

# **NATURAL RESOURCES LEGISLATION AMENDMENT BILL 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Policy objectives of the Bill**

The Bill proposes to amend the *Aboriginal Land Act 1991*, *Acquisition of Land Act 1967*, the *Coal Mining Safety and Health Act 1999*, the *Explosives Act 1999*, the *Land Act 1994*, the *Land Court Act 2000*, the *Land Title Act 1994* and the *Torres Strait Islander Land Act 1991*.

The amendments are primarily business driven administrative changes to clarify the operation of legislation as well as providing certainty of legislative operation. The amendments to the *Coal Mining Safety and Health Act 1999* are to ensure transitional arrangements are in place for accredited mine safety services.

#### **Why the Proposed Legislation is Necessary**

The proposed amendments arise from ongoing stakeholder consultation on operational and business issues as well as departmental review processes. The amendments are seen as necessary administrative changes that will benefit the day-to-day operation of each piece of legislation.

#### **Estimated cost of implementation to Government**

It is understood that there is no cost of implementation to government in these amendments.

#### **Consistency with Fundamental Legislative Principles**

There are no fundamental legislative principle issues arising from the Bill, apart from the retrospective application of the *Coal Mining Safety and Health Act 1999*.

The amendments to that Act will operate retrospectively to ensure transitional arrangements are in place for accredited mine safety services from the *Coal Mining Act 1925* to the *Coal Mining Safety and Health Act 1999* and to ensure those services can be offered legally during the transitional arrangement.

### **Consultation**

Consultation was undertaken with the various Departmental and external stakeholders affected by the amendments. The amendments to the *Land Title Act 1994* and the *Land Act 1994* about the writ of execution arose from submissions from the Queensland Law Society supported by a legal opinion from Senior Counsel. The amendments to the *Explosives Act 1999* arose from consultation with stakeholder groups.

The periods of consultation have extended from early 1999 until early 2001.

The retrospective transitional amendment to the *Coal Mining Safety and Health Act 1999*, about mine safety services, has the support of the mining industry.

## **PART 1—PRELIMINARY**

*Clause 1* provides the short title of the Bill—“*The Natural Resources Legislation Amendment Bill 2001*”.

## **PART 2 —AMENDMENT TO ABORIGINAL LAND ACT 1991**

*Clause 2* names the Act to be amended.

*Clause 3* allows the chairperson of the land tribunal to be appointed on a part-time as well as a full-time basis.

### **PART 3—AMENDMENT OF *ACQUISITION OF LAND ACT 1967***

*Clause 4* names the Act to be amended.

*Clause 5* which expands the class of persons who may be given an advance against compensation in acquisitions under the Act removes a longstanding inequity. The *Acquisition of Land Act 1967* presently restricts advances against compensation to the owners of the land acquired. This has effectively prevented people who have a lesser interest in the land, e.g. a lessee of freehold land, from also receiving an advance of compensation that could for instance be used for relocation for business costs.

### **PART 4—AMENDMENT OF THE *COAL MINING SAFETY AND HEALTH ACT 1999***

*Clause 6* names the Act to be amended.

*Clause 7* provides a transition arrangement to allow corporations accredited by the Minister, under the *Coal Mining Act 1925* to legally provide mine rescue services under the *Coal Mining Safety and Health Act 1999* until accreditation can be obtained under that Act. This provision does not materially alter the quality or extent of mine rescue services in any way, as the requirements for the provision of mine safety and accreditation under both pieces of legislation are the same.

### **PART 5—AMENDMENT OF *EXPLOSIVES ACT 1999***

*Clause 8* names the Act to be amended.

*Clause 9* New regulations to replace those continued under the transitional arrangements of the *Explosives Act 1999* are presently being developed. However these replacement regulations will not be able to be commenced by the expiry date of 30 June 2001 for the old regulations. The expiry date is in section 140 of the Act. To ensure essential regulatory

control of explosives is maintained until the replacement regulation is implemented, an extension of the transitional time to 30 June 2002 is necessary.

## **PART 6—AMENDMENT OF *LAND ACT 1994***

*Clause 10* names the Act to be amended.

*Clause 11* introduces a new plan format to the *Land Act 1994*—the explanatory format plan.

