

# ENVIRONMENTAL LEGISLATION AMENDMENT BILL 2002

## EXPLANATORY NOTES

### GENERAL OUTLINE

#### Short title

The short title of the Bill is the *Environmental Legislation Amendment Act 2002*.

#### Objectives of the Legislation

1. The object of the Bill is to amend the following Acts administered by the Minister for Environment:

- *Brisbane Forest Park Act 1977*
- *Forestry Act 1959*
- *Meaker Trust (Raine Island Research) Act 1981*
- *Nature Conservation Act 1992*;

2. amend section 233 and section 236 of the *Transport Infrastructure Act 1994*, which are administered by the Minister for Environment; and

3. carry out minor and consequential amendments to the *Beach Protection Act 1968* and the *Newstead House Trust Act 1939*.

#### Reasons for the Bill

##### *Brisbane Forest Park Act 1977* Amendment

A review in 1999 of the 1982 *Brisbane Forest Park By-law* resulted in the repeal of the power to appoint authorised officers, and of the powers which may be exercised by such officers under the By-law on the premise that such matters should be contained in the principle Act. The amendments will address this issue.

*Forestry Act 1959 Amendments*

It is proposed to bring the *Forestry Act 1959* under the State Penalties Enforcement Registry Scheme for infringement notice issue. To allow for this, the current infringement notice provisions under the *Forestry Act* will be repealed and the maximum penalty which may be applied under the *Forestry Regulation 1998* will be increased to a level which allows infringement notice penalties to be more consistent with those under the *Nature Conservation Act 1992* and *Nature Conservation Regulation 1994*. It is proposed to deal with declined credit card payments for permits in a similar manner to current provisions dealing with dishonoured cheques.

*Nature Conservation Act 1992 Amendments*

Section 22 of the *Nature Conservation Act 1992* will be amended to insert a reference to cultural resources in the management principles for nature refuges.

At present, the Chief Executive is required to keep certain registers. As the matters which are the subject of these registers are recorded in specific schedules in *Nature Conservation regulations*, it is proposed to delete the requirement.

The Environmental Protection Agency (EPA) proposes to consolidate the annual reports on the administration of the *Nature Conservation Act 1992* and the *Environmental Protection Act 1994* with the annual report for the EPA. It is therefore proposed to extend the reporting time for the administrative reports on the *Nature Conservation Act 1992* and the *Environmental Protection Act 1994* from the current three months to four months.

*Meaker Trust (Raine Island Research) Act 1981 Amendments*

Amendments are proposed which provide for greater scientific, community and indigenous representation; the ability for non-government members to appoint a proxy if unable to attend a meeting; the ongoing membership of the Butler family; and a minor amendment to correct a drafting error.

*Transport Infrastructure Act 1994 Amendments*

Certain provisions of the *Harbours Act 1955* dealing with coastal approvals have been continued under the provisions of the *Transport Infrastructure Act 1994* until 31 December 2002. These provisions will be superseded by the provisions of the *Coastal Protection and Management and Other Legislation Amendment Act 2001* (Amendment Act) which will bring coastal approvals within the Integrated Development Assessment

System under the *Integrated Planning Act 1997* when the Amendment Act commences.

However, when the Amendment Act commences it will be necessary to have a regulation in place to deal with fees, royalties and certain other matters. In order to provide for the contingency that the regulation is not in place by 31 December 2002 and that the Amendment Act is not commenced by that date, it is necessary to extend the transitional provisions to allow the current provisions of the Harbours Act to continue.

#### *Other Minor Amendments*

The Office of the Queensland Parliamentary Counsel (OQPC) has included a number of minor amendments in this Bill to rectify errors in legislation in the Environment portfolio, which have been noted during the reprint process.

### **ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION**

These amendments will not result in any costs to government.

### **CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES**

The Bill contains no provisions which depart from the fundamental legislative principles.

### **RESULTS OF CONSULTATION**

The proposed amendments have been supported.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act.

