

Queensland



**NATURAL RESOURCES AND  
OTHER LEGISLATION  
AMENDMENT ACT 1997**

**Act No. 78 of 1997**



# Queensland



## NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT ACT 1997

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*police officers*

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Queensland



**Natural Resources and Other Legislation  
Amendment Act 1997**

**Act No. 78 of 1997**

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**An Act to amend legislation about natural resources, and for other  
purposes**

*[Assented to 5 December 1997]*

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**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Natural Resources and Other Legislation Amendment Act 1997*.

### **Commencement**

**2.(1)** Part 3 (other than sections 6, 8 to 10, 12 to 24, 25(1) and 26) is taken to have commenced on 13 July 1997.

**(2)** Parts 4, 8 and 11 commence on a day to be fixed by proclamation.

**(3)** Part 6 (other than sections 36 to 60, 61(1), 62 to 69 and 71 to 80) is taken to have commenced on 1 July 1995.

## **PART 2—AMENDMENT OF ACQUISITION OF LAND ACT 1967**

### **Act amended in pt 2**

**3.** This part amends the *Acquisition of Land Act 1967*.

### **Amendment of s 42 (Regulations)**

**4.** Section 42—

*insert—*

‘**(3)** A regulation may be made about fees payable under this Act.’.

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## PART 3—AMENDMENT OF BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

### Act amended in pt 3

5. This part amends the *Body Corporate and Community Management Act 1997*.

### Amendment of s 18 (Meaning of “lease-back scheme” and “lease-back scheme operator”)

6. Section 18(c), ‘lease-back scheme’—

*omit, insert—*

‘lease-back scheme operator’.

### Amendment of s 22 (Meaning of “regulation module”)

7. Section 22—

*insert—*

‘(3A) A regulation module applies to a community titles scheme if—

- (a) the regulation module states that it is the regulation module that applies to a community titles scheme if no other regulation module applies to it; and
- (b) no other regulation module applies to the scheme including, for example, because the community management statement for the scheme—
  - (i) fails to identify a regulation module as the regulation module applying to the scheme; or
  - (ii) identifies as the regulation module applying to the scheme a regulation module that, under subsection (3), does not apply to the scheme.’

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**Amendment of s 40 (Creating common property by subdivision (no new scheme))**

8. Section 40(3), ‘scheme—the land’—

*omit, insert—*

‘scheme, the land’.

**Amendment of s 41 (Creating common property from scheme land (new scheme))**

9. Section 41(3), ‘scheme—the land’—

*omit, insert—*

‘scheme, the land’.

**Amendment of s 51 (New statements and subsequent plans of subdivision)**

10.(1) Section 51(1), ‘, unless all plans’ to ‘the new plan of subdivision’—

*omit.*

(2) Section 51—

*insert—*

‘(3) Subsection (4) applies if—

- (a) a new plan of subdivision proposed to be lodged under subsection (1) is consistent with all statements about proposed future subdivision contained in the existing statement for the scheme; and
- (b) the difference between the existing statement and the new community management statement for the scheme is limited to making sure that, after registration of the new plan of subdivision and the recording of the new community management statement, the scheme’s community management statement will—
  - (i) be consistent with all plans of subdivision relating to the scheme; and



- (ii) contain the statements about proposed future subdivision that are contained in the existing statement, changed only to the extent necessary to take account of the registration of the new plan of subdivision.

‘(4) The body corporate must, as quickly as practicable having regard to when the plan of subdivision is proposed to be lodged, endorse its consent to the recording of the new community management statement.’.

### **Amendment of s 55 (Body corporate to consent to recording of new statement)**

**11.(1)** Section 55(4)(d), after ‘common property’—

*insert—*

‘or body corporate assets’.

**(2)** Section 55—

*insert—*

‘(5) Also, the consent to the recording of a new community management statement need not be in the form of a resolution without dissent or special resolution if the consent is required to be endorsed under section 51(4).<sup>1</sup>’.

### **Amendment of s 91 (Composition and election of committee)**

**12.** Section 91(2), ‘elected annually’ to ‘body corporate’—

*omit, insert—*

‘chosen’.

### **Insertion of new s 101A**

**13.** Chapter 3, part 1, division 4, after section 101—

*insert—*

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<sup>1</sup> Section 51 (New statements and subsequent plans of subdivision)

**‘Voting other than at general meeting**

**‘101A.(1)** This section—

- (a) provides a way for the body corporate for a community titles scheme to decide a motion other than at a general meeting; but
- (b) applies to a community titles scheme only if the regulation module applying to the scheme says it applies.

**‘(2)** A resolution on a motion may be passed by the body corporate, and has effect as a resolution without dissent, special resolution or ordinary resolution as may be required for the motion, even though the motion is not placed before and decided at a general meeting of the body corporate, if—

- (a) a vote on the motion is exercised for each lot included in the scheme; and
- (b) the vote for each lot is exercised by a person who would be entitled (other than merely as a proxy) to exercise the vote for the lot at a general meeting held to decide the motion; and
- (c) each vote is a vote for the motion; and
- (d) each vote is given or confirmed in writing.’.

**Amendment of s 107 (Regulation module)**

**14.** Section 107(3), ‘body corporate manager,’

*omit.*

**Amendment of s 112 (Review of remuneration under engagement of service contractor)**

**15.** Section 112(5), definition “**community titles scheme**”, ‘chapter 8, part 1’—

*omit, insert—*

‘the transitional provisions’.

**Amendment of s 113 (Financial management arrangements)**

**16.** Section 113(2)(j), after ‘accounts’—

*insert—*

‘by an auditor’.

**Amendment of s 169 (Cancellation for not complying with basic requirements)**

**17.(1)** Section 169(1), after ‘established’—

*insert—*

‘or changed’.

**(2)** Section 169(2), after ‘scheme’—

*insert—*

‘as established or changed’.

**Amendment of s 170 (Statement to be given by seller to buyer)**

**18.(1)** Section 170(1), after ‘established’—

*insert—*

‘or changed’.

**(2)** Section 170(2)(b), ‘proposed engagement’—

*omit, insert—*

‘engagement’.

**(3)** Section 170(2)(b), after ‘of the scheme’—

*insert—*

‘, or proposed to be continued or entered into after the scheme is changed’.

**(4)** Section 170(2)(c), ‘proposed authorisation’—

*omit, insert—*

‘authorisation’.

(5) Section 170(2)(c), after ‘of the scheme,’—

*insert—*

‘or proposed to be continued or given after the scheme is changed,’.

(6) Section 170(2)(d), after ‘establishment’—

*insert—*

‘or change’.

(7) Section 170(2)(e)(ii), after ‘if the scheme’—

*insert—*

‘to be established or changed’.

#### **Amendment of s 174 (Cancelling contract for inaccuracy of statement)**

**19.(1)** Section 174(b)(i), after ‘its establishment’—

*insert—*

‘or change’.

(2) Section 174(d), after ‘established’—

*insert—*

‘or changed’.

#### **Amendment of s 176 (Restriction on powers of attorney in favour of seller)**

**20.** Section 176(3), after ‘established’—

*insert—*

‘or changed’.

#### **Amendment of s 177 (Definitions for pt 3)**

**21.** Section 177, definition “**lot**”, paragraph (b), ‘established’—

*omit, insert—*

‘established or changed’.

### Replacement of div 1 hdg

22. Chapter 7, heading ‘*Division 1—Appeals*’—  
*omit, insert—*

## ‘PART 1—APPEALS’.

### Amendment of s 250 (Definitions for div 1)

23.(1) Section 250, heading, ‘div 1’—  
*omit, insert—*

‘pt 1’.

(2) Section 250, ‘In this division’—  
*omit, insert—*

‘In this part’.

(3) Section 250, definition “**decision**”, paragraph (b)(ii) and (iii),  
‘amendment’—

*omit, insert—*

‘change’.

### Replacement of div 2 hdg

24. Chapter 7, heading ‘*Division 2—Other matters*’—  
*omit, insert—*

## ‘PART 2—OTHER MATTERS’.

### Amendment of s 268 (Regulation-making power)

25.(1) Section 268(3)(a)—  
*omit, insert—*

‘(a) misusing a proxy or otherwise voting on behalf of a person without authority;’.

(2) Section 268(5), ‘3’—

*omit, insert—*

‘6’.

### **Amendment of s 283 (Community management statement)**

26. Section 283(4)(a), ‘before’—

*omit, insert—*

‘on or after 13 April 1997 but before’.

### **Amendment of s 288 (Definitions for div 6)**

27. Section 288, definition “**exempted provisions**”, paragraph (f)—

*omit.*

### **Amendment of s 290 (Body corporate contracts)**

28. Section 290(5)—

*omit, insert—*

‘(5) However, if the new body corporate contract mentioned in subsection (4)(d) is entered into on the basis of an amendment of the original contract made after the notification day—

- (a) to the extent the new contract is, or is in the nature of, the engagement of a person as a body corporate manager for the scheme—the relevant subsection applies to the new contract only until the end, for the new contract, of the shorter of the following terms—
  - (i) the maximum term provided for in the regulation module applying to the scheme for the engagement of a person as a body corporate manager;
  - (ii) the term mentioned in the new contract; and

- (b) to the extent the new contract is, or is in the nature of, the engagement of a person as a service contractor for the scheme—the relevant subsection applies to the new contract only until the end, for the new contract, of the shorter of the following terms—
- (i) the maximum term provided for in the regulation module applying to the scheme for the engagement of a person as a service contractor;
  - (ii) the term mentioned in the new contract; and
- (c) to the extent the new contract is, or is in the nature of, the authorisation of a person as a letting agent for the scheme—the relevant subsection applies to the new contract only until the end, for the new contract, of the shorter of the following terms—
- (i) the maximum term provided for in the regulation module applying to the scheme for the authorisation of a person as a letting agent;
  - (ii) the term mentioned in the new contract.’.

## **PART 4—AMENDMENT OF CITY OF BRISBANE ACT 1924**

### **Act amended in pt 4**

**29.** This part amends the *City of Brisbane Act 1924*.

### **Insertion of new s 39D**

**30.** Part 2, division 11, after section 39C—  
*insert—*

**‘Documents open to inspection not to contain information about protected persons**

**‘39D.(1)** This section applies to a document that—

- (a) is, under this Act, open to inspection; and
- (b) is, or is based on, a document given to the council by the chief executive (valuations); and
- (c) would, apart from this section, include the name and postal address of a protected person.

**‘(2)** If the chief executive (valuations) gives notice to the council under the *Valuation of Land Act 1944*, section 73A, about a protected person, the council must not include the name and postal address of the protected person in the document when the document is open to inspection.

**‘(3)** In this section—

**“chief executive (valuations)”** means the chief executive of the department in which the *Valuation of Land Act 1944* is administered.

**“protected person”** means a person for whose benefit the chief executive (valuations) has made a direction under the *Valuation of Land Act 1944*, section 75B(2), that continues to have effect.<sup>2</sup>.

<sup>2</sup> The *Valuation of Land Act 1944*, section 73A provides as follows—

**‘Local governments to be given notice about protected persons**

**73A.(1)** If a valuation roll or part of a valuation roll is, under section 73, given to a local government, the chief executive must, at the time the roll or part is given to the local government, give notice to the local government about the suppression directions for the benefit of each protected person whose name and address appears in the roll or part.