The amendment will, in some instances where survey information is already held in the land registry or other highly accurate information which is held in spatial or other land information data bases, allow a plan to be drawn without the necessity of conducting a field survey. The plan can be drawn using mathematical calculations and distances from information taken from other registered plans or other highly accurate information available within the land registry about a lot including land descriptions or existing sketch plans of survey standard. The plan does not have to rely on the usual survey requirements such as monuments on the ground or physical survey to establish the bearings and distances usually shown on plans of survey.

It is envisaged the plan could be used for easements, or covenants.

An example of the application of the explanatory format plan could be where an easement of access was proposed to truncate the corner of a lot for which an indefeasible title existed in the land registry, and the boundaries of the easement were straight lines diagonally truncating the corner of the lot. The easement plan could be drawn as an explanatory plan using the existing plan's bearings and distances but showing the distance on the boundaries of the lot where the easement joined on the boundary and the joining of the points would show the boundaries of the easement.

The purpose of the new plan format is to provide a cost effective means of providing a plan in particular circumstances. The Chief executive will determine the circumstances for the use of the plan, the standard of information which may allow the format to be used as well as direction about the form of explanatory plans.

*Clause 12* clarifies that the easement document for public utility easements for water storage (referred to in clause 15) must show the extent

(perhaps by pictorial or other forms of representation) of inundation behind the weir. This is to ensure that the lessee of the land or any prospective purchaser is able to establish the limits, on the leased land, of inundating water behind a weir.

*Clause 13* aligns the *Land Act 1994* and the *Land Title Act 1994* as to the requirements of plans of survey showing easements. An easement can only be created when an easement plan and the easement document are lodged together. A survey plan or a subdivision plan may also show an easement to be created in the future as a “proposed easement”. However, as no easement document is registered at the same time as the plan the easement remains a proposed easement. The current provision (section 365) requires the word “proposed” to be included, even if accompanied by the easement document. The amendment will remove the inconsistency with the *Land Title Act 1994* and ensure uniform administrative consideration of the plans for these different types of tenures.

*Clause 14* provides that a public utility easement for water storage is to be over the whole of the land. The purpose of applying the easement to the whole of the lease is to limit the difficulty in accurately ground surveying the extent of water inundation as well as the high cost of conducting ground surveys of this type. While the easement burdens the whole of the land, the easement document, which set up the terms and conditions of the easement, will be able to provide the actual and practical limitations of these particular types of public utility easements.

*Clause 15* adds the water storage easement to the classes of public utility easements.

*Clause 16* inserts a new section to clarify the position of priority that a prior registered mortgagee of a lease of non-freehold land has over a later registered writ of execution where the mortgagee exercise power of sale. The amendment supports the position taken by the Courts where there has been a dispute between the mortgagee and the holder of the writ as to their priority of sale and the ability of the mortgagee to still lodge the transfer of the interest notwithstanding the registered writ of execution.

The amendment also allows the chief executive to cancel the writ where there has been a sale and transfer by a mortgagee. The reason for this is that where the mortgagee sells, in priority, to a third party, the owner of the lease has changed. As the writ of execution is personal to the previous owner it can no longer be enforced over the land. Consequently it must be removed.

*Clause 17* will allow the administrative amendments for the changing of strategic port lands to tenures under the *Land Act 1994* without disturbing any other existing interests in the land, e.g. existing leases or licences. For example it may be that strategic port land, which may be the subject of existing leases, is best served if a local government rather than a port authority held it. To amendment will allow administrative process to the change in tenure to the local government to be conducted in a more simple and cost effective method while still maintaining the security of existing interest holders.

*Clause 18* includes in the dictionary the term “explanatory plan of survey”.

## **PART 7—AMENDMENT OF *LAND COURT ACT 2000***

*Clause 19* names the Act to be amended.

*Clause 20* allows for a member of the Land Court to be appointed on a full-time basis or a part time basis if that member is appointed to the land tribunal.

*Clause 21* allows, where a member of the land tribunal is a member of the Land Court and the person is the chairperson or a member, the person may be appointed on a part-time or full-time basis.

*Clause 22* allows acting members of the Land Court to be appointed on a part-time or full-time basis for the term of their appointment.

## **PART 8—AMENDMENT OF *LAND TITLE ACT 1994***

*Clause 23* names the Act to be amended.

*Clause 24* will allow additional places other than land registries to receive instruments to be lodged for registration.

*Clause 25* introduces the new plan format to the *Land Title Act 1994*—the explanatory format plan.

