

NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

Short title

Natural Resources and Other Legislation Amendment Bill 2004

Policy objectives of the Bill

The legislative amendments to the *Land Act 1994*, the *Forestry Act 1959* and the *Land Title Act 1994* seek to provide a mechanism, consistent with that which is available on freehold land, to recognise statutory rights to, and facilitate commercial dealings in, natural resource products (including carbon commodities, trees and vegetation) on leasehold land in Queensland. Such a mechanism is currently only available for owners of freehold land. The proposed amendments seek to enable a lessee of a lease, where the purpose and conditions of the lease allow it to be used for agricultural or timber plantation purposes, to enter into contracts with interested parties for the ownership, use and economic benefits of natural resource products of trees owned by the lessee as an improvement under the *Land Act 1994*. The agreement will be able to be registered as a profit a prendre under the *Land Act 1994*.

The proposed amendment to the *Land Protection (Pest and Stock Route Management) Act 2002* is required to provide an extension to the deadline of 1 July 2004, by which date local governments are required to have pest and stock route management plans in place.

The proposed miscellaneous amendments to the *Land Act 1994*, the *Acquisition of Land Act 1967* and the *Valuation of Land Act 1944* provide clarity and consistency both within the legislation and with other legislation as a result of experience gained in using the Acts since their commencement.

Why the Proposed Legislation is Necessary

In Queensland, under the *Forestry Act 1959*, owners of freehold land and other interested parties can enter into contracts about the ownership, use and economic benefits of natural resource products (such as carbon commodities, trees and vegetation) on freehold land in Queensland. The contracts may include a common law mechanism (“profit a prendre”) enabling separation of ownership and/or interests in the natural resource product and subsequent registration on the indefeasible land title as per the *Land Title Act 1994*. This mechanism is not currently available for leasehold land.

A number of lessees have for some time indicated a desire to participate in a range of forestry activities on State leasehold land, including the establishment of plantations. The proposed legislative amendments will provide a mechanism to establish commercial dealings in the natural resource products of plantations, such as timber and carbon stored in or sequestered by trees.

Extending the instrument of profit a prendre to plantations on leasehold land will deliver the environmental benefits of an increased number of trees by providing an incentive for lessees to plant trees. It will also provide an important diversification opportunity for lessees, particularly where part or all of a property is no longer suitable for traditional rural production. Leases issued for plantation or agricultural purposes can be used for plantations. There are clear environmental benefits from the planting and retention of vegetation.

In addition, it will also position Queensland lessees to take full advantage of forestry investment in the event that a possible emissions trading scheme is established. Enabling carbon trading on leasehold land will prevent two separate regimes evolving for freehold and leasehold land and will simplify the process for lessees wishing to enter the emerging market in carbon.

The *Land Protection (Pest and Stock Route Management) Act 2002* requires that local governments have pest and stock route management plans in place by 1 July 2004. However, many local governments will not be able to meet this deadline. The amendment will allow local governments a further twelve months to have plans completed.

The miscellaneous changes to the *Land Act 1994*, *Acquisition of Land Act 1967* and *Valuation of Land Act 1944* provide for minor amendments to

administrative provisions to tidy up inconsistencies and to ensure improved efficiency in processing associated dealings.

Estimated cost of implementation to Government

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. The legislation will simply provide a mechanism, consistent with that which is available on freehold land, to recognise statutory rights to, and facilitate commercial dealings in, natural resources products (including carbon commodities, trees and vegetation) owned by the lessee on leasehold land in Queensland.

Consultation

Initial consultation was undertaken through individual discussion with key stakeholders as part of consultation on the Draft Rural Leasehold Land Strategy. Extensive consultation with a broad range of stakeholders was undertaken on the profit a prendre provisions of the draft Bill. The Local Government Association of Queensland has been consulted on the miscellaneous amendments and supports an extension of time for completion of pest and stock route management plans. Agforce has been consulted on the proposed amendments to *Valuation of Land Act 1944*. The Department of Primary Industries, State Development, Premier and Cabinet, Treasury and the Environmental Protection Agency were consulted extensively throughout the development of the Authority to Prepare.

PART 1—PRELIMINARY

Clause 1 provides the short title of the Act—“*The Natural Resources and Other Legislation Amendment Act 2004*”.

PART 2—AMENDMENT OF ACQUISITION OF LAND ACT 1967

Clause 2 names the Act to be amended.

Clause 3 amends the definition of “constructing authority” in section 2. The current wording of the definition of “constructing authority” in section 2 could be interpreted to mean that a local government can be a constructing authority only if it is authorised by an Act to take land. This is not the intent. The amendment makes it clear that a local government or a person authorised by an Act to take land for any purpose can be a constructing authority.

PART 3—AMENDMENT OF *FORESTRY ACT 1959*

Clause 4 names the Act to be amended.

Clause 5 amends section 61J.

The clause extends the instrument of profit a prendre, which is available on freehold land, to natural resource products of plantations on leasehold land in Queensland, where the lessee owns the trees as an improvement under the *Land Act 1994*. It enables a lessee, in certain circumstances, to enter into a contract with another person about natural resource products located on the lessee’s leasehold property and for that contract to be registered as a profit a prendre on the lease.

As for freehold land, the contractual agreement will enable parties to obtain partial or absolute control over natural resource products of trees and vegetation on the leasehold land. This is to allow a person other than the lessee to have access to, manage, harvest or otherwise deal with the natural resource products of the trees or vegetation on the property.

The right of partial or absolute control of the trees occurs by way of vesting ownership, use or economic benefits to another party. Importantly, vesting to another party does not create an interest in the land itself. The intention of this is to separate the ownership of the land and the rights intrinsic to the property from the contractual rights of a person in respect to natural resource products.

To ensure that the contractual rights are recognised and capable of being ascertained by any potential buyer, the contract may be registered as a profit a prendre under the *Land Act 1994*.

PART 4—AMENDMENT OF *LAND ACT 1994*

Clause 6 names the Act to be amended.

Clause 7 amends section 5. In apparent contradiction of the statement made in section 5 (2), the footnote to that sub-section indicated that the Governor in Council could not grant, in fee simple, layers and strata above and below the surface of the land. The amendment draws attention to section 14(3) in the footnote, thereby making it clear that the Governor in Council may grant in fee simple layers and strata above and below the surface of land, provided such land is above high-water mark.

Clause 8 amends section 26 by correcting an anomaly that prevents the delineation of the boundaries of a reservation for public purposes in a lease when that reservation is being resumed. Section 26 currently refers to deciding the boundaries of a reservation in a deed of grant and deed of grant in trust but not in a lease. The resumption provisions of the Act, sections 228 to 233, refer to a lease, a deed of grant or a deed of grant in trust.

Clause 9 amends section 33. The amendment clarifies the reasons for revoking a reserve by including the situation where the Minister is satisfied a more appropriate tenure is required. The current reasons for revoking a reserve (no longer needed for a community purpose or needed in the public interest for a different use), do not cover the situation where an “operational” reserve, for example a reserve for police purposes, should now be held under a more appropriate tenure such as freehold in accordance with the Government Asset Management System Guidelines.

Clause 10 amends section 38 by defining which parties must be advised of the cancellation of a deed of grant in trust; the effect of that cancellation on the right to remove improvements; and, in order to remove doubt, advising that no person has a right to claim compensation for the cancellation of a deed of grant in trust under the authority of section 38.

Clause 11 amends section 45 by permitting the recording of a trustee's change of name in the land register and, in light of current privacy requirements, removing the requirement that the address of a trustee of trust land must be recorded in the land register.

Clause 12 amends section 55 by defining the effect of a surrender of all or part of a deed of grant in trust on registered interests.

Clause 13 amends section 57 by defining the description requirements of a trustee lease.

Clause 14 inserts new section 57A to allow for the amendment of a trustee lease and defines the limitations and requirements of that amendment.

Clause 15 amends section 58 by further defining the rights of a lessee of a trustee lease and the rights of a sublessee of a sublease of a trustee lease; and by permitting the release of a mortgage registered over a trustee lease or sublease. This amendment is required to remove any legal doubt on the validity of a surrender of a trustee lease or sublease or the release of a mortgage.

Clause 16 amends section 101 by removing any doubt that the Minister's approval to a road closure application may be subject to conditions.

Clause 17 replaces the current section 105. As the section currently reads, the interest created by a road licence appears to be an interest greater than that normally created by a statutory licence. If the Minister is satisfied the land should be used for more appropriate purposes (for example, as a Reserve for Environmental purposes), the present wording of section 105(1)(a) limits the Minister's discretion to cancel a road licence unless the road "is again needed for public use as an open road". As a licence does not create a compensatory interest in land, the replacement of section 105 will ensure all licences created under the *Land Act 1994* are dealt with in an equitable manner. The new section 105 also provides for the partial cancellation or surrender of a road licence.

Clause 18 amends section 122 by allowing a deed of grant to be granted to a local government, in priority, provided the Minister decides that the land is required for a public purpose.

Clause 19 amends section 123 by further defining the priority criteria for the grant of a lease or a deed of grant over unallocated State land to include an applicant who held a significant interest in the land before it became unallocated State land. Section 123 requires minor amendment to recognise the rights of a holder of a significant interest in a land parcel

being considered for the issue of a priority deed of grant. “Significant interests” would include for example, a deed of grant in trust or a lease issued for more than twenty years that would change hands in the market place at close to freehold value. This will bring consistency with the conversion and priority lease provisions of the *Land Act 1994* as well as the Government’s policies for disposal of Government owned land in priority.

Clause 20 amends section 160 to alter the emphasis from the Minister (or delegate) advising decisions in writing, to the Minister (or delegate) making the decision with an appropriate officer advising the applicant in writing accordingly. This will streamline administrative procedures and bring them into line with normal correspondence protocols.

Clause 21 amends section 163 to clarify that, where a new lease of part only of a former lease over a reserve is offered, the balance of the land remains reserve, i.e. it does not become unallocated State land. As section 163 is currently worded, if it is proposed to renew a lease over part only of the former lease area, the balance becomes unallocated State land. This does not take account of the situation where the lease was over a reserve and the balance should remain reserve.

Clause 22 amends section 168 to alter the emphasis from the Minister (or delegate) advising decisions in writing, to the Minister (or delegate) making the decision with an appropriate officer advising the applicant in writing accordingly. This will streamline administrative procedures and bring them into line with normal correspondence protocols.

Clause 23 amends section 174 to alter the emphasis from the chief executive (or delegate) advising the Governor in Council’s decision in writing, to an appropriate officer advising the applicant of the Governor in Council’s decision in writing. This will streamline administrative procedures and bring them into line with normal correspondence protocols.

Clause 24 amends section 177 to provide that a permit issued for three months or less is not a tenure that may be recorded in the land registry. This provides a more informal mechanism to give authority to use unallocated State land, reserve or road for periods of three months or less for situations where the use of an area is required for a short period for a specific purpose e.g. travelling circuses and shows, batching plants and stockpile sites.

Clause 25 amends section 196 to allow action for recovery of monies owing as well as the forfeiture or cancellation of a lease, licence or permit. In some circumstances the Department may wish to forfeit a lease or cancel

a licence or permit, thereby reclaiming the land, as well as recover outstanding monies. The amendment makes it clear that both actions may be taken.

Clause 26 amends section 197 to allow notice to be given about recovery of monies owing as well as the cancellation of a licence or permit. The amendment makes it clear that notice may be given in respect of both actions.

Clause 27 amends section 203 to make it clear that a condition of lease may be about the transfer or sublease of the lease, for example a condition may prohibit a transfer or sublease of the lease. Not allowing a transfer would be appropriate say for a significant development where a detailed tender process was undertaken.

Clause 28 amends section 211 to make it clear that the conditions of a lease may be reviewed every 15 years after the “start” of the lease, which is easily identifiable, rather than the “issue” of the lease (i.e. the date the Governor in Council granted the lease) which is not easily identified.

Clauses 29 and 30 amend sections 246 and 247 to include deeds of grant in trust in the classes of land that relate to payment for improvements received from incoming lessees or buyers and the State’s obligation to pay any such amount received by it to the previous holder of the land or owner of the improvements.

Clause 31 amends section 274A to prevent lessees who have planted trees as a requirement of a compliance notice from owning them as an improvement to the property, thereby preventing the trees from becoming the subject of a profit a prendre.

Clause 32 amends section 322 to make it clear that a lease, licence or sublease may not be transferred if a provision of the *Land Act 1994* or a condition of the lease, licence or sublease prohibits the transfer. This clause supports the amendment in clause 27.

Clause 33 amends section 328 to allow surrender of part of a sublease.

Clause 34 amends section 336 to ensure that Ministerial approval is required to register an amendment of a registered sublease, as for amendment of an easement.

Clause 35 amends section 362 to provide for the grant of an easement over a deed of grant in trust.

Clauses 36 to 39 amend sections 363, 368, 369B and 371 to delete “permittee” from and include “trustee of land granted in trust” in the

definition of “owner of the land” when dealing with easements over land granted in trust or non-freehold land.

Clause 40 amends section 372 to define when an easement over land granted in trust ends and provide for the continuation of a public utility easement over a deed of grant in trust. This is necessary as a result of the inclusion of the ability to grant an easement over a deed of grant in trust in clause 35.

Clause 41 inserts new Division 8B – Profits a prendre.

Section 373E defines the circumstances under which a profit a prendre applies on leasehold land.

Section 373F defines the terms “lease” and “natural resource”. Leases over State Forests and reserves are not included.

Section 373G allows for the registration of a document of profit a prendre over a lease, similar to registration for freehold land under the *Land Title Act 1994*.

Section 373H cross-references the amendments to the *Land Title Act 1994*, as outlined in clause 51, to allow the registration of profits that exist over two different land tenures, similar to the registration of easements under the *Land Act 1994*.

Section 373I sets out the requirements of a document creating a profit a prendre.

Section 373J defines the particulars of a profit a prendre to be recorded in the appropriate registers.

Section 373K provides for the registration of a profit a prendre even if the lease benefited and the lease or freehold land burdened are in common ownership.

Sections 373L and 373M set out the circumstances concerning extinguishment of profits a prendre when common ownership of benefited and burdened leases occurs.

Section 373N defines the requirements for amending a profit a prendre.

Section 373O provides for the release or removal of a profit a prendre.

Section 373P defines the effect on a profit a prendre of both an absolute surrender of a lease and a surrender that is not absolute.

Section 373Q provides that a profit a prendre over a lease may be sold, mortgaged, made the subject of a gift or pass to a beneficiary by will or intestacy.

Clause 42 inserts new section 393A to make it clear who may give notice under the Land Act, if the Act does not specify who is to give such notice. This supports the amendments in clauses 20, 22 and 23.

Clause 43 amends section 443 to clarify that the fee for the issue of a deed of grant is prescribed under the *Land Act 1994*, not the *Land Title Act 1994*.

Clause 44 amends section 481 to provide for partial cancellation or partial surrender of an occupation licence.

Clause 45 amends schedule 2 (Original decisions) to bring the subsection numbers for sections 160 and 168 into line with changes made to the sections in clauses 20 and 22.

Clause 46 amends schedule 6 (Dictionary) to include a “local government owned corporation” in the definition of a “statutory body”. Due to the creation of a “local government owned corporation” under the *Local Government Act 1993*, the current definition of a statutory body under schedule 6 of the *Land Act 1994* limits which bodies may be appointed as a trustee of trust land (trustees are appointed under section 44 of the Land Act). To remove this limitation it is proposed to amend the definition of “statutory body” in schedule 6 to include a “local government owned corporation”.

PART 5—AMENDMENT OF *LAND PROTECTION (PEST AND STOCK ROUTE MANAGEMENT) ACT 2002*

Clause 47 names the Act to be amended.

Clause 48 amends section 25 to provide a period of two years from commencement (instead of one year) within which period local governments are to have pest management plans in place.

Clause 49 amends section 105 to provide a period of two years from commencement (instead of one year) within which period local governments are to have stock route management plans in place.

PART 6—AMENDMENT OF *LAND TITLE ACT 1994*

Clause 50 names the Act to be amended.

Clause 51 inserts new section 97EA to allow the registration of profits a prendre that exist over two different tenures of land, similar to the registration of easements under the *Land Title Act 1994*.

Clause 52 amends section 97G to include leases of non-freehold land in the classes of land to be recorded in the freehold land register when registering an instrument of profit a prendre.

Clause 53 inserts new section 97M to define the effect on a profit a prendre of both an absolute surrender of a lot and a surrender of lot that is not absolute.

PART 7—AMENDMENT OF *VALUATION OF LAND ACT 1944*

Clause 54 names the Act to be amended.

Clauses 55 and 56 amend sections 14 and 28 to allow any restrictions to the value or enhancement to the value of a State lease from the existence of a native title determination or an indigenous land use agreement (ILUA) under the *Commonwealth Native Title Act 1993* to be taken into account in the valuation process and to allow a valuation to be altered due to a change resulting from a native title determination or conditions of an ILUA.

PART 8—MINOR AMENDMENTS

Clause 57 provides that Part 8 of the Bill amends the Acts mentioned in the schedule.