**(2)** If a valuation roll or part of a valuation roll has, under section 73, been given to a local government and a person, whose name and address appears in the roll or part, becomes a protected person, the chief executive must give notice to the local government about the suppression direction for the benefit of the protected person, no later than 7 days after the date of the direction.

**(3)** If matters stated in a suppression direction change (including, for example, the land stated in the direction), the chief executive must give notice to a local government that has previously been given notice about the direction.

**(4)** A notice under this section must be in the approved form.’.



**PART 5—AMENDMENT OF FORESTRY ACT 1959****Act amended in pt 5**

**31.** This part amends the *Forestry Act 1959*.

**Amendment of s 18 (General powers of forest officers)**

**32.(1)** Section 18(1)(g), ‘enter’—

*omit, insert—*

‘enter and inspect’.

**(2)** Section 18(1)(g) and (ga)(ii), ‘the Act’—

*omit, insert—*

‘this Act’.

**(3)** Section 18(1)(ga), ‘, the forest officer may’—

*omit.*

**Insertion of new s 19**

**33.** After section 18—

*insert—*

**‘Retention of document produced to forest officer**

**‘19.(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—

- (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.’

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**Amendment of s 82 (Powers for seized timber etc.)**

**34.** Section 82(3), ‘section 82(1)(ga)(i)’—

*omit, insert—*

‘section 18(1)(ga)(i)’.

**PART 6—AMENDMENT OF LAND ACT 1994****Act amended in pt 6**

**35.** This part amends the *Land Act 1994*.

**Replacement of s 35 (Granting land in trust to be used for community purpose)**

**36.** Section 35—

*omit, insert—*

**‘Use for community purposes of land granted in trust**

**‘35.(1)** The way land granted in trust by the Governor in Council is used must not be inconsistent with—

- (a) a community purpose for which it was granted;<sup>3</sup> or
- (b) an additional community purpose notified under subsection (2).

**‘(2)** The Governor in Council may, by gazette notice, notify an additional community purpose for land granted in trust.’.

**Amendment of s 57 (Trustee leases)**

**37.** Section 57(3)—

*omit, insert—*

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<sup>3</sup> The power of the Governor in Council to grant land in trust is in section 14(2) (Governor in Council may grant land).

‘(3) Each trustee lease must be registered in the appropriate register.

‘(4) Each trustee lease must be endorsed with the Minister’s approval before it is registered.’.

### **Amendment of s 83 (Exhumations)**

**38.** Section 83—

*insert—*

‘(3) To avoid any doubt, it is declared that in this section—

“**exhume**” includes take out of a place of interment, whether above or below ground.’.

### **Amendment of s 112 (Interests in land available by auction, tender or ballot)**

**39.** Section 112(a) and (b)—

*omit, insert—*

‘(a) an estate in fee simple;

(b) a lease of, or permit over, unallocated State land;

(c) a term lease of, or permit over, a reserve.’.

### **Amendment of s 140 (Provisional value may be negotiated)**

**40.** Section 140(5) and (6)—

*omit, insert—*

‘(5) To decide the value of the improvements, the Court must decide each of the following amounts—

(a) the amount that fairly represents the value of the improvements to a prudent buyer, having regard to the buyer’s proposed use of the land;

(b) the amount that fairly represents the cost of constructing the improvements, adjusted to allow for depreciation of the

improvements since construction.

‘(6) The value mentioned in subsection (5)(a) is the value on the day the offer was made or the sale notice was published.

‘(7) The cost mentioned in subsection (5)(b) is the cost on the day the Court decides the value of the improvements.

‘(8) If the amount decided under subsection (5)(a) is equal to or less than the amount decided under subsection (5)(b), the value of the improvements is the amount decided under subsection (5)(a).

‘(9) If the amount decided under subsection (5)(a) is more than the amount decided under subsection (5)(b), the value of the improvements is the amount decided under subsection (5)(b).

‘(10) The value of the improvements decided by the Court under subsections (5) to (9) becomes the negotiated value.’.

#### **Amendment of s 174 (Freehold lease may not be transferred without approval)**

**41.(1)** Section 174(1)—

*omit, insert—*

‘**174.(1)** If a perpetual lease for agricultural or grazing purposes is converted to a deed of grant, or a deed of grant issues for a grazing homestead freeholding lease, the deed of grant is issued subject to a covenant prohibiting the transfer of the land to a corporation, or to a person as trustee for a corporation, without the Governor in Council’s approval.’.

**(2)** Section 174(3), after ‘corporation’—

*insert—*

‘, or to a person as trustee for a corporation,’.

#### **Amendment of s 175 (Forest entitlement areas)**

**42.** Section 175—

*insert—*

‘(6) For subsection (3), the value of the commercial timber on a forest

entitlement area is decided by the Minister.

‘(7) The value of the commercial timber decided by the Minister must be its value on the day—

- (a) if the lessee or registered owner applies to buy the forest entitlement area—the application was received by the Minister; or
- (b) if the Minister made an offer to sell the forest entitlement area before the lessee or registered owner applied to buy the forest entitlement area—the offer was made.

‘(8) The lessee or registered owner may appeal against the value decided by the Minister for the commercial timber.<sup>4</sup>

‘(9) However, if the lessee or registered owner appeals against the value decided by the Minister under subsections (6) and (7), the value of the timber decided by the Court must be the value of the timber on the day the appeal is decided.

‘(10) Subsection (9) has effect despite anything in chapter 7, part 3, division 3.<sup>5</sup>’.

### **Amendment of s 185 (Development concessions)**

**43.(1)** Section 185, heading—

*omit, insert—*

**‘Development and investigation concessions’.**

**(2)** Section 185(3)—

*omit, insert—*

‘(3) If a permit is for investigation for a lease for development work, the Minister may fix an annual rent, instead of the rent normally applying to a permit, while the permit is in force.

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<sup>4</sup> Under section 421 (Notice of right of appeal to be given), a person who has a right to appeal against a decision must be given written notice of the person’s right to appeal.

<sup>5</sup> Chapter 7 (General), part 3 (Review of decisions and appeals), division 3 (Appeals)

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‘(4) This section does not apply to a lease or permit if the lease or permit has a set rent.’.

### **Insertion of new s 194A**

44. Chapter 5, part 1, division 4, before section 195—

*insert—*

#### **‘Meaning of “instalment” for div 4**

‘194A. In this division—

“instalment” includes a fee payable under this Act for issuing and registering a deed of grant.’.

### **Amendment of s 199 (Duty of care condition)**

45. Section 199, ‘lessee’—

*omit, insert—*

‘lessee, licensee or permittee’.

### **Amendment of s 219 (Effect of resumption)**

46. Section 219(1)—

*omit, insert—*

‘219.(1) If a lease or part of a lease is resumed under this division, the land the subject of the interest comprising the lease or the part of the lease is free of any interest or obligation arising under the lease.’.

### **Amendment of s 220 (Service of order in council)**

47. Section 220(3), ‘subsections’—

*omit, insert—*

‘subsection’.

**Amendment of s 225 (Effect of resumption)**

**48.** Section 225(1)—

*omit, insert—*

‘**225.(1)** If a lease or part of a lease is resumed under this division, the land the subject of the interest comprising the lease or the part of the lease is free of any interest or obligation arising under the lease.’.

**Amendment of s 253 (Definitions)**

**49.** Section 253, definition “**critical area**”, paragraph (a)(i), ‘land’—

*omit.*

**Amendment of s 263 (Chief executive may issue tree clearing permit)**

**50.(1)** Section 263—

*insert—*

‘**(2A)** The applicant for a tree clearing permit may appeal against a condition imposed by the chief executive under subsection (1)(a) (including a condition mentioned in subsection (2)).<sup>6</sup>’.

**(2)** Section 263—

*insert—*

‘**(4A)** The applicant may appeal against the chief executive’s refusal to issue the permit.’.

**Amendment of s 266 (Cancellation of tree clearing permit)**

**51.** Section 266—

*insert—*

‘**(3)** A person to whom a tree clearing permit has been issued under this

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<sup>6</sup> Under section 421 (Notice of right of appeal to be given), a person who has a right to appeal against a decision must be given written notice of the person’s right to appeal.



division may appeal against the chief executive's cancellation of the permit under subsection (1).<sup>7</sup>

'(4) A person for whose benefit a tree clearing permit is continued in force under section 267 may appeal against the chief executive's cancellation of the permit under subsection (1).'

### **Amendment of s 307 (Borrowing lodged document before registration)**

**52.** Section 307(1)(c), 'subsection (1)(a) or (b)'—

*omit, insert—*

'paragraph (a) or (b).'

### **Insertion of new s 334A**

**53.** After section 334—

*insert—*

#### **'Application to sub-subleases**

'**334A.** For applying this division to sub-subleasing under schedule 6, definition "**sublease**"<sup>8</sup>—

- (a) a reference in the following provisions to a lessee is taken to be a reference to a sublessee under a sublease of a lease issued under this Act—
  - section 332(1)(a)
  - section 333(1), (2) and (4)
  - section 334; and
- (b) the reference in section 333(5) to a lease is taken to be a reference

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<sup>7</sup> Under section 421 (Notice of right of appeal to be given), a person who has a right to appeal against a decision must be given written notice of the person's right to appeal.

<sup>8</sup> Schedule 6 (Dictionary)—  
"**sublease**" includes a sub-sublease.

to a sublease.’.

### **Amendment of s 358 (Changing deeds of grant)**

**54.** Section 358(6)—

*omit.*

### **Amendment of s 363 (Registration of easement)**

**55.** Section 363(3), ‘compulsory’—

*omit, insert—*

‘compulsorily’.

### **Amendment of s 368 (Same person becoming lessee, licensee or permittee of benefited and burdened lands)**

**56.** Section 368(1), after ‘permittee’—

*insert—*

‘of’.

### **Insertion of new s 369B**

**57.** After section 369A—

*insert—*

#### **‘Transfer of benefited land**

**‘369B.(1)** This section applies if—

- (a) land burdened by an easement is unallocated State land or a reserve; and
- (b) the document creating the easement includes a provision (the **“power of attorney provision”**) appointing the grantor of the easement the attorney of the grantee of the easement, including for the purpose of surrendering the easement if circumstances stated in the document happen; and

- (c) since the easement was created, the person (the “**original owner**”) who was the owner of the land benefited by the easement when the easement was created has not always been the owner of the land, whether or not the original owner is now the owner of the land.

‘(2) The power of attorney provision binds the current owner of the land benefited by the easement, whether or not, since the easement was created, the current owner of the land has always been the owner of the land.

‘(3) In this section—

“**current owner**”, of land, means the person who is now the owner of the land.

“**owner**”, of land, includes a registered owner, lessee, licensee and permittee of the land.’.

#### **Amendment of s 421 (Notice of right of appeal to be given)**

**58.** Section 421(1), after ‘against the decision’—

*insert—*

‘and how the appeal is started’.

#### **Amendment of s 424 (Applying for review)**

**59.** Section 424(1), ‘28’—

*omit, insert—*

‘42’.

#### **Amendment of s 426 (Decision on reconsideration)**

**60.** Section 426(3)—

*omit, insert—*

‘(3) The notice must state—

- (a) the day the notice is given to the applicant (the “**review notice day**”); and

- (b) if the review decision is not the decision sought by the applicant—
- (i) the reasons for the decision; and
  - (ii) that the applicant may appeal against the decision to the Court within 42 days after the review notice day.’.