The amendment will, in some instances where survey information is already held in the land registry or other highly accurate information which is held in spacial or other land information data bases, allow a plan to be drawn without the necessity of conducting a field survey. The plan can be drawn using mathematical calculations and distances from information taken other registered plans or other highly accurate information available within the land registry about a lot including land descriptions or existing sketch plans of survey standard. The plan does not have to rely on the usual survey requirements, such as monuments on the ground or physical survey, to establish the bearings and distances usually shown on plans of survey.

It is envisaged the plan could be used for easements, covenants and profits a prendre.

An example of the application of the explanatory format plan could be where an easement of access was proposed to truncate the corner of a lot for which an indefeasible title existed in the land registry and the boundaries of the easement were straight lines diagonally truncating the corner of the lot. The easement plan could be drawn as an explanatory plan using the existing plan's bearings and distances but showing the distance of the boundaries of the lot where the easement joined on the boundary and the joining of the points would show the boundaries of the easement.

The purpose of the new plan format is to provide a cost effective means of providing a plan in particular circumstances. The Registrar of Titles will determine the circumstances for the use of the plan, the standard of information which may allow the format to be used, as well as direction about the form of explanatory notes.

*Clause 26* is a technical amendment to clarify the status of land where a particular plan format is used.

The land, which is the base lot for subdivision under the Land Title Act, is a standard format lot. The lot may be further subdivided by other plans, including standard format plans of subdivision, building format plans of subdivision and volumetric plans of subdivision.

A building format plan of subdivision (for a strata titled high rise building) which subdivides the standard format lot into two or more lots may result in a balance lot which is a standard format lot by reason of its means of determination, i.e. defined using a horizontal plane and references to marks on the ground. This remaining land must still retain the characteristics of the original standard format lot to allow it to be further subdivided or amalgamated with other standard format lots.

*Clause 27* As the explanatory format plan will be available for leases, the requirement for sketch plans as an identifying tool is no longer required.

*Clause 28* clarifies the easement document for public utility easements for water storage (referred to in clause 30) must show the extent (perhaps by pictorial or other forms of representation) of inundation behind the weir. This is to ensure that the owner of the land or any prospective purchaser is able to establish the limits, on the land, of inundating water behind a weir.

*Clause 29* provides that a public utility easement for water storage is to be over the whole of the land. The purpose of applying the easement to the whole of the lease is to remove the difficulty in accurately ground surveying the extent of water inundation as well as the high cost of conducting ground surveys of this type. While the easement burdens the whole of the land, the easement document, which sets up the terms and conditions of the easement, will be able to provide the actual and practical limitations of these particular types of public utility easements.

*Clause 30* adds the water storage easement to the classes of public utility easements.

*Clause 31* inserts a new section to clarify the position of priority that a prior registered mortgagee has over a later registered writ of execution where the mortgagee exercise power of sale. The amendment supports the position taken by the Courts where there has been a dispute between the mortgagee and the holder of the writ as to their priority of sale and the ability of the mortgagee to still lodge the transfer of the interest notwithstanding the registered writ of execution.

The amendment also allows the Registrar of Titles to cancel the writ where there has been a sale and transfer by a mortgagee. The reason for this is that where the mortgagee sells, in priority, to a third party, the owner of the lot has changed. As the writ of execution is personal to the previous owner it can no longer be enforced over the land. Consequently it must be removed as there is not right against the new owner.

*Clause 32* Under the Torrens System, a caveat is a mechanism to allow a person who wishes to perfect an interest in a lot to “freeze” the register in respect of that interest or a particular dealing about an interest whilst taking certain action to perfect the person’s interest.

Caveats are treated administratively as an instrument under the Act for the purposes of execution, correction, examination, withdrawal and priority of registration (under for example sections 158 and 159 of the *Land Title Act*). The proposed amendment clarifies that a caveat does not create an interest in land.



*Clause 33* includes the definitions of “area” and “explanatory format” into the dictionary.

The *Land Title Act 1994* refers to the word “area” in a number of instances. The introduction in 1997 of the concept of volumetric lots consequently introduced a “volumetric area” to the accepted concept of a “square meter” area. To allow the common term “area” to apply to both square meters and cubic meters an inclusive definition is to be included in the Dictionary.

## **PART 9—AMENDMENT TO *TORRES STRAIT ISLANDER LAND ACT 1991***

*Clause 34* names the Act to be amended.

*Clause 35* allows the chairperson of the land tribunal to be appointed on a part-time or full-time basis.