LAND LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Short title

The Act will be known as the *Land Legislation Amendment Bill 2003*.

Objectives of the Bill

The objectives of the Bill are to amend:

(a) the *Aboriginal Land Act 1991*;

(b) the *Land Act 1994*;

(c) the *Mineral Resources Act 1989;*

(d) the *Valuation of Land Act 1944*; and

(e) the *Valuers Registration Act 1992*.

Reasons for the Bill

The proposed amendments clarify a number of matters:

- in the *Land Act 1994* (defines the meaning of "agriculture" principally to include forestry);
- in the *Mineral Resources Act 1989*
- in the *Valuation of Land Act 1944*:
  - clarifies the approach to valuation of State leases with sub leases;
  - clarifies ownership and valuation of lands leased from Government Owned Corporations and water authorities;
  - extends the power to alter valuations for rates, land tax or State land rental under certain circumstances back 3 years;

- provides for separate valuation notices for land tax purposes where such valuation amounts are different from the annual valuation notice;
- empowers withholding certain particulars of valuation and sales information in contracts to data wholesale brokers on reasonable grounds; and
- makes other minor changes and improved drafting.

- in the *Valuers Registration Act 1992* (empowers access to searching Queensland Police data on criminal history in the appointment process of members and assistant members to the Valuers Registration Board); and
- in the *Aboriginal Land Act 1991* (removes doubt as to the validity of a regulation and facilitates future transfers of land).
- in the *Mineral Resources Act 1989*:
  - cancels Mining Leases Numbers 5940 and 5941 (the mining leases) situated at Shelburne Bay on Cape York Peninsular; and
  - provides that the applications for renewal of the mining leases do not require a decision under the *Mineral Resources Act 1989*;
  - expressly provides that no compensation is payable to any person as a result of the cancellation of the mining leases.

Way in which the policy objective is to be achieved

The policy objectives will be achieved by operational means using the amended legislation.

Alternate ways of achieving the objective

Continuation of administration without these amendments would not be efficient and would continue operational difficulties.

Consistency with fundamental legislative principles

The amendments are generally consistent with fundamental legislative principles. Though the amendment to the *Aboriginal Land Act 1991* may

have a retrospective effect, given that the amendment is restricted to the operation of section 19 of the Act (that is, defining "available Crown land"), there is no imposition of obligations upon any person nor any adverse effects on the rights and liberties of individuals, and thus, the amendment does not breach fundamental legislative principles.

The amendment to the *Mineral Resource Act 1989* breaches section 4(3) (g) & (i) of the *Legislative Standards Act 1992*. The proposed legislation will effect the cancellation of the mining leases notwithstanding the holder's compliance with section 286(3) of the *Mineral Resources Act 1989*. The proposed legislation breaches fundamental legislative principal in two aspects:

- the holders' legislative right to renewal is being revoked for reason of public interest to ensure that the environmental and conservation values are protected.
- The amendment has the effect of removing the former holders rights as a lease holder without the payment of any compensation. This is justified for the following reasons:
  - it is beyond doubt that State Parliament may if it so elects, remove such rights without the payment of any compensation;
  - it is in the public interest that the land subject to the mining leases is protected for future generations;
  - it would be nonsensical for the Government to continue to renew the mining leases knowing that the land has never and will never be mined; and
  - it is highly unlikely that the Commonwealth Government will issue an export licence for the sand.

Administrative cost to government of the implementation

Apart from the actual cost of printing the legislation, there are expected system costs of about $37,000 to produce the notices of valuations for land tax purposes.

Consultation

Consultation on this draft legislation included all relevant State Government Departments, the Local Government Association of

Queensland, Agforce, SunWater, and South East Queensland Water Board. Specific consultations with the Torres Shire Council and the Kaurareg native title holders were undertaken in relation to Part 2 of the Bill and with the Queensland Police Service in relation to Part 5 of the Bill.

Consultation in respect of the *Mineral Resources Act 1989* amendment included, Department of Premier and Cabinet, Department of Treasury, the Queensland Mining Council and the Land and Resources Tribunal.

ANALYSIS OF THE BILL

PART 1—PRELIMINARY

Clause 1 gives the Short Title to the amending Act as the *Land Legislation Amendment Act 2003*.

Clause 2 provides commencement of the amendments on a date to be proclaimed to allow necessary system or procedural changes to occur.

PART 2—AMENDMENT OF *ABORIGINAL LAND ACT 1991*

Clause 3 identifies the Act being amended.

Clause 4 inserts section 137AB into the Act. The section provides that Sales Permit No 004490 issued under the *Forestry Act 1959* in respect of the sale of quarry materials does not create, and never has created, an interest in land for the purposes of section 19 of the Act. This will enable the presently proposed transfers of land (over which the Sales Permit operates) to proceed without doubt and without the need to surrender and reissue the Sales Permit repeatedly. The section further provides that the associated *Aboriginal Land Amendment Regulation (No 1) 2002* was a valid regulation.

PART 3—AMENDMENT OF *LAND ACT 1994*

Clause 5 identifies the Act being amended.

Clause 6 ensures the meaning of agriculture used in the Act is defined particularly in relation to forestry activities.

PART 4—AMENDMENT OF *MINERAL RESOURCES ACT 1989*

Clause 7 provides that Part 4 amends the *Mineral Resources Act* 1989.

Clause 8 inserts section 418C into the *Mineral Resources Act* 1989. Section 418C is a new section which deals with the cancellation of Shelburne Bay mining leases.

Section 418C (1) (a) provides that from the commencement of the section the mining leases are cancelled.

Section 418C(1) (b) (i) provides that despite any entitlement under the *Mineral Resources Act* 1989 for the renewal of the mining leases, the Minister may not further deal with any application for the renewal of the mining leases made before the commencement of this section. This section is intended to negate the requirement to deal with applications for renewal made before the commencement of this section in accordance with section 286 of the *Mineral Resources Act* 1989.

Section 418C(b)(ii) provides that the Minister must not recommend to the Governor in Council to grant a renewal of the leases.

Section 418C(1)(b)(iii) provides that the Governor in Council must not grant a renewal of the leases.

Section 418C(2) expressly provides that no compensation is payable to any person because of the operation of subsection (1).

Section 418C(3) provides that subsection (2) applies despite any other provision of this Act and despite any other Act or law.

Section 418C(4) defines the term “relevant mining leases.”

PART 5—AMENDMENT OF *VALUATION OF LAND ACT 1944*

Clause 9 identifies the Act being amended.

Clause 10 inserts definitions of "SunWater" and "Water Authority" which are necessary from the amendment in *Clauses 12* and *14,* which refer in part to a "lessee of SunWater or a Water Authority".

Clause 11 redrafts section 6(2) to clarify the meaning of "improvements" in relation to land owned by a lessee from Government Owned Corporation (GOC) land, or land owned by a GOC for a valuation for rating or land tax purposes.

Clause 12 expands the definition "owner" for valuation purposes to include lessees of all GOC lands (currently only Port Authorities and Queensland Rail) and of Water Authority lands. This will make "owner" under this Act consistent with the owner for rating purposes under the *Local Government Act 1993*.

Clause 13 omits a redundant reference to the "issue of a certificate of title" and replaces it with "registration of a plan of subdivision" to conform to land registry practices under the *Land Title Act 1994.*

The clause also ensures a lease of land from the State which has subleases is generally not deemed to be "subdivided" for valuation purposes.

However, if the State Lease is subleased to a GOC and further leased to persons, such derivative subleases are regarded as a subdivision and separately valued. For example, the Department of Transport hold a State perpetual lease over rail corridor land and such lease is subleased to Queensland Rail (QR). QR further leases parts to various persons. These parts are still regarded as subdivisions for valuation purposes.

Clause 14 redrafts section 14 to remove a direction to ignore a notice of a road realignment from a local government in a valuation. The Act is silent on a notice from the State, however in practice, impacts of such a notice are considered in a valuation. The particular part of section 14 is an inconsistent provision and has in practice not generally been applied by the Department and the Land Court in decisions on valuations. The amendment will ensure all notices of road realignments are in fact considered in valuations.

The clause also redrafts section 14(5)(c) to ensure conditions and purpose of a lease, licence or permit from SunWater or a water authority are taken into account in a valuation.

Clause 15 corrects a heading to ensure the chief executive must fix the date of valuation of any valuation. This was always intended in a previous amendment, however the section heading was not amended.

Clause 16 omits redundant parts of section 28 which are now covered by other provisions in the Act consequent upon the amendment in *Clause 18*.

Clause 17 amends section 29(1) by adding a reference to the new section 30(3) which redrafts the current section 30 in *Clause 19.*

Clause 18 amends section 29A to extend the provision to allow any previous valuation to be altered for the usual reasons allowed under sections 28, 29, or the new section 30(3) from *Clause 19* - for example, subdivision, amalgamation, loss of a licence, right or privilege, town planning change etcetera. Currently section 29A only applies to valuations for local government rating purposes. This amendment extends section 29A to also apply to valuations for rental or land tax purposes, whilst maintaining discretion for the chief executive to not alter valuations, if the impact on rates, State Land rental or land tax is so small that the adjustment could not be justified in the circumstances. Also, it extends the limitation on altering a valuation to 3 years.

Clause 19 amends section 30 to allow the valuation of land to be made if such land becomes rateable, subject to State land rental or land tax. It limits how far back such valuations may be made to a period of 3 years. The period is similar to that outlined in *Clause 18.* It maintains the power to alter a valuation under sections 29 or 29A if land ceases to be rateable, subject to State land rental or subject to land tax.

Clause 20 is a consequential amendment from *Clause 13* to ensure State Land Leases with buildings capable of separate occupation are not generally "subdivided" by declaring separate parcels for valuation purposes.

Clause 21 provides a definition of the term **"category"** in relation to land as a category for differential rating by a local government. It includes "category" amongst the reasons for separate valuations required under section 35, where part of the land is one category and part in another. The separate valuations then allow a local government to apply the specified differential rate in the dollar to the valuation of the respective parts.

This Clause also contains a consequential amendment from *Clause 13* to ensure State Land Leases with subleases are not generally "subdivided" by including new subsections (1A) and (1B) of section 35. These subsections provide that subsection (1)(a), which directs that several parcels of land which are separately let, shall be separately valued, does not generally apply to State Land Leases with subleases.

Clause 22 inserts a reference to "land tax" for valuation notices consequent upon *Clause 24.*

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Clause 24 amends section 41A to include the requirement of a **"notice of valuation for land tax purposes"** where the amount of the valuation is different from that on the annual valuation notice. This will ensure that where land comprises mixed freehold and State leasehold tenure, a valuation notice is given in relation to the freehold component. Also, if no annual valuation notice is issued, for example, if freehold land is not rateable, a notice (of valuation for land tax purposes) will issue.

Clause 25 makes a minor drafting change by substituting an "and" for the conjunctive "or" to better reflect circumstances. It also inserts references to "land tax" purposes consequent upon *Clause 24*.

Clause 26 inserts a reference to "land tax" for valuation notices consequent upon *Clause 24.*

Clause 27 amends section 77 to empower the chief executive to provide, in a contract for the supply particulars of the valuation roll or land sales information (section 81 notices) with data wholesalers, that—

if the chief executive is satisfied on reasonable grounds that the inclusion of the particulars may result in the particulars being misused, certain particulars may be excluded from the information supplied; and

if the chief executive is satisfied on reasonable grounds that the future distribution of certain particulars already supplied may result in the particulars being misused, the future distribution of the particulars may be limited.

PART 6—AMENDMENT OF *VALUERS REGISTRATION ACT 1992*

Clause 28 identifies the Act being amended.

Clause 29 inserts a definition of "criminal history" consequent upon *Clause 30.*

Clause 30 provides the power and the conditions of supply of data from a search of the criminal history of a person from records of the Queensland Police Service. The search is required to comply with probity requirements in the appointment of a member or assistant member to the Valuers Registration Board of Queensland. For appointment, in accordance with section 10(b) the person is not eligible for appointment if "the person has been convicted of an indictable offence (whether in Queensland or elsewhere)."