### **Amendment of s 428 (Procedure for an appeal to the Court)**

**61.(1)** Section 428(3)—

*omit, insert—*

‘(3) The notice of appeal must be filed within 42 days after the review notice day under section 426.’.

**(2)** Section 428(5)—

*omit, insert—*

‘(5) The Court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.’.

**(3)** Section 428(6), ‘and the facts relied on’—

*omit.*

### **Amendment of s 434 (Meaning of “unimproved value”)**

**62.** Section 434(4), definition “**unimproved state**”, after ‘to the land’—

*insert—*

‘performed by the State’.

### **Amendment of s 449 (Existing reserves and purposes continue)**

**63.** Section 449—

*insert—*

‘(3) If, under subsection (1), land is taken to be reserved for cemetery purposes, the land is taken also to be reserved for crematorium and mortuary purposes.’.

**Amendment of s 451 (Existing deeds of grant in trust and purposes continue)****64.** Section 451—*insert—*

‘(3) If, under subsection (1), land is taken to be granted for cemetery purposes, the land is taken also to be granted for crematorium and mortuary purposes.’.

**Amendment of s 457 (Terms of pre-Wolfe freeholding leases)****65.** Section 457—*insert—*

‘(3) The discount mentioned in subsection (1)(d) does not apply to the amount of the remaining purchase price that, in the records of the department about the payment of the purchase price, is attributable to the value of commercial timber.’.

**Amendment of s 466 (Terms of grazing homestead freeholding leases)****66.(1)** Section 466(2), ‘division 5’—*omit, insert—*

‘division 3’.

**(2)** Section 466—*insert—*

‘(3) The discount mentioned in subsection (1)(c) does not apply to the amount of the remaining purchase price that, in the records of the department about the payment of the purchase price, is attributable to the value of commercial timber.’.

**Amendment of s 469 (Right to a grazing homestead freeholding lease)****67.** Section 469—*insert—*

‘(4) The conditions mentioned in subsection (3)(c) do not include conditions that—

- (a) the Minister is satisfied are redundant in the context of the grazing homestead freeholding lease; and
- (b) are expressly or impliedly excluded from the grazing homestead freeholding lease when it is issued.’

#### **Amendment of s 471 (Right to a post-Wolfe freeholding lease)**

**68.** Section 471—

*insert—*

‘(3) The conditions mentioned in subsection (2)(c) do not include conditions—

- (a) the Minister is satisfied are redundant in the context of the post-Wolfe freeholding lease; and
- (b) are expressly or impliedly excluded from the post-Wolfe freeholding lease when it is issued.’

#### **Amendment of s 478 (Right to a post-Wolfe freeholding lease)**

**69.** Section 478—

*insert—*

‘(3) The conditions mentioned in subsection (2)(c) do not include conditions—

- (a) the Minister is satisfied are redundant in the context of the post-Wolfe freeholding lease; and
- (b) are expressly or impliedly excluded from the post-Wolfe freeholding lease when it is issued.’

#### **Amendment of s 506 (Existing cemeteries continue)**

**70.** Section 506—

*insert—*

---

‘(2) All existing rules and regulations made by trustees under the *Cemetery Act 1865* for the purpose of a reserve or deed of grant in trust for cemetery purposes under the *Cemetery Act 1865* continue, as by-laws for the land comprising the reserve or deed of grant in trust for cemetery purposes under this Act, for a period of 3 years from the commencement.’.

### **Amendment of s 506A (Meaning of terms)**

**71.(1)** Section 506A, all words before definition “**agreement**”—

*omit, insert—*

#### **‘Definitions for pt 7A**

**‘506A.** In this part—’.

**(2)** Section 506A, definition “**agreement**”—

*omit.*

**(3)** Section 506A—

*insert—*

‘ **“agreement”** means the agreement that was set out in the schedule to the repealed Act.

**“repealed Act”** means the *Brigalow and Other Lands Development Act 1962*.’.

### **Amendment of s 506H (When fee-simple of lease may be acquired)**

**72.(1)** Section 506H, ‘fee-simple’ —

*omit, insert—*

‘fee simple’.

**(2)** Section 506H(1)(b), ‘paragraph (a) of section 23(1)’—

*omit, insert—*

‘section 23(1)(a) of the repealed Act’.

**Amendment of s 506I (Fund)**

**73.(1)** Section 506I(2) and (3)—

*renumber* as section 506I(1) and (2).

**(2)** Section 506I(1)(b) (as renumbered), ‘(herein called “the First Schedule Area”)’—

*omit, insert*—

‘(the “**First Schedule Area**”)’.

**Omission of s 506J (Further advances)**

**74.** Section 506J—

*omit.*

**Amendment of s 506K (Construction of instruments)**

**75.(1)** Section 506K, ‘section 24A’—

*omit, insert*—

‘section 24A of the repealed Act’.

**(2)** Section 506K, ‘section 24B’—

*omit, insert*—

‘section 24B of the repealed Act’.

**Amendment of s 506M (Restricted application of 4 Eliz. II. No. 16)**

**76.(1)** Section 506M, heading—

*omit, insert*—

**‘Restricted application of Bills of Sale and Other Instruments Act’.**

**(2)** Section 506M, from ‘provisions’ to ‘relating’—

*omit, insert*—

‘provisions of the *Bills of Sale and Other Instruments Act 1955* relating’.



### **Amendment of s 506O (Accounts and annual report)**

**77.** Section 506O, heading—

*omit, insert—*

**‘Accounts’.**

### **Amendment of s 506P (Application of Act to purchase leases)**

**78.** Section 506P(1) and (2), from ‘under’—

*omit, insert—*

‘under the repealed Act.’.

### **Amendment of sch 2 (Original decisions)**

**79.** Schedule 2—

*insert—*

- ‘175(6) about the value of commercial timber
- 263(1)(a) condition with which a tree clearing permit is issued
- 263(1)(b) refusal to issue a tree clearing permit
- 266(1) cancellation of a tree clearing permit’.

### **Amendment of sch 6 (Dictionary)**

**80.(1)** Schedule 6, definition “**standard document**”—

*omit.*

**(2)** Schedule 6, definition “**pre-Wolfe Freeholding lease**”—

*insert—*

- (g) an existing lease for a term of years subject to a covenant entitling the lessee to a deed of grant in fee simple, if the lease was granted under the *Special Freeholding of Leases Act 1991* on the application of the lessee of a lease mentioned in section 4(1)(b) of that Act.’.

**PART 7—AMENDMENT OF LAND TITLE ACT 1994****Act amended in pt 7**

**81.** This part amends the *Land Title Act 1994*.

**Omission of pt 6, div 4, sdiv A, hdg and insertion of new s 81A**

**82.** Part 6, division 4, subdivision A, heading—  
*omit, insert—*

**‘Definitions for div 4**

**‘81A.** In this division—

**“public utility easement”** means an easement in favour of a public utility provider.

**“public utility provider”** means—

- (a) the State or a State corporation or instrumentality; or
- (b) the Commonwealth or a Commonwealth corporation or instrumentality; or
- (c) a local government; or
- (d) a person authorised by law to provide a public utility service; or
- (e) a person approved by the Minister as suitable to provide a particular public utility service.’.

**Amendment of s 82 (Creation of easement by registration)**

**83.(1)** Section 82, after ‘may’—

*insert—*

‘only’.

**(2)** Section 82—

*insert—*

‘(2) The instrument must state—

- 
- (a) the nature of the easement and its terms; and
  - (b) the land to be benefited, and the land to be burdened, by the easement.’.

### **Replacement of s 83 (Particulars to be registered)**

**84.** Section 83—

*omit, insert—*

#### **‘Registration of easement**

**‘83.** An instrument creating an easement over part of a lot may be registered only if—

- (a) a plan of survey designating the easement is registered; and
- (b) it is signed by—
  - (i) the registered owner of the lot to be burdened; and
  - (ii) if the easement benefits another lot—the registered owner of the lot; and
  - (iii) if the easement benefits non-freehold land—the lessee or other person entitled to the land; and
  - (iv) if the easement is a public utility easement—the public utility provider.’.

### **Insertion of new ss 85A–85B**

**85.** After section 85—

*insert—*

#### **‘Particulars to be registered**

**‘85A.** When an easement is registered, the following particulars must be recorded in the appropriate registers—

- (a) the lot burdened by the easement;
- (b) any lot benefited by the easement;
- (c) any registered lease benefited or burdened by the easement;

- (d) if non-freehold land is benefited or burdened by the easement—any registered sublease or sub-sublease benefited or burdened by the easement.

### **‘Rights and liabilities created on registration of instrument**

‘**85B.(1)** On registration of the instrument creating an easement, the easement is created and, without anything further, vests in the person entitled to the benefit of it.

‘**(2)** If the easement is in favour of a public utility provider, the registered owner of a lot burdened by the easement may recover from the public utility provider a reasonable contribution towards the cost of keeping the part of the lot affected by the easement in a condition appropriate for enjoyment of the easement.

‘**(3)** The liability to contribute may be amended or excluded by agreement.’.

### **Replacement of s 89 (Easements for public utility providers)**

**86.** Section 89—

*omit, insert—*

### **‘Easements for public utility providers**

‘**89.(1)** Despite section 82(2), it is not necessary to state the land to be benefited in a public utility easement that is not attached to, or used or enjoyed with, other land.

‘**(2)** However, a public utility easement mentioned in subsection (1)—

- (a) may be registered only for the following—
- (i) a right of way;
  - (ii) drainage or sewerage;
  - (iii) the supply of water, gas, electricity, telecommunication facilities or another public utility service; and
- (b) may be registered in favour of a person mentioned in section 81A, definition “public utility provider”, paragraph (e),

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only if the easement is for the public utility service mentioned in the paragraph.’.

**Omission of pt 6, div 4, sdiv B**

**87.** Part 6, division 4, subdivision B—  
*omit.*

**Amendment of s 129 (Further caveat)**

**88.** Section 129, after ‘for a lot,’—  
*insert—*  
‘or is rejected by the registrar under section 157,<sup>9</sup>’.

**Amendment of sch 2 (Dictionary)**

**89.** Schedule 2, definition “**public utility provider**”—  
*omit.*

**PART 8—AMENDMENT OF LOCAL GOVERNMENT  
ACT 1993**

**Act amended in pt 8**

**90.** This part amends the *Local Government Act 1993*.

**Insertion of new s 8A**

**91.** After section 8—  
*insert—*

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<sup>9</sup> Section 157 (Rejecting instrument for failure to comply with requisition)

**‘Documents open to inspection not to contain information about protected persons**

**‘8A.(1)** This section applies to a document that—

- (a) is, under this Act, open to inspection; and
- (b) is, or is based on, a document given to the local government by the chief executive (valuations); and
- (c) would, apart from this section, include the name and postal address of a protected person.

**‘(2)** If the chief executive (valuations) gives notice to the local government under the *Valuation of Land Act 1944*, section 73A, about a protected person, the local government must not include the name and postal address of the protected person in the document when the document is open to inspection.

**‘(3)** In this section—

**“chief executive (valuations)”** means the chief executive of the department in which the *Valuation of Land Act 1944* is administered.

