

Natural Resources Legislation Amendment Bill 2004

Explanatory Notes

General Outline

Short Title

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Policy Objectives of the Legislation

The Act amends the *Land Protection (Pest and Stock Route Management) Act 2002*, *Surveyors Act 2003*, *Survey and Mapping Infrastructure Act 2003* and *Valuation of Land Act 1944*.

The amendments to the *Land Protection (Pest and Stock Route Management) Act 2002* involve two new initiatives:

1. a provision for establishing an amnesty period for illegally held pests to prevent people from dumping their illegally held (live) animals into the natural environment when they first become aware of the law and become fearful of prosecution. This amendment will allow Queensland to participate in national amnesty programs coordinated by Commonwealth wildlife enforcement agencies.
2. a provision allowing people to take declared pests to the Queensland Museum and Queensland Herbarium for identification purposes.

The amendments also make a number of minor corrections and changes to provide more certainty in the implementation of the Act, based on the first year of its operation.

The amendments to the *Surveyors Act 2003* provide for a smooth transition from the *Surveyors Act 1977* which was repealed on 1 August 2004, with the commencement of the *Surveyors Act 2003*. The amendments also clarify a number of technical matters regarding the registration of a corporate as a surveyor.

The amendments to the *Survey and Mapping Infrastructure Act 2003* clarify the requirements for the provision of plans to the chief executive.

The amendments to the *Valuation of Land Act 1944* refine the definition of ‘owner’ to negate the requirement to supply redundant valuation notices and also correct some out of date terminology.

Reasons for the Bill

The current *Land Protection (Pest and Stock Route Management) Act 2002* does not make provision for amnesties on the illegal possession of potentially invasive exotic pests. An amendment that makes provision for amnesties to be called will help implement government policy to prevent the escape and spread of exotic animals that have the potential to become destructive pests of agriculture and natural areas. The current Act also prevents people from taking declared pests to Queensland Museum or Queensland Herbarium for identification purposes, thereby hindering the identification process. Other minor amendments and corrections will provide more certainty in the implementation of the Act, based on the first year of its operation.

The *Surveyors Act 2003* does not significantly alter the registration and disciplinary processes that were in place under the *Surveyors Act 1977*. It is appropriate that competency assessments made under the former Act can be recognised under the new legislation. Similarly, it is appropriate that the disciplinary processes under the current Act are able to be used to deal with the conduct of registered persons under the former Act.

The Act contains a transitional provision that keeps the board that was appointed under the former Act in office for an interim period. Certain aspects of that provision require clarification.

The Act does not contain a head of power for a number of fees that were proposed to be included in the regulations under this Act. The amendments provide this head of power.

The *Survey and Mapping Infrastructure Act 2003* requires plans to be provided to the chief executive with 40 business days of certain types of marks being placed. The amendments clarify the requirements, and remove some duplication that may have occurred.

The current definition of owner in the *Valuation of Land Act 1944* (VOL Act) (in certain circumstances) recognises more than one owner of a property, which requires the issue of redundant valuation notices. The requirement to provide redundant valuations places an additional workload on Departmental staff and systems and could result in the valuation being used for a purpose other than that for which it was provided.

As an example, where land owned by a Government Owned Corporation (GOC) is leased, the lessee is the owner under the VOL Act. In this case a valuation is provided to the lessee. This is the valuation used by the local government for the assessment of rates and the lessee, as the owner is responsible for the rates. The current definition of owner also recognises the GOC as an owner, which requires that the valuation that is provided to the lessee for rating purposes, also be provided to the GOC. This valuation, in the name of the GOC, is not used for the assessment of rates or land tax and is therefore redundant (a separate valuation is provided to the GOC for land tax purposes). As the redundant valuation is issued to the GOC, grievance rights apply — a resource intensive process that is not appropriate, as the valuation is not used for local government rating or the assessment of land tax.

The terms ‘zone’, ‘zoning’, ‘ordinance’ and ‘by-law’ are no longer relevant and are being amended to reflect current terminology.

Achieving the Objectives

Matters requiring clarification as well as some new initiatives to address issues arising in the first twelve months of the implementation of the *Land Protection (Pest and Stock Route Management) Act* are addressed through a number of amendments to the provisions of the Act.

The matters requiring clarification in the *Surveyors Act 2003* are addressed through a number of minor amendments to the provisions of the Act.

The provisions of the *Survey and Mapping Infrastructure Act 2003* regarding giving of plans to the chief executive are clarified.

The *Valuation of Land Act 1944* is amended by refining the definition of owner in the Act to be the person responsible for the payment of local government rates or State land tax or State land rental relative to a specific valuation, and by correcting the out of date terminology.

Administrative Costs

There are no administrative costs associated with the amendment to the *Land Protection (Pest and Stock Route Management) Act 2002* or the *Valuation of Land Act 1944*.

