

Recreation Areas Management Bill 2005

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Recreation Areas Management Bill 2005*.

Policy Objectives of the Legislation

The objectives of the *Recreation Areas Management Bill 2005* are to:

- maintain the intent of the *Recreation Areas Management Act 1988* to provide for coordinated recreation management across a range of land tenures;
- improve consistency with related legislation such as the *Nature Conservation Act 1992* with regard to permits, offences and penalties;
- abolish the Queensland Recreation Areas Management Authority and Board, with their functions and responsibilities to be vested in the Minister for Environment, Local Government, Planning and Women and the Chief Executive of the Environmental Protection Agency;
- incorporate contemporary standards and improve effective operation of the Act in administration, law enforcement and planning; and
- recognise cultural values of recreation areas, in addition to continuing the recognition of conservation, education, production and recreation values.

Reasons for the Bill

The *Recreation Areas Management Bill 2005* is intended to repeal the present Act, bring the legislation into line with current drafting practice, enhance consistency with the *Nature Conservation Act 1992* and provide more contemporary legislation in keeping with present standards and administrative practices.

Achieving the objectives

The management of recreation areas under the new Act will be consistent with that under the present Act, with enhanced effectiveness. The provisions of the Bill provide for consistent management across differing tenures, and the Bill has been drafted to take account of other laws relating to lands in a recreation area. For example, provisions in the Bill take account of the *Nature Conservation Act 1992* in relation to national parks within the recreation area. Local laws will be able to be applied and enforced in recreation areas within the local government's jurisdiction to the extent the local laws are consistent with the Bill. Generally local laws are supportive of and can supplement the provisions in the Bill.

Alternatives to the Bill

The alternatives to the creation of a new Bill, which repeals the present Act, would be to leave the present Act as it is and not proceed with amendments, or to incorporate any necessary amendments into the structure of the present Act. As some amendments are essential (for example, to deliver Government commitments about commercial activity agreements) and as the present Act does not comply with current legislative standards, the amount of redrafting required is considerable, and the framing of a new Bill has been adopted by the Office of the Queensland Parliamentary Counsel as the most efficient and effective drafting method.

Administration costs

The Bill will not impose further costs on either the EPA or other Government Departments. Implementation costs will be met from existing EPA allocations. The Bill promotes a coordinated and integrated approach with other legislation, thus encouraging the formulation of arrangements to maximise efficiencies in management.

Consistency with Fundamental Legislative Principles

Regulatory signage

The Bill allows for the use of signs which may regulate some actions in specified areas or even prohibit entry in some cases, in order to protect the environment and provide for public safety and the rights of other visitors. This provision might be considered to breach fundamental legislative principles relating to delegation of power only in appropriate cases and to appropriate persons.

The relevant regulatory signage provisions, relating to various matters, are: clauses 44, 64, 90, 99 to 105, 107, 108, 115, 118 to 123, 125, 128 and 133.

The regulatory framework for signage allowed under the Bill is consistent with the framework allowed under other legislation, including the *Nature Conservation Regulation 1994* and the *Forestry Act 1959*.

The power to use signs for the purposes specified in the Bill to manage activities is considered to be appropriate and necessary because:

- it allows a timely, relevant and flexible management response to unpredictable or changing circumstances affecting recreation areas, involving natural factors such as drought, wildfire or cyclone, as well as directing visitor behaviour;
- it is consistent with contemporary practice and public expectations in areas such as national parks;
- it ensures that information on management controls and offences at specific sites is conveyed fully and directly to the public; and
- its directness and convenience ensures greater efficiency in the use of limited management resources.

The use of regulatory signs will be managed through operational policies and signage manuals to ensure consistency, adequate consultation and balance.

Powers of authorised officers for compliance and investigation

The Bill confers on an authorised officer, powers to enter a place and a range of powers which can be exercised by the officer for enforcement and investigative purposes once they have entered. These powers are necessary for investigation and enforcement relating to monitoring compliance with the Bill or the collection of evidence where offences have been committed under the Bill. The collection of evidence in situ and in person ensures that such evidence is properly protected from damage or disposal.

The relevant provisions are:

- Clauses 151 to 158 relating to powers of entry; and
- Clauses 171 to 181 conveying powers of seizure of evidence.

The entry and post-entry powers are in a relatively standardised form. The powers will be exercised only by persons with appropriate training in relation to compliance matters.

