials, fencing materials, metal or plastic drums, vegetation

- (2) A person in a State forest or timber reserve must not—

- 
- (a) defecate within the prescribed minimum distance of a dam, lake, watercourse or walking track in the State forest or timber reserve; or
  - (b) bury human waste within the prescribed minimum distance of—
    - (i) a dam, lake or watercourse in the State forest or timber reserve; or
    - (ii) an occupied or established camp site; or
    - (iii) a camp site designated by a regulatory notice as a camp site; or
    - (iv) a walking track or other public facility; or
  - (c) leave human waste unburied.

Maximum penalty—50 penalty units.

- (3) Subsection (2)(a) and (b) does not apply if the person is using toilets provided by the chief executive or a plantation operator.
- (4) In this section—

*prescribed minimum distance* means 10m, or a longer distance specified on a regulatory notice that is displayed near the entrance of the State forest or timber reserve.

## 69I Breaking glass

- (1) A person must not break glass in a State forest or timber reserve, unless the person has a reasonable excuse.

Maximum penalty—30 penalty units.

- (2) A person must not allow another person to break glass in a State forest or timber reserve, unless the person has a reasonable excuse.

Maximum penalty—30 penalty units.

**69J Littering**

- (1) A person must not leave litter brought into a State forest or timber reserve, unless the person has a reasonable excuse.

*Example of reasonable excuse—*

the person has collected litter from public land next to the State forest or timber reserve and brings the litter into the State forest or timber reserve to put it in a litter bin

Maximum penalty—20 penalty units.

- (2) A person must not, unless the person has a reasonable excuse, leave litter in a State forest or timber reserve—

- (a) other than in a litter bin; or
- (b) in contravention of a regulatory notice.

Maximum penalty—20 penalty units.

- (3) If a forest officer or plantation officer considers it reasonably necessary, the officer may direct a person to remove the person's litter from a State forest or timber reserve, even if there is a litter bin in the State forest or timber reserve.

*Example of when a direction under subsection (3) may be given—*

when all the litter bins in a State forest or timber reserve are full

- (4) A person given a direction under subsection (3) must, unless the person has a reasonable excuse, comply with the direction—

- (a) immediately after the direction is given; or
- (b) if the direction includes a time within which the person must comply, within that time.

Maximum penalty for subsection (4)—20 penalty units.

## Part 7B Requirements about camping

### 69K Camping requires permit etc.

(1) A person must not camp in any part of a State forest or timber reserve (the *relevant area*), unless the person—

(a) is camping under a camping permit for the relevant area; or

*Note—*

See the *Recreation Areas Management Act 2006*, section 40, for camping permits issued under that Act.

(b) has the chief executive's written approval to camp in the relevant area; or

(c) is camping in accordance with—

(i) an authority (such as an agreement, contract, permit, licence or lease) under this Act; or

(ii) a lease under the *Land Act 1994*; or

(iii) an agreement entered into with a plantation operator for a licence area, to the extent that the agreement is consistent with the licence or sublicense, and related agreement for the licence area; or

(d) is acting in the course of performing duties under this Act.

Maximum penalty—20 penalty units.

(2) For subsection (1)(a) and (b), a person, other than the holder of a permit or approval, may camp under the permit or approval only if the number of people with the holder is not more than the number authorised by the permit or approval.

(3) A person must not camp in a State forest or timber reserve contrary to a regulatory notice.

Maximum penalty—80 penalty units.

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Part 7B Requirements about camping

[s 69L]

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**69L Camping in forest entitlement area prohibited**

A person must not camp in a forest entitlement area, unless the person—

- (a) is camping with the chief executive's written approval; or
- (b) is a lessee or owner of the land containing a forest entitlement area, or a person camping with the lessee or owner; or
- (c) is acting in the course of performing duties under this Act.

Maximum penalty—80 penalty units.

**69M Compliance with conditions of camping permit**

A person camping in a State forest or timber reserve under a camping permit must comply with the conditions of the permit.

Maximum penalty—10 penalty units.

*Note—*

For the conditions of a camping permit, see section 35C.

**69N Maximum number of people who may camp under permit or approval**

- (1) The holder of a camping permit must not allow more people to camp under the permit or approval than—
  - (a) for an e-permit camping area—the number of people stated by the holder in the application for the permit; or
  - (b) for a self-registration camping area—the lower of the following—
    - (i) the number of people stated on the camping form for the permit;

- (ii) the number of people stated on the camping notice for the area as the maximum number of people who may camp under a camping permit in the area.

Maximum penalty—20 penalty units.

- (2) In this section—

*camping permit* includes a written approval of the chief executive that authorises camping in a State forest or timber reserve.

#### **69O Displaying camping tags**

- (1) Immediately after a person who is camping under a camping permit makes camp, the person must attach the camping tag for the permit, in a conspicuous position, to—
  - (a) the tent, caravan or other structure that the person is camping in; or
  - (b) if the person is not camping in a tent, caravan or other structure—a vehicle or equipment that the person is using for camping.

Maximum penalty—2 penalty units.

- (2) The person must take reasonable steps to ensure the camping tag remains displayed at the person's camp while the person is camping under the permit.

Maximum penalty—2 penalty units.

#### **69P Direction to leave camping site for protection, safety or minimising disturbance**

- (1) This section applies if a forest officer reasonably believes it is necessary for a person camping in a State forest, timber reserve or licence area (the *camp site*) to leave the camp site in order to—
  - (a) protect or secure the health and safety of a person or a person's property; or

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Part 7B Requirements about camping

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- (b) minimise disturbance to people in the State forest or timber reserve; or
  - (c) protect the forest products or waters of the State forest, timber reserve or licence area.
- (2) The officer may direct the person—
- (a) to leave the camp site; and
  - (b) to remove all of the person's property from the camp site; and
  - (c) not to return to the camp site for a stated period of not more than 6 days.
- (3) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction—
- (a) immediately after the direction is given; or
  - (b) if the direction includes a time within which the person must comply, within that time.

Maximum penalty for subsection (3)—50 penalty units.

**69Q Direction to leave camp site for person camping for long periods**

- (1) This section applies if a person is camping in a part of a State forest, timber reserve or licence area (the *camp site*) and a forest officer reasonably believes—
- (a) the same, or predominantly the same, camping equipment has been at the camp site for 30 days or more; and
  - (b) any of the following apply—
    - (i) it is necessary or desirable to allow the camp site to be used by another person who is authorised to camp at the camp site;
    - (ii) the natural condition of the camp site has been, or is being, degraded by the presence of the camping equipment;

- 
- (iii) it is necessary for the person to leave the camp site to protect the health or safety of a person; and
  - (c) another part of the State forest, timber reserve or licence area is available for the person to use for camping.
- (2) The officer may direct the person in writing—
- (a) to leave the camp site; and
  - (b) to remove all of the person's property from the camp site; and
  - (c) not to return to the camp site for a stated period.
- (3) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction—
- (a) immediately after the direction is given; or
  - (b) if the direction includes a time within which the person must comply, within that time.

Maximum penalty for subsection (3)—50 penalty units.

#### **69R Displaying camping tag without permit**

A person must not attach a camping tag to a tent, caravan, structure, camping equipment or vehicle in a State forest or timber reserve unless the person holds a camping permit for the area.

Maximum penalty—20 penalty units.

#### **69S Tampering with camping tag**

- (1) A person must not, unless a person has a reasonable excuse, tamper with a camping tag displayed on a tent, caravan, structure, camping equipment or vehicle being used for camping.

Maximum penalty—20 penalty units.

- (2) In this section—

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*tamper with*, a camping tag, includes—

- (a) to remove, damage or destroy the camping tag; and
- (b) to change anything written on the tag.

## Part 8 Miscellaneous

### 69T Chief executive must consult with plantation licensee or plantation sublicensee if considering exercising power in relation to a licence area

- (1) This section applies if the chief executive is considering granting or making a permit, licence, lease or other authority, or an agreement or contract, under this Act that is over a licence area (the *relevant authorisation*).
- (2) This section does not apply if a person exercising delegated power under section 96B is considering the granting or making of the relevant authorisation.
- (3) Before granting or making the relevant authorisation, the chief executive must—
  - (a) consult with the plantation licensee and any plantation sublicensee for the licence area; and
  - (b) consider any written representations made by the plantation licensee and any plantation sublicensee about the impact of the relevant authorisation on its operations under the plantation licence or plantation sublicense.
- (4) If activities under a relevant authorisation may result in damage being caused to the licence area, the chief executive must also take into account the ability of the applicant for the relevant authorisation to repair or pay for the damage.
- (5) A person to whom a relevant authorisation is granted or made who causes damage to the licence area is liable in damages to the plantation licensee or plantation sublicensee for the damage to the licence area.

- (6) The plantation licensee or plantation sublicensee may bring an action against a person mentioned in subsection (5) who causes damage to the licence area.

## 70 Destruction of trees on roads

The chief executive may from time to time grant permits to such persons as the chief executive deems fit and subject to such provisions, conditions and reservations as the chief executive deems fit, authorising the destruction of trees on roads (save State-controlled roads under the *Transport Infrastructure Act 1994*).

## 72 Wild stock

- (1) This section applies if the chief executive reasonably believes stock are unlawfully in, and are detrimental to, a State forest, timber reserve, forest entitlement area or forest consent area (each an *affected area*).
- (1A) The chief executive may conduct a muster of the stock in the affected area.
- (1AA) However, the chief executive must give each relevant landholder for the affected area and each person the chief executive reasonably believes is the owner of the stock a notice stating the chief executive intends to conduct the muster on a stated day.
- (1AB) The notice must be given at least 5 business days before the stated day.
- (1AC) A relevant landholder for an area may be present at and take part in the muster.
- (1AD) The chief executive may issue a permit to muster stock to a person for the purposes of the muster.
- (1B) However, the chief executive shall not issue a permit to muster stock with respect to any part of an area which is comprised in a Crown holding or is subject to a permit (other than a sales

permit) granted under this Act without the consent in writing of the lessee, licensee or permittee first had and obtained.

- (2) All stock mustered during any muster at a stockyard shall be held at that stockyard until noon on the day following the day of its muster at that stockyard unless otherwise lawfully dealt with under the provisions of this section.
- (3) At least 1 forest officer or plantation officer shall attend at a stockyard on the day or days of each muster at that stockyard and until noon on the day following the last day of such muster.
- (4) The forest officer or plantation officer in attendance at a stockyard shall release from that stockyard and shall deliver to the claimant therefor any stock in respect of which a person has—
  - (a) claimed ownership, or a right to possession, on the day of the muster at that stockyard or before noon on the day following the day of such muster; and
  - (b) established his or her claim to the satisfaction of the forest officer or plantation officer; and
  - (c) paid to the forest officer or plantation officer such fees as may be from time to time prescribed.
- (4A) However, if the claimant has participated in and assisted the muster, and the forest officer or plantation officer thus certifies to the chief executive, the claimant may be granted a rebate of such sum on account of fees as the chief executive may determine.
- (4B) Before the forest officer or plantation officer releases stock from a stockyard under subsection (4) the forest officer or plantation officer shall give to the person to whom the stock is to be released a permit to remove stock and travel it to the boundary of the area.
- (5) Any person who removes, or causes to be removed, stock from a stockyard notified in accordance with the provision of subsection (1) shall be guilty of an offence unless the person has been given by the forest officer or plantation officer in

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attendance at that stockyard prior to such removal a permit referred to in subsection (4B).

- (6) Stock remaining in a stockyard at noon on the day following the day of its muster at that stockyard shall be dealt with in the following manner—
- (a) all stock that is unbranded or carries no decipherable brand (when clipped if necessary) or in respect of which a claim has been made in accordance with the provisions of subsection (4) but has not been established to the satisfaction of the forest officer or plantation officer in attendance at the stockyard or in respect of which a claim has been so established but the fees have not been paid as required by subsection (4) shall be sold, destroyed or otherwise disposed of in such manner and on such terms as the chief executive may determine;
  - (b) all other stock must be dealt with in the way stated under subsection (6A).
- (6A) For subsection (6)(b), stock must be dealt with as follows—
- (a) the chief executive must give each relevant landowner and each person the chief executive reasonably believes is the owner of the stock a notice stating that—
    - (i) the owner may claim the stock within 14 days after the notice is given (the *claim period*); and
    - (ii) the stock may be disposed of if not claimed within the claim period;
  - (b) if, after having been given a notice under paragraph (a), the owner of the stock does not claim it within the claim period, the chief executive may sell, destroy or otherwise dispose of the stock in the way the chief executive considers appropriate.
- (7) The proceeds of sale of any stock and fees paid with respect to any stock under this section shall be paid to Consolidated Fund.

- (8) No owner, nor any person claiming a proprietary or possessory interest in any stock sold, destroyed, disposed of or otherwise dealt with in pursuance of this section shall have any claim to damages or compensation or otherwise against the Crown or any other person on account of anything done or omitted to be done bona fide with respect to such stock in the course of carrying out or giving effect to the provisions of this section, anything in any Act or law or process of law to the contrary notwithstanding.
- (9) In this section—  
*relevant landholder*, for an affected area, means a landholder of land that adjoins the affected area.

**73 Unlawfully using State forests etc.**

- (1) Any person who, except under the authority of and in compliance in every respect with a permit or licence or other right or authority granted under this Act, [an access licence or project lease under the \*Forest Wind Farm Development Act 2020\*](#), or a lease, licence, or other authority from the Crown, on any State forest, timber reserve or forest entitlement area—
- (a) depastures any stock; or
  - (b) occupies, resides on, or encloses any land or waters, or grows crops upon any land, or clears or breaks up any land for cultivation or for any other purpose; or
  - (c) places any beehives; or
  - (d) searches for or collects minerals; or
  - (e) other than in accordance with a regulatory notice, traverses any part of such area with vehicles, teams, horses, or other animals;

shall be guilty of an offence against this Act.

*Note—*

See sections 69K and 69L in relation to camping in a State forest, timber reserve or forest entitlement area.

- (2) The chief executive may from time to time grant permits for the purposes of subsection (1)(e) to such persons as the chief executive deems fit and subject to such provisions, reservations and conditions as the chief executive deems fit.
- (3) If a plantation licensee, plantation sublicensee, plantation manager or plantation officer (the *decision maker*) exercising power delegated to the decision maker under section 96B makes a decision under this section, the decision maker must advise the applicant for the permit that the applicant may apply for a review of the decision under section 83A within 28 days if the applicant is dissatisfied with the decision.