**“protected person”** means a person for whose benefit the chief executive (valuations) has made a direction under the *Valuation of Land Act 1944*, section 75B(2), that continues to have effect.<sup>10</sup>.

<sup>10</sup> The *Valuation of Land Act 1944*, section 73A provides as follows—

**‘Local governments to be given notice about protected persons**

**73A.(1)** If a valuation roll or part of a valuation roll is, under section 73, given to a local government, the chief executive must, at the time the roll or part is given to the local government, give notice to the local government about the suppression directions for the benefit of each protected person whose name and address appears in the roll or part.

**(2)** If a valuation roll or part of a valuation roll has, under section 73, been given to a local government and a person, whose name and address appears in the roll or part, becomes a protected person, the chief executive must give notice to the local government about the suppression direction for the benefit of the protected person, no later than 7 days after the date of the direction.

**(3)** If matters stated in a suppression direction change (including, for example, the land stated in the direction), the chief executive must give notice to a local government that has previously been given notice about the direction.

**(4)** A notice under this section must be in the approved form.’

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## **PART 9—AMENDMENT OF MIXED USE DEVELOPMENT ACT 1993**

### **Act amended in pt 9**

**92.** This part amends the *Mixed Use Development Act 1993*.

### **Amendment of s 28 (Application for approval of scheme)**

**93.** Section 28(1A)—

*omit, insert—*

‘(1A) However, on and from the commencement of this subsection, no further applications for approval may be made (other than an application that, under a provision of this Act other than this division, is required to be made under this division).’.

## **PART 10—AMENDMENT OF RIVER IMPROVEMENT TRUST ACT 1940**

### **Act amended in pt 10**

**94.** This part amends the *River Improvement Trust Act 1940*.

### **Amendment of s 2 (Meanings of terms)**

**95.(1)** Section 2, heading—

*omit, insert—*

‘**Definitions**’.

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**Amendment of s 3 (Constitution of the Burdekin River Improvement Area)**

**96.(1)** Section 3, heading—

*omit, insert—*

**‘Burdekin Shire Rivers Improvement Area and other river improvement areas’.**

**(2)** Section 3(1), (1A) and (1B)—

*omit, insert—*

**‘3.(1)** The Burdekin River Improvement Area is continued in existence under the name the Burdekin Shire Rivers Improvement Area.’.

**(3)** Section 3(3), (3A), (3B)(a), (4) and (5)(a), ‘Burdekin River Improvement Area’—

*omit, insert—*

‘Burdekin Shire Rivers Improvement Area’.

**Amendment of s 4 (Constitution of the Burdekin River Improvement Trust)**

**97.(1)** Section 4, heading—

*omit, insert—*

**‘Burdekin Shire Rivers Improvement Trust and other river improvement trusts’.**

**(2)** Section 4(1)—

*omit, insert—*

**‘4.(1)** The Burdekin River Improvement Trust is continued in existence under the name the Burdekin Shire Rivers Improvement Trust.’.

**(3)** Section 4(2), ‘Burdekin River Improvement Area’—

*omit, insert—*

‘Burdekin Shire Rivers Improvement Area’.

**(4)** Section 4(3), ‘as constituted under subsection (1) and’—



*omit.*

**(5)** Section 4—

*insert—*

‘**(5)** To remove doubt, it is declared that subsections (3) and (4) are provisions to which the *Acts Interpretation Act 1954*, section 20A applies.<sup>11</sup>

‘**(6)** Subsections (3), (4) and (5) and this subsection expire 1 month after this subsection commences.’.

### **Amendment of s 5 (Membership of trust)**

**98.(1)** Section 5(1)(b) and (1A), ‘2’—

*omit.*

**(2)** Section 5—

*insert—*

‘**(1B)** A local government that may appoint representatives under subsection (1)(b) for a trust may appoint 2 representatives for the trust, unless a regulation prescribes that the local government may, for the trust, appoint a stated number of representatives greater than 2.’.

**(3)** Section 5(5A)—

*omit, insert—*

‘**(5A)** However, the chief executive must fix the time and place for holding the first meeting of the trust.’.

### **Amendment of s 7 (Trust constituted a body corporate)**

**99.(1)** Section 7, heading—

*omit, insert—*

**‘Trusts are bodies corporate’.**

**(2)** Section 7(1), ‘Burdekin River Improvement Trust’—

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<sup>11</sup> Section 20A (Repeal does not end saving, transitional or validating effect etc.)

*omit, insert—*

‘Burdekin Shire Rivers Improvement Trust’.

### **Amendment of s 8 (Trusts are statutory bodies)**

**100.** Section 8(1), after ‘the’—

*insert—*

‘*Financial Administration and Audit Act 1977* and’.

### **Amendment of s 10 (Works which trust shall undertake or maintain)**

**101.(1)** Section 10(1), ‘, with the consent of the Minister,’—

*omit.*

**(2)** Sections 10(1A) and (1B)—

*omit, insert—*

‘**(1A)** To remove doubt, it is declared that the trust must comply with all laws in relation to undertaking or maintaining works mentioned in subsection (1).’.

**(3)** Section 10(1C), ‘Also’—

*omit, insert—*

‘Without limiting subsection (1A)’.

**(4)** Section 10(1C), ‘(other than a harbour board)’—

*omit.*

**(5)** Section 10(3), ‘in that behalf given with the consent of the Minister’—

*omit.*

### **Amendment of s 12 (Fund of the trust)**

**102.(1)** Section 12(1), ‘River’—

*omit, insert—*

‘Shire Rivers’.

(2) Section 12(1), (3B), (4) and (5), ‘Minister’—

*omit, insert—*

‘chief executive’.

### **Insertion of new s 12A**

**103.** After section 12—

*insert—*

#### **‘Trust may make certain arrangements about its accounts**

**‘12A.(1)** A trust may, by resolution, enter into a written arrangement with a local government to use the accounts, and the accounting systems, of the local government if—

- (a) at least 1 of the local government’s councillors is a member of the trust; and
- (b) the trust is satisfied it will achieve operational efficiencies under the arrangement.

**‘(2)** If a trust enters into an arrangement, the funds established under section 12 must be included with the local government’s accounts and accounting systems and, at least once a month, are to be reconciled to ensure the funds consist of the moneys mentioned in the section.

**‘(3)** This section applies despite a contrary provision under the *Financial Administration and Audit Act 1977* or *Statutory Bodies Financial Arrangements Act 1982*.’.

### **Amendment of s 13 (Budget)**

**104.(1)** Section 13(3)(c) and (d)—

*omit, insert—*

- ‘(c) must, by resolution, approve making the disbursement; and
- (d) must obtain the chief executive’s approval for it.’.

(2) Section 13(4A), ‘shall, with the consent of the Minister,’—

*omit, insert—*

‘must’.

(3) Section 13(5), ‘Minister approves thereof’—

*omit, insert—*

‘chief executive approves it’.

(4) Section 13(6), ‘Minister’—

*omit, insert—*

‘chief executive’.

### **Amendment of s 20A (Audit and accounts)**

**105.(1)** Section 20A, heading—

*omit, insert—*

**‘Arrangements for auditing accounts of superannuation schemes’.**

(2) Section 20A(1), ‘of a trust including the accounts’

*omit.*

### **Replacement of s 21 (Annual report by trust)**

**106.** Section 21—

*omit, insert—*

#### **‘Delegations**

**‘21.(1)** The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified person.

**‘(2)** In this section—

**“appropriately qualified person”** means a person with the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person’s classification level in the public service.’.

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**Insertion of new s 24**

**107.** After section 23—

*insert—*

**‘Transitional provision on the change of name of Burdekin River Improvement Area and Trust**

‘**24.** A reference in a law or other document to the Burdekin River Improvement Area or the Burdekin River Improvement Trust is to be read as a reference to the Burdekin Shire Rivers Improvement Area or the Burdekin Shire Rivers Improvement Trust.’.

**PART 11—AMENDMENT OF VALUATION OF LAND  
ACT 1944****Act amended in pt 11**

**108.** This part amends the *Valuation of Land Act 1944*.

**Amendment of s 2 (Definitions)**

**109.** Section 2—

*insert—*

‘**“annual valuation notice”** see section 41A.

**“protected person”** see section 75B(2).

**“suppression direction”** means a direction under section 75B(2).’.

**Replacement of ss 11 and 12**

**110.** Sections 11 and 12—

*omit, insert—*

**‘Delegation**

**‘12.(1)** The chief executive may delegate to an appropriately qualified person the following powers—

- (a) the chief executive’s powers under this Act;
- (b) the chief executive’s powers under another Act for the valuation or categorisation of land.

**‘(2)** In subsection (1)—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

*Examples of ‘qualifications, experience or standing’—*

- 1. Registration as a registered valuer under the *Valuers Registration Act 1992*.
- 2. A person’s classification level in the department.’.

**Amendment of s 14 (Deciding unimproved value of certain land)**

**111.(1)** Section 14(2)(b)—

*omit.*

**(2)** Section 14(2)(c)—

*renumber* as section 14(2)(b).

**(3)** Section 14(2), from ‘or, as the case requires’—

*omit, insert—*

‘of the land must be ascertained without regard to the restriction, limitation or other covenant or condition.’.

**(4)** Section 14(3)—

*omit.*

**Amendment of s 18 (General valuation date)**

**112.(1)** Section 18(1)—

*omit, insert—*

**‘18.(1)** The chief executive may at periodic intervals fix, by gazette notice, a date for a general valuation.’.

**(2)** Section 18(3), ‘may alter from time to time’—

*omit, insert—*

‘may, by further gazette notice, alter’.

### **Amendment of s 27 (Valuations at periodic intervals)**

**113.** Section 27(2) and (4)—

*omit.*

### **Amendment of s 28 (Alteration of valuation)**

**114.(1)** Section 28(1), from ‘between the issuing’ to ‘part 4’—

*omit, insert—*

‘between the issuing of an annual valuation notice under part 4, or a notice of valuation under part 6,’.

**(2)** Section 28(1)(e), ‘, assignment to a sugar mill,’—

*omit.*

### **Amendment of s 40 (Particulars of annual valuation to be available for inspection)**

**115.(1)** Section 40(1), from ‘and in addition’—

*omit.*

**(2)** Section 40(4), ‘21 days’—

*omit, insert—*

‘42 days’.

**(3)** Section 40(4)(b), from ‘at which the office’—

*omit, insert—*

‘stated in the advertisement.’.

(4) Section 40—

*insert—*

‘(6) In this section—

“**particulars of an annual valuation**” does not include the name and postal address of a protected person.’.

### **Amendment of s 41 (Advertisements)**

**116.(1)** Section 41(1)(a), ‘made;’—

*omit, insert—*

‘made; and’.

(2) Section 41(1)(b) and (c)—

*omit, insert—*

‘(b) that particulars of the valuation will be available for inspection by any person, without payment of a fee, for a period of not less than 42 days starting on a stated day and at the stated places and times.’.

### **Insertion of new s 41A**

**117.** After section 41—

*insert—*

#### **‘Notice to individual owners about annual valuation**

**‘41A.(1)** As soon as practicable after making an annual valuation of all land in an area but not later than 31 March in the year in which the valuation is to take effect, the chief executive must give to each owner of land within the area a notice (an “**annual valuation notice**”) about the valuation of the owner’s land.

**‘(2)** The annual valuation notice must—

- (a) be in the approved form; and
- (b) state that the owner may object to the valuation within 42 days after the notice is given to the owner; and



(c) state the way in which an objection may be made.’.

### **Amendment of s 42 (Owner may object)**

**118.(1)** Section 42(1), from ‘within 28 days’ to ‘that annual valuation’—  
*omit, insert—*

‘within 42 days after the annual valuation notice is given to the owner’.

**(2)** Section 42(4), ‘28’—

*omit, insert—*

‘42’.

### **Replacement of s 44 (Late objection)**

**119.(1)** Section 44—

*omit, insert—*

#### **‘Late objection**

**‘44.(1)** This section applies if—

- (a) a person was entitled to make a timely objection about a valuation of the person’s land but failed to do so; and
- (b) the person objects in writing to the valuation within 1 year after—
  - (i) if the person alleges that the person did not receive an annual valuation notice—the first advertisement about the valuation under section 41(1);<sup>12</sup> or
  - (ii) in any other case—the date the annual valuation notice was given to the person; and
- (c) the person is, at the time of the late objection, the owner of the land.

**‘(2)** If the chief executive is satisfied that the person’s failure to make a timely objection happened through no fault of the person, the chief

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<sup>12</sup> Section 41 (Advertisements)

executive must accept the late objection.

‘(3) A late objection accepted by the chief executive is to be dealt with under this part as if it were a timely objection.

‘(4) In this section—

“**late objection**” means an objection mentioned in subsection (1)(b).

“**timely objection**” means an objection under section 42<sup>13</sup> within the time stated in that section.’.

### **Amendment of s 45 (Appeal)**

**120.** Section 45(2), ‘28’—

*omit, insert—*

‘42’.

### **Amendment of s 46 (Right of new owner to carry on objection or appeal)**

**121.(1)** Section 46(1), from ‘subsequent’ to ‘forms part’—

*omit, insert—*

‘after the relevant date of notice,’.

**(2)** Section 46—

*insert—*

‘(4) In subsection (1)—

“**relevant date of notice**” means the later of the following—

- (a) if it is alleged that the previous owner did not receive an annual valuation notice—the date of the first advertisement about the valuation under section 41(1);<sup>14</sup>
- (b) in any other case—the date the annual valuation notice is given to

<sup>13</sup> Section 42 (Owner may object)

<sup>14</sup> Section 41 (Advertisements)

the previous owner.’.

### **Amendment of s 52 (Objections to valuation)**

**122.** Section 52, ‘60’—

*omit, insert—*

‘42’.

### **Insertion of new 52A**

**123.** After section 52—

*insert—*

#### **‘Late objections to valuation**

**‘52A.(1)** This section applies if—

- (a) a person was entitled to make a timely objection about a valuation of the person’s land but failed to do so; and
- (b) the person objects in writing to the valuation within 1 year after the date the notice was issued to the person; and
- (c) the person is, at the time of the late objection, the owner of the land.

**‘(2)** If the chief executive is satisfied that the person’s failure to make a timely objection happened through no fault of the person, the chief executive must accept the late objection.

**‘(3)** A late objection accepted by the chief executive is to be dealt with under this part as if it were a timely objection.

**‘(4)** In this section—

**“late objection”** means an objection mentioned in subsection (1)(b).

**“timely objection”** means an objection under section 52<sup>15</sup> within the time stated in that section.’.

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<sup>15</sup> Section 52 (Objections to valuation)

**Amendment of s 53 (Consideration of objections)**

**124.(1)** Section 53(1), ‘the objection’—

*omit, insert—*

‘an objection under section 52’.

**(2)** Section 53(10)—

*omit.*

**Amendment of s 54 (Notice to objector)**

**125.(1)** Section 54(1), ‘is made and, without prejudice to the foregoing, such’—

*omit, insert—*

‘is made.

‘**(1A)** If the objection is made under section 52 within the time stated in that section, the’.

**(2)** Section 54—

*insert—*

‘**(1B)** If the objection was a late objection within the meaning of section 52A, the notice must be issued within 1 year after the date of the objection mentioned in section 52A.<sup>16</sup>’.

**Amendment of s 55 (Appeal against the chief executive’s decision on an objection)**

**126.** Section 55(2), ‘60’—

*omit, insert—*

‘42’.

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<sup>16</sup> Section 52A (Late objections to valuations)

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**Amendment of s 73 (Supply of copies of valuation roll by chief executive)**

**127.(1)** Section 73(1) and (2), ‘furnish’—

*omit, insert—*

‘give’.

**(2)** Section 73(2), ‘furnished’—

*omit, insert—*

‘given’.

**Insertion of new s 73A**

**128.** After section 73—

*insert—*

**‘Local governments to be given notice about protected persons**

**‘73A.(1)** If a valuation roll or part of a valuation roll is, under section 73, given to a local government, the chief executive must, at the time the roll or part is given to the local government, give notice to the local government about the suppression directions for the benefit of protected persons whose names and addresses appear in the roll or part.

**‘(2)** If a valuation roll or part of a valuation roll has, under section 73, been given to a local government and a person, whose name and address appears in the roll or part, becomes a protected person, the chief executive must give notice to the local government about the suppression direction for the benefit of the protected person, no later than 7 days after the date of the direction.

**‘(3)** If matters stated in a suppression direction change (including, for example, the land stated in the direction), the chief executive must give notice to a local government that has previously been given notice about the direction.

**‘(4)** A notice under this section must be in the approved form.’.

**Amendment of s 74 (Other valuations)**

**129.** Section 74—

*insert—*

‘(6) Parts 4 and 6 do not apply to a valuation under this section.<sup>17</sup>’.

**Amendment of s 75 (Chief executive may identify land for local government)**

**130.** Section 75—

*insert—*

‘(2) A regulation may prescribe a fee payable by a local government for identifying land in a category.’.

**Replacement of pt 8 hdg**

**131.** Part 8, heading—

*omit, insert—*

**‘PART 8—SUPPRESSION DIRECTION AND OTHER  
MISCELLANEOUS MATTERS*****‘Division 1—Suppression direction*****‘Applications about direction to exclude personal details from rolls  
etc.**

‘**75A.(1)** A person who is the owner of a parcel of land may apply to the chief executive for a direction to exclude the person’s name and postal address from the publicly available parts of the valuation rolls and other documents kept under this Act in relation to the parcel of land.

‘(2) The application must—

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<sup>17</sup> Part 4 (Annual valuations) and part 6 (Notice of valuation, objections and appeals)

- (a) be made in the approved form; and
- (b) be supported by a statutory declaration by the applicant about the reasons for the application; and
- (c) state the parcel or parcels of land for which the application is made.

‘(3) The person must also give the chief executive all the cooperation, information and help reasonably necessary for the chief executive to consider the application.

‘(4) Before 5 years after the date of a suppression direction, the relevant protected person may apply for renewal of the direction.

‘(5) If a person is not the only owner of a parcel of land, an application under this section may be made jointly by all persons who have an interest in the parcel of land.

#### **‘Chief executive’s approval and making of suppression direction**

‘75B.(1) The chief executive must consider an application under section 75A(1) or (4) by a person.

‘(2) The chief executive must approve the application and, in writing, direct the name and postal address of the person (the “**protected person**”) be excluded from the publicly available parts of the valuation rolls and other documents kept under this Act in relation to the parcel of land stated in the application, if the chief executive is satisfied, on reasonable grounds, that the inclusion of the person’s name and postal address would place at risk—

- (a) the personal safety of the person or someone else mentioned in the application; or
- (b) the property of the person or someone else mentioned in the application.

‘(3) A direction has effect for 5 years from the date of the chief executive’s approval, under subsection (2), of the application.

‘(4) The direction must state—

- (a) the name of the person for whose benefit the direction is made; and

- (b) the parcel of land of which the person is an owner; and
- (c) the valuation rolls and other documents from which the protected person's name and postal address are to be excluded; and
- (d) the date of the chief executive's approval and the date the direction stops having effect.

'(5) The chief executive must promptly give written notice to the applicant of the chief executive's decision and, if a direction is made, a copy of the direction.

'(6) If the chief executive does not approve the application, the notice must also state—

- (a) the reasons for the decision; and
- (b) that the applicant may appeal against the decision to a Magistrates Court within 42 days after the day the notice is received by the applicant.

'(7) If there is a change of ownership involving a protected person or parcel of land stated in a suppression direction, the protected person must give written notice to the chief executive about the change and the chief executive must issue an amended direction under subsection (2).

'(8) However, an amendment must not change the date of the approval or date the direction stops having effect.

#### **'Grounds for revocation of suppression direction**

'75C. Each of the following is a ground for the revocation of a suppression direction—

- (a) the direction was obtained on the basis of incorrect or misleading information;
- (b) the direction is no longer required because the grounds for the direction, as mentioned in section 75B(2), no longer exist.

#### **'Procedure for revocation of suppression direction**

'75D.(1) If the chief executive considers that reasonable grounds exist to



revoke a suppression direction (the “**action**”), the chief executive must give the protected person a written notice (the “**show cause notice**”) that—

- (a) states the action proposed; and
- (b) states the grounds for proposing to take the action; and
- (c) outlines the facts and circumstances that form the basis for the chief executive’s belief; and
- (d) invites the protected person to show cause within a stated time, of not less than 42 days, why the action proposed should not be taken.

‘(2) If, after considering all representations made within the specified time, the chief executive still believes that grounds to take the action exist, the chief executive may revoke the suppression direction.

‘(3) The chief executive must inform the protected person of the decision by written notice.

‘(4) If the chief executive decides to revoke the suppression direction, the notice must state—

- (a) the reasons for the decision; and
- (b) that the person who was a protected person may appeal against the decision within 42 days to a Magistrates Court.

‘(5) The decision takes effect on the later of the following—

- (a) the day on which the notice is given to the person;
- (b) the day stated in the notice.

### ‘**Right to appeal to the Court**

‘75E.(1) An applicant for a suppression direction may appeal against the chief executive’s decision to refuse to make the direction.

‘(2) Also, a person who was a protected person may appeal against the chief executive’s decision to revoke the direction.

‘(3) The appeal may be made to the Magistrates Court nearest the place where the applicant or person resides.

**‘How to start appeal**

‘75F.(1) An appeal is started by—

- (a) filing a written notice of appeal with the clerk of the court of the Magistrates Court; and
- (b) serving a copy of the notice on the chief executive.

‘(2) The notice of appeal must be filed within 42 days after the appellant receives notice of the decision appealed against.

‘(3) The Court may at any time extend the period for filing the notice of appeal.

‘(4) The notice of appeal must state the grounds of the appeal.

**‘Action pending outcome of appeal**

‘75G.(1) This section applies if, under section 75(1)(b), a person serves the chief executive with a copy of a notice of appeal against—

- (a) the chief executive’s decision about the person’s application under section 75A (an “**application appeal**”); or
- (b) the chief executive’s decision, under section 75D(4), to revoke a direction (a “**revocation appeal**”).

‘(2) For an application appeal, the chief executive must exclude the name and postal address of the person from the publicly available parts of the valuation rolls or other documents under this Act, unless the chief executive considers that the application under section 75A was frivolous or vexatious.

‘(3) For a revocation appeal, the chief executive must continue to exclude the name and postal address of the person from the publicly available parts of the valuation rolls or other documents under this Act, unless the chief executive considers that the appeal is frivolous or vexatious.