The inclusion in the *Surveyors Act 2003* of a head of power to charge certain fees will allow the Surveyors Board to recover the administrative cost of dealing with these matters.

The changes to the *Survey and Mapping Infrastructure Act 2003* will reduce the administrative cost of processing plans to the Department and to surveyors.

Fundamental Legislative Principles

There are no FLP issues.

Consultation

Central agencies were consulted with regard to the amendments and raised no issues.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 sets out the short title of the Act.

Part 2 Amendment of Land Protection (Pest and Stock Route Management) Act 2002

Act amended in pt 2

Clause 2 specifies that this part amends the *Land Protection (Pest and Stock Route Management) Act 2002*

Amendment of s 6 (Relationship with Nature Conservation Act and Forestry Act)

Clause 3 provides for the inclusion of the *Fisheries Act 1994* in section 6 of the *Land Protection (Pest and Stock Route Management) Act 2002* and

would have the effect of exempting persons from committing an offence under the *Fisheries Act 1994* if they were acting in accordance with the *Land Protection (Pest and Stock Route Management) Act 2002*. However, such persons would need to be operating under a supporting code of practice, as required by the *Fisheries Act 1994*.

Amendment of s 37 (Declaring declared pests by emergency pest notice)

Clause 4 amends section 37 regarding declaring pests by emergency pest notice. The current wording “gazette notice” in sub-section (2) conflicts with sub-section (4) which refers to the notice being subordinate legislation.

Amendment of s 41 (Keeping declared pest)

Clause 5 amends section 41 to negate the need for a permit for keeping a declared pest when this is done for official identification purposes (by Qld Herbarium in the case of a plant and Qld Museum in the case of an animal).

Insertion of new s 41A

Clause 6 inserts new section 41A to allow for an amnesty for the illegal keeping of declared pest animals. The trigger for such declaration is when the chief executive learns that a significant number of people may be keeping such animals as pets or for some other purpose or when the chief executive agrees to participate in national amnesties organised by Commonwealth wildlife enforcement agencies. The purpose of a declaration of an amnesty is to encourage the surrender of the designated pest. This type of strategy would be preferable to prosecution action as the owners may release the animals into the wild when they learn they are committing an offence.

Amnesty is not a function to be used routinely or administered lightly. Consequently, power to declare an amnesty is to be vested with the chief executive with the approval of the Minister.

Amendment of s 44 (Supplying declared pest)

Clause 7 amends section 44 to negate the need for a permit for supplying a declared pest when this is done for official identification purposes (by Qld Herbarium in the case of a plant and Qld Museum in the case of an animal).

Amendment of s 45 (Supplying things containing reproductive material of particular declared pests)

Clause 8 amends section 45 to require both the supplier and receiver of things (eg agricultural produce), to retain copies of the written notice. Copies of the written notice would be required as evidence in any legal proceedings taken.

Amendment of s 79 (Extending compliance period)

Clause 9 amends section 79 to create greater clarity, flexibility and consistent terminology throughout the Act regarding the provisions for extending the compliance period of a pest control notice. Since the Act generally refers to “land owners”, this section needs to be consistent by making reference to “owner” rather than “person”. Section 79 is amended to ensure that requests to extend a compliance period are made in writing, thereby formalising the process and allowing accurate record keeping of requests.

A minor change to section 79(3)(a)(i) will give compliance staff greater flexibility to extend the compliance period, depending on the landowner’s specific problems and circumstances, without extending the compliance period to a point that jeopardises effective pest control.

Section 79(4) needs to be amended to allow compliance staff to issue an information notice in situations where the compliance period has been partially extended, following negotiation with the landholder.

Amendment of s 80 (Noncompliance with pest control notice)

Clause 10 amends section 80 to include reference to the period of the entry notice. While section 82(1)(a) indicates that a period is specified in a notice, there is no mention of this in section 80.

Amendment of s 90 (Emergency quarantine notice)

Clause 11 amends section 90 to make it clear that a local government cannot issue an Emergency Quarantine Notice upon State land (local government has no jurisdiction over the State). Only the Chief Executive or delegate has this power in relation to State land.

Amendment of s 116 (Application for permit)

Clause 12 amends section 116(2)(c)(i) to allow all local governments to identify areas of relevant land that may be available for agistment after considering the needs of travelling stock. All local governments in the State contain relevant land and the ability to allow agistment should not be restricted to those local governments that are required to prepare a stock route management plan under s 104 (as per the current provision). However, where a local government is required to prepare a stock route management plan, the areas available for agistment must be identified in the plan.

Amendment of s 118 (Deciding application)

Clause 13 amends section 118(2)(a) to allow consideration of applications for agistment where a stock route network management plan is not required.

Clause 13 amends section 118(2)(b)(ii) to require that the issuing entity be satisfied that there is more pasture and water than is needed for the use of travelling stock, when it grants an application for agistment.

Amendment of s 159 (Amounts payable by landowner)

Clause 14 corrects the heading of section 159, as the section refers to the permit holder and not the landowner.

Amendment of s 163 (Water facility agreements)

Clause 15 amends section 163 to allow access to a stock route network facility. For a water facility constructed on the owners land, the water facility agreement under s 163(1)(e) must provide access to the water facility for:

- the construction of a water facility by a local government or a contractor engaged by a local government;
- the maintenance of the facility by a local government, a contractor engaged by a local government or person under an agreement mentioned in section 163(1)(d); and
- the watering of stock travelling under a stock route travel permit by the person in charge of the travelling stock.

Amendment of s 165 (Registration of particular agreements)

Clause 16 replaces sections 165(2) and (3). The amendments provide that written notification of the agreement will be given:

- for land leased from the State - to the chief executive; or
- for freehold land – to the registrar of titles.

The existence of the water facility agreement is to be recorded in the land registry (as per section 7(2)(b) of the *Land Title Act 1994*) The information will be recorded as an administrative advice and will show as an encumbrance in a search of the land registry.

The amendments also cause the agreement to “run with the land”. By making the agreement run with the land, it changes the arrangement from being solely persona on successive owners, as it is now, to also being an encumbrance against the land.

Insertion of new ss 195A and 195B

Clause 17 inserts new sections 195A and 195B, which provide a legislative basis for requesting criminal history checking by Queensland Police Service (QPS) to ascertain a person’s eligibility for membership of the Land Protection Council, in terms of section 195(1)(b).

Amendment of s 224 (Qualifications for appointment)

Clause 18 amends section 224 to include a head of power for a regulation to specify further qualifications for members of pest operational boards.

Insertion of new ss 224A and 224B

Clause 19 inserts new sections 224A and 224B, which provide legislative basis for requesting criminal history checking by Queensland Police Service (QPS) to ascertain a person’s eligibility to be appointed as a director of pest operational board, in terms of section 224(1)(b).

Amendment of s 274 (Destruction or disposal of seized things)

Clause 20 provides an amendment to allow an owner of a declared pest, who admits in writing (eg. a signed declaration) that he/she does not have a permit to keep the pest, to surrender the pest to the authorised person who would then destroy or dispose of it. In the vast majority of seizure actions, no permit will have been issued and the owners are prepared to admit this.

Surrendering the pest to the authorised person “there and then” would negate the need for the officer to return to the property 48 hours later as is currently required (s 274).

Amendment of sch 3 (Dictionary)

Clause 21 inserts a meaning of ‘criminal history’ in relation to new sections 195A, 195B, 224A and 224B.

The clause also amends the meaning of “State-controlled land”, in the dictionary to be amended to include “national park (recovery) reserve” under the *Nature Conservation Act 1992*.

Part 3 Amendment of Surveyors Act 2003

Act amended in pt 3

Clause 22 specifies that this part amends the *Surveyors Act 2003*.

Amendment of s 16 (Disqualification from membership)

Clause 23 would exclude from membership of the Board a person who had been convicted of an offence under the *Surveyors Act 1977*.

Amendment of s 36 (Eligibility for registration or registration endorsement—individuals)

Clause 24 makes provision for certain events occurring under the *Surveyors Act 1977* (the repealed Act) to be taken into account under this Act.

The amendment to s 36(2)(a)(i) permits an assessment of competency under the repealed Act to be used as a basis for registration of an individual under the Act.

The amendment to s 36(3)(a) includes in the criteria for registration as an emeritus surveyor the person’s registration under the repealed Act.

The amendment to s 36(2)(c)(i) permits an assessment of competency under the repealed Act to be used as a basis for registration with a consulting endorsement under the Act.

Amendment of s 38 (Eligibility for registration and registration endorsement—corporations)

Clause 25 amends s 38(2)(b) to permit an assessment of competency under the *Surveyors Act 1977* (the repealed Act) to be used as a basis for registration or registration endorsement for a corporation.

Clause 25 also clarifies the requirements for registration or registration endorsement of a corporation. For a corporation to be eligible to be registered as a surveyor, it must employ a person registered as a surveyor. For a corporation to be eligible to obtain a registration endorsement other than a consulting endorsement, it must employ a person with the same endorsement.

Amendment of s 43 (Who may assess competency)

Clause 26 identifies certain components that may be included in an assessment of competency. These components are identified so that a head of power can be provided (via the following Clause) for fees to be charged in relation to these components.

Amendment of s 44 (Application for competency assessment)

Clause 27 establishes a head of power for fees to be charged in relation to various components of a competency assessment process.

Amendment of s 46 (Additional requirements for application by corporation)

Clause 28 amends s 46 to align with the amendments to s 38.