### 73A Application of ss 73B to 73F

Sections 73B to 73F do not apply to a person acting in accordance with an agreement with a plantation operator for a licence area, to the extent that the agreement is consistent with the licence or sublicense, and any related agreement, for the licence area.

### 73B Commercial activities

- (1) A person must not conduct an activity for gain (a *commercial activity*) in a State forest or timber reserve.

*Examples of commercial activity—*

- the hire or sale of goods or services
- commercial photography
- a guided tour, safari, scenic flight, cruise or excursion
- advertising or promoting the use of a State forest or timber reserve as part of a tour, safari, scenic flight, cruise or excursion
- advertising or promoting the use of a State forest or timber reserve as a feature associated with a resort or tourist facility on land adjoining the State forest or timber reserve

Maximum penalty—165 penalty units.

- (2) However, subsection (1) does not apply to—

- (a) an activity that is authorised under a permit, licence, lease or other authority under this Act; or
  - (b) an activity that is authorised under an agreement or contract granted or entered into under this Act; or
  - (c) filming or photography that involves no more than 10 people, and does not involve any of the following—
    - (i) building a tower, platform, building or other structure, other than a portable structure that is large enough to shelter only 1 person;
    - (ii) using a generator or power source, other than a power source that consists of only dry cells or a single wet cell battery;
    - (iii) using a vehicle, other than for transport or for camping that is authorised under this Act or the *Recreation Areas Management Act 2006*; or
  - (d) an activity that is authorised under an access licence or project lease under the *Forest Wind Farm Development Act 2020*.
- (3) Also, subsection (1) does not apply if the chief executive is reasonably satisfied—
- (a) the use of the State forest or timber reserve is incidental to, and not integral to, the conduct of the activity; or
- Examples for paragraph (a)—*
- a scheduled commercial flight over a State forest or timber reserve that is not part of a tour or scenic flight over the State forest or timber reserve
  - a scheduled bus service through a State forest or timber reserve that is not a part of a tour or safari in the State forest or timber reserve
  - conducting an activity in a State forest or timber reserve if the activity involves a trade and is conducted for the chief executive or the holder of a permit, licence or other authority for the State forest or timber reserve
  - providing a mechanical or vehicle towing service for a visitor in a State forest or timber reserve

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- (b) the activity relates to the filming or photographing of an event when, or as soon as practicable after, the event happens, in order to inform the public about the event—
    - (i) on television; or
    - (ii) in a newspaper, magazine or similar publication.
  - (4) The chief executive must publish the exemption of a type of media activity under subsection (3)(b), by a declaration published on the department's website.

### 73C Organised events

- (1) A person must not conduct an activity (an *organised event*) that is a non-commercial activity involving the organised use of a part of a State forest or timber reserve (the *area*) that is likely to—
  - (a) expose a person involved in the organised event to an unreasonable risk to the person's safety from another activity conducted in the area; or  
*Example of an activity likely to expose a person to unreasonable risk—*
    - timber harvesting
  - (b) have a detrimental impact on the area, or affect the use of the area by other persons, having regard to the following—
    - (i) the location of the area;
    - (ii) the number of people, vehicles or animals involved in the organised event or likely to be in the area when the organised event is conducted;
    - (iii) the type of organised event;
    - (iv) the timing of the organised event;
    - (v) any likely disturbance to the area as a result of conducting the organised event;

- (vi) the extent to which the conducting of the organised event may restrict access to the area by the general public.

Maximum penalty—50 penalty units.

*Examples of an activity that may be an organised event—*

concert, competitive sporting event, training exercises conducted by the Australian Defence Force, vehicle rally

- (2) However, subsection (1) does not apply to an activity that is conducted—
  - (a) by a group of Aboriginal people under Aboriginal tradition in a part of a State forest or timber reserve with which the group has a traditional, customary or historical link under Aboriginal tradition; or
  - (b) by a group of Torres Strait Islanders under Island custom in a part of a State forest or timber reserve with which the group has a traditional, customary or historical link under Island custom; or
  - (c) under an authority (such as an agreement, contract, permit, licence or lease) under this Act.

*Note—*

See the *Recreation Areas Management Act 2006*, section 48 for permits for organised events in a recreation area.

- (3) In this section—

***non-commercial activity*** means an activity other than a commercial activity under section 73B(1).

### **73D Restricted items**

- (1) A person must not possess, have control over, or use any of the following items in a State forest or timber reserve, unless the person has a reasonable excuse—
  - (a) a weapon within the meaning of the *Weapons Act 1990*, schedule 2;

- (b) an axe, hoe, knife, mattock, pick, saw, shovel or other implement;
- (c) a trap, snare, net or birdlime;
- (d) a poison, prohibited substance, fumigant or pesticide within the meaning of the *Medicines and Poisons Act 2019*;
- ~~(d) a poison within the meaning the *Health (Drugs and Poisons) Regulation 1996*, appendix 9;~~
- (e) an explosive within the meaning of the *Explosives Act 1999*;
- (f) a decoy;
- (g) anything else that can be used to take, or help take, wildlife or forest products.

Maximum penalty—120 penalty units.

- (2) However, subsection (1) does not apply to—
  - (a) an item that is, or will be, used only for—
    - (i) taking fish or other animals under the *Fisheries Act 1994*; or
    - (ii) camping; or
    - (iii) a domestic purpose; or
  - (b) an unloaded spear gun that is to be used in an area adjoining the State forest or timber reserve where the use of the gun in the adjoining area is not prohibited under an Act.
- (3) Also, subsection (1) does not apply if the person—
  - (a) securely stores the item in a place in or on a vehicle or vessel where it is not easily accessible and is out of sight; or
  - (b) is authorised to possess, have control over, or use the item in the State forest or timber reserve under an

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authority (such as an agreement, contract, permit, licence or lease) under any of the following Acts—

- (i) this Act;
- (ii) [the \*Forest Wind Farm Development Act 2020\*](#);
- (iii) the *Geothermal Energy Act 2010*;
- (~~iii~~iv) the *Greenhouse Gas Storage Act 2009*;
- (iv) the *Land Act 1994*;
- (vi) the Mining Acts; or

(c) is in the course of performing duties under this Act.

(4) In this section—

*take*, in relation to wildlife or forest products, has the meaning given in the *Nature Conservation Act 1992*.

*Editor's note—*

[Section 73D\(1\)\(d\) is an uncommenced amendment—see 2019 Act No. 26 sch 2.](#)

### 73E Bringing plants into State forest or timber reserve

- (1) A person must not bring a plant into a State forest or timber reserve, unless the plant—
  - (a) is food for the person or the person's animal; or
  - (b) is securely stored in or on a vehicle or vessel in a way that ensures no part of the plant is spread or released into the State forest or timber reserve, such as by keeping the plant—
    - (i) in a cabin of the vehicle or vessel; or
    - (ii) covered at all times.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply if the person—

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- (a) is authorised to bring the plant to the place under an authority (such as an agreement, contract, permit, licence or lease) under an Act; or
  - (b) is acting in the course of performing duties under this Act.
- (3) In this section—
- plant* means—
- (a) any member of the plant or fungus kingdom (whether alive, dead, standing or fallen); or
  - (b) the whole or any part of the flowers, seeds or genetic or reproductive material of a plant or fungus.

### 73F Unauthorised structures or works

- (1) A person must not build or keep a structure or other works in a State forest, timber reserve or forest entitlement area.  
Maximum penalty—165 penalty units.
- (2) However, subsection (1) does not apply to a camping structure under a camping permit.
- (3) Also, subsection (1) does not apply if the person is authorised to build or keep the structure or works, in the State forest, timber reserve or forest entitlement area, under an authority (such as an agreement, contract, permit, licence or lease) under any of the following Acts—
  - (a) this Act;
  - (b) [the Forest Wind Farm Development Act 2020](#);
  - (~~b~~c) the *Geothermal Energy Act 2010*;
  - (~~e~~d) the *Greenhouse Gas Storage Act 2009*;
  - (~~d~~e) the *Land Act 1994*;
  - (~~e~~f) the Mining Acts.

**74 Unauthorised building etc. within State forest etc.**

- (1) When any building, hut, tramline, fence, dam, weir, standing crop, or any other thing, or any property that appears to have been abandoned, is found within a State forest, timber reserve or forest entitlement area and—
  - (a) the owner or occupier thereof does not on demand produce any lease, licence, permit, or other authority therefor; or
  - (b) after reasonable enquiries made by a forest officer or plantation officer the owner or occupier thereof can not be ascertained or can not be found;

then on the hearing of the complaint by a forest officer or plantation officer acting with the authority of the chief executive, any Magistrates Court may fix a time within which such building, hut, tramline, fence, dam, weir, crop, or other thing, or that property, shall be removed.

(2) **Unauthorised building to become property of Crown**

If such removal is not effected within the time so fixed, such building, hut, tramline, fence, dam, weir, crop, or other thing, or that property, shall become the property of the Crown and may be disposed of or otherwise dealt with as the chief executive may direct.

(3) **Service of order for removal of building etc.**

In any case where after such enquiries by a forest officer or plantation officer as aforesaid an owner or occupier has not been ascertained or has not been found, the order of the Magistrates Court fixing the time for removal of the building, hut, tramline, fence, dam, weir, crop, or other thing, or the property, shall, within a period fixed by the court for that purpose, be posted on some conspicuous part of the land on which the building, hut, tramline, fence, dam, weir, crop, or other thing, or the property, is situated and no other service or publication of that order need be made or given.

(4) In this section—

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*owner*, in relation to property that has been abandoned, means the person who was the owner of the property immediately before the property was abandoned.

## 75 Removal of trespassers

- (1) Any forest officer who has reason to believe that any person is in unlawful occupation of any State forest, timber reserve or forest entitlement area, or part thereof, may make complaint before justices, who shall hear and determine the matter in a summary way, and on being satisfied of the truth of the complaint, shall issue their warrant, addressed to any police officer, requiring the police officer forthwith to remove such person from such land, and to take possession of the same on behalf of the Crown, and the person to whom the warrant is addressed shall forthwith carry the same into execution.
- (1A) Subsection (1) applies to a forest consent area as well as a State forest, timber reserve or forest entitlement area, but a forest officer may act under the subsection only with the agreement of the lessee or registered owner of the land that is or that includes the forest consent area.
- (2) In subsection (1)—  
*forest officer* includes, in relation to a licence area, a plantation officer for the licence area.

## 75A Direction to remove animal

- (1) This section applies to—
  - (a) a forest officer in relation to a State forest or timber reserve (a *relevant area*); or
  - (b) a plantation officer in relation to a licence area (also a *relevant area*).
- (2) The officer may direct a person in charge of an animal, other than stock, in a relevant area to remove the animal from the area if the officer is satisfied the animal—

- (a) is unlawfully in the area; or
  - (b) has been a disturbance in the area; or
  - (c) is a danger to people, property, other animals or wildlife in the area; or
  - (d) is in danger of injury because of activities being conducted in the area.
- (3) A person given a direction under this section must, unless the person has a reasonable excuse—
- (a) comply with the direction—
    - (i) immediately after the direction is given; or
    - (ii) if the direction includes a time within which the person must comply, within that time; and
  - (b) ensure the animal is not returned to the relevant area within 24 hours after its removal.

Maximum penalty for subsection (3)—40 penalty units.

**76 Entry on to reserves may be prohibited**

- (1) Whenever the Minister thinks it reasonable and necessary the Minister may, by notification in the gazette, prescribe that, while the notification remains in force, no person shall, in respect of a State forest or timber reserve, or a specified part thereof, and no person other than a person who is therein under the authority conferred by an agreement made in relation to that area under section 39A or by the person being lessee or owner of land that is or includes that area, shall, in respect of a forest entitlement area or a specified part thereof, be in or on the forest, reserve or, as the case may be, area specified in the notification or, where a part only thereof is specified therein, the part so specified, except under and in accordance with a permit granted by the chief executive for the purposes of this section.
- (1A) However, the Minister can not, by notification under subsection (1), exclude the plantation licensee or plantation

sublicensee for a licence area from, or limit the plantation licensee's or plantation sublicensee's access to, the licence area.

- (2) Any person who contravenes or fails to comply with any notification in force under subsection (1) shall be guilty of an offence against this Act.
- (3) The chief executive may from time to time grant subject to such conditions as the chief executive thinks fit permits for the purposes of this section.
- (4) The provisions of this section shall be in addition to and not in derogation from any other provisions of this Act.
- (5) In subsection (1A)—

*plantation licensee* includes the plantation licensee's employees, agents, contractors, customers and invitees.

*plantation sublicensee* includes the plantation sublicensee's employees, agents, contractors, customers and invitees.

#### **76A Ministerial exemption for forest products and quarry materials**

- (1) The Minister may, by gazette notice, exempt a person or a class of persons from compliance with a provision of this Act in relation to forest products or quarry material.
- (2) An exemption may be subject to the conditions that—
  - (a) the Minister considers appropriate, including the period for which it applies; and
  - (b) are stated in the gazette notice.
- (3) A person must not contravene a condition of an exemption that applies to the person.

Maximum penalty—10 penalty units.

**77 Persons found in possession of forest products**

Any person found within any State forest, timber reserve, forest entitlement area, forest consent area, reserve for public purposes, Crown land, or Crown holding, the forest products or quarry material whereon are the property of the Crown, or in the vicinity thereof, and having in the person's possession any forest products, quarry material, or earth, who on being thereunto required by a forest officer, refuses or otherwise fails to give an account to the satisfaction of such officer of the manner in which the person became possessed of such forest products, quarry material, or earth, shall be deemed to have got the same on or from that State forest, timber reserve, forest entitlement area, forest consent area, reserve for public purposes, Crown land, or, as the case may be, Crown holding in contravention of the provisions of this Act, and shall be guilty of an offence against this Act, unless the person satisfies the court to the contrary.

**78 Receiving forest products**

Any person who receives any forest products or quarry material, the getting of which is an offence against this Act, knowing the same to have been so got shall be guilty of an offence against this Act.