‘(4) The exclusion under subsection (2), or continuation of the exclusion under subsection (3), extends until the application appeal or revocation appeal is decided or otherwise ends.

**‘Hearing procedures**

‘75H.(1) The power under the *Magistrates Courts Act 1921* to make rules for Magistrates Courts includes power to make rules for appeals to Magistrates Courts under this Act.

‘(2) The procedure for an appeal to a Magistrates Court under this Act is to be in accordance with—

- (a) the rules made under the *Magistrates Courts Act 1921*; or
- (b) in the absence of relevant rules—directions of the Court.

‘(3) An appeal is to be by way of rehearing, unaffected by the chief executive’s decision.

‘(4) In deciding an appeal, the 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.

**‘Powers of Court on appeal**

‘75L.(1) In deciding an appeal, the Court may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the matter to the chief executive with directions that the Court considers appropriate.

‘(2) In substituting another decision, the Court has the same powers as the chief executive.

*Example—*

The Court may decide that an unsuccessful applicant for a direction be granted the direction.

‘(3) If the Court substitutes another decision, the substituted decision is taken, for the purposes of this Act, to be the chief executive’s decision.

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**‘Appeal to District Court on questions of law only**

**‘75J.** A party aggrieved by the decision of the Court may appeal to a District Court, but only on a question of law.

**‘Division 2—Other miscellaneous matters’.**

**Insertion of new pt 9**

**132.** After section 100—

*insert—*

**‘PART 9—VALIDATION, TRANSITIONAL, SAVINGS  
ETC.**

**‘Failure to make general valuation within prescribed periods**

**‘101.** An annual valuation for an area that was made before the commencement is not invalid merely because a general valuation for the area was not made as required by section 27 before the commencement.

**‘Fees for identifying land for local governments before commencement of section**

**‘102.(1)** This section applies if the chief executive has, after 1 January 1985 and before the commencement of this section, identified land for a local government as land within a category.

**‘(2)** If the chief executive has charged a local government a fee for identifying the land in a category, the fee is taken to have been validly charged.

**‘(3)** However, if the fee has not been paid to, or recovered by, the chief executive, the fee may be recovered from the local government as a debt payable to the State.

**‘(4)** If the chief executive has not charged a local government a fee for identifying for it the land in a category, the chief executive may charge the local government the fee prescribed under section 75.

‘(5) This section expires 1 year after it commences.

#### **‘Time allowed under legislation**

‘**103.(1)** This section applies to provisions that, before the commencement of this section, provided for a thing to be done by, within or after a stated time (the “**original time period**”) and before the commencement—

- (a) the thing had not been done; and
- (b) the original time period had not ended.

‘(2) If, after the commencement, there is more time than the original time period for doing the thing (the “**greater time period**”), the thing may be done before the greater time period ends.

‘(3) However if, after the commencement, there is less time than the original time period for doing the thing (the “**reduced time period**”), the reduced time period does not apply to doing the thing but the thing may be done before the original time period ends.

‘(4) This section expires 3 months after it commences.’.

## **PART 12—AMENDMENT OF WATER RESOURCES ACT 1989**

### **Act amended in pt 12**

**133.** This part amends the *Water Resources Act 1989*.

### **Amendment of title**

**134.** Title, after ‘physical integrity of watercourses’—

*insert—*

‘, lakes and springs’.

### **Amendment of s 2 (Interpretation)**

**135.(1)** Section 2(1)—

*insert—*

‘ **“declared subartesian area”** means a locality in the State prescribed under a regulation as a declared subartesian area.

**“driller’s licence”** means a licence to drill boreholes for the construction of artesian or subartesian bores, to construct artesian or subartesian bores and for carrying out work in relation to existing bores.

**“water available for allocation”** means—

- (a) water available for irrigation or another purpose, from works of the corporation or a board; or
- (b) water from watercourses, lakes or springs; or
- (c) underground water.’

**(2)** Section 2(1), definition **“water allocation”**, ‘irrigation or any other purpose from works of the corporation’—

*omit, insert—*

‘allocation’.

### **Amendment of s 8 (General powers etc. of corporation and chief executive)**

**136.(1)** Section 8(1)(g)(i) and (ii)—

*omit, insert—*

- ‘(i) springs; and
- (ii) the beds and banks of watercourses and lakes, and other elements of watercourses and lakes that confine or contain water.’.

**(2)** Section 8(2)(g) and (h)—

*omit, insert—*

‘(g) monitor the physical integrity of—

- (i) springs; and
  - (ii) the beds and banks of watercourses and lakes, and other elements of watercourses and lakes that confine or contain water; and
- (h) take action necessary or desirable to protect—
- (i) springs; and
  - (ii) the beds and banks of watercourses and lakes, and other elements of watercourses and lakes that confine or contain water; and’.

**Amendment of s 29 (Wastage of water from artesian or subartesian bore)**

**137.** Section 29(2), penalty, ‘50’—

*omit, insert—*

‘200’.

**Amendment of s 30 (Supply of surplus water from artesian or subartesian bore)**

**138.** Section 30(6), penalty—

*omit, insert—*

‘Maximum penalty for subsection (6)—50 penalty units.’.

**Omission of ss 31 and 32**

**139.** Sections 31 and 32—

*omit.*

**Amendment of s 37 (Control of certain quarry material)**

**139A.** Section 37(3), from ‘to the owner’ to ‘is situated’—

*omit.*

**Insertion of new pt 4, div 1A**

**140.** After section 37—

*insert—*

*‘Division 1A—Certain specific provisions about subartesian bores*

**‘Act applies to subartesian bores in declared subartesian areas**

**‘37A.** The provisions of this Act about subartesian bores apply only to subartesian bores in declared subartesian areas.

**‘Exemptions for small bores in declared subartesian areas**

**‘37B.** Section 38(1)(i) does not apply to a person in a declared subartesian area who, on the person’s land—

- (a) constructs or uses a bore that is declared, under a regulation, a small bore for the declared subartesian area; or
- (b) enlarges, deepens or alters in any way a bore that is declared, under a regulation, a small bore for the declared subartesian area and the bore as enlarged, deepened or altered remains a small bore for the declared subartesian area.<sup>18</sup>

*Example of regulation prescribing a bore a small bore for a declared subartesian area—*

For the declared subartesian area constituted by the Shire of Clifton, a bore is a small bore if it is to be used for domestic purposes and has a casing size less than 150 mm in diameter.’.

**Amendment of s 38 (Requirements as to licence)**

**141.(1)** Section 38, heading—

*omit, insert—*

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<sup>18</sup> Section 38 (Offences about constructing works etc. and otherwise taking water without the authority of a licence)



**‘Offences about constructing works etc. and otherwise taking water without the authority of a licence’.**

(2) Section 38(1)(b)(i), ‘water;’—

*omit, insert—*

‘water; or’.

(3) Section 38(1)(c)(i), ‘drainage;’—

*omit, insert—*

‘drainage; or’.

(4) Section 38(1)(c)(ii), ‘banks;’—

*omit, insert—*

‘banks; or’.

(5) Section 38(1)(e)(i), ‘goods;’—

*omit, insert—*

‘goods; or’.

(6) Section 38(1)(i), from ‘in districts’ to ‘section 31’—

*omit, insert—*

‘in a declared subartesian area—’.

(7) Section 38(1), penalty—

*omit, insert—*

‘Maximum penalty—

(a) 400 penalty units, if the person is convicted of an offence in relation to matters mentioned in subsection (1)(a); or

(b) 200 penalty units, in any other case.’.

**Amendment of s 41 (Alterations other than for repair or maintenance of works prohibited)**

**142.(1)** Section 41(a), after ‘of the licence;’—

*insert—*

‘or’.

(2) Section 41, penalty—

*omit, insert—*

‘Maximum penalty—

- (a) 400 penalty units, if the person is convicted of an offence about effecting alterations to a referable dam or using the water supplied from a referable dam; or
- (b) 200 penalty units, in any other case.’.

### **Amendment of s 43 (Inquiry by chief executive and grant or refusal of application)**

**143.(1)** Section 43(1)—

*insert—*

- ‘(d) if the application is for a driller’s licence—the suitability of the applicant to hold a driller’s licence of the type stated in the application, including, for example, the applicant’s skills in different aquifer systems and knowledge and proficiency in different drilling techniques.’.

(2) Section 43(1A), ‘However, if the’—

*omit, insert—*

‘If an’.

(3) Section 43(3)—

*insert—*

- ‘(e) the type of driller’s licence stated in the application modified or varied;’.

### **Amendment of s 43A (Chief executive’s decision to be published)**

**144.(1)** Section 43A, heading—

*omit, insert—*

**‘Certain decisions of the chief executive to be published in newspapers’.**

(2) Section 43A(1)—

*omit, insert—*

‘**43A.(1)** This section applies to a decision, made by the chief executive under section 43, about which a person may, under section 51,<sup>19</sup> appeal to the Land Court, other than a decision about constructing or using an artesian or subartesian bore.’

**Insertion of new section 43B**

**145.** After section 43A—

*insert—*

**‘Notice of decision about constructing or using artesian or subartesian bores**

‘**43B.(1)** This section applies to a decision, made by the chief executive under section 43, about constructing or using an artesian or subartesian bore.

‘(2) The chief executive must promptly give notice of the chief executive’s decision about the application to the applicant.

‘(3) If the decision is other than a decision to grant the application absolutely, the notice must also state—

- (a) the reasons for the decision; and
- (b) that the applicant may, under section 51, appeal against the decision to the Land Court within 30 days after the day the notice is received by the applicant.<sup>20</sup>

‘(4) Also, if there is another person who is, or may be, a dissatisfied

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<sup>19</sup> Section 51 (Appeal to Land Court) states the persons who may appeal against decisions of the chief executive to the Land Court, the process for making the appeal, the way the matter must be heard and determined by the Land Court and other matters.

<sup>20</sup> Section 51 (Appeal to Land Court)

person under section 51(1) in relation to the decision, the chief executive must promptly give notice of the chief executive's decision, and the reasons for the decision, to the person.'

### **Insertion of new s 48A**

**146.** After section 48—

*insert—*

#### **'Holder of driller's licence to keep certain information about boreholes and give it to the chief executive**

**'48A.(1)** The holder of a driller's licence must keep information prescribed under a regulation about the boreholes drilled by the holder.

**'(2)** The holder must keep the information about a borehole as the driller is drilling the borehole.

**'(3)** Subject to subsection (4), the holder must give to the chief executive a copy of the information about a borehole within 60 days of completing the drilling of the borehole.

**'(4)** However, a regulation may prescribe an area in relation to which a holder of a driller's licence need not give to the chief executive a copy of the information about boreholes drilled within the area.

**'(5)** The chief executive may issue a document containing forms suitable for use for keeping the information mentioned in subsection (1) to each holder of a driller's licence and, if the chief executive issues a document to a holder, the holder must use the forms.'

### **Amendment of s 50 (Amendment, variation, cancellation, revocation or suspension of licence)**

**147.** Section 50(2)(b), from 'for such period'—

*omit, insert—*

'for a period not longer than the period stated in the notice;'

**Insertion of new ss 50A–50B**

**148.** After section 50—

*insert—*

**‘Procedure for internal review of decision about driller’s licences**

**‘50A.(1)** This section applies to each of the following decisions (an **“original decision”**) if the decision is made by a person other than the chief executive personally—

- (a) a decision under section 43(2) in relation to a driller’s licence, other than a decision to grant the application absolutely;
- (b) a decision under section 50(2) to amend, vary, cancel, revoke or suspend a driller’s licence.<sup>21</sup>

**‘(2)** Each of the following (an **“affected person”**) may apply for a review of the original decision—

- (a) the applicant for a driller’s licence;
- (b) a holder of a driller’s licence, or person who was a holder of a driller’s licence, affected by a decision under section 50(2).

**‘(3)** The application must—

- (a) be made in the approved form to the chief executive within—
  - (i) 14 days after the day on which the affected person receives notice of the original decision; or
  - (ii) the longer period the chief executive in special circumstances allows; and
- (b) be supported by enough information to enable the chief executive to decide the application.

**‘(4)** The chief executive must, within 14 days after receiving the application—

- (a) review the original decision; and
- (b) make a decision (the **“review decision”**) to—

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<sup>21</sup> Sections 43 (Inquiry by chief executive and grant or refusal of application) and 50 (Amendment, variation, cancellation, revocation or suspension of licence)

- (i) confirm or revoke the original decision; or
- (ii) vary the original decision in a way the chief executive considers appropriate.

‘(5) The application does not stay the original decision.

‘(6) If the application is not dealt with by the chief executive personally, it must not be dealt with by—

- (a) the person who made the original decision; or
- (b) a person in a less senior office than the person who made the original decision.

‘(7) Within 14 days after making the review decision, the chief executive must give written notice of the decision to the applicant.

‘(8) The notice must include the reasons for the review decision.

‘(9) If the chief executive does not comply with subsection (7), the chief executive is taken to have made a decision confirming the original decision.

‘(10) Subsection (6) applies despite the *Acts Interpretation Act 1954*, section 27A.<sup>22</sup>

### ‘Stay of operation of original decisions

‘50B.(1) If an application is made under section 50A for review of an original decision, the applicant may immediately apply for a stay of the decision to a Magistrates Court.

‘(2) The court may stay the decision to secure the effectiveness of the review.

‘(3) A stay may be given on conditions the court considers appropriate and has effect for the period stated by the court.

‘(4) The period of a stay must not extend past the time when the chief executive reviews the decision.’

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<sup>22</sup> Section 27A (Delegation of powers)

**Amendment of s 51 (Appeal to Land Court)**

**149.** Section 51(4), from ‘in the Land Court’—

*omit, insert—*

‘a notice of appeal in the registry of the Land Court within 30 days after—

- (a) if the decision relates to an application about constructing or using an artesian or subartesian bore—the day the notice under section 43B is received by the applicant; or
- (b) in any other case—the day notification of the decision is first published in the newspaper.’.

**Amendment of s 53 (Requirement as to licensing and employment of drillers)**

**150.(1)** Section 53(1) ‘bore not’—

*omit, insert—*

‘bore, not’.

**(2)** Section 53(1), after ‘driller’s licence’—

*insert—*

‘that authorises the drilling operation,’.

**(3)** Section 53(1), penalty, ‘15’—

*omit, insert—*

‘200’.

**(4)** Section 53(2), after ‘driller’s licence’—

*insert—*

‘for the drilling operations for which the person is employed as a driller,’.

**(5)** Section 53(2), penalty—

*omit, insert—*

‘Maximum penalty for subsection (2)—200 penalty units.’.

(6) Section 53(3) and (4)—

*omit.*

**Amendment of s 56 (Power to issue permit to government department, other person or body to take water)**

**151.** Section 56(2)(b), ‘90 days’—

*omit, insert—*

‘1 year’.

**Amendment of s 57 (Power to issue permit to construct or use works in the exercise of a right to use water under s 36)**

**152.** Section 57(6), penalty—

*omit, insert—*

‘Maximum penalty for subsection (6)—50 penalty units.’.

**Amendment of s 58 (Application for and issue of permit in respect of quarry material)**

**153.** Section 58(2) and (3)—

*omit, insert—*

‘(2) However, an application under subsection (1) about quarry material, other than controlled quarry material, may only be made by—

- (a) the owner of the land through or past which the watercourse flows or on which part of the lake is situated; or
- (b) a person who makes the application with the written consent of the owner and includes a copy of the consent in the application.

‘(3) The chief executive may, by written notice to the applicant, require the applicant to give to the chief executive further documents, information or particulars about the proposed operation as stated in the notice.’.



**Amendment of s 63 (Royalty or price)**

**154.** Section 63(3), penalty, ‘20’—

*omit, insert—*

‘50’.

**Insertion of new s 64A**

**155.** Part 4, division 3, after section 64—

*insert—*

**‘Notice to stop unauthorised quarrying activities etc.**

**‘64A.(1)** This section applies if—

- (a) it appears to the chief executive that a person is engaging in, or is about to engage in, taking, getting, removing or otherwise interfering with quarry material in or from a watercourse or lake, including controlled quarry material; and
- (b) a permit under this division is required, but has not been obtained, for the activity.

**‘(2)** The chief executive may give written notice to the person requiring the person to stop, or not to engage in, the activity.

**‘(3)** The person must not contravene a notice under subsection (2).

Maximum penalty—200 penalty units.

**‘(4)** A penalty may be imposed under this section in relation to an activity even if—

- (a) a penalty is imposed under section 223<sup>23</sup> in relation to the activity; or
- (b) an enforcement injunction is obtained under part 11, division 1B.<sup>24</sup>.

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<sup>23</sup> Section 233 (Unlawful construction of works or interference with works)

<sup>24</sup> Under part 11, division 1B an injunction may be obtained if a person contravenes a notice under section 76(1).

**Amendment of s 65 (Limitation of times during which water may be taken under licence or permit)**

**156.** Section 65(3), penalty—

*omit, insert—*

‘Maximum penalty for subsection (3)—200 penalty units.’.

**Amendment of s 66 (Offences as to dealing with water)**

**157.(1)** Section 66(1), penalty, ‘30’—

*omit, insert—*

‘200’.

**(2)** Section 66(5), penalty, ‘15’—

*omit, insert—*

‘200’.

**Amendment of s 67 (Powers of chief executive with respect to unauthorised works)**

**158.** Section 67(2), penalty—

*omit, insert—*

‘Maximum penalty—

- (a) 400 penalty units, if the person is convicted of an offence of failing to comply with a notice about a referable dam; or
- (b) 200 penalty units, in any other case.’.

**Amendment of s 68 (Definitions)**

**159.** Section 68, definition “**placing of fill**”, ‘watercourse’—

*omit, insert—*

‘watercourse, lake or spring’.

**Amendment of s 70 (Destruction of vegetation, excavation or placing of fill)**

**160.(1)** Section 70(1), ‘watercourse’—

*omit, insert—*

‘watercourse, lake or spring’.

**(2)** Section 70(1), penalty—

*omit, insert—*

‘Maximum penalty—400 penalty units.’.

**(3)** Section 70(2)(a) and (b)—

*renumber* as section 70(2)(b) and (c).

**(4)** Section 70(2)—

*insert—*

‘(a) destruction of vegetation, excavation or placing of fill, in a lake or spring by a person if the lake or spring—

(i) is wholly contained in the person’s land; and

(ii) for a lake—does not have a watercourse flowing into or from the lake, that passes through or past the land owned or occupied by someone else; or’.

**(5)** Section 70(2)(b)(iv) and (v) (as renumbered)—

*omit, insert—*

‘(iv) in a watercourse, lake or spring prescribed under a regulation; or

(v) in a watercourse, lake or spring in an area prescribed under a regulation; or’.

**Amendment of s 71 (Permit to destroy vegetation or to excavate or fill)**

**161.(1)** Section 71(1)—

*omit, insert—*

‘**71.(1)** A person may apply to the chief executive for a permit to do any

or all of the following activities—

- (a) destroy vegetation in a watercourse, lake or spring;
- (b) excavate in a watercourse, lake or spring;
- (c) place fill in a watercourse, lake or spring.

‘(1A) If the applicant is not the owner of land that wholly contains the watercourse, lake or spring or that part of the watercourse, lake or spring where the activity is to take place, the application must include the written consent of all owners of land—

- (a) wholly containing a length of the watercourse in which the activity is to take place, or a part of the lake or spring where the activity is to take place; or
- (b) abutting the watercourse, lake or spring, where the activity is to take place.’.

(2) Section 71(3)—

*omit, insert—*

‘(3) The chief executive, by written notice to the applicant, may require the applicant to give to the chief executive further documents, information or particulars about the proposed activity as stated in the notice, including, for example, a statement of environmental effects and, if subsection (1A) applies, copies of the written consents of all the relevant owners.’.

### **Amendment of s 72 (Matters to be considered by chief executive)**

**162.** Section 72(1)(d) and (e) and (2)(a), ‘watercourse’—

*omit, insert—*

‘watercourse, lake or spring’.

### **Amendment of s 73 (Cancellation of permit or amendment of terms of permit)**

**163.** Section 73(1)(b), ‘watercourse’—

*omit, insert—*

‘watercourse, lake or spring’.

**Amendment of s 74 (Suspension of permit in exceptional circumstances)**

**164.(1)** Section 74(2), ‘watercourse’—

*omit, insert—*

‘watercourse, lake or spring’.

**(2)** Section 74(3), penalty—

*omit, insert—*

‘Maximum penalty—400 penalty units.’.

**Replacement of s 76 (Notice to stop activities etc.)**

**165.** Section 76—

*omit, insert—*

**‘Notice to stop, or not engage in, a stated activity**

**‘76.(1)** This section applies if—

- (a) it appears to the chief executive or an authorised officer that a person is engaging in, or is about to engage in—
  - (i) destroying vegetation in a watercourse, lake or spring; or
  - (ii) excavating in a watercourse, lake or spring; or
  - (iii) placing fill in a watercourse, lake or spring; and
- (b) a permit under this division is required, but has not been obtained, for the activity.

**‘(2)** The chief executive or authorised officer may give written notice to the person requiring the person to stop, or not to engage in, the activity stated in the notice.

**‘(3)** The person must stop, or not engage in, the activity stated in the notice.

Maximum penalty—200 penalty units.

‘(4) A penalty may be imposed under subsection (3) for an activity even if—

- (a) a penalty is imposed under section 70 for the activity; or
- (b) an enforcement injunction is obtained under part 11, division 1B.<sup>25</sup>.

**Amendment of s 77 (Notice to remove vegetation etc.)**

**166.(1)** Section 77(1)(b), after ‘to the chief executive’—

*insert—*

‘or an authorised officer’.

**(2)** Section 77(1)(b), ‘watercourse’—

*omit, insert—*

‘watercourse, lake or spring’.

**(3)** Section 77(1), ‘may give’—

*omit, insert—*

‘or the authorised officer may give’.

**(4)** Section 77(2), penalty—

*omit, insert—*

‘Maximum penalty—200 penalty units.’.

**(5)** Section 77(3), after ‘chief executive’—

*insert—*

‘or authorised officer’.

**(6)** Section 77(3), ‘watercourse’—

*omit, insert—*

‘watercourse, lake or spring’.

---

<sup>25</sup> Section 70 creates offences for destroying vegetation etc. Under part 11, division 1B an injunction may be obtained if a person contravenes a notice under section 76(1).

(7) Section 77(4) and (5), after ‘chief executive’—  
*insert*—  
‘or authorised officer’.

**Amendment of s 93 (Requirements by chief executive as to referable dam)**

**167.** Section 93(4), penalty, ‘200’—  
*omit, insert*—  
‘400’.

**Amendment of s 156 (Power to make by-laws)**

**168.** Section 156(2)(a), ‘20’—  
*omit, insert*—  
‘50’.

**Amendment of s 194 (Prohibition on voting by member having pecuniary interest)**

**169.** Section 194(1), penalty, ‘20’—  
*omit, insert*—  
‘50’.

**Amendment of s 213 (Obstruction of member of board, officer or other person)**

**170.** Section 213, penalty, ‘20’—  
*omit, insert*—  
‘200’.

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**Amendment of s 218 (Obstruction of officer or other person)**

**171.** Section 218, penalty, ‘20’—

*omit, insert—*

‘200’.

**Amendment of s 222 (Prohibition as to taking water on non-payment of charges therefor)**

**172.** Section 222(3), penalty—

*omit, insert—*

‘Maximum penalty for subsection (3)—200 penalty units.’.

**Amendment of s 223 (Unlawful taking, getting or removal of quarry material)**

**173.(1)** Section 223(1), penalty, ‘20’—

*omit, insert—*

‘400’.

**(2)** Section 223—

*insert—*

‘**(3)** On conviction for an offence against subsection (1), the court may order the offender to pay to the chief executive, in addition to any penalty imposed, the cost of any remedial work or rehabilitation necessary or desirable because of the commission of the offence.’.

**Replacement of s 224 (Contravention of or failure to comply with terms of a licence or permit)**

**174.(1)** Section 224—

*omit, insert—*

‘**Contravention of licences and certain permits**

‘**224.(1)** A person must not contravene a licence.’.



Maximum penalty—

- (a) 400 penalty units, if the person is convicted of an offence about contravening a licence involving a referable dam; or
- (b) 200 penalty units, in any other case.

‘(2) A person must not contravene a permit under section 58 or 71.

Maximum penalty—200 penalty units.

‘(3) A person must not contravene a permit under section 56(1) or 57.

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

### **Insertion of new pt 11, divs 1A and 1B**

**175.** Part 11, after section 224—

*insert—*

***‘Division 1A—Enforcement powers of authorised officers and police officers***

#### **‘Power to require name and address**

‘**224A.(1)** An authorised officer may require a person to state the person’s name and address if the authorised officer—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the authorised officer to suspect on reasonable grounds that the person has committed an offence against this Act.<sup>26</sup>

‘(2) When making the requirement, the authorised officer must warn the person that it is an offence against this Act to fail to state the person’s name and address, unless the person has a reasonable excuse.

‘(3) The authorised officer may require the person to give evidence of the correctness of the person’s name or address if the authorised officer

<sup>26</sup> It is an offence against section 224D(1) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

suspects on reasonable grounds that the name or address given is false.<sup>27</sup>

‘(4) If a police officer believes on reasonable grounds that a person has not complied with an authorised officer’s requirement under subsection (1) or (3), the police officer may take the following steps—

- (a) the police officer may ask the person whether the person has a reasonable excuse for not complying with the requirement;
- (b) if the person gives an excuse, the police officer may ask for details or further details of the excuse;
- (c) if the person does not answer the question or gives an excuse the police officer reasonably believes is not a reasonable excuse, the officer may—
  - (i) tell the person that the officer is considering arresting the person for failing to comply with the requirement; and
  - (ii) require the person to state the person’s name and residential address (or, if the person has no residential address, an address at which the person can most likely be contacted); and
  - (iii) if the officer reasonably suspects a stated name or address is false—require the person to give evidence of the correctness of the stated name or address;
- (d) the police officer may arrest the person without a warrant if the officer reasonably believes—
  - (i) the person has not complied with a requirement of the officer under paragraph (c)(ii) or (iii); and
  - (ii) proceedings by way of complaint and summons against the person for an offence against section 224D would be ineffective.

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<sup>27</sup> It is an offence against section 224D(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

**‘Power to require answers to questions**

‘**224B.(1)** This section applies if an authorised officer suspects, on reasonable grounds, that—

- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence.

‘**(2)** The authorised officer may require the person to answer a question about the offence.<sup>28</sup>

‘**(3)** When making the requirement, the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

**‘Power to require production of documents**

‘**224C.(1)** An authorised officer may require a person to produce a document required to be held or kept by the person under this Act to the authorised officer for inspection.<sup>29</sup>

‘**(2)** The authorised officer may keep a produced document to take an extract from, or make a copy of, the document.

‘**(3)** The authorised officer must return the document to the person as soon as practicable after taking the extract or making the copy.

**‘Failure to give name and address etc.**

‘**224D.(1)** A person who is required by an authorised officer under section 224A(1)<sup>30</sup> to state the person’s name or address must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

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<sup>28</sup> It is an offence against section 224E(2) to fail to comply with the requirement unless the person has a reasonable excuse for not complying with it.

<sup>29</sup> It is an offence against section 224F to fail to comply with the requirements unless the person has a reasonable excuse for not complying with it.

<sup>30</sup> Section 224 (Power to require name and address)

‘(2) A person who is required by an authorised officer under section 224A(3) to give evidence of the correctness of a name or address must give the evidence, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

‘(3) A person does not commit an offence against this section if—

- (a) the authorised officer required the person to state the person’s name and address on suspicion of the person having committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

#### **‘Failure to answer questions**

‘**224E.(1)** This section applies if an authorised officer requires a person under section 224B(1) to answer a question.

‘(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

‘(3) It is a reasonable excuse for the person to fail to answer the question if complying with the requirement might tend to incriminate the person.

‘(4) The person does not commit an offence against this section if the information sought by the authorised officer is not in fact relevant to the offence.

#### **‘Failure to produce documents**

‘**224F.** A person who is required under section 224C<sup>31</sup> to produce a document must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

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<sup>31</sup> Section 224C (Power to require production of documents)

**‘False, misleading or incomplete documents**

**‘224G.(1)** A person must not give to the chief executive or an authorised officer a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—200 penalty units.

**‘(2)** Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive or authorised officer of the extent to which the document is false, misleading or incomplete; and
- (b) gives the correct information to the chief executive or authorised officer if the person has, or can reasonably obtain, the correct information.

**‘(3)** It is enough for a complaint for an offence against subsection (1) to state the document was false, misleading or incomplete to the person’s knowledge.

**‘False or misleading information**

**‘224H.(1)** A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

**‘(2)** It is enough for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person’s knowledge.

**‘Impersonation of authorised officer**

**‘224I.** A person must not pretend to be an authorised officer.

Maximum penalty—200 penalty units.

***‘Division 1B—Enforcement of certain notices*****‘Definitions for div 1B**

**‘224J.** In this division—

**“compliance section”** means section 64A or 76.

**“court”** means the Supreme Court.

**“enforcement injunction”** means an injunction under section 224K.

**“involved person”**, for a contravention, means a person involved in the contravention who—

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced the contravention (whether through threats, promises or another way); or
- (c) has been in any way (directly or indirectly) knowingly concerned in, or a party to, the contravention; or
- (d) has conspired with others to effect the contravention.

**‘Orders to enforce notice under compliance section**

**‘224K.(1)** This section applies if, on the application of the chief executive or an authorised officer, the court is satisfied that a person has engaged, is engaging, or proposes to engage, in conduct constituting a contravention of a notice under a compliance section.

**‘(2)** The court may make all or any of the following orders—

- (a) an order granting an injunction, on terms the court considers appropriate—
  - (i) restraining the person from engaging in the conduct; or
  - (ii) if the conduct involves failing to do something—requiring the person to do the thing;
- (b) an order directing the person to compensate the State for loss or damage suffered because of the contravention;
- (c) another order the court considers appropriate.

‘(3) If the court has power under subsection (2) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the court may make any other order (including granting an injunction) it considers appropriate against an involved person for the contravention concerned.

### ‘Consent injunctions

‘224L. On an application for an enforcement injunction, the court may grant the injunction by consent of all of the parties to the proceeding (whether or not the court is satisfied that the section under which the application is made applies).

### ‘Interim injunctions

‘224M.(1) The court may grant an interim injunction pending determination of an application for an enforcement injunction.

(2) However, the court must not require the chief executive, authorised officer or another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

### ‘Factors relevant to granting restraining injunction

‘224N. The court may grant an enforcement injunction restraining a person from engaging in conduct whether or not—

- (a) it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) the person has previously engaged in conduct of that kind; or
- (c) there is an imminent danger of substantial damage—
  - (i) to someone else if the person fails to do the thing; or
  - (ii) to a watercourse, lake or spring, or to vegetation, if the person engages in conduct of that kind.

**‘Factors relevant to granting mandatory injunction**

**‘224O.** The court may grant an enforcement injunction requiring a person to do a thing whether or not—

- (a) it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do the thing; or
- (c) there is an imminent danger of substantial damage—
  - (i) to someone else if the person fails to do the thing; or
  - (ii) to a watercourse, lake or spring, or to vegetation, if the person engages in conduct of that kind.

**‘Discharge or variation of injunction or order**

**‘224P.** The court may discharge or vary an injunction or order granted or made under this division.’.

**Amendment of s 225 (Trespass and unlawful occupation)**

**176.** Section 225(2), penalty, ‘15’—

*omit, insert—*

‘50’.Clause

**Amendment of s 233 (Unlawful construction of works or interference with works)**

**177.** Section 233(1), (2) and (3), penalty, ‘20’—

*omit, insert—*

‘200’.



**Amendment of s 234 (Powers of chief executive where obstruction causes collection of water on railway, tramway or public road or public nuisance)**

**178.** Section 234(3), penalty, ‘15’—  
*omit, insert—*  
‘200’.

**Amendment of s 250 (Approval of forms)**

**179.** Section 250, ‘approved’—  
*omit, insert—*  
‘approve’.

**Insertion of new ss 253—255**

**180.** Before the schedule—  
*insert—*

**‘Localities declared under a regulation**

**‘253.(1)** This section applies to a locality that, immediately before the commencement of this section, was a locality to which provisions of the Act about subartesian bores applied.

**‘(2)** The locality is taken to be a declared subartesian area.

**‘(3)** This section expires 1 year after it commences.

**‘Licence to construct bore etc.**

**‘254.(1)** This section applies if, within 2 years before the commencement of this section—

- (a) a person was granted a licence for the construction of an artesian or subartesian bore, or enlarging, deepening or altering an existing bore, on the person’s land; and
- (b) the terms of the licence included a requirement for the person to

give to the chief executive information about the construction, enlargement, deepening or alteration.

‘(2) The person is excused from complying with the requirement if the holder of the driller’s licence gives to the chief executive a copy of the information from the driller’s log about the drilling of the borehole for the construction, enlargement, deepening or alteration of the bore.

‘(3) This section expires 2 years after it commences.

### **‘Driller’s licences**

‘**255.(1)** This section applies to a driller’s licence issued under section 53 before the commencement of this section that has not expired before the commencement.

‘(2) The licence continues to have effect as if it had been issued under section 43<sup>32</sup> until 1 year after the day the licence took effect.

‘(3) This section expires 1 year after it commences.’.

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<sup>32</sup> Section 43 (Inquiry by chief executive and grant or refusal of application)