For example, the Bill provides that a place may be entered only if:

- its occupier consents to the entry, having been first told the purpose of the entry and that consent may be refused;
- it is a public place and entry is made when it is open to the public;
- the entry is authorised by a warrant; or
- it is the place of business of a commercial activity permit holder or a party to a commercial activity agreement (not being an area where a person resides), and is open for business or otherwise open for entry or required to be open for inspection under the permit or agreement.

In addition, authorised officers are required under the Bill to produce identification whenever they exercise such powers.

The Bill also provides that authorised officers will have the power to stop and detain a person found committing an offence in a recreation area and to require disclosure of the person's name and address, as well as to stop and search vehicles, vessels and aircraft suspected on reasonable grounds of use in committing an offence (refer clauses 163 to 166 and 168 to 170). This recognises that recreation areas are public places where people are usually transient and highly mobile. The power to stop and detain, therefore, is a necessary part of enforcement. Again, authorised officers are required to produce identification.

Whilst these provisions might be considered to breach fundamental legislative principles relating to laws conveying power to enter premises only with a warrant, the powers in the Bill are consistent with those in similar Queensland legislation dealing with national parks, marine parks and fisheries and are reasonably required for effective management. They will be exercised only by trained officers.

Powers of authorised officers to give directions

Clauses 159 to 162 and clause 167 of the Bill provide authorised officers with powers to give a direction about certain matters, including using vehicles, controlling fires and removing dangerous dogs.

These provisions might be considered to breach fundamental legislative principles relating to delegation of power only in appropriate cases and to appropriate persons. These provisions are reasonable and necessary to provide for public safety, protection of the rights of other visitors and for the protection of the environment.

Each provision specifies the circumstances in which these powers can be exercised, for example, a person may be directed to leave an area if circumstances exist that are a danger to people or property (such as a wildfire), or if the person's presence may interfere with an emergency or rescue activity, or if the person is found committing an offence. As mentioned above, the Bill requires authorised officers to produce identification whenever they exercise such powers.

Responsibilities of executive officers

Clauses 202 to 205 of the Bill provide that, if a person acting for another is convicted of an offence, the person for whom the convicted person was acting (for example, an executive officer of a corporation, a holder of a permit, or an owner or other person in control of a vessel, vehicle or aircraft) is also taken to have committed an offence of failing to ensure that the person who is acting complies with the Act. The provisions place an obligation on permit holders, vehicle and vessel owners and executives to take responsibility for offences committed by their employees. The Bill provides for a defence that the person charged with the associated offence exercised reasonable diligence or was not in a position to influence the conduct of their subordinates.

This provision might be considered to breach fundamental legislative principles that a law should not reverse the onus of proof in criminal proceedings without adequate justification.

Such requirements are now reflected in most natural resource legislation (such as the *Nature Conservation Act 1992*, the *Fisheries Act 1994*, the *Transport Operations (Marine Pollution) Act 1995*, the *Transport Operations (Marine Safety) Act 1994*, the *Integrated Planning Act 1997*, the *Water Act 2000*, the *Vegetation Management Act 1999*, and the *Environmental Protection Act 1994*) as well as national and international standards for environmental management (for example *AS/NZS ISO14000: Environmental Management Systems*, Standards Australia).

In the absence of such provisions, the persons who have the primary control of an operation, and who may in fact be directing the actions of employees which result in offences being committed, can frequently evade prosecution owing to the necessity in law to prove direct complicity in a specific offence. The provisions are considered essential to ensure that there is effective accountability at the top management level.

Appeal processes (merit review)

The present Act provides no right of appeal of permit decisions. Clauses 206 to 215 of the Bill introduce provisions allowing for internal Departmental review of permit decisions, with the option of further appeal to a Magistrate if the person is dissatisfied with the outcome of the Departmental review. These review and appeal opportunities apply to commercial activity permits and group activity permits.

Review and appeal provisions have not been included for vehicle access permits and camping permits. Such provisions are considered unwarranted because:

- some 50,000 vehicle access permits and 40,000 camping permits are issued for recreation areas each year, and applications for these permits are only refused if an area is fully booked; and
- few, if any, conditions are imposed on vehicle access permits and camping permits, and these are simple requirements relating to safety and environmental protection.