*Clause 2* states how and when the Act commences.

## **PART 2—AMENDMENT OF BRISBANE FOREST PARK ACT 1977.**

*Clause 3* provides that this part amends the *Brisbane Forest Park Act 1977*.

*Clause 4* relocates the definitions under the Act to the schedule to the Act.

*Clause 5* repeals two redundant sections of the Act.

*Clause 6* extends protection from liability to authorised officers, while applying the overall protection to an act done, or omission made, honestly without negligence under the Act.

*Clauses 7 and 8* provide for renumbering of sections and subsections.

*Clause 9* inserts new part 6.

## **PART 6—AUTHORISED OFFICERS**

### *Division 1—Appointment*

#### **Appointment and qualification**

*Clause 42* empowers the administration authority to appoint authorised officers to investigate suspected offences and carry out other enforcement functions under the Act. To be eligible for appointment as an authorised officer, the person must be a public service employee, or from a class of persons specified by regulation (for example, local government officers may be considered).

Due to the specialist nature of role of authorised officers, a person must have the necessary expertise or experience and have satisfactorily finished training approved by the administration authority before being appointed as an authorised officer.

**Appointment conditions and limitations on powers**

*Clause 43* provides that an authorised officer holds office on the conditions stated in the officer's instrument of appointment, under a regulation or notice of the administration authority. This allows the exercise of the functions and powers of an authorised officer to be restricted.

Conditions of appointment may require an authorised officer to provide information or a report to the administration authority about the performance of the officer's functions or the exercise of the officer's powers. This is designed to ensure authorised officers are accountable for the exercise of their statutory powers.

**Issue of identity card to each authorised officer**

*Clause 44* requires the administration authority to provide each authorised officer with an identity card, containing a recent photograph of the person and other relevant particulars. The purpose of the clause is to ensure authorised officers can be easily identified.

**Production or display of identity card**

*Clause 45* requires that an authorised officer must produce or display the authorised officer's identity card before exercising any powers under the Act. However, provision is also made for the authorised officer to produce the card at the first reasonable opportunity where it is not immediately practical to do so.

**When authorised officer ceases to hold office**

*Clause 46* details the circumstances in which an authorised officer ceases to hold office.

**Resignation**

*Clause 47* specifies the conditions and method of resignation of an authorised officer.

**Return of identity card**

*Clause 48* provides that when a person ceases to be an authorised person, the person must return the identity card to the chief executive. This is to

ensure that a person does not represent that the person is an authorised officer after ceasing to be one.

## ***Division 2—Powers of authorised officers***

### ***Subdivision 1—Entry to vehicles***

#### **Application of subdiv 1**

*Clause 49* provides that subdivision 1 applies to a vehicle at or about the park or a public place or road in or adjoining the park. However, it does not apply to a vehicle, or a part of a vehicle designed to be and being used as a residence, such as a campervan, camper trailer or a houseboat.

#### **Power of entry for vehicles**

*Clause 50* empowers an authorised officer to enter a vehicle if the officer reasonably suspects:

- that the vehicle is being or has been used in connection with an offence against the Act; or
- that the vehicle, or a thing in the vehicle may provide evidence of the commission of an offence against the Act.

#### **Procedure before entry to a vehicle**

*Clause 51* details the procedures for an authorised officer to follow where the officer is intending to enter a stationary vehicle under clause 50. In these circumstances, if the person in control of the vehicle or an occupier of the vehicle is present at the vehicle, the authorised officer must make a reasonable attempt to:

- produce the officer's identity card;
- tell the person the purpose of the entry;
- seek consent if no consent has been given; and
- tell the person the officer is permitted under this Act to enter the vehicle without consent.

If the person in control of the vehicle is not present, the officer must still take reasonable steps to inform the person or any registered operator of the officer's intention to enter the vehicle and take the other steps listed above.

However the authorised officer does not need to take a step where he/she reasonably believes that this may frustrate or hinder an investigation or the purpose of the intended entry.