**79 Subpurchase**

- (1) Every purchaser of forest products, quarry material, or earth from a person holding an agreement or a contract or permit, licence, or other right or authority made or granted under this Act shall be deemed to have purchased the same subject to the terms and provisions, conditions, and reservations of such agreement, contract, permit, licence, or, as the case may be, other right or authority and with notice thereof.
- (2) This section does not apply to a purchaser of natural resource product from a plantation licensee or plantation sublicensee.

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**80 Accounts of forest products**

- (1) Every purchaser of forest products or quarry material under this Act shall keep such books and accounts and shall furnish such returns concerning the forest products or quarry material got as are required by the chief executive, and shall permit any forest officer to have access at all reasonable times to all such books and accounts and to all documents and writing relating thereto and to take copies thereof and extracts therefrom.
- (2) The chief executive may require such returns to be verified by statutory declaration as to the truth or correctness thereof.
- (3) This section does not apply to a plantation licensee or plantation sublicensee or a purchaser of natural resource product from a plantation licensee or plantation sublicensee.

**81 Power to enter land**

Any person performing duties under this Act or any other person authorised by the chief executive by writing so to do, may for the purposes of this Act, without any previous notice—

- (a) enter upon any land or waters whatsoever for the purpose of inspecting any forest products thereupon or therein, whether growing or otherwise, or for giving effect to any of the provisions of this Act and upon such entry carry out such purpose;
- (b) upon such entry, make surveys and examine any timber or other forest products and any quarry material thereupon or therein;
- (c) upon such entry, do anything necessary for ascertaining the suitability of the land or waters for any forestry purposes or for the purposes of this Act.

**82 Powers for seized timber etc.**

- (1) Where timber has been seized under section 18(1)(ga)(i), the forest officer making the seizure may brand the timber for the purposes of identification.
- (2) When any forest products, quarry material, or earth have been seized under section 18(1)(ga)(i) the forest officer making such seizure may, in lieu of detaining and removing the same, place in a conspicuous position upon any such forest products, quarry material or earth, a notice signed by the forest officer and specifying so as to sufficiently identify it, the forest products, quarry material, or earth seized and the place wherein or whereon it is situated at the time of seizure and the date and time of such seizure and thereupon any such forest products, quarry material, or earth shall be deemed to be in the custody and possession of that forest officer pending proceedings or until that forest officer by notice placed in the manner as aforesaid notifies that the forest officer has gone out of possession of such forest products, quarry material, or earth.
- (3) Every person who without authority alters, uses, interferes with, or removes or disposes of in any way any timber or other forest products, quarry material, or earth seized under section 18(1)(ga)(i) or attempts to do any such act whilst it is, or pursuant to this section is deemed to be, in the custody and possession of a forest officer shall be guilty of an offence against this Act.
- (4) The provisions of subsection (3) shall not derogate from or otherwise affect the provisions of section 86 of this Act.
- (5) Any forest officer, person performing duties under this Act, or other person authorised by the chief executive by writing so to do, may (with such assistants, plant, vehicles, animals, and equipment as may be necessary for the purpose) enter upon any place and thereon or therein remain and do and take all such things and steps as will enable the forest officer or person to obtain and remove anything seized or which has become and remains the property of the Crown.

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- (6) Such power of entry shall include such right of ingress, egress, and regress as may be necessary in the circumstances.
  - (7) Despite sections 82C to 82F, and 82H, a forest officer may seize any beehive or beehives which have been placed on a State forest otherwise than under the authority of a permit granted under this Act, and may remove such beehive or beehives from such State forest and may sell or otherwise dispose of the same.
  - (8) Before seizing a beehive under subsection (7), the forest officer must—
    - (a) make reasonable inquiries to find the owner (the *apiarist*) of the hive; and
    - (b) if the apiarist can be found—require the apiarist, by written notice, to remove the hive within a stated reasonable time.
  - (9) The apiarist must comply with a requirement under subsection (8).

Maximum penalty—20 penalty units.
  - (10) If the apiarist can not be found or contravenes subsection (8), the forest officer may then exercise the power under subsection (7).
  - (11) The proceeds (if any) of such sale or disposal shall be paid into consolidated fund.
  - (12) The provisions of this section shall be in addition to and not in diminution of or substitution for any other provisions of this Act.

## **82A Seizure and forfeiture of vehicles**

- (1) A forest officer may seize, remove and detain a vehicle on a State forest or timber reserve if the forest officer reasonably believes the vehicle—
  - (a) is being, or has been, used in contravention of section 73; or

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- (b) is being, or has been used, in connection with an offence against section 34G; or
  - (c) has been abandoned.
- (2) Despite sections 82D and 82E, where the owner or other person claiming a proprietary interest in a vehicle being detained under this section produces to a forest officer at the place where that vehicle is being detained—
- (a) proof to the forest officer's satisfaction of such ownership or interest; and
  - (b) where that person was not using the vehicle at the time of commission of the alleged offence referred to in subsection (1)(a) or (b)—proof to the forest officer's satisfaction of the identity and address of the person who was using the vehicle at that time;

the vehicle shall be returned to the person forthwith upon the person signing a receipt for the same.

**82B Receipt to be given**

- (1) As soon as practicable after a thing (a *seized thing*) is seized by a forest officer under this Act, the forest officer must give a receipt for it to the person from whom it was seized.
- (2) The receipt must describe generally the condition of the seized thing and, if more than 1 thing is seized, must include an inventory or general description of them.
- (3) If, for any reason, it is not practicable to comply with subsection (1), the forest officer must—
  - (a) leave the receipt at the place where the thing is seized; and
  - (b) ensure the receipt is left in a reasonably secure way in a conspicuous position.
- (4) This section does not apply if—
  - (a) it is not practicable to comply with subsection (1); and

- (b) it is not practicable to comply with subsection (3); and
- (c) the owner of the seized thing can not be decided after reasonable inquiries or, having regard to its value, it is not reasonable to make inquiries about its owner.

**82C Forest officer to allow inspection etc.**

Until a seized thing is forfeited, returned or otherwise finally dealt with under this Act, a forest officer must allow a person who would be entitled to possession of it, if it had not been seized, to inspect it and, if it is a document, make copies of it.

**82D Chief executive may return seized thing**

- (1) The chief executive may return a seized thing to its owner.
- (2) The chief executive may return the thing to its owner on conditions, including conditions to ensure that the thing is available for forfeiture.
- (3) If the thing is not ordered to be forfeited to the State, the chief executive must return any property, including any security, taken by the chief executive under a condition imposed under subsection (2) at the end of—
  - (a) 6 months after the seizure; or
  - (b) if a prosecution for an offence involving the forest products or quarry material to which the seizure of the thing related is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

**82E Chief executive's obligation to return seized things**

- (1) The chief executive must return a seized thing to its owner at the end of—
  - (a) 6 months; or

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- (b) if a prosecution for an offence involving the forest products or quarry material to which the seizure of the thing related is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.
- (2) Despite subsection (1), the chief executive must return the thing to its owner immediately if the chief executive is not satisfied, or stops being satisfied, its retention as evidence is necessary.
- (3) However, the chief executive may keep the thing if the chief executive believes, on reasonable grounds, the thing is liable to forfeiture under this Act.
- (4) This section does not require the return of a thing that has been forfeited under section 82F, 82G or 82L or another law.

**82F Chief executive may order forfeiture of unclaimed seized things**

- (1) This section applies if the owner of a seized thing can not be found after reasonable inquiries or, having regard to its value, it is not reasonable to make inquiries about its owner.
- (2) The chief executive may order the forfeiture of the thing.

**82G Forfeiture of seized things on conviction**

- (1) On the conviction of a person for an offence against section 39, 53 or 54, the court may order the forfeiture of a seized thing including any incidental thing seized in connection with the offence under section 18(1)(ga)(i).
- (2) The court may make an order under subsection (1) in relation to the thing whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture that it considers appropriate.

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- (4) This section does not limit the court's powers under the *Criminal Proceeds Confiscation Act 2002*, the *Penalties and Sentences Act 1992* or any other law.

### **82H Where and how to start appeal**

- (1) A person from whom a seized thing has been seized may appeal to the Magistrates Court nearest to where the thing was seized.
- (2) The appeal is started by—
- (a) filing a written notice of appeal with the clerk of the court of the Magistrates Court; and
  - (b) giving a copy of the notice to the chief executive.
- (3) Without limiting subsection (2)(b), the chief executive is given a copy of the notice if a copy is given to the forest officer who seized the thing.
- (4) The notice of appeal must state the grounds of the appeal.

### **82I Hearing procedures**

- (1) The power to make rules of court under the *Magistrates Courts Act 1921* includes power to make rules of court for an appeal to Magistrates Courts under section 82H.
- (2) The procedure for the appeal is to be—
- (a) in accordance with the rules made under the *Magistrates Courts Act 1921*; or
  - (b) in the absence of relevant rules, as directed by a magistrate.
- (3) In deciding the appeal, the Magistrates Court—
- (a) is not bound by the rules of evidence; and
  - (b) must observe natural justice; and
  - (c) may hear the appeal in court or chambers.

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- (4) However, the Magistrates Court is not to require the chief executive or any witness to disclose any evidence or information, including the name of a witness that may prejudice—
- (a) an investigation of an offence against this Act; or
  - (b) a proceeding for a contravention of this Act, whether or not a proceeding has then been commenced.

**82J Powers of Magistrates Court on appeal**

- (1) In deciding the appeal, the Magistrates Court may—
- (a) confirm the seizure of the thing; or
  - (b) set aside the seizure and order the return of the thing.
- (2) Without limiting subsection (1), a Magistrates Court may give any necessary directions about the seized thing before the appeal is heard or to dispose of the appeal.

**82K Appeal to District Court on questions of law only**

- (1) A party dissatisfied by the decision of the Magistrates Court may appeal to the District Court, but only on a question of law.
- (2) The District Court may give any necessary directions about the seized thing before the appeal is heard or to dispose of the appeal.

**82L Seized forest products and quarry material become State's property**

- (1) This section applies—
- (a) if a seized thing is forest products or quarry material; and
  - (b) despite sections 82E to 82G.
- (2) The forest products and quarry material are forfeited if—

- (a) their seizure is not the subject of an appeal to a Magistrates Court within 14 days after their seizure; or
- (b) their seizure is the subject of an appeal to a Magistrates Court within 14 days after their seizure, but the seizure is confirmed on appeal; or
- (c) the chief executive and the person (the *claimant*) claiming to be entitled to the forest products and quarry material agree, in writing, that the forest products and quarry material are forfeited.

**82M Forfeited things seized become State's property**

On the forfeiture of a seized thing under section 82F, 82G or 82L, the thing becomes the State's property.

**82N Seizure of vehicles by plantation officer**

- (1) A plantation officer may seize, remove and detain a vehicle in a licence area for which the plantation officer is appointed if the plantation officer reasonably believes the vehicle has been abandoned in the area.
- (2) However, subsection (3) applies if—
  - (a) the owner of, or a person who claims a proprietary interest in, a vehicle detained under subsection (1) provides evidence of the person's ownership of, or interest in, the vehicle to a plantation officer at the place where the vehicle is detained; and
  - (b) the plantation officer is satisfied the person is the owner of, or has a proprietary interest in, the vehicle.
- (3) The plantation officer must return the vehicle to the person.
- (4) The plantation officer must ensure a person to whom a vehicle is returned under subsection (3) signs a receipt for the vehicle.

**82O Chief executive may order forfeiture of particular vehicles to plantation licensee**

- (1) This section applies if—
  - (a) a vehicle is seized under section 82N(1); and
  - (b) the owner of the seized vehicle can not be found after reasonable inquiries or, having regard to its value, it is not reasonable to make inquiries about its owner.
- (2) The chief executive may order the forfeiture of the vehicle to the plantation licensee.
- (3) The plantation licensee may dispose of the vehicle in any way decided by the plantation licensee.

**83 Dealing with forfeited forest products etc.**

- (1) Forest products, quarry material, earth or any vehicle or incidental thing, forfeited to the State under this Act shall be dealt with or disposed of as the chief executive may direct.
- (2) Any such forfeiture, dealing with, or disposal shall not confer upon any person any right to compensation.
- (3) **Saving of Crown rights in respect of forest products**

The provisions of this section or any other provision of this Act relating to the seizure, detention, removal, or forfeiture of any forest products, quarry material, or earth, shall not prejudice the rights of the Crown with respect to any forest products, quarry material, or earth which are the property of the Crown, and any such right may be exercised at any time by the Crown anything to the contrary in this Act notwithstanding.

**83A Particular decisions subject to review**

- (1) A person who is dissatisfied with a reviewable decision made by a delegate of the chief executive exercising a delegated function of the chief executive under section 96B (the *original decision maker*) may ask the chief executive to review the

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decision within 28 days after the person is notified of the decision.

- (2) The person reviewing the decision (the *reviewer*) must be more senior than the person who made the decision.
- (3) The reviewer—
  - (a) may—
    - (i) confirm the original decision; or
    - (ii) make another decision and, for that purpose, has the same powers as the original decision maker; and
  - (b) must give the applicant a statement of reasons for his or her decision.
- (4) In this section—

*reviewable decision* means—

  - (a) a decision in relation to a permit under section 35;
  - (b) a decision in relation to a licence under section 55;
  - (c) a decision in relation to a permit, licence, lease, or other authority, or an agreement or contract, under section 56;
  - (d) a decision in relation to a permit under section 73(2).

#### **84 Matters may be completed by different officers**

- (1) If an officer has issued any order or given any direction or notice or made any request or taken any action under this Act, the officer or any other officer who is empowered by this Act to issue, give, or make a like order, direction, notice, or request, or, as the case may be, to take any like action, may at any time (and shall if so directed by the chief executive) withdraw or revoke or from time to time vary the order, direction, notice, request, or action, or take further steps thereon.

(2) **Prevention of breach of Act**

Any officer may, without further warrant or authority than this subsection, summarily interfere to prevent any actual or attempted breach of this Act.

(3) **Certificates of appointment**

Every officer shall be furnished with a certificate of appointment, signed by the chief executive and upon entering any place for the purposes of this Act shall, if required, produce such certificate to the occupier of the place.

(4) Every person performing duties under this Act or other person authorised by the chief executive to enter upon any place for the purposes of this Act shall, if required, produce the person's authority to the occupier of the place.

(5) In subsections (1) and (3)—

*officer* includes plantation officer.

**84A Directions about use of vehicle or vessel**

(1) This section applies to—

- (a) a forest officer in relation to a State forest or timber reserve (a *relevant area*); or
- (b) a plantation officer in relation to a State forest, timber reserve or licence area (also a *relevant area*).

(2) The officer may give a person in control of a vehicle or vessel in a relevant area a direction that regulates or prohibits the use of the vehicle or vessel in the area, if the officer reasonably believes it is necessary to—

- (a) prevent or remedy any harm to, or loss or destruction of, forest products or waters of the area; or
- (b) secure the safety of a person or a person's property; or
- (c) minimise disturbance to people in the area; or

- (d) minimise or prevent damage to roads, drainage works, facilities or infrastructure.

*Example—*

a direction to remove the vehicle or vessel from the relevant area

- (3) The officer may give the direction using a sign or signal.
- (4) A person must comply with a direction given under this section, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

- (5) However, it is not a reasonable excuse for subsection (4) that the person holds an authority (such as an agreement, contract, permit, licence or lease) under this Act, that is inconsistent with the direction.

#### **84B Directions to leave—offences or suspected offences**

- (1) This section applies to—
- (a) a forest officer in relation to a State forest or timber reserve (a *relevant area*); or
  - (b) a plantation officer in relation to a State forest, timber reserve or licence area (also a *relevant area*).
- (2) Subsection (3) applies if—
- (a) the officer—
    - (i) finds a person committing, or about to commit, an offence against this Act; or
    - (ii) finds a person in circumstances that lead the officer to reasonably suspect the person has committed an offence against this Act; or
    - (iii) has information that leads the officer to reasonably suspect a person has committed an offence against this Act; and
  - (b) the forest officer or plantation officer reasonably believes the direction is necessary—

- (i) to prevent the commission or continuation of the offence; or
  - (ii) to secure evidence of the offence; or
  - (iii) to prevent another offence from being committed.
- (3) The officer may direct the person and any person with the person—
- (a) to leave the relevant area; and
  - (b) to remove the person’s property from the relevant area; and
  - (c) not to return to the relevant area for a stated period of not more than 6 days.
- (4) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction—
- (a) immediately after the direction is given; or
  - (b) if the direction includes a time within which the person must comply, within that time.
- Maximum penalty for subsection (4)—50 penalty units.
- (5) If the person does not comply with the direction, the officer may take reasonable steps to ensure the person complies with the direction, including by—
- (a) using reasonable force; and
  - (b) moving the person’s property to another place.

**84C Directions to leave—dangerous circumstances**

- (1) This section applies to—
- (a) a forest officer in relation to a State forest or timber reserve, or a part of a State forest or timber reserve (a *relevant area*); or
  - (b) a plantation officer in relation to a State forest, timber reserve or licence area or a part of a State forest, timber reserve or licence area (also a *relevant area*).

- (2) If the officer reasonably believes circumstances exist that are a danger to a person, or the person's property, in a relevant area, the officer may direct the person—
- (a) to leave the relevant area; and
  - (b) to remove the person's property from the relevant area; and
  - (c) not to return to the relevant area for a stated period.

*Examples of when the officer might give a direction under subsection (2)—*

- trees are being harvested in the State forest or timber reserve
- a cyclone is seriously threatening the State forest or timber reserve
- a fire has been lit in the State forest or timber reserve for management purposes

- (3) If the officer reasonably believes the presence of a person in the relevant area may interfere with an emergency or rescue activity, the officer may direct the person—
- (a) to leave the relevant area; and
  - (b) to remove the person's property from the relevant area; and
  - (c) not to return to the relevant area for a stated period.

*Examples of when the officer might give a direction under subsection (3)—*

- a serious vehicle, aircraft or boating accident has happened in the relevant area
- a wildfire is being fought in the relevant area

- (4) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction—
- (a) immediately after the direction is given; or
  - (b) if the direction includes a time within which the person must comply, within that time.

Maximum penalty for subsection (4)—80 penalty units.

- (5) If the person does not comply with the direction, the officer may take reasonable steps to ensure the person complies with the direction, including by—

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- (a) using reasonable force; and
- (b) moving the person's property to another place.

**84D Power to stop people committing offence**

- (1) This section applies if a forest officer or plantation officer—
  - (a) finds a person committing, or about to commit, an offence against this Act; or
  - (b) finds a person in circumstances that lead the officer to reasonably suspect the person has committed an offence against this Act; or
  - (c) has information that leads the officer to reasonably suspect a person has committed an offence against this Act.
- (2) The officer may direct the person—
  - (a) to stop committing the offence; or
  - (b) to stop any activities forming the basis of the officer's suspicion mentioned in subsection (1)(b) or (c); or
  - (c) to remain at a place to allow the officer to exercise his or her powers under this Act; or
  - (d) if it is relevant to the offence mentioned in subsection (1) whether the person is licensed to drive a vehicle under a law of the State—to produce a licence.
- (3) A person given a direction under this section must comply with the direction, unless the person has a reasonable excuse.  
Maximum penalty for subsection (3)—100 penalty units.

**84E Power to stop or move vehicle or vessel**

- (1) This section applies if a forest officer believes or reasonably suspects that something in or on a vehicle or vessel may provide evidence of the commission of an offence against this Act.

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- (2) The officer, in order to exercise his or her powers under this Act, may direct a person in control of the vehicle or vessel to—
    - (a) stop the vehicle or vessel; or
    - (b) move the vehicle or vessel to, and keep it at, a place within a reasonable distance.
  - (3) The officer may give the direction using a sign or signal.
  - (4) However, the officer must—
    - (a) when giving the direction—clearly identify himself or herself as a forest officer exercising his or her powers; and
    - (b) when the vehicle or vessel stops—immediately produce his or her identity card for the inspection of the person in control of the vehicle or vessel.
  - (5) Section 84F(2) does not apply in relation to a moving vehicle if, in the circumstances, it is not possible for the warning to be given until after the vehicle or vessel has stopped.
  - (6) A person in control of a vehicle or vessel must comply with a direction under this section, unless the person has a reasonable excuse.

Maximum penalty for subsection (6)—100 penalty units.
  - (7) It is a reasonable excuse for the person not to comply with a direction if the officer does not comply with subsection (4) or section 84F.
  - (8) Also, it is a reasonable excuse for the person not to comply with a direction if—
    - (a) immediately complying with the direction would endanger someone else or cause loss of, or damage to, property; and
    - (b) the person complies with the direction as soon as it is practicable to do so.
  - (9) Subsection (4) applies despite section 17D.

**84F Warning requirements for giving directions**

- (1) This section applies if a forest officer or plantation officer gives a direction under this Act to a person.
- (2) When giving the direction, the officer must—
  - (a) explain why the direction has been given; and
  - (b) warn the person that it is an offence to fail to comply with the direction.
- (3) However, the officer need not comply with subsection (2) if the officer reasonably considers that, in the circumstances, it is not possible to give the explanation and warning without endangering the safety of—
  - (a) a person, including the officer; or
  - (b) property, including State property.

**85 Owners and occupiers to give all reasonable assistance**

The owner or occupier of any place and a person in charge or apparently in charge of any place shall furnish to any officer or other person acting under lawful authority under or pursuant to this Act, all reasonable assistance and all such information which the owner, occupier or other person is capable of furnishing or as required by that officer or person with respect to the exercise of his or her powers and the discharge of his or her duties under this Act.

**86 Obstruction of officer etc.**

- (1) A person shall not—
  - (a) assault, obstruct, hinder, threaten, abuse, insult, or intimidate any person performing duties under this Act in the exercise of the person's powers or the discharge of the person's duties under this Act, or offer or attempt, or invite or encourage any other person, so to do; or

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- (b) fail to facilitate by all reasonable means the entry and inspection of any place by any person performing duties under this Act; or
  - (c) refuse to allow to be removed, seized or detained under this Act any forest products, quarry material, incidental thing or vehicle; or
  - (d) take, retake, remove or otherwise interfere with or attempt to take, retake, remove or otherwise interfere with forest products, quarry material, incidental thing or vehicle removed, seized, detained or forfeited under this Act; or
  - (e) when required by or under this Act to furnish any assistance or to furnish any information to a person performing duties under this Act fail to furnish that assistance or information, as the case may be, or, in the latter case, furnish information which is in any respect false or misleading; or
  - (f) fail, without reasonable excuse, the proof whereof shall lie upon the person, to produce any licence, permit, or other authority, book, notice, record, list, document, or writing which the person is required under this Act by a person performing duties under this Act to produce, or fail to allow a person performing duties under this Act to take a copy of or extract from any such licence, permit, or other authority, book, notice, record, list, document, or writing; or
  - (g) fail to comply with the lawful requisition or lawful direction or any part of the lawful requisition or lawful direction of any person performing duties under this Act; or
  - (h) give or agree to give or offer to any person performing duties under this Act any gift or consideration as an inducement or reward for any act done or to be done, or any forbearance observed or to be observed, or any favour shown or to be shown by such officer or employee in or in relation to the exercise of his or her

powers or the discharge of his or her duties under this Act: (For the purpose of this paragraph, a gift or consideration shall be deemed to be given as an inducement or reward if the receipt or any expectation whereof would be in any way likely to influence the person to do or leave undone something contrary to the person's duty); or

- (i) knowingly furnish any officer with a false or incorrect statement of any forest products, quarry material, or earth got by the person or by any person as the person's agent or employee on which royalties, stumpage, fees, charges, or other moneys whatsoever are payable to the Crown or the chief executive; or
  - (j) without lawful authority, the proof whereof shall lie upon the person, take, destroy, damage, or otherwise interfere with or cause to be taken, destroyed, or otherwise interfered with any buildings, fences, gates, roads, tracks, works, notices, materials, tools, goods, or chattels of any nature the property of the State and being on any State forest or timber reserve; or
  - (k) within any State forest or timber reserve behave in a manner likely to cause danger, inconvenience or annoyance to any person; or
  - (l) having left a State forest or timber reserve pursuant to a direction given to the person under section 84B, on the same day as the direction was given re-enter or enter any State forest or timber reserve.
- (2) **Person not obliged to criminate himself or herself**

No person shall be obliged under this Act to answer any question, or give any information or evidence, or to sign any declaration tending to criminate himself or herself.

- (3) In this section—

*officer* includes any person acting under lawful authority under or pursuant to this Act.

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**87      Forgery of licence etc. and other offences**

A person shall not—

- (a) forge or counterfeit any licence, permit, certificate, or other authority granted under and for the purposes of this Act; or
- (b) utter, or make use of any such licence, permit, certificate, or other authority so forged or counterfeited; or
- (c) counterfeit or unlawfully fix to any forest products any mark used by and appropriated for the use of forest officers, or unlawfully alter, remove, disfigure, or obliterate any mark placed upon any forest products by any forest officer; or
- (d) without due authority, make or cause to be made, or use or cause to be used, or have in the person's possession, a brand or stamp which resembles or purports to be a brand or stamp such as is usually used by forest officers; or
- (e) unlawfully alter, obliterate, deface, pull up, remove, or destroy any boundary-mark or any notice which has been posted, erected or displayed in any place for the purposes of this Act; or
- (f) personate any person named in any licence, permit, certificate, or other authority granted under and for the purposes of this Act; or
- (g) make or cause to be made in any book, record, return, declaration, or statement directed by this Act to be kept or made, any entry or writing which is to the person's knowledge false in any material particular; or
- (h) knowingly or recklessly furnish information in a camping form that is false or misleading in a material particular; or
- (i) connive at any such forging, counterfeiting, uttering, making use, fixing, making, using, personating, making

of the entry or writing or furnishing of the information, as aforesaid.

Maximum penalty—

- (a) for a first offence—1000 penalty units or 1 year imprisonment; and
- (b) for a subsequent offence—3000 penalty units or 2 years imprisonment.

## 88 Offences generally

- (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.
- (1A) Every person who attempts, aids, abets, counsels, or procures, or is in any way knowingly concerned in, the commission of an offence against this Act shall be deemed to have committed that offence, and shall be punishable accordingly.
- (1B) Where by this Act any authority is given to any person to direct anything to be done or to forbid anything to be done and anything so directed to be done is not done or anything so forbidden to be done is done, then every person who has offended against such direction or, as the case may be, prohibition shall be guilty of an offence against this Act.

### (2) General penalty

A person guilty of an offence against any provision of this Act is liable, if no specific penalty is provided for the offence, to a penalty of—

- (a) for a first offence—100 penalty units; and
- (b) for a second or subsequent offence against the same section or that is similar to the first or a previous offence—200 penalty units.

(2A) **Loss or damage**

Any person guilty of an offence against any provisions of this Act relating to State forests or timber reserves, or any forest products or quarry material the property of the Crown or a plantation licensee or plantation sublicensee, shall, in every case, be liable for all loss and all damage caused by that offence, in addition to the penalty for the offence, and such loss and damage may be awarded by the court in fixing the penalty, and may be recovered in the same way as a pecuniary penalty.

(2B) For the purposes of subsection (2A), the loss and damage caused by the offender shall include the value of the forest products or quarry material in respect of which the offence was committed, and also the value of the damage to the forest including any works or improvements thereon caused by the offence.

(2C) However, all such loss and damage may be recovered by the State or, to the extent the loss or damage related to a licence area or natural resource product and quarry material in which the plantation licensee or a plantation sublicensee has an interest, the plantation licensee or plantation sublicensee by action as for a debt in any court of competent jurisdiction.

(2D) Furthermore the value of any tree in relation to which the offence was committed, shall be taken to be the sale price ordinarily obtainable on the sale of the tree then and there standing.

(2E) Where a person is convicted of an offence in respect of unauthorised interference with forest products on land reserved or dedicated for public purposes under the control of a local government (including any road save a State controlled road within the meaning of the *Transport Infrastructure Act 1994*, chapter 6), the court pronouncing the conviction may, if it is satisfied that the local government in which control of the land is vested is willing to undertake the work, in addition to imposing a penalty upon that person, order the person to pay

to the chief executive a sum by way of compensation to cover the cost of—

- (a) clearing from the land debris caused by the offence;
- (b) replacing trees destroyed by that person and tending trees so replaced for a period of 12 months.

(2F) The chief executive shall remit to the local government concerned moneys received by the chief executive by way of compensation pursuant to subsection (2E) and that local government shall use those moneys for the purposes for which they were ordered to be paid.