These provisions will bring the Bill into compliance with fundamental legislative principles in relation to the requirement to make rights, liberties and obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Penalty levels

The Bill contains maximum penalties of up to 165 penalty units for offences that may cause environmental harm or threaten life or property, such as lighting a fire when prohibited by notice.

A maximum penalty of 120 penalty units applies to the offence of the holder of a commercial activity permit or group activity permit failing to keep records as required, or to provide information and fee payments as required (clauses 219 to 222). Tourism operators who wilfully and deliberately fail to keep accurate records or to pay fees could potentially defraud the State of very large amounts.

The penalties in the Bill are relatively low. It has been assumed that prosecutions for serious conservation offences would occur under other legislation such as the *Nature Conservation Act 1992* or the *Marine Parks Act 2004* where higher penalties of up to 3,000 penalty units or jail terms are available, rather than under the Bill.

All penalties over 20 penalty units have been brought into the Bill, bringing the legislation into line with the view that, in order to have sufficient regard

to the institution of Parliament, maximum penalties in delegated legislation should be limited generally to 20 penalty units.

Consultation

Consultation with Government, business and the community during the review has been based around a discussion paper released in 2002. Submissions on the discussion paper were supportive of the proposals now incorporated in the Bill. Additional consultation with Queensland Government Departments has occurred in preparing the Bill.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states that the short title of the Act is the *Recreation Areas Management Act 2005*.

Commencement

Clause 2 provides for the Act to commence on a day to be fixed by proclamation.

Definitions

Clause 3 refers to the dictionary in the schedule for definitions of terms.

Purpose of Act

Subclause 4(1) states that the main purpose of the Act is the establishment, maintenance and use of recreation areas, and to provide, coordinate, integrate and improve recreational planning, recreational facilities and recreational management for recreation areas, having regard to the area's conservation, cultural, educational, production and recreational values, and the interests of area land holders.

This recognises that planning and management of the area for recreational use must occur in a broader context, and take into account the interests of land-holders.

Key measures to achieve the purpose are provided in subclause 4(2):

- providing for the declaration, planning and management of recreation areas in consultation with area land-holders and other interested groups and persons, including relevant Aboriginal and Torres Strait Islander entities for the area;
- recognising the rights and obligations of the area land-holders;
- ensuring that the management of the area is not incompatible with the underlying tenure of lands;
- providing for access and use, recreational facilities and services, and the payment of associated fees and charges;
- publishing information about recreation areas; and
- investigating and enforcing compliance with the Act.

Act binds all persons

Clause 5 provides that the Act will apply to the State, and the Commonwealth and other States, as far as the power of the Parliament permits. However the State, the Commonwealth and other States may not be prosecuted for an offence against the Act.

Part 2 Recreation areas

Division 1 Establishing recreation areas

Agreement for inclusion of land in recreation area

Clause 6 states that any land can be included in a recreation area. For land other than State land the land-holder must enter into a written agreement (a *recreation area agreement*) with the State for its inclusion. A recreation area agreement must contain any conditions relating to the area's inclusion, be consistent with the Act and be compatible with the land tenure. For land subject to an *exclusive possession determination*, the agreement must be an indigenous land use agreement under the *Native Title Act 1993* (Cwlth).

Consultation will occur between Queensland Government agencies over the inclusion of State land. This internal Government process is not specified in the Bill.

Declaration of recreation area

Clause 7 states that a recreation area may be declared by regulation. The regulation must describe the land included, name the recreation area and state the management intent – a brief description of the intended goals for managing the area and the policies to achieve the goals.

Division 2 Amalgamating, dividing and revoking recreation areas

Amalgamating or dividing recreation areas

Clause 8 provides for recreation areas to be amalgamated or divided if necessary. For example, a newly declared recreation area could be amalgamated with an adjacent recreation area.

Amalgamations and divisions will not require the declaration procedure mentioned in clauses 6 and 7 to be repeated because they only deal with land that has already been through the process.

Revoking recreation areas

Clause 9 states that all or part of a recreation area may be revoked by regulation, for example if the area is no longer required as a recreation area, or the area is to be removed under an agreement with a land-holder.

Division 3 Recreation area agreements

Recording particulars of agreements

Clause 10 sets out the process whereby notice of a recreation area agreement relating to freehold land, or a lease, licence or reserve under the Land Act, is recorded in the relevant land register so that a search of the register will show the existence of the agreement.