### ***Subdivision 2—Entry to other places***

#### **Application of subdiv 2**

*Clause 52* provides that this subdivision applies to a place, other than a vehicle, except where the vehicle is designed to be and is being used as a residence.

#### **Power of entry for particular places**

*Clause 53* provides that an authorised officer may enter a place if:

- (a) the occupier consents to entry;
- (b) it is a public place, when the place is open to the public;
- (c) the entry is authorised by a warrant.

If the authorised officer intends to enter a place to ask the occupier for consent to enter under paragraph (a), the authorised officer may enter the land around premises to the extent that it is reasonable to contact the occupier or enter part of the place that the authorised officer reasonably considers that members of the public are allowed to enter.

#### **Procedure for entry with consent**

*Clause 54* outlines the procedures an authorised officer must follow when seeking consent to enter a place.

#### **Application for warrant**

*Clause 55* sets out the manner in which an authorised officer may apply for a warrant.

#### **Issue of warrant**

*Clause 56* sets out the circumstances in which a magistrate may issue a warrant and things which must be stated in the warrant.

## **Special warrants**

*Clause 57* sets out the circumstances under which a special warrant may be applied for by an authorised officer and the procedures which apply to the authorised officer and the magistrate if such a warrant is granted.

## **Warrants - procedure before entry**

*Clause 58* sets out the procedures that an authorised officer must follow in the execution of a warrant.

### ***Subdivision 3—Power for entry to places***

## **Power to stop vehicle that may be entered**

*Clause 60* provides an authorised officer with the power to signal a person to stop a moving vehicle or to prevent a vehicle from moving which the authorised officer may enter under this subdivision. This power may be exercised in respect to vehicles generally, including a vehicle which is designed to be and is being used as a residence.

It is an offence for a person in control of a vehicle to disobey the signal given by an authorised officer. It will not be an offence if the person had a reasonable excuse such as that immediately obeying would have endangered the person or someone else and the signal was complied with as soon as practicable.

## **Other powers relating to vehicles that may be entered**

*Clause 61* empowers an authorised officer, where the authorised officer may enter a vehicle under this subdivision, to require the person in control of the vehicle to give the authorised officer reasonable help to enter the vehicle. For example, where a vehicle is locked and the person in control of the vehicle has the keys, the authorised officer may require the person to unlock the vehicle. This power may be exercised in respect to vehicles generally, including a vehicle which is designed to be and is being used as a residence.

When making a requirement the authorised officer must warn the person in control of the vehicle that it is an offence not to comply. It is an offence for the person not to comply unless the person has a reasonable excuse.



**Powers of authorised officers after entering places**

*Clause 62* specifies the powers available to an authorised officer who has entered a place for the purposes of enforcing compliance with the legislation. The authorised officer may:

- search any part of the place;
- inspect, examine, photograph, videotape or otherwise record an image of a document or other thing;
- make copies of a document at the place;
- take into or onto the place any persons, equipment or materials the authorised officer reasonably requires for exercising a power under division 4; and
- require reasonable help from the occupier or a person at the place, for example, by producing a document or giving information.

When making a requirement for reasonable help the authorised officer must warn the person that it is an offence not to comply with the requirement without a reasonable excuse. It is a reasonable excuse for the person not to comply if complying with the requirement might tend to incriminate the person.

***Subdivision 4—Seizure*****Power to seize evidence – entry to place without consent or warrant**

*Clause 63* provides that an authorised officer who enters a place under division 2 may seize a thing at the place:

- if the authorised officer reasonably suspects the thing is evidence of an offence against the Act; and
- if the inspector reasonably believes it is necessary to prevent it being hidden, lost or destroyed, or used to commit, continue or repeat the offence.

**Power to seize evidence – entry to place with consent or warrant**

*Clause 64* provides that if the entry to a place by an authorised officer was by consent of a person, the authorised officer may seize a thing at the

place only if the authorised officer reasonably believes the thing is evidence of an offence against the Act and the seizure is consistent with the purpose of entry as told to the person.

Where the authorised officer enters a place under a warrant the authorised officer may seize the evidence for which the warrant was issued.

The authorised officer may also seize anything else in the place if the authorised officer reasonably believes:

- (a) the thing is evidence of an offence against the Act; and
- (b) the seizure is necessary to prevent the thing being destroyed, hidden, lost or used to repeat an offence against the Act.

### **Power to seize abandoned things**

*Clause 65* empowers an authorised officer to seize a thing in the park if the authorised officer reasonably believes the thing has been abandoned by its owner.

### **Securing seized things**

*Clause 66* provides that an authorised officer may move a seized thing from the place where it was seized or leave the thing at the place of seizure and take reasonable action to restrict access to it.

### **Offence to tamper with seized thing**

*Clause 67* creates an offence in relation to tampering with a seized thing to which an authorised officer has restricted access or any equipment which the authorised officer has made inoperable, without an authorised officer's approval. This includes tampering with something the authorised officer has used to restrict access to the thing.

### **Powers to support seizure**

*Clause 68* provides that an authorised officer may give a requirement to a person in control of a thing to be seized, to take the thing to a reasonable place by a stated reasonable time and, if necessary, to remain in control of it at the stated place for a reasonable time.

The requirement must be made by notice or, if that is not practicable, confirmed by a notice as soon as practicable.

It is an offence not to comply with a requirement.

### **Receipt for seized thing**

*Clause 69* requires an authorised officer to issue a receipt for any seized thing and give the receipt to the person from whom it was seized. However, this requirement does not apply if it would be impracticable or unreasonable to expect the authorised officer to account for the thing given its nature, condition or value.

The receipt must generally describe each thing seized and its condition. If the person is not present, the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

These provisions do not apply to a thing if the authorised officer reasonably believes the thing has been abandoned by its owner.

### **Return of seized thing**

*Clause 70* provides for the return by an authorised officer of a seized thing with some intrinsic value other than where it has been forfeited.

Under this clause, the authorised officer must:

- return the thing at the end of 6 months after seizure; or
- if a proceeding has been commenced within 6 months of seizure, at the end of the proceedings and any appeal from the proceeding; or
- return the thing as soon as the authorised officer stops being satisfied the thing is required as evidence or to prevent the thing being used to continue or repeat an offence.

These provisions do not apply to a thing if the authorised officer reasonably believes the thing has been abandoned by its owner.

### **Access to seized thing**

*Clause 71* requires an authorised officer who has seized anything to allow the owner of the thing access to inspect it at any reasonable time or, if it is a document, to copy it. The section does not apply when it would be unreasonable to allow these rights to the owner.

### ***Subdivision 5—Forfeiture***

#### **Forfeiture by authorised officer**

*Clause 72* sets out the circumstances under which a seized thing will be forfeited to the State, for example:

- if the owner cannot be found, after making reasonable inquiries;  
or
- it cannot be returned to its owner after making reasonable efforts.

#### **Forfeiture on conviction**

*Clause 73* provides that on conviction of a person for an offence against the Act, the court may order forfeiture to the State of anything owned by the person and seized under subdivision 4.

#### **Dealing with forfeited thing**

*Clause 74* details how a thing may be dealt with if it becomes the property of the State under clause 72 or clause 73. The clause provides that the administration authority may deal with the property as it sees fit including destroying or disposing of it. If the thing is sold, the proceeds of the sale, less any expenses relating to the sale must be paid into the Brisbane Forest Park fund.

### ***Subdivision 6—Other powers***

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

*Clause 75* provides that an authorised officer with the power to require a person's name and address in certain circumstances. When making such a requirement, the inspector must warn the person that it is an offence to fail to state their name and address, unless the person has a reasonable excuse.

If the authorised officer reasonably suspects that the name or address stated is false, the inspector may require the person to give evidence of the correctness of the stated name or address.

**Failure to give name or address**

*Clause 76* makes it an offence to fail to comply with a requirement made under *clause 75*, unless the person has a reasonable excuse. However, a person does not commit an offence by not complying with such a requirement, if the requirement was given where an authorised officer suspected the person had committed an offence against the Act and the person is proven not to have committed that offence.

**Power to require information about contravention**

*Clause 77* provides that an authorised officer may require a person to provide information about an offence against this Act.

The authorised officer may exercise this power only if the officer reasonably believes that an offence against the Act has been committed and the person may be able to give information about the offence.

When making the requirement, the inspector must warn the person that it is an offence not to give the information unless the person has a reasonable excuse.

**Failure to give information about contravention**

*Clause 78* provides that it is an offence for a person not to comply with a requirement made under *clause 77*, unless the person has a reasonable excuse. It is a reasonable excuse for the person if complying might tend to incriminate the person.

**Power to require production of documents**

*Clause 79* makes provision for an authorised officer to require a person to produce a document given to the person under the Act, or required to be kept by the person under the Act.

The authorised officer may keep the document to copy it and must return the document to the person as soon as practicable after copying it.

**Failure to produce document**

*Clause 80* makes it an offence to fail to produce a document in accordance with a requirement under *clause 79* unless the person has a reasonable excuse.

***Division 3—Offences relating to authorised officers*****False or misleading statements**

*Clause 81* makes it an offence for a person to state anything to an authorised officer that the person knows is false or misleading in a material particular.

**False or misleading documents**

*Clause 82* makes it an offence for a person to give an inspector a document containing information that the person knows is false or misleading in a material particular.

**Obstruction of authorised officer**

*Clause 83* provides an offence by a person to obstruct an authorised officer in the exercise of a power under division 2, unless the person has a reasonable excuse.

***Division 4—Notice of damage and compensation*****Notice of damage**

*Clause 84* requires an authorised officer to give notice to the owner or person in possession of a thing damaged by the authorised officer, or a person acting under the direction or authority of the authorised officer when exercising a power. However, if for some reason this proves impractical, the authorised officer must leave the notice in a conspicuous and secure way at the place where the damage happened. This is to ensure that the notice is likely to come to the attention of the owner. However the authorised officer need not give notice if the authorised officer believes the damage is trivial.

**Compensation**

*Clause 85* provides that if a person incurs loss or damage because of the exercise of a power, other than a forfeiture, the person is entitled to be paid reasonable compensation as agreed to between the person and the administration authority, or failing agreement, decided by a court.

**Insertion of new schedule**

*Clause 10* inserts a new schedule containing the dictionary after section 90 of the Act.

**PART 3—AMENDMENT OF FORESTRY ACT 1959****Act amended in part 3 and schedule**

*Clause 11* provides that part 3 of the Bill amends the *Forestry Act 1959*;

**Amendment of s 5 (Definitions)**

*Clause 12* omits the definition “forest infringement”.

**Replacement of s 32 (Land for tourist purposes)**

*Clause 13* inserts a replacement for section 32 of the Act.

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

*Clause 32* recasts section 32 of the Act regarding the revocation of State forest or timber reserve for the use of a road or for providing accommodation or recreational facilities for encouraging or promoting the tourist industry. The replacement section continues the previous policy objective, but requires the Minister, rather than the Governor in Council to be satisfied as to the desirability of the proposed revocation. The revocation action is still required to proceed by recommendation to the Governor in Council to make the necessary regulation.

**Amendment of s 35A (Permit to camp in State forest taken to have been granted by chief executive)**

*Clause 14* provides that a person is not taken to have a permit to camp on a State forest if the person completes the credit card payment section of a camping form and the person’s financial institution does not subsequently authorise the payment. This mirrors the existing arrangements under the Act for dishonoured cheques.

**Replacement of s 73A (Display of camping forms)**

*Clause 15* recasts section 73A(1) of the Act without changing the policy objective regarding how a person wishing to camp in a self-registration camping area deals with a camping form.

This clause also creates an offence for interfering with camping form which has been attached to a tent, caravan, other structure, camping equipment or vehicle a person is using for camping if a person is camping under the permit to which the form relates.

**Display of camping form if no permit to camp**

*Clause 73B* recasts section 73(A)(1) which creates an offence for a person to attach a part of a camping form to a tent, caravan, vehicle or other camping equipment if the person does not hold a permit to camp on the area.

**Omission of ss 87A (Interference with infringement notices or camping forms)**

*Clause 16* deletes those sections of the Act which deal with infringement notices. Similar provisions exist under the State Penalties Enforcement Registry Scheme under which infringement notices will subsequently be issued.

**Omission of ss 88A-88F**

*Clause 17.*

**Amendment of sch 2 (Subject matters for regulations)**

*Clause 18* inserts a replacement for section 27 of schedule 2 of the Act.

**Penalties**

*Clause 27* increases the maximum penalty that may be applied under a regulation from 10 penalty units to 20 penalty units.



## **PART 4—AMENDMENT OF MEAKER TRUST (RAINE ISLAND RESEARCH) ACT 1981**

### **Act amended in pt 4 and schedule**

*Clause 19* provides that:

- Part 4 of the Bill amends the *Meaker Trust (Raine Island Research) Act 1981*; and
- the schedule to the Bill includes amendments to the *Meaker Trust (Raine Island Research) Act 1981*.

### **Replacement of s 4 (Meaning of terms)**

*Clause 20* replaces the current section 4 with section 2 and section 3. Section 2 provides definitions for certain terms used in the Act.

### **References to latitudes and longitudes**

*Clause 3* inserts References to latitudes and longitudes in the form of section 3 to identify the datum (AGD66) used to define the latitudes and longitudes mentioned in the Act. This is required as a range of data sets are in use and differences exist between most.

### **Replacement of ss 6-8**

*Clause 21* replaces section 6 to 8 of the Act.

### **Membership of corporation**

*Clause 6* provides that the Raine Island Corporation must consist of at least 8 members but not more than 9 members. These members must include the chief executive of the department in which the *Meaker Trust (Raine Island Research) Act 1981* is administered, who is the chairperson of the corporation, and the chief executive of the department in which the *Community Services (Torres Strait) Act 1984* is administered. These members are able to appoint an officer of his or her department to act as his or her deputy as a member of the corporation. Although a person appointed as a deputy may act as the member for which the person is deputy in the

member's absence and have all the powers and functions of the said member, he or she must not act as chairperson.

The members of the corporation must also include a Torres Strait Islander, an Aborigine, a community representative, 2 members of the Doctor Wilmer Edward George Butler family and 1 or 2 persons who hold pre-eminent scientific or conservation qualifications. These "non-government" members are appointed by the Governor in Council, on nomination by the Minister, for a term of not more than 3 years. The Governor in Council also appoints a person who holds pre-eminent scientific or conservation qualifications as the deputy chairperson of the corporation.

The new membership differs from the membership outlined in the existing legislation in a number of ways. Under the existing legislation:

- the corporation consisted of 7 members;
- the chief executive of the department responsible for fisheries management was a member;
- there was only 1 person who held pre-eminent scientific qualifications or other appropriate qualifications in the conservation field;
- there was no Aboriginal member;
- there was no community representative; and
- only Doctor Wilmer Edward George Butler, his lineal descendents including his son David Angus Butler or his wife Elizabeth Maxwell Butler were eligible to represent the Doctor Wilmer Edward George Butler family as members of the corporation.