Amendment of s 63 (Amending, suspending or cancelling registration or registration endorsement)

Clause 29 amends s 63(1)(b) to permit the Board to amend, suspend or cancel a registration or registration endorsement if the person has been convicted of an offence under the *Surveyors Act 1977* (the repealed Act).

Amendment of s 85 (Complaints about registrant's professional conduct)

Clause 30 amends s 85(3) to permit the chief executive to refer a matter to the Board if the chief executive believes that a surveyor has not complied with survey standards under the *Surveyors Act 1977*. In some

circumstances, issues regarding compliance with standards do not arise until some time after the survey has been completed. This amendment provides for such matters to be dealt with.

Insertion of new s 194A

Clause 31 inserts a new section 194A that has the effect of validating certain actions taken under sections 16, 36, 38, 63 and 85 of the *Surveyors Act 2003*, and any section that relies on the defined meaning of ‘professional conduct’ or ‘professional misconduct’, in the period from the commencement of the *Surveyors Act 2003* to the commencement of the relevant provisions of this amendment Act. These actions may otherwise have been invalid.

Replacement of s 199 (Continuation of existing members’ membership)

Clause 32 replaces the transitional provision in the Act regarding the surveyors board. The replacement provision clarifies the following:

- The president and members of the surveyors board who were appointed under the repealed Act, and in office at the time that Act was repealed, continue to serve as the chairperson and members of the board under the *Surveyors Act 2003* for an interim period of six months.
- The length of the interim period can be reduced by the appointment of members of the board under s 12 of this Act.
- The Minister has the power to fill casual vacancies during the interim period.

Amendment of sch 3 (Dictionary)

Clause 33 makes the following amendments to the dictionary for the Act:

- The terms “competence equivalence”, “professional assessment project” and “professional training agreement” are listed in the dictionary, with references to the new provisions that introduce these terms.
- A definition for “former registrant” is included, to ensure that where this term is used in the Act, it applies not only to persons formerly registered under this Act, but also to persons registered under the repealed Act.

- The meaning of “information notice” refers in two places to the ‘applicant’, but not all information notices relate to applications, so the term ‘applicant’ is replaced with ‘recipient’.
- The meanings of “professional conduct” and “professional misconduct” are amended to include compliance and non-compliance respectively with: the repealed Act; the code of professional conduct under the repealed Act; and survey standards under the repealed Act. The terms are also amended to include reference to former registrants.

Part 4 Amendment of Survey and Mapping Infrastructure Act 2003

Act amended in pt 4

Clause 34 specifies that this part amends the *Survey and Mapping Infrastructure Act 2003*.

Amendment of s 15 (Obligation on person placing permanent survey mark)

Clause 35 amends section 15 to provide that when a surveyor is required to give a permanent survey mark plan to the chief executive, and the permanent survey mark relates to a cadastral survey, the surveyor must give the copy of the permanent survey mark plan to the chief executive at the same time as the surveyor gives a copy of the cadastral plan to the chief executive, or at the same time as the surveyor lodges the cadastral plan in the land registry. If all relevant plans for a survey are provided at the same time, this allows for easier processing by the department.

Amendment of s 16 (Obligation on cadastral surveyor)

Clause 36 amends section 16 to provide that where a surveyor has lodged a copy of a cadastral plan in the land registry within 40 days of placing a cadastral survey mark, the surveyor is not required to comply with the provisions of this section that require a copy of the plan to be given to the chief executive. This avoids duplication of effort on the part of the surveyor and the department.

Amendment of s 46 (State digital cadastral dataset)

Clause 37 amends s 46 due to the inclusion in the dictionary of a definition for “land registry”.

Amendment of s 47 (Effect and use of information in State digital cadastral dataset)

Clause 38 amends s 47 due to the inclusion in the dictionary of a definition for “land registry”.

Amendment of schedule (Dictionary)

Clause 39 inserts meanings for “approved form” and “land registry” in the dictionary. Both are self-explanatory.

Part 5 Amendment of Valuation of Land Act 1944**Act amended in pt 5**

Clause 40 specifies that this part amends the *Valuation of Land Act 1944*.

Amendment of s 7 (Meaning of owner)

Clause 41 inserts a new subsection (4) to section 7 which refines the definition of owner by stating that the owner of the land is the person responsible for the payment of the rates, rent or land tax in relation to the specific valuation.

Amendment of s 28 (Alteration of valuation in force or to come into force)

Clause 42 is divided into two parts.

Part (1) amends section 28(1)(i)(i) to correct out of date terminology by removing the existing content that included ‘zoning’ and replacing with references to the implementation and amendment of a planning scheme and an alteration in the land use and development under a scheme.

Part (2) amends section 28(1)(i)(ii) to correct out of date terminology by removing the phrase ‘an ordinance or a by-law’ and replacing it with ‘a local law’.