(2G) **Penalties to be in addition to fines under licences or permits**

Penalties imposed for offences against this Act shall be in addition to and not in substitution for any penalty or fine (pecuniary or otherwise) imposed by or under any agreement, contract, lease, permit, or licence or other authority under this Act.

(2H) Any penalty or punishment to which the person committed may be liable under this Act upon the person's conviction shall be in addition to any forfeiture under this Act.

(3) **Summary proceeding**

All offences against this Act may be prosecuted and all amounts of fees, royalties, stumpages, charges, or other moneys payable under this Act and not paid may be recovered in a summary way under the *Justices Act 1886* on complaint by—

- (a) if the offence happened in, or related to, a licence area—  
a plantation officer; or
- (b) generally—any forest officer or any other person authorised for the purpose either generally, or in the particular case, by the chief executive.

(4) **Time for commencement of prosecutions**

A prosecution for an offence against this Act may be instituted at any time within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

**88A Recovery of moneys by plantation licensee or plantation sublicensee**

- (1) This section applies if a fee or amount—
  - (a) may be retained or recovered by a plantation licensee or plantation sublicensee under this Act, including under section 96B(6); and
  - (b) is unpaid.
- (2) The plantation licensee or plantation sublicensee may recover the fee or amount in any court of competent jurisdiction by action as for a debt.
- (3) The plantation licensee or plantation sublicensee may bring the action in its own name.

**89 Recovery of moneys due**

- (1) All moneys due to the Crown in respect of the sale of any forest products or quarry material or in respect of any royalty or stumpage on any forest products or quarry material got in pursuance of this Act or in respect of any loss or damage (including under section 88(2C)) to any forest products or quarry material, the property of the Crown or in respect of any other matter or thing whatsoever under this Act may be recovered by the State in any court of competent jurisdiction by action as for a debt.
- (1A) All moneys owing to a plantation licensee or plantation sublicensee in relation to any loss or damage (including under section 88(2C)) to natural resource product or quarry material the property of the plantation licensee or plantation

sublicensee may be recovered by the plantation licensee or plantation sublicensee in any court of competent jurisdiction by action as for a debt.

- (2) Where the liability for the payment of moneys due or owing under subsection (1) or (1A) arises by reason of, or in connection with, a contravention of this Act, such moneys shall be recoverable under this Act in relation to the conduct constituting the contravention whether proceedings in respect of that contravention are commenced or not and whether any person is convicted therefor or not.
- (3) The provisions of this section are in addition to and not in diminution of or substitution for the provisions of any other enactment of this Act.

#### **91 Power to waive proceedings**

(1AA) This section does not apply to natural resource product in a licence area that is got, ringbarked, destroyed, damaged, used, marked or in any way interfered with by the plantation licensee or any plantation sublicensee for the licence area or any employee, agent, contractor, customer or invitee of the plantation licensee or plantation sublicensee.

- (1) Where any forest products are or any quarry material is got, ringbarked, destroyed, damaged, used, marked or in any way interfered with in contravention of this Act the chief executive may demand payment of—
  - (a) the value of such forest products or quarry material; and
  - (b) the value of the damage to the forest and any property of the State occasioned by the contravention; and
  - (c) the cost and expense of the investigation by or on behalf of the chief executive of the contravention;

in such amount or amounts as the chief executive determines, from the person who actually committed the contravention of this Act or, where the contravention has occurred by reason of

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any instruction or information given by any other person, from that other person.

- (1A) Upon payment to the chief executive by the person upon whom such demand is made of the amount or amounts so demanded the chief executive may, in the chief executive's discretion, allow such person to gather and remove the whole or any part of the forest products or quarry material in relation to which the contravention of this Act occurred and to retain the same.
- (1B) Where 2 or more persons have given any instruction or information, by reason of which the contravention of this Act was committed, demand under subsection (1) shall be made on the person who first gave that instruction or information.
- (1C) Any amount so demanded and not paid may be recovered by the State by summary proceedings upon complaint or by action as for a debt in any court of competent jurisdiction.
- (1D) A proceeding or action under this section for the recovery of any amount may be commenced whether or not proceedings for prosecution of an offence against this Act are commenced or not and whether any person is convicted therefor or not.
- (1E) For the purposes of this section the value of any tree shall be taken to be the sale price ordinarily obtainable on the sale of the tree as it stood immediately before the act that has rendered the person concerned liable under this section to a demand upon the person by the chief executive.
- (2) Notwithstanding the provisions of subsection (1) and anything done or omitted to be done thereunder, the chief executive may, at any time, either before or after making a demand upon any person, sell all or any part of the forest products or quarry material affected by the act which has rendered any person liable to a demand thereunder on such terms and conditions as the chief executive thinks fit.
- (3) The net proceeds of any such sale may be applied towards the reduction of the value demanded or to be demanded by the chief executive under this section.

- (4) Should the net proceeds of any such sale equal or exceed the value demanded, or to be demanded, by the chief executive under this section then the person upon whom the demand has been made, or would otherwise have been made, shall not be required to make a payment in respect of the value of the forest products or quarry material so sold.
- (5) For the purposes of subsections (3) and (4)—
- net proceeds* means the proceeds of the sale of any forest products or quarry material less such expenses incurred in relation to—
- (a) such forest products or quarry material with a view to the sale thereof or, any part thereof; and
  - (b) the sale of such forest products or quarry material or any part thereof;
- as the chief executive may determine.

**92 All moneys to be property of Crown**

- (1) All debts and other moneys whatsoever for the time being owing to the chief executive under this Act by any person on any account whatsoever, are hereby declared to be the property of the Crown and recoverable as from debtors to the Crown with such interest (if any) as prescribed.
- (2) **Recovery of moneys**
- Any money due to the Crown under this Act may be recovered by summary proceedings on complaint, or by action as for a debt in any court of competent jurisdiction.
- (3) The several remedies for the recovery of amounts of fees, rents, charges, royalties, stumpages and other sums payable under this Act and not paid shall be alternative and no such remedy shall prejudice or otherwise affect any other excepting that resort shall not be had to more than 1 such remedy in respect of any 1 and the same amount of fees, rents, charges, royalties, stumpages or other sums so payable.

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**93 Judicial notice**

- (1) Judicial notice shall be taken of—
  - (aa) the boundaries of every State plantation forest; and
  - (a) the boundaries of every State forest and timber reserve; and
  - (b) every notification under this Act published in the gazette.

**(2) Timber presumed to be property of Crown**

When in any proceedings under or for the purpose of this Act a question arises as to whether any forest products or quarry material are the property of the Crown, such forest products or quarry material shall be presumed to be the property of the Crown until the contrary is proved.

**94 Mistaken belief as to boundaries**

- (1) In every case of a sale of any forest products or quarry material situated on any land or part of any land whereon forest products or, as the case may be, quarry material are not the property of the Crown and which land or part thereof is adjoining or situate in the vicinity of lands whereon the forest products or, as the case may be, quarry material are the property of the Crown, it shall be the duty of the seller to clearly and correctly indicate to the buyer and of the buyer clearly and correctly ascertain the boundaries of that land or, as the case may be, part.
- (2) Any person who is charged with an offence against this Act with respect to the getting, ringbarking, destroying, damaging, or other interference with any earth, forest products or quarry material, or with respect to trespass or encroachment upon, or unlawful use of, any State forest or timber reserve, shall not escape liability for that offence by pleading any mistaken belief as to the situation of the boundaries of any land or part of any land whereon the person was lawfully entitled to get, ringbark, destroy, damage, or otherwise interfere with any

forest products, quarry material, or, as the case may be, earth, or of that State forest or, as the case may be, timber reserve.

**95 Facilitation of proof**

In any proceedings under or for the purpose of this Act—

- (a) it shall not be necessary to prove the appointment of any person performing duties under this Act, or the authority of any person performing duties under this Act, to do any act or to take the proceedings or to give any direction or order, but this shall not prejudice the right of any defendant to prove the extent of such authority;
- (b) a signature purporting to be that of any person performing duties under this Act shall be taken to be the signature it purports to be until the contrary is proved;
- (c) it shall not be necessary to prove the limits of any area or locality whatsoever, or that any place is within a State forest or timber reserve, or an area or a locality, or part thereof, but this shall not prejudice the right of any defendant to prove the limits of the area or locality or that any place is not within the State forest or timber reserve, area, or locality, or part thereof;
- (d) a document purporting to be a duplicate or a copy of a lease, permit, licence, certificate, or other authority, agreement or contract, notice, or order granted, given or made under this Act shall, upon its production in evidence, be evidence of that lease, permit, licence, certificate, other authority, agreement or contract, notice, or, as the case may be, order, and in the absence of evidence in rebuttal thereof, shall be conclusive evidence thereof;
- (e) a document purporting to be made by the chief executive and stating that at any specified time there was or was not in force a lease, agreement, contract, permit, licence, certificate, or other authority, as described therein granted, given or made under this Act to or with a

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specified person, and, if stated therein, that such lease, agreement, contract, permit, licence, certificate, or other authority was or was not subject to terms, conditions, or restrictions, or was or was not issued or made subject to the provisions, conditions, and restrictions set out in that document, or that at any specified time a specified person was or was not exempted from any specified provisions of this Act, shall, upon its production in evidence, be evidence of the matters in that document, and in the absence of evidence in rebuttal thereof, shall be conclusive evidence of such matters;

- (f) a document purporting to be a copy of any letter or telegram and purporting to be made by the chief executive and purporting to authorise any person to institute any legal proceedings shall be admissible in evidence at the proceedings, and shall be accepted as evidence of the authority of the person to institute and prosecute the proceedings;
- (g) the averment in any complaint of the date on which the commission of any offence under this Act came to the knowledge of the complainant shall be evidence of that matter and in the absence of evidence in rebuttal shall be conclusive evidence of such matter;
- (h) where an offence is committed by a person in respect of more than 1 Crown holding or area of Crown lands, or State forest, timber reserve, reserve for public purposes, or road, or any combination of these, a complaint may aver that the offence has been so committed and it shall not be necessary to show the extent of the offence in respect to any 1 of such areas;
- (i) a map or plan purporting to be made by the chief executive or by a person performing duties under this Act, or purporting to be issued or published by any department of the government or any officer thereof, shall, upon its production in evidence, be evidence of the matters stated or delineated thereon, and in the

absence of evidence in rebuttal thereof, shall be conclusive evidence of such matters;

- (j) copies of any plans, sections, specifications and books of reference relating to matters arising under this Act, or of any alteration or correction thereof, or extracts therefrom, certified by a person performing duties under this Act in that behalf to be true copies or, as the case may be, extracts thereof (which certificates such officer shall give to all parties interested when required, on payment of such fees as are prescribed) shall, upon production in evidence, be evidence of the contents thereof, and in the absence of evidence in rebuttal thereof, shall be conclusive evidence of the contents thereof;
- (k) a document purporting to be made by the chief executive and certifying that the amount of fees, royalties, stumpages, rents, compensation, costs, charges, expenses, or other sums specified therein is payable under this Act and has not been paid by a specified person shall, upon its production in evidence, be evidence of the matter or matters certified to therein, and in the absence of evidence in rebuttal thereof shall be conclusive evidence of such matter or matters;
- (l) any document whatever purporting to be issued or written by or under the direction of the chief executive shall be received in evidence and shall be deemed to be issued or written by or under the direction of the chief executive until the contrary is proved: (The expression *document* includes any order, direction, and notice).

**96 Acknowledgment of service**

A person or the person's manager, servant, or agent shall, if thereunto required by a person performing duties under this Act, acknowledge any notice, order, direction, or other document given, delivered, or served under this Act, by

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signing the original or, as the case may be, duplicate copy retained by the person performing duties under this Act.

**96AA Delegation by Minister**

The Minister may delegate the Minister's functions and powers under parts 6D and 6E to the chief executive.

**96A Delegation by chief executive—general**

(1) The chief executive may delegate the chief executive's powers under this or another Act to an appropriately qualified officer or employee of a department responsible for the administration of this Act.

(2) In subsection (1)—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person's classification level in the public service

**96B Delegation by chief executive—State plantation forests**

(1) Without limiting section 96A, the chief executive may delegate the chief executive's functions under sections 21(2), 34AA, 34AB, 34G, 35(1)(a), (c) or (d) and (2), 55 (other than section 55(1)(g) or (h)), 56 (other than the function of granting sales permits for the sale of natural resource product from a licence area), 58, 59, 69D, 72, 73(2) and section 84(3) (to the extent it applies to plantation officers) to—

- (a) a plantation licensee; or
- (b) a plantation sublicensee; or
- (c) a plantation manager; or
- (d) a plantation officer; or

- (e) a registered mortgagee or an enforcing party exercising power under section 61SQ.

*Note—*

A plantation licensee or plantation sublicensee may not exercise power under section 56 to grant sales permits for the sale of natural resource product from its licence area but it can contract with other persons to sell natural resource product on its licence area under section 61QD.

- (1A) Also, without limiting section 96A, the chief executive may delegate the chief executive's functions under section 82O to a plantation licensee.
- (2) The chief executive may also delegate the chief executive's functions under sections 17, 17C and 17E to appoint plantation officers to—
- (a) a plantation licensee; or
- (b) a plantation sublicensee; or
- (c) a plantation manager; or
- (d) a registered mortgagee or an enforcing party exercising power under section 61SQ.
- (3) Further, the chief executive may delegate a function under section 83A(1) about reviewable decisions under section 35 or 55 to a person having management responsibility for a plantation licensee or plantation sublicensee.
- (4) A function delegated under subsection (1)—
- (a) is limited in its application to the relevant licence area; and
- (b) if the delegated function authorises the erection or display of regulatory notices under section 34AA or 34AB or a notice under section 34G, may be exercised only for the following purposes—
- (i) the protection of the health and safety of persons;

*Example—*

- prohibiting or limiting access to an area when tree felling is happening

- (ii) the protection of a plantation licensee's or plantation sublicensee's interests;

*Example—*

- prohibiting or limiting access to an area of young trees at risk of damage because of careless behaviour or general use of the area

- (iii) the proper maintenance of roads and tracks.

*Example—*

- prohibiting or limiting use of an unformed road to protect it from traffic damage after heavy rain

- (5) Subsection (6) applies if, in relation to a function of the chief executive delegated under this section to a plantation licensee or plantation sublicensee (each a *delegate*) or an appointed person and performed by a delegate or an appointed person, the State is entitled to receive a fee prescribed under a regulation or another amount under this Act in connection with the performance of the function (each a *relevant amount*).

- (6) A relevant amount—

- may be recovered by the delegate who performed the function or appointed the appointed person who performed the function; and
- if received or recovered by the delegate who performed the function or appointed the appointed person who performed the function, may be retained by the delegate; and
- does not form part of the consolidated fund.

- (7) Subsection (6) does not apply to the performance of a function, or a fee received, under section 72.

- (8) In this section—

*appointed person* means a plantation officer or plantation manager.

*function* includes power.

*relevant licence area* means—

- (a) for a plantation licensee—the licence area for the plantation licensee’s plantation licence; or
- (b) for a plantation sublicensee—the licence area for the plantation sublicensee’s plantation sublicense; or
- (c) for a plantation manager—the licence area or part of the licence area for which the plantation manager is appointed; or
- (d) for a plantation officer—the licence area for which the plantation officer is appointed.

**96C Delegation by chief executive (lands)**

- (1) The chief executive (lands) may delegate his or her functions under this Act to an appropriately qualified public service officer.
- (2) In subsection (1)—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person’s classification level in the public service

*function* includes power.

**96D Delegation by FPQ and head of FPQO**

- (1) Without limiting any other power of delegation under another Act, FPQ and the head of FPQO may delegate its or his or her functions under this or another Act to—
  - (a) a declared entity within the meaning of the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*; or
  - (b) an appropriately qualified person who is an employee of an entity mentioned in paragraph (a).

- (2) In this section—

*appropriately qualified*, for the performance of a function, includes having the qualifications, experience or standing appropriate to perform the function.

*function* includes power.

### **96E Protection of State officials and the State from liability**

- (1) A State official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a State official, the liability attaches instead to the State.
- (3) Also, the State or a State official is not civilly liable in a designated proceeding for an act done, or omission made, in—
- (a) the performance or purported performance of a function under this Act; or
  - (b) the exercise or purported exercise of a power under this Act; or
  - (c) the management or operation of a State forest or timber reserve.
- (4) This section is subject to section 96G.
- (5) In this section—

*damages* includes any form of monetary compensation.

*designated proceeding* means a proceeding for damages based on a liability for personal injury, damage to property or economic loss resulting from personal injury or damage to property, and, for a fatal injury, includes a proceeding for the deceased's dependants or estate.

*personal injury* see the *Civil Liability Act 2003*, schedule 2.

*State official* means—

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- (a) the Minister; or
- (b) the chief executive; or
- (c) a forest officer; or
- (d) a public service employee or another employee of the State; or
- (e) a person acting, on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses), under the direction of a person mentioned in paragraph (a), (b), (c) or (d).

**96F Protection of plantation officials and licensees from liability**

- (1) A plantation official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a plantation official, the liability attaches instead to the plantation licensee who employed the official when the act was done or the omission was made.
- (3) Also, a plantation licensee or plantation official is not civilly liable in a designated proceeding as defined under section 96E for an act done, or omission made, in—
  - (a) the performance or purported performance of a function under this Act; or
  - (b) the exercise or purported exercise of a power under this Act.
- (4) This section is subject to section 96G.
- (5) In this section—

*plantation official* means—

  - (a) a plantation officer; or
  - (b) an employee of a plantation licensee; or

- (c) a person acting, on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses), under the direction of a person mentioned in paragraph (a) or (b).

**96G Exception to protections against designated proceeding**

- (1) This section applies if, other than for this section, an entity would not be civilly liable for an act or omission because of section 96E(3) or 96F(3) (the *protection*).
- (2) The protection does not apply to liability—
  - (a) arising from the entity's—
    - (i) construction, installation or maintenance of a relevant fixture, or a road, that is defective other than because of a natural event; or
    - (ii) failure to give adequate notice of a relevant fixture, or a road, that is defective other than because of a natural event; or
    - (iii) carrying out of a non-exempt activity; or

*Examples of a natural event—*  
a storm, flood, period of heavy rain
  - (b) for an MAIA injury incurred by the entity as an insured person; or
  - (c) for an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003* (the *WCA*) incurred by the entity in the entity's capacity as an employer.
- (3) For subsection (2)(c), the following is immaterial—
  - (a) whether compensation for the injury is actually claimed under the WCA;
  - (b) whether the entitlement to seek damages as defined under section 96E for the injury is regulated under the WCA.

(4) In this section—

**compensation** see the WCA, section 9.

**defective** includes damaged or destroyed.

**insured person** see the *Motor Accident Insurance Act 1994* (the **MAIA**), section 4.

**MAIA injury** means a personal injury as defined under section 96E to which the MAIA applies.

**non-exempt activity** means the following—

- (a) if the entity is the State or a State official, an activity (a **programmed activity**) that is the programmed—
  - (i) shooting or poisoning of animals; or
  - (ii) burning or poisoning of vegetation;
- (b) if the entity is a plantation licensee or plantation official—
  - (i) a programmed activity conducted by or for a plantation licensee; or
  - (ii) an activity related to plantation forestry.

**relevant fixture** means a building, structure or other thing constructed or installed by or for the following—

- (a) if the entity is the State or a State official—the State;
- (b) if the entity is a plantation licensee or plantation official—a plantation licensee.

*Examples—*

- a lookout or boardwalk
- a stairway
- a fence or other barrier
- the following and anything else used for a recreational purpose—
  - a flying fox ride or zipline ride
  - a rope or swing over a river or waterhole
  - a ramp or jump on a mountain bike trail

- an anchor point for rock climbing

**road—**

- (a) generally—see the *Transport Operations (Road Use Management) Act 1995*, schedule 4; and
- (b) if the entity is the State or a State official—includes a State-controlled road as defined under the *Transport Infrastructure Act 1994*, schedule 6.

**97 Regulation-making power**

- (1) The Governor in Council may from time to time make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, without limiting the generality of the foregoing provisions of this section, regulations may be made for or in respect of all or any of the purposes, matters, and things set forth in schedule 2.
- (2) The power to make with respect to State forests, timber reserves, forest products, quarry material, or matters or things whatsoever, any regulation under this Act shall include power to make that regulation so that it may be of general or specially limited application according to time, place, purposes, classes, or circumstances, or otherwise as is prescribed, and so that any regulation or specially limited application may or may not differ from any other regulation of specially limited application with respect to the same persons, matters, or things.
- (3) The power to make regulations with respect to any matter shall include power to make regulations under this section prohibiting that matter either generally or to meet particular cases.

**98 Misnomer, inaccurate description etc.**

- (1) No misnomer, inaccurate description, or omission in or from any proclamation, order in council, regulation, order, or notification, shall in anywise prevent or abridge the operation of this Act with respect to the subject matter of that misnomer, inaccurate description, or omission provided the same is designated so as to be understood.
- (2) No proclamation, order in council, or notification purporting to be made under this Act and being within the powers conferred on the Governor in Council or other authority shall be invalid on account of any non-compliance with any of the matters required by this Act as preliminary to the same.

**102 Saving of certain Acts**

- (1) Unless otherwise expressly provided, the provisions of this Act are in addition to, and do not limit the operation of, the following Acts—
  - (a) *Biodiscovery Act 2004*;
  - (b) *Criminal Code*;
  - (c) *Fire and Emergency Services Act 1990*;
  - (d) *Nature Conservation Act 1992*;
  - (e) *Petroleum (Submerged Lands) Act 1982*.
- (2) If there is any inconsistency between this Act and the *Petroleum (Submerged Lands) Act 1982*, the later Act is to prevail to the extent of the inconsistency.

**103 Existing orders in council**

- (1) An order in council in force under section 25, 27, 28 or 34A immediately before the commencement of this section continues to have effect after the commencement, and may be repealed or amended as if it were a regulation.

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- (2) Without limiting subsection (1), but despite section 26(2), an order in council setting apart and declaring a State forest may be repealed by a regulation without the resolution of the Legislative Assembly if the area of land comprising the State forest is set apart and declared as a State forest under the regulation.

**104 Delegations continue until revoked**

A delegation made by the chief executive under the *Primary Industries Corporation Act 1992*, section 10, before the commencement of this section—

- (a) is taken to have been made by the chief executive under this Act; and
- (b) continues to have effect until revoked by the chief executive.

**Part 10 Transitional provisions**

**Division 1 Forestry Plantations Queensland Act 2006**

**117 Permits and licences etc. relating to State plantation forests**

- (1) This section applies to a relevant authority granted or made by the chief executive—
- (a) in relation to land in a State plantation forest or a forest product from a State plantation forest; and
- (b) that is in force immediately before this part commences.
- (2) From the commencement of this part, the authority is taken to have been granted or made—

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- (a) by the administering entity for the provision under which the authority was granted or made; and
  - (b) subject to the power of the administering entity to cancel, suspend or forfeit the authority under section 58(1), as if the authority had been granted or made by the administering entity after that commencement.
- (3) If the authority was granted or made subject to a condition mentioned in section 58(1A) in relation to relevant natural resource products, section 58(1A) and the condition apply, with any necessary changes, as if the money to which the section and condition apply were payable to FPQ.
- (4) Subsections (2) and (3) apply despite section 58.
- (5) In this section—
- administering entity* see section 61L.
- relevant authority* means—
- (a) a permit under section 35; or
  - (b) a licence under section 55; or
  - (c) a permit, licence, lease or another authority, or an agreement or contract, under section 56;
- and does not include—
- (d) an instrument or authority mentioned in paragraphs (a) to (c) that relates to, or to the extent it relates to, quarry material.

## **Division 2                      Natural Resources and Other Legislation Amendment Act 2010**

### **118      Definitions for div 2**

In this division—

*2010 Amendment Act* means the *Natural Resources and Other Legislation Amendment Act 2010*.

**administering entity** has the meaning given by repealed section 61L.

**administering party**, in relation to an FPQ sales permit, means—

- (a) if there is a plantation sublicensee for the licence area in relation to which the FPQ sales permit is operative—the plantation sublicensee; or
- (b) otherwise—the plantation licensee for the licence area in relation to which the FPQ sales permit is operative.

**commencement** means—

- (a) for section 121—the day on which the section commences; or
- (b) otherwise—the day on which section 119 commences.

**FPQ sales permit** means a permit, licence, lease or another authority, or an agreement or contract, under section 56 granted or made by an administering entity, including by acting under repealed section 61M, under which its holder is entitled to take natural resource product in the form of plantation timber from a future licence area.

**future licence area** means an area that, immediately before the commencement, is in a State plantation forest, and that, after the commencement, becomes a licence area.

**Infrastructure Act** means the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

**old**, in relation to a provision of this Act, means the provision as in force immediately before its amendment by the 2010 Amendment Act.

## 119 Provision for s 17 (Appointment of officers)

- (1) This section applies to a person who, before the commencement, is an employee of FPQO and appointed by FPQO as a forest officer if—

- (a) the person is transferred or seconded to a declared entity under the Infrastructure Act, section 9(1)(k); and
- (b) the declared entity—
  - (i) enters into an agreement with the Minister under section 61QA(1); or
 

*Note—*  
An agreement under section 61QA(1) is a plantation licence.
  - (ii) becomes a plantation sublicensee; or
  - (iii) is appointed, with the Minister’s approval, under section 61QG or 61QQ as a plantation manager for a licence area or part of a licence area.
- (2) The person’s appointment as a forest officer ends and the person is taken to have been appointed as a plantation officer for the licence area or part by the chief executive under section 17—
  - (a) if subsection (1)(b)(i) applies—on the entry into the agreement mentioned in the provision; or
  - (b) if subsection (1)(b)(ii) applies—on the day on which the declared entity becomes a plantation sublicensee; or
  - (c) if subsection (1)(b)(iii) applies—on the appointment of the declared entity as a plantation manager for a licence area or part of a licence area.

**120 Provision for s 34AA or 34AB**

A notice mentioned in section 34AA(1) or (2) or 34AB(1) erected or displayed by an administering entity, including by acting under repealed section 61M, and having effect immediately before the commencement is taken, immediately after the commencement, to have been authorised by the chief executive under section 34AA(1) or (2) or 34AB(1) as appropriate and continues to have effect accordingly.

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

- (1) This section applies if—
  - (a) immediately before the commencement, the whole or a part of a State forest was declared to be a feature protection area or scientific area under old section 34A (*declared land*); and
  - (b) immediately after the commencement, the declared land is also State plantation forest.
- (2) Despite the amendment of old section 34A by the 2010 Amendment Act, declared land continues after the commencement to be a feature protection area or scientific area.
- (3) After the commencement, the Governor in Council may, by regulation and despite the amendment of old section 34A, continue to exercise power under old section 34A to revoke or amend a declaration in relation to declared land.

**122 Provision for s 34G (Regulating movement of vehicles on feature protection areas etc.)**

A notice mentioned in section 34G(1) erected by the chief executive or an administering entity, including by acting under repealed section 61M, and having effect immediately before the commencement is taken, after the commencement, to have been erected by the chief executive under section 34G(1) and continues to have effect accordingly.

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

- (1) A notice mentioned in section 34H(1) erected by the chief executive or an administering entity, including by acting under repealed section 61M, and having effect immediately before the commencement is taken, after the commencement, to have been erected by the chief executive under section 34H(1) and continues to have effect.

- (2) Subsection (1) does not prevent the chief executive from exercising power to remove the notice after the commencement.
- (3) A form approved for use in relation to self-registration camping areas by an administering entity or the chief executive immediately before the commencement may continue to be used after the commencement until another form is approved for use by the chief executive.

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

- (1) This section applies to a permit or the extension of a permit under section 35 granted or made by an administering entity, including by acting under repealed section 61M, that is in force or of effect immediately before the commencement.
- (2) After the commencement, the permit—
  - (a) continues in force or effect; and
  - (b) is taken to have been granted or made by the chief executive.

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

- (1) This section applies to a licence under section 55 granted by an administering entity, including by acting under repealed section 61M, that is in force immediately before the commencement.
- (2) After the commencement, the licence—
  - (a) continues in force; and
  - (b) is taken to have been granted by the chief executive.

**126 Provision for s 56 (Permits etc.)—general**

- (1) This section applies to an existing authority, other than an FPQ sales permit, granted or made by an administering entity,

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including by acting under repealed section 61M, and in force immediately before the commencement.

- (2) After the commencement, the existing authority—
- (a) continues in force; and
  - (b) is taken to have been granted or made by the chief executive.

- (3) In this section—

*existing authority* means a permit, licence, lease or another authority, or an agreement or contract, under section 56.

**127 Provision for s 56 (Permits etc.)—administering party for FPQ sales permits**

After the commencement, an FPQ sales permit—

- (a) continues in force; and
- (b) is taken to have been granted or made by the administering party.

**128 Provision for s 56 (Permits etc.)—application of relevant provisions or FPQ sales permits**

- (1) In relation to an FPQ sales permit, a function conferred on the chief executive under a relevant provision must be performed by the administering party.
- (2) Power to cancel or suspend an FPQ sales permit under section 58(1) or (1B) may be exercised by the administering party only in relation to an act, omission or event that, under the express terms and conditions of the FPQ sales permit or any contract (*related contract*) between the administering party and the permittee in relation to the same subject matter, enables the administering party to terminate the FPQ sales permit.

- (3) Subsection (2) does not apply to an FPQ sales permit if neither the FPQ sales permit nor any related contract contains any express term or condition dealing with its termination.
- (4) A person dissatisfied with a decision of the administering party to cancel or suspend an FPQ sales permit if subsection (2) does not apply may ask the chief executive to review the decision within 28 days after receiving written notice of the decision.
- (5) The chief executive—
  - (a) may—
    - (i) reinstate the FPQ sales permit; or
    - (ii) confirm the administering party's decision; or
    - (iii) make another decision that the chief executive considers appropriate; and
  - (b) must give the person and the administering party a statement of reasons for his or her decision.
- (6) For this section—
  - (a) in a relevant provision—
    - (i) a reference to the chief executive, the State or the Crown is taken to be a reference to the administering party; and
    - (ii) a reference to a forest officer is taken to be a reference to a plantation officer employed by the administering party; and
  - (b) in section 88(2C), to the extent it applies to an offence relating to a contravention of an FPQ sales permit, a reference to the State is taken to be a reference to the administering party; and
  - (c) in section 89, to the extent it applies to moneys due in relation to natural resource product under an FPQ sales permit, royalty or stumpage on natural resource product got under an FPQ sales permit or loss or damage to natural resource product (including loss or damage

occasioned by an employee, contractor, agent or invitee of the holder), or any other matter or thing relating to an FPQ sales permit, a reference to the Crown or the State is taken to be a reference to the administering party.

(7) In this section—

*function* includes power.

*relevant provision* means each of the following—

- (a) section 5, to the extent it is relevant to another relevant provision;
- (b) section 56(1), to the extent it relates to an extension of an FPQ sales permit;
- (c) part 4;
- (d) sections 58, 59, 61(1A) and 80;
- (e) sections 88(3), 89, 91 and 92.

## **129 Provision for s 73 (Unlawfully using State forests etc.)**

- (1) This section applies to a permit under section 73(2) granted by an administering entity, including by acting under repealed section 61M, that is in force immediately before the commencement.
- (2) After the commencement, the permit—
  - (a) continues in force; and
  - (b) is taken to have been granted by the chief executive.

## **130 References to FPQ**

In an Act or document, a reference to any of the following in relation to a State plantation forest or part of a State plantation forest may, if the context permits, be taken as a reference to the plantation licensee or a plantation sublicensee for the relevant licence area in the State plantation forest or part—

- (a) FPQ;

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- (b) the chief executive of FPQ;
- (c) the head of FPQO.

**131 Dissolution of corporation sole under the Forestry Plantations Queensland Act 2006**

The corporation sole constituted by the chief plantation forestry officer under the *Forestry Plantations Queensland Act 2006* is dissolved.

**Division 3 Amendments under Waste Reduction and Recycling Act 2011**

**133 Existing State forest or timber reserve**

- (1) This section applies to a State forest or timber reserve declared and set apart under this Act as in force immediately before the commencement of this section.
- (2) As soon as practicable after the commencement, the chief executive must give the chief executive (lands) written notice of the existence of the State forest or timber reserve.
- (3) To remove any doubt, it is declared that section 32AB does not apply to the State forest or timber reserve.

**Division 4 Amendments under Forestry and Another Act Amendment Act 2014**

**134 Definition for div 4**

In this division—

*old*, in relation to a provision, means the provision as in force immediately before the commencement of the *Forestry and Another Act Amendment Act 2014*.

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**135 Certificates of appointment**

- (1) This section applies to a person who held an appointment as a forest officer or plantation officer immediately before the commencement of this section.
- (2) On and after the commencement, the person's certificate of appointment is taken to be an instrument of appointment.
- (3) Also, the person's certificate of appointment is taken to be the person's identity card until whichever of the following happens first—
  - (a) 1 year after the commencement;
  - (b) the day when the person is issued an identity card under section 17C or subsection (4).
- (4) The chief executive may issue an identity card to a forest officer or plantation officer until the commencement of section 17C.
- (5) The identity card must—
  - (a) contain a recent photo of the person; and
  - (b) contain a copy of the person's signature; and
  - (c) identify the person as a forest officer or plantation officer under this Act; and
  - (d) state an expiry date for the card.
- (6) An identity card issued under this section is taken to be an identity card issued under section 17C, until the identity card expires.
- (7) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

**136 Existing directions**

- (1) This section applies if a direction was given to a person and was still in effect before the commencement of this section.

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- (2) On and after the commencement, the direction is taken to continue in effect and to comply with any necessary requirements under the Act.

**137 Existing notices under ss 34AA and 34G**

- (1) This section applies if a notice under the old section 34AA, 34AB or 34G is on display before the commencement of this section.
- (2) On and after the commencement, the notice is taken to be a notice under, and in accordance with, section 34AA, 34AB or 34G.

**138 Existing applications for permits to camp**

- (1) This section applies if, before the commencement of this section—
  - (a) a person applied to the chief executive for a permit to camp under the old section 35; and
  - (b) the application has not been decided.
- (2) On and after the commencement, the application is taken to be an application for a camping permit under section 35.

**139 Existing permits to camp**

- (1) This section applies if, immediately before the commencement of this section—
  - (a) a person held a permit to camp under the old section 35 or 35A; and
  - (b) the permit was still in force.
- (2) The permit is taken to be camping permit, until the day the permit would have ended under the old section 35 or 35A.

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**Division 5**                      **Transitional provisions for  
Recreation Areas Management and  
Another Act Amendment Act 2014**

**140**      **Permits for group activities granted before the  
commencement**

- (1) A permit for the conduct of a group activity in a State forest or timber reserve that is in force immediately before the commencement continues in force and the unamended Act continues to apply for the conduct of the activity as if the amendment Act, part 2 had not been enacted.

- (2) In this section—

*amendment Act* means the *Recreation Areas Management and Another Act Amendment Act 2014*.

*unamended Act* means the Act as in force immediately before the commencement of the amendment Act, part 2.

**141**      **Applications for permits for group activities made before  
commencement**

An application for a permit to conduct a group activity made but not decided before the commencement is taken to be an application for a permit to conduct an organised event.

**142**      **References to group activity or group activity permit**

- (1) A reference in an Act or document to a group activity may, if the context permits, be taken to be a reference to an organised event.
- (2) A reference in an Act or document to a group activity permit may, if the context permits, be taken to be a reference to a permit for an organised event.

## Schedule 2      Subject matters for regulations

section 97

### 1      **Officers**

Prescribing the powers, functions, authorities and duties of forest officers and other persons performing duties under this Act.

### 2      **Training of officers**

Providing for the training of officers.

### 3      **Mode of action etc.**

Prescribing and defining the manner of doing or performing any act or thing under or for the purposes of this Act, and the time when or within which it shall be done or performed.

### 4      **State forests and timber reserves**

#### (1) Regulating and controlling—

- (a) the management and control of State forests or timber reserves;
- (b) the conduct and duties of persons in State forests or timber reserves;
- (c) recreational and commercial activities within State forests or timber reserves.

(2) Providing for the payment of charges for the use of facilities and improvements on State forests or timber reserves and prescribing the amount thereof.

(3) Providing for camping fees payable in relation to camping in State forests and timber reserves.

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**4A State forest parks, feature protection areas and forest drives**

- (1) Regulating and controlling recreational activities in or on State forest parks, feature protection areas and forest drives.
- (2) The regulations may vary in respect of different State forest parks, feature protection areas and forest drives.

**5 Use etc. of buildings**

Providing for, regulating and controlling the use, management, and letting of any building or structure or other improvement the property of the State or FPQ.

**6 Method of getting and disposal**

Prescribing, regulating, and controlling the method, system, or order of getting and disposal of quarry material and forest products within all or any parts of State forests and timber reserves, or other prescribed lands whereon quarry material or forest products are the property of the Crown or FPQ.

**7 Permits etc.**

- (1) Prescribing, regulating, and controlling applications for, and the granting and issuing of leases, permits, licences, and other authorities, and the entering into agreements and contracts, under or for the purposes of this Act.
- (2) Prescribing the provisions, conditions, and reservations subject to which all or any such leases, permits, licences, other authorities, agreements and contracts shall be granted or made, held, transferred, mortgaged, extended, determined, cancelled, forfeited, surrendered, or withdrawn.
- (3) Prescribing, regulating, and controlling the exercise of the powers and authority conferred by leases, permits, licences, other authorities, agreements and contracts, and all or any matters incidental thereto.
- (4) Prescribing the conditions under which, and the period or maximum period for which, the obligations under this Act of

the holder of a lease, permit, licence, or other authority, or of a party to a contract or agreement to perform any conditions thereof may be suspended.

- (5) Prescribing the manner and form of forfeiture or cancellation or suspension of leases, permits, licences, other authorities, and agreements and contracts, and the conditions under which such may be made, and the procedure to be observed.

**8 Deposits etc.**

Prescribing the deposits to be lodged with an application or tender under this Act and prescribing the conditions under which such deposits may be forfeited.

**9 Auction etc. of forest products**

- (1) Prescribing and regulating the method and the procedure for the sale, whether by auction, tender or other method of sale, of forest products or quarry material, and enabling upset prices or minimum royalties, stumpages, or charges to be fixed.
- (2) Providing for the drawing up from time to time of price lists for various timbers and other forest products and various classes and specifications of timbers and other forest products whether in the forest or converted in any way or delivered to any place.

**10 Auction etc. of grazing permits etc.**

Prescribing the procedure for the sale by auction or tender or otherwise of rights, stock grazing permits, occupation permits, or apiary permits, and enabling upset prices or minimum charges to be fixed.

**11 Declarations etc.**

- (1) Providing in respect of forest products or quarry material, irrespective of source, for the making of declarations or statements in writing as to the quantity and description of forest products or quarry material got, held, treated,

consigned, or exported, or otherwise disposed of, and as to the place where any forest products or quarry material were obtained, and as to the place to which they were or were intended to be consigned or otherwise disposed of.

- (2) Prescribing the time within which such declarations or statements shall be made.

## **12 Inspection**

- (1) Providing for the inspection of forest products or quarry material for export and for local uses.
- (2) Prescribing the forms and certificates to be used, the fees to be paid, and the brands or marks to be used.

## **13 Grading**

Prescribing rules for the naming, classifying, and grading of timber and other forest products for export and for local use.

## **14 Sizes, quantities etc.**

- (1) Prescribing the kinds, sizes, and quantities of any forest products or quarry material which may be got.
- (2) Prohibiting the removal of any forest products or quarry material until branded or marked, or otherwise permitted by a forest officer.

## **15 Brands**

- (1) Prescribing for all or any purposes of this Act the mode in which any forest products are to be branded or marked, and the mode in which such brands or marks shall be registered.
- (2) Requiring the registration of brands by all or any timber-workers operating under agreements, contracts, permits, or licences.
- (3) Prescribing the manner of and the fees to be paid for all or any such registrations.

- (4) Requiring the holders of permits or licences and all owners of private forests to register and retain the use of a brand whereby timber or other forest products cut or removed under their permits or licences or cut in or removed from their holdings may be distinguished from any other timber or other forest products.
- (5) Prescribing the manner of and the fees to be paid for all or any such registrations.

**16 Records**

Prescribing the books and records to be kept and the returns to be made by persons working or taking delivery of forest products or quarry material.

**17 Production of permits etc.**

Requiring the production of any lease, permit, licence, or other authority, agreement or contract by the holder thereof, for the purpose of making an endorsement thereon, or for any other purposes.

**18 Fire prevention etc.**

Prescribing means for fire prevention and protection in State forests and timber reserves.

**19 Felling trees**

Regulating and controlling the felling or cutting of trees which are on any State forest or timber reserve.

**20 Prevention of pollution**

Prescribing with respect to the depositing or discharge of effluent, rubbish, refuse, garbage, litter or other matter whether in a solid or fluid state on State forests or timber reserves.

**22 Honorary rangers**

Prescribing the powers, functions and authorities of honorary rangers.

**23 Reservation of trees**

- (1) Reserving from sale any tree or kind or class of trees within State forests or timber reserves or other place whereon the forest products are the property of the Crown, either wholly or to such extent as is considered necessary.
- (2) Prohibiting the getting, destroying, or damaging of reserved trees.

**24 Forms**

Prescribing forms (including registers, records, books, documents, instruments, licences, permits, agreements, contracts, and other writings) under and for the purposes of this Act and the respective purposes for which such forms, or forms to the like effect, shall be used and specifying such information as is required to be contained in such forms, and requiring the verification of any statements inserted in or on any prescribed forms by declaration made under the *Oaths Act 1867*.

**25 Fees etc.**

Prescribing the matters or things in respect whereof fees, costs, royalties, stumpages, charges, and expenses shall be payable under this Act (including royalties, stumpages, and charges to be paid to the Crown or FPQ) in respect of any forest products or quarry material cut or got and removed pursuant to licences, permits, agreements or contracts under this Act, and the amounts of such fees, costs, royalties, stumpages, charges, and expenses, and prescribing the persons who shall be liable for the payment of such fees, costs, royalties, stumpages, charges, and expenses, and when such fees, costs, royalties, stumpages, charges, and expenses shall be payable and paid, and providing for the manner of

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Schedule 2

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payment thereof and for the recovery of any amount thereof not duly paid.

**26 Stock**

Prescribing all or any matters and things necessary or desirable with respect to the disposal of or dealing with stock found on State forests, timber reserves and forest entitlement areas.

**27 Penalties**

Prescribing a penalty of not more than 20 penalty units for a contravention of a regulation.

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## Schedule 3 Dictionary

## section 5

*accepted representations*, for part 6D, division 6, see section 61QZ(2).

*aircraft* includes a helicopter.

*animal life* means all mammals, birds, reptiles, frogs, fish, molluscs, crustaceans, insects, and all other species of animal life and the eggs and young thereof.

*apiary permits* see section 35(1)(d).

*application for division* see section 61RC.

*approved appliance* means a self-contained cooking, heating or lighting appliance that is portable and uses manufactured fuel, including kerosene, refined oil or gas.

*approved form* means a form approved by the chief executive (lands) under section 61RU.

*beds and banks*, used with reference to any watercourse the bed and banks thereof as defined in the *Water Act 2000* and where elevations or slopes of land contiguous to the bed and banks as hereinbefore in this definition defined of any watercourse confine or tend to confine the waters flowing in, into or out of such watercourse during the period of any flood or cyclone, the term *bed and banks* shall include all land covered by the waters so confined or tending to be so confined.

*camp* includes each of the following—

- (a) to pitch, place or erect a tent, caravan or other structure that may be used for camping to stay overnight by using the tent, caravan or structure;
- (b) to place camping equipment or a vehicle in position to stay overnight using the equipment or vehicle;

- (c) to keep a tent, caravan or other structure or camping equipment in position overnight, whether or not the tent, caravan, structure or equipment is attended;
- (d) to stay overnight, other than as part of an activity that—
  - (i) does not involve the use of camping equipment; and
  - (ii) is generally not considered to be camping.

**camping area** means a State forest, or a part of a State forest, stated in a camping notice to be a camping area.

**camping equipment** means equipment or other things used for camping.

**camping fee** see section 34H(3).

**camping fee container** see section 34I(1).

**camping fee envelope** see section 34I(3)(b).

**camping form** see section 34I(2).

**camping notice** see section 34H(2).

**camping permit** means a permit granted under—

- (a) section 35(1)(b);
- (b) section 35A(2), (3) or (4).

**camping tag** means a tag made available by the chief executive for display at a person's camp site to show that the person has a camping permit for the site.

**carbon abatement product**, for part 6C, see section 61K.

**carbon sequestration**, for living biomass including trees and vegetation, dead organic matter or soil, includes—

- (a) the process by which the biomass, matter or soil removes and stores carbon dioxide from the atmosphere; and
- (b) the use of the biomass, matter or soil to avoid, reduce or eliminate greenhouse gas emissions.

**chief executive (lands)** means the chief executive within the meaning of the *Land Act 1994*.

**commercial activity permit** means a permit for a commercial activity.

**compensation event**, for part 6D, see section 61Q.

**contiguous**, when used in relation to lands set apart and declared as State forests, or timber reserves, includes lands that are separated only by a road or roads or by a watercourse, body of water or other natural feature.

**conviction** includes a finding of guilt, and the acceptance of a plea of guilty by a court.

**Crown holding** means land—

- (a) held under the repealed *Land Act 1962* as a pastoral lease, stud holding, grazing homestead perpetual lease, special lease, development lease (issued on or after 31 December 1991), occupation licence, permissive occupancy or road licence; or
- (b) held as a perpetual town lease (non-competitive lease), perpetual suburban lease (non-competitive lease) or perpetual country lease (non-competitive lease)—
  - (i) that issued under the repealed *Land Act 1962* over Crown land on or after 31 December 1991; or
  - (ii) that issued on or after 31 December 1991 on an application under the repealed *Land Act 1962*, section 207 that was received—
    - (A) on or after 5 February 1990; or
    - (B) in respect of a lease issued under this Act and under an arrangement under the repealed *Industrial Development Act 1963*, section 9 or issued before the commencement of the repealed *Industrial Development Act 1963* under a recommendation of the Minister administering industrial development—on or after 3 October 1991; or
- (c) held as a term lease, a perpetual lease, a licence or permit issued under the *Land Act 1994*; or

- (d) held under a lease or licence prescribed under the regulations.

**Crown land** means all land in Queensland, except land which is, for the time being—

- (a) lawfully granted or contracted to be granted in fee simple by the Crown; or
- (b) reserved for or dedicated to public purposes; or
- (c) subject to any lease or licence lawfully granted by the Crown; or
- (d) set apart and declared as a State forest, protected area or timber reserve or deemed so to be.

However, land held under an occupation licence, other than an occupation licence referred to in the definition *Crown holding*, and an occupation licence granted over a timber reserve or any part thereof, shall be deemed to be **Crown land**.

**deed of grant** means land granted in fee simple under the *Land Act 1994*, and includes an indefeasible title under the *Land Act 1994*.

**destroy**, used in relation to any tree, means cut down, fell, ringbark, push over, poison or destroy by any means whatsoever.

**development agreement** [see the \*Forest Wind Farm Development Act 2020\*, section 6.](#)

**enforcement warrant**, for part 6E, division 9, see section 61SU.

**enforcing party** means a person appointed by a mortgagee under a registered mortgage.

**entrance**, in relation to a State forest, timber reserve or forest entitlement area, is an area of land—

- (a) developed with the authority of the chief executive for use as a vehicular or walking entrance; and
- (b) that is commonly used by people for the purpose of driving or riding vehicles or walking into the State forest, timber reserve or forest entitlement area.

***e-permit camping area*** means a State forest, or a part of a State forest, stated to be an e-permit camping area by a camping notice.

***existing lease***, for part 6B, see section 61JA(1).

***feature protection area*** means the whole or part of a State forest declared as such under this Act.

***fire commissioner*** means the commissioner of the Queensland Fire and Emergency Service.

***forest consent agreement*** see section 61J.

***forest consent area*** see section 61J.

***forest drive*** means that part of a State forest declared as such under this Act.

***forest entitlement area*** has the same meaning as in the *Land Act 1994*.

***forest officer*** means a person appointed as a forest officer under section 17.

***forest products*** means all vegetable growth and material of vegetable origin whether living or dead and whether standing or fallen, including timber, and, in relation to a State forest, timber reserve, forest consent area or forest entitlement area the term includes—

- (a) honey;
- (b) all form of indigenous animal life;
- (c) any nest, bower, shelter or structure of any form of indigenous animal life;
- (d) fossil remains;
- (e) relics;
- (f) quarry material;

but does not include grasses on a stock route under the *Stock Route Management Act 2002*, or grasses (indigenous or introduced) or crops grown on a Crown holding by the lessee or licensee of the Crown holding, on a forest consent area by the lessee or owner of the land containing the forest consent

area or on a forest entitlement area by the lessee or owner of the land containing the forest entitlement area.

**FPQ** means Forestry Plantations Queensland.

**FPQO** means the public service office called Forestry Plantations Queensland Office.

**freeholding lease** means a freeholding lease under the *Land Act 1994*, if the deed of grant that will issue from the freeholding lease would be required, under the *Land Act 1994*, section 22, to contain a reservation mentioned in the section.

**Geothermal Act** means the *Geothermal Energy Act 2010*.

**get**, used in relation to any forest products, includes get, win, cut, saw, fell, dig, gather, remove, convert, or obtain; and used in relation to any earth, soil, or quarry material, includes dig, gather, remove, convert, or obtain.

**GHG storage Act** means the *Greenhouse Gas Storage Act 2009*.

**incidental thing** see section 18(1)(ga)(i).

**interfere with**, used in relation to any forest products, earth, soil, or quarry material, includes destroy, get, damage, mark, move, use, or in any way interfere with.

**lake** includes lagoon, swamp, marsh and any other natural collection of water.

**lease land**, for part 6B, see section 61J.

**licence** means a licence under this Act, but does not include a plantation licence.

**licence area** means the area of State plantation forest specified in a plantation licence or plantation sublicense as the licence area for the plantation licence or plantation sublicense.

**litter** includes broken glass.

**litter bin** means a receptacle for litter provided by the chief executive.

**living biomass** includes a tree or vegetation.

**management** includes control, regulation, construction, maintenance and protection.

**Mining Acts** means the *Coal Mining Safety and Health Act 1999*, the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

**mortgage**, in relation to a plantation licence or plantation sublicense, means a mortgage, charge or other security interest granted by—

- (a) a plantation licensee over its rights under a plantation licence; or
- (b) a plantation sublicensee over its rights under a plantation sublicense.

**mortgagee** means the person entitled to the benefit of a mortgage.

**motor vehicle** has the same meaning as in the *Transport Operations (Road Use Management) Act 1995*.

**National Credit Code** means the *National Credit Code* in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cwlth).

**natural resource product** includes the following—

- (a) all parts of a tree or vegetation, whether alive or dead, including parts below the ground;
- (b) carbon stored in a tree or vegetation;
- (c) carbon sequestration by a tree or vegetation.

**notice** means a notice, sign, pictograph or other device, of whatever material and whether fixed or movable, erected or displayed in or near a State forest with the authority of the chief executive.

**occupation permits** see section 35(1)(a).

**officer** means the chief executive or a forest officer.

**official traffic sign** means an official traffic sign within the meaning of the *Transport Operations (Road Use Management) Act 1995*.

**original plantation licence**, for part 6D, division 7, see section 61RC(1)(a).

**owner**—

- (a) generally, means—
  - (i) for a vehicle that is registered under a law of a State or Territory providing for the registration of vehicles—the person in whose name the vehicle is registered; or
  - (ii) for land held under a deed of grant—its registered proprietor; or
  - (iii) for a freeholding lease—the lessee; and
- (b) of land for part 6C, see section 61K.

**permit** means a permit granted or taken to have been granted under this Act and in force at the material time and, with reference to any particular provision of this Act, a permit of the description appropriate according to that provision.

permit distribution point see section 34J(1).

**permit holder** means the holder of a permit.

**place** includes any house, office, room, tent, building, erection, structure, premises (whether upon land or water), vessel, vehicle or aircraft, and any road, street, thoroughfare, alley, right of way (whether public or private), and any land, whether public or private and whether enclosed or otherwise, and also includes any part of any place.

**plantation forestry**, for part 6D, see section 61Q.

**plantation licence** see section 61QA(1).

**plantation licence sketch plan**, for part 6E, see section 61RL.

**plantation licensee** see section 61QA(1).

**plantation manager** means a person appointed as a plantation manager under section 61QG or 61QQ.

**plantation officer** means a person appointed as a plantation officer under section 17.

**plantation operator** means any of the following persons—

- (a) a plantation licensee;
- (b) a plantation sublicensee;
- (c) a plantation manager;
- (d) a registered mortgagee or an enforcing party exercising power under section 61SQ.

**plantation sublicensee** see section 61QO(2).

**plantation sublicensee** see section 61QO(1).

**prescribed** means prescribed by this Act.

**project area A** see the [Forest Wind Farm Development Act 2020, schedule 2](#).

**proponent, for a development agreement**, see the [Forest Wind Farm Development Act 2020, schedule 2](#).

**protected area** means any of the following under the *Nature Conservation Act 1992*—

- (a) a national park (scientific);
- (b) a national park;
- (c) a national park (Aboriginal land);
- (d) a national park (Torres Strait Islander land);
- (e) a national park (Cape York Peninsula Aboriginal land);
- (f) a conservation park;
- (g) a resources reserve;
- (h) a special wildlife reserve.

**public purposes** means any purposes included within the definition of the term *public purpose* under the *Land Act 1994*, schedule 6.

**quarry material** includes—

- (a) guano; and
- (b) stone, gravel, sand, rock, clay, earth and soil;

but does not include—

- (c) minerals within the meaning of the *Mineral Resources Act 1989*; or
- (d) topsoil, if quarry material is reserved in a deed of grant; or
- (e) topsoil on a freeholding lease.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***recreational purposes*** means any purpose for recreational activities, including recreational activities provided by a business.

***register*** means the register of plantation licences.

***registered*** means registered in the register.

***register of plantation licences*** means the register kept by the chief executive (lands) under section 61RM.

***registrar of titles*** means the registrar of titles under the *Land Title Act 1994*.

***registry*** means the land registry under the *Land Act 1994*, section 275.

***regulatory notice*** means a notice referred to in section 34AA(1A).

***related agreement*** means an agreement under section 61QB(1).

***relevant State land***, for part 6D, see section 61Q.

***requirement***, in relation to a regulatory notice or camping notice, includes a direction, instruction, indication, condition or other provision contained on the notice.

***requisition*** see section 61TQ(1).

***restricted matter*** see the *Biosecurity Act 2014*, section 21.

***sales permit*** means a permit granted under section 56.

**scientific area** means the whole or part of a State forest declared as such under this Act.

**seized thing** see section 82B.

**self-registration camping area** means a State forest, or a part of a State forest, stated to be a self-registration camping area by a camping notice.

**show cause notice**, for part 6D, division 6, see section 61QY(2).

**show cause period**, for part 6D, division 6, see section 61QY(2)(d).

**signed notice** means a notice signed by the chief executive.

**sketch plan**, for part 6E, see section 61RL.

**State forest** means land set apart and declared or deemed to be set apart and declared under this Act as a State forest.

**State forest park** means the whole or part of a State forest declared as such under this Act.

**State plantation forest** means an area of land declared to be a State plantation forest under section 32A.

**stock** means cattle, horses, sheep, goats, or swine, or the young of any such animals.

**stock grazing permits** see section 35(1)(c).

**timber** includes the trunks, branches, stumps and roots of trees, whether standing or not, and all wood, whether or not the same is cut up, sawn, hewn, split, or otherwise fashioned.

**timber reserve** means land set apart and declared or deemed to be set apart and declared under this Act as a timber reserve.

**topsoil** means that part of the soil profile from the earth's surface down to the limit of major biological activity that—

- (a) generally contains most of the root systems of native perennial plants; and
- (b) is generally darker in colour than underlying material.

**trees** includes not only timber trees, but all other trees, and shrubs, bushes, seedlings, saplings, and re-shoots of every description and any parts thereof.

**unformed plantation forest road** see section 61QM(7).

**vehicle** includes—

- (a) any type of transport that moves on wheels, whether or not the vehicle is capable of being operated or used in a normal manner; and
- (b) a hovercraft.

**vessel** means—

- (a) a ship, boat, punt, ferry, or air cushion vehicle; or
- (b) any other kind of vessel that is used or apparently designed for use in navigation, however it is propelled.

**watercourse** means a river, creek or stream in which water flows permanently or intermittently.

**waters** means Queensland waters.