The new membership reflects the following points:

- When the Act was first enacted, the department responsible for turtle conservation was the then Queensland Fisheries Service. Given the importance of the green turtle nesting site on Raine Island and the proposed scientific and conservation functions of the corporation, membership was therefore provided to the chief executive of the department responsible for fisheries management. The responsibility for sea turtles has since transferred to the EPA under the *Nature Conservation Act 1992*. In addition, the waters surrounding Raine Island now occur

within a national park zone of the Far Northern Section of the Great Barrier Reef Marine Park where fishing other than by traditional inhabitants is prohibited. The Department of Primary Industries has agreed that the membership position currently reserved for that department under the existing legislation should be reframed so as to allow more broadly for the appointment of a person having pre-eminent qualifications in science and conservation.

- The corporation will benefit by having both Torres Strait Islander and Aboriginal members as this better reflects indigenous interest in Raine Island. The chairperson of the Wuthathi Land Trust currently attends corporation meetings as an observer and the Wuthathi have provided documentation to the corporation outlining their traditional affiliation with Raine Island and interest in corporation membership.
- Providing membership to a person who is representative of the Australian community would help overcome the public perception that the corporation is purely a government body, involved only in government research. This perception has hindered the corporation's attempts to build an independent profile for fundraising and other purposes. In this regard, possession of financial and/or fundraising skills would also be extremely beneficial.
- The corporation exists because of the vision of the Butler family. It is important to ensure the continuation of the family's interest by enabling relatives, as well as lineal descendants, of Doctor Wilmer Edward George Butler to be nominated for membership.

*Clause 22* omits sections 15 to 19 and inserts the following sections:

### **Conduct of business**

*Clause 15* provides that the corporation must conduct its business in the way it considers appropriate. This includes meetings of the corporation.

This section is consistent with the existing legislation – amendments were initiated by OQPC to reflect current drafting requirements.

**Quorum**

*Clause 16* provides that four members of the corporation, including at least one of the members representing the Doctor Wilmer Edward George Butler family, are required to attend a meeting of the corporation for a quorum to be formed.

This section is consistent with the existing legislation – amendments were initiated by OQPC to reflect current drafting requirements.

**Attendance by proxy**

*Clause 17* provides that a member of the corporation is able to appoint a proxy to attend a meeting of the corporation on his or her behalf. A proxy has, during the absence of the relevant member, the same powers and functions as that member. However, a proxy is not entitled to preside at a meeting at which he or she is present merely because he or she is attending the meeting on behalf of a member who would be entitled to preside if present. This provision is intended to allow a non-government member to be represented at a meeting of the corporation if he or she is unable to attend.

**Time and place of meetings**

*Clause 18* provides that the corporation determines the times and places of its meetings. The secretary of the corporation must provide written notice of each meeting (including an adjourned meeting), stating the day, time and place of the meeting and business to be conducted, and this must be provided to each member at least 7 days prior to the meeting unless this is impracticable.

This section is consistent with the existing legislation – amendments were initiated by OQPC to reflect current drafting requirements.

**Presiding at meetings**

*Clause 19* provides that the chairperson must preside at a meeting of the corporation if present. In his or her absence, the deputy chairperson must preside if present. If both are absent, another member elected by the other members present must preside.

This section is consistent with the existing legislation – amendments were initiated by OQPC to reflect current drafting requirements.

**Conduct of meetings**

*Clause 20* provides that each member of the corporation has a vote on each question to be decided at a meeting with the member presiding also having a casting vote. Questions are decided by a majority vote.

This part of the section is consistent with the existing legislation – amendments were initiated by OQPC to reflect current drafting requirements.

This section also provides for members to attend meetings by using any technology that reasonably allows them to hear and take part in discussions as they occur, such as teleconferencing. A member who participates in a meeting using such technology is taken to be present at the meeting.

This section also provides for the corporation to make a valid resolution, even if it is not passed at a meeting, if notice of the resolution has been given under approved procedures and a majority of members give written agreement.

**Minutes and records**

*Clause 20A* provides that the corporation is required to keep minutes of its meetings. Each entry in the minutes must be signed by the member presiding at the meeting following the meeting for which the minutes were taken.

This part of the section is consistent with the existing legislation – amendments were initiated by OQPC to reflect current drafting requirements.

This section also provides that records of resolutions passed out of session are kept by the corporation.

**Disclosure of interest**

*Clause 20B* is a new section inserted to address conflict of interest issues.

Members of the corporation must disclose any conflicts of interest (financial or otherwise) regarding an issue being considered, or about to be considered, by the corporation to a meeting of the corporation and not participate in any consideration, decisions or directions regarding the issue, unless otherwise directed by the corporation. A quorum for the purposes of considering or deciding an issue or whether to give a direction is not

affected by the abstention of a member with a declared conflict of interest. Disclosures must be recorded in the corporation's minutes.

A contravention of this section does not invalidate any decision of the corporation or the performance of a function or exercise of a power of the corporation.

### **Insertion of new ss 38**

*Clause 23* inserts a new section 38 into the Act. This section provides the power to have the Act renumbered given the omission and inclusion of various sections and gaps in the numbering.

### **Insertion of new pt 5**

*Clause 24* adds a new Part 5 – Transitional provision for *Environmental Legislation Amendment Act 2002*.

## **PART 5—TRANSITIONAL PROVISION FOR ENVIRONMENTAL LEGISLATION AMENDMENT ACT 2002**

### **Definition of pt 5**

*Clause 39* provides that in this part “commencing day” means the day the Environmental Legislation Amendment Act 2002, part 4, commences.

### **Members of corporation**

*Clause 40* provides that:

- the chief executive of the department responsible for fisheries management ceases to be a member of the corporation on the commencing day; and
- all other members of the corporation immediately before the commencing day continue to be members of the corporation until their existing term of appointment is due to end.

**Term of appointment of new members**

*Clause 41* provides that the term of a person appointed on the commencing day to be a member ends on the day the appointment of members continued under section 40 (1) (b) of the Act ends.

**PART 5—AMENDMENT OF NATURE CONSERVATION ACT 1992****Act amended in pt 5**

*Clause 25* provides that part 5 amends the *Nature Conservation Act 1992*.

**Amendment of s 22 (Management principles of nature refuges)**

*Clause 26* provides that the management principles for a nature refuge are to take into account cultural resources, in addition to natural resources.

**Amendment of s 70C (Dedication of forest reserves)**

*Clause 27* provides that unallocated State land may be dedicated as a forest reserve under the Act in addition to a Land Act reserve or a State forest or timber reserve.

**Amendment of s 133 (Chief executive to keep register)**

*Clause 28* removes the requirement for the chief executive to keep certain registers under the Act.

**Amendment of s 139 (Annual report)**

*Clause 29* extends the period by which the chief executive must give a report to the Minister on the administration of the Act during the year after the end of each financial year from 3 months to 4 months. This will allow reporting to align with the reporting time set down for the annual report of the EPA

## **PART 6—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994**

### **Act amended in pt 6**

*Clause 30* provides that this part amends the *Transport Infrastructure Act 1994*.

### **Amendment of s 233 (Continuation of certain by-laws and provisions of Harbours Act)**

*Clause 31* extends the expiry date of section 233 for a further 12 months. The matters dealt with in the sections will be addressed when the *Coastal Protection and Management and Other Legislation Amendment Act 2001* commences. The extended provisions are to be repealed on commencement of that legislation whereupon development regulated under sections 233 and 236 will be integrated into IDAS.

### **Amendment of s 236 (Continuation of certain provisions of Harbours Act requiring approval for certain matters)**

*Clause 32* extends the expiry date of section 236 for a further 12 months. The matters dealt with in the sections will be addressed when the *Coastal Protection and Management and Other Legislation Amendment Act 2001* commences. The extended provisions are to be repealed on commencement of that legislation whereupon development regulated under sections 233 and 236 will be integrated into IDAS.

## **PART 7—MINOR AND CONSEQUENTIAL AMENDMENTS**

### **Acts amended - schedule**

*Clause 33* provides that the schedule amends the Acts it mentions.