Agreements attach to land

Clause 11 states that a recreation area agreement for freehold land or a lease, licence or reserve under the Land Act attaches to the land and binds the land-holder, the land-holder's successors in title and persons with an interest in the land.

Amending or cancelling agreements

Subclause 12(1) provides that a recreation area agreement may be amended or cancelled by a subsequent agreement, and subclauses 12(2) to (4) provide for how and when the subsequent agreement is given effect, including provision for land to be removed from a recreation area.

Under subclause 12(5), if an amendment or cancellation results in all or part of the recreation area becoming and remaining State land, the agreement is cancelled to the extent the land becomes State land. The resulting State land in the recreation area would then be managed subject to inter-departmental arrangements.

Subclause 12(6) provides that if any land in the recreation area is revoked without an agreed change to the recreation area agreement, then the agreement is taken to be amended or cancelled to the necessary extent.

Subclause 12(7) defines 'parties' for the purposes of clause 12.

Recording amendment or cancellation of agreement

Clause 13 provides for any necessary adjustment to be made to the entry in the relevant land register if a recreation area agreement is amended or cancelled.

Division 4 Effect of declaration on land-holders and native title rights

Rights and obligations concerning land in a recreation area

Clause 14 states that, unless a recreation area agreement for the land states otherwise, the Act does not affect the rights and obligations of an area land-holder (as defined in the schedule) concerning the land-holder's land in a recreation area. This fundamental provision maintains the land-holder's right to undertake or authorise activities on the land that may otherwise be regulated or prohibited by provisions in the Act. Clause 14 also ensures that

the area land-holder retains relevant responsibilities for managing the land, e.g. any responsibility for weed control.

A recreation area agreement could, for example, allow a land-holder to forego a specified land use in part of an area, or allow responsibility for a particular aspect of management to be undertaken by the recreation area staff. However, under clause 6(3)(c), the agreement cannot be inconsistent with the land tenure and any conditions applying to that tenure.

Rights and obligations of interest holders unaffected

Clause 15 states that the Act does not affect the rights and obligations of a person who has a registered interest in relation to the land or an authorisation to carry out exploration or prospecting activities under mining and petroleum and gas legislation. This maintains the person's right to undertake activities on the land in accordance with the relevant interest or authorisation.

Native title rights and interests not affected

Clause 16 provides that the declaration of an area as a recreation area does not extinguish or affect native title or native title rights and interests applying to the land.

Effect of exclusive possession determination on declaration of recreation area

Clause 16 provides that the declaration of an area as a recreation area does not extinguish or affect native title rights and interests applying to the land.

Effect of declaration of recreation area on mining interests

Clause 17 clarifies that exploration or prospecting authorities under mining and petroleum and gas legislation may be issued over land in a recreation area, provided that the relevant land is otherwise available for the issue of those authorities. (Mining exploration could not occur in a national park in a recreation area because the land's national park status would prevent this.)

Part 3 Management Plans

Division 1 Preparing and approving management plans

Preparing draft management plan

Clause 18 states that as soon as practicable after a recreation area is established, the Minister must prepare a draft management plan for the area. The draft plan may apply the provisions of another relevant document. For example, if a recreation area includes part of a national park, the recreation area management plan could adopt the national park management plan with regard to management for that area. Any adopted provisions are taken to be those in force (as revised) from time to time, unless stated otherwise.

Public notice of draft management plan

Subclauses 19(1) to (3) require the Minister to invite public submissions on the draft plan.

However, subclause 19(4) provides that the Minister need not invite submissions if:

- the draft plan is substantially uniform or complementary with other legislation; or
- the draft plan adopts an Australian or international protocol, standard, code or intergovernmental agreement or instrument, and a cost-benefit assessment relevant to Queensland has already been made; or
- public consultation has already been conducted and the Minister is satisfied that the consultation was adequate.

This recognises that other legislation or plans may be in place relative to the area, and that significant consultation on the relevant matters may have already been conducted, for example if the area includes marine park or national park. This exemption is comparable to similar exemptions under the *Statutory Instruments Act 1992* applying to the release of regulatory impact statements.

Subclauses 19(5) and (6) allow for a copy of the draft plan to be obtained for a fee of not more than the cost of providing the copy.

Content of draft management plan

Clause 20 states that each draft or final management plan for a recreation area must, at least, include the name of the area, and the recreational objectives for planning, developing and managing the area.

Minister to prepare final management plan

Clause 21 provides that in preparing the final management plan the Minister must consider each submission made on the draft plan and have regard to the purpose of the Act.

Approval of final management plan

Clause 22 provides that the Governor in Council may approve the final management plan by gazette notice.

When approved management plan has effect

Clause 23 states that the approved management plan takes effect on the day the gazette notice approving the plan is published or the commencement day stated in the plan, whichever is the later.

Effect of management plan if there is an amalgamation or division

Clause 24 provides that regulations amalgamating or dividing recreation areas can allow an approved management plan to apply to all, or a stated part, of the new area or areas. This avoids the need for a new planning process in cases where continuation of the existing plan is appropriate.

**Division 2 Amending and reviewing
 management plans****Preparing draft amendment**

Clause 25 states that the Minister may prepare a draft amendment of an approved management plan, which may apply provisions of another relevant document, in the same way that applies to a draft plan under clause 19.

Public notice of draft amendment

Clause 26 applies a similar process for draft amendments as applies under clause 19 for the making of a draft plan. Notice of each proposed amendment must be given and public submissions invited.

Exceptions from ss 25 and 26

Clause 27(1) provides that public submissions do not need to be invited if the proposed amendment is a minor amendment to correct an error or make an insubstantial change, or the change is of a type that is stated to be allowed in the approved management plan. For example, an approved plan might list priorities for the development of recreation facilities, but provide that these priorities may be amended in the plan without a public submission process if there has been a significant change in the pattern of recreational use that requires the priorities to change.

Clause 27(2) applies the same exceptions to the requirement to invite submissions as apply in relation to a draft plan in clause 19(4).

Preparing final amendment

Clause 28 states that in preparing the final amendment the Minister must consider each submission made, and have regard to the purpose of the Act.

Approval of amendment

Clause 29 provides that the Governor in Council may approve the final amendment by gazette notice, provided that the amendment has been prepared under clauses 25 and 26.

When approved amendment has effect

Clause 30 states that the approved amendment takes effect on the day the gazette notice approving the amendment is published or the commencement day stated in the amendment, whichever is the later.

Reviewing management plans

Clause 31 states that the Minister must give public notice of the intention to review an approved management plan within 10 years of the plan's commencement. The process for review is specified, including a requirement to invite public submissions. After considering any

submissions the Minister may prepare a new draft plan, prepare a draft amendment to the existing plan, or leave the existing plan unchanged.

Division 3 Other matters about management plans

Public access to approved management plans

Clause 32 provides that a copy of each current approved management plan must be available for inspection, without charge, at Departmental offices and on the Department's website.

Subclauses 32(2) and (3) provide that a copy of the approved management plan may be obtained for a fee of not more than the cost of providing the copy.

Chief executive may enter into cooperative arrangement for approved management plan

Clause 33 allows the chief executive to enter into an agreement or arrangement with a person or group of persons with a special interest in the area, when preparing, amending and reviewing the management plan for a recreation area. This could include, for example, arrangements with the relevant Aboriginal and Torres Strait Islander entities for the area.

Part 4 Access to, and permits for, recreation areas

Division 1 Activities permitted

Types of permits

Clause 34 outlines the types of permits issued under the Act – camping permits, vehicle access permits, group activity permits and commercial activity permits. Permits may authorise other activities related to the permitted activity, for example a camping permit may authorise the camper to use a generator.

Terms of permits

Clause 35 states the maximum duration for which each type of permit may be issued.

Division 2 Camping permits

How to obtain a camping permit

Clause 36 sets out the procedure for obtaining a camping permit. Applications must be supported by sufficient information, and the applicant must pay the permit fee before the application is decided. For a self-registration camping area, where permits are self-issued, a person may complete the camping form and provide payment in the way stated on the camping form.

When a camping permit granted

Clause 37 provides that a permit is considered to be granted when the applicant receives a permit or, for internet and telephone transactions, the applicant is provided with a permit number.

Subclauses 37(4) and (5) state that for a self-registration camping area, a permit is considered to be granted when a person complies with the procedures specified in with clause 36(3). However, in this situation, where the validity of payment cannot normally be checked until after the camping has occurred, a camping permit is taken not to have been granted if a person's cheque or credit card payment is not honoured.

Extent to which camping permit granted

Clause 38 applies to permits obtained by internet or telephone or by self-registration. Permits are only considered to be granted for the number of people and for the number of days stated by the applicant. Maximum duration of the permit is 30 days, or a shorter period if stated in a notice relating to the area.

Conditions of camping permit

Clause 39 applies to e-permit camping areas (areas subject to internet or telephone permits) and self-registration camping areas. It specifies that any

conditions stated in camping notices (signs) are taken to be the conditions of each camping permit for the area.

Camping permit taken to be authorisation under other Acts

Clause 40 recognises that camping in certain areas within a recreation area may also require a permit under other particular Acts relating to the land within the recreation area, and so provides that a recreation area camping permit is taken to be an authorisation for camping under the Nature Conservation Act, Forestry Act and Marine Parks Act.

Division 3 Vehicle access permits

How to obtain a vehicle access permit

Clause 41 sets out the procedure for applying for a vehicle access permit. Applications must be supported by sufficient information, and the applicant must pay the permit fee before the application is decided.

For rental vehicles in recreation areas, the person who hired the vehicle for that occasion must be the person who applies for the vehicle access permit. This clause is intended to ensure a vehicle access permit fee is paid for each separate visit, in order to collect fees proportionate to use. It prevents a rental vehicle owner or other person paying for a vehicle access permit for a hire vehicle which then covers the vehicle making several trips into the area with different hirers.

When a vehicle access permit granted

Clause 42 provides that a vehicle access permit is considered to be granted when the applicant receives a permit or, for internet and telephone transactions, when the applicant is provided with a permit number.

Extent to which vehicle access permit granted

Clause 43 provides that for vehicle access permits obtained by internet or telephone, the permit is only considered to be granted for the vehicle and for the period of time stated by the applicant.

Vehicle access permit taken to be authorisation under Forestry Act

Clause 44 recognises that a person taking a vehicle into a State forest within a recreation area may need a permit under the Forestry Act, and so provides that a vehicle access permit is taken to be an authorisation under the Forestry Act to traverse a road, other than any road where a sign prohibits the vehicle or access to the area.

Division 4 Group activity permits

How to obtain a group activity permit

Clause 45 sets out the procedure for applying for a group activity permit. (The definition of ‘group activity’ in the schedule ensures that such a permit is not required for every activity carried out by a group, but only for those activities that may restrict access to or enjoyment of the area by the general public.) Applications must be supported by sufficient information, and the applicant must pay the permit fee before the application is decided.

Requirements for grant of application for group activity permit

Clause 46 provides that, depending on the nature of activities (and level of associated risk), insurance cover may be required for a group activity permit to be issued.

When a group activity permit granted

Clause 47 states that a group activity permit is granted when the application is decided and the applicant is given a permit.

Group activity permit taken to be authorisation under other Acts

Clause 48 recognises that a group activity in certain areas within a recreation area may also need a permit under other particular Acts relating to the land within the recreation area, and so provides that a recreation area group activity permit is taken to be an authorisation for the activity under the Nature Conservation Act and Forestry Act.

Division 5 Commercial activity permits

How to obtain a commercial activity permit

Clause 49 sets out the procedure for applying for a commercial activity permit. Applications must be supported by sufficient information, and the applicant must pay the permit fee before the application is decided. Information must be verified by a statutory declaration, if required by the approved form.

Requirements for holding commercial activity permit

Clause 50 provides that a commercial activity permit may be granted only if the applicant is a suitable person to hold the permit. Insurance cover may be required, depending on the nature of the proposed activities. The chief executive may inquire about the applicant and an *associated person* of the applicant and consider any matter relevant to the applicant's ability to competently and ethically carry out the proposed activities. Associated person of the applicant is defined in subclause 50(4) and includes executive officers of a corporation, and a person in charge of, or in control of, the business.

Chief executive may request public notice of application for commercial activity permit

Clause 51 applies if the chief executive considers that the granting of an application for a commercial activity permit for a recreation area may limit the reasonable use of part of the area by people other than the applicant. The chief executive may by written notice require the applicant to give public notice of the application and invite submissions to be made to the chief executive. Prior to deciding whether or not to grant the permit, the chief executive must take account of any written submissions received in response to the public notice.

Deciding application for commercial activity permit

Clause 52 provides that chief executive must decide to grant a commercial activity permit application with or without conditions, or grant the application for a shorter period than applied for, or refuse the application. Subclause 52(4) includes timeframes for making the decision. Subclause 52(6) provides for the issue of an information notice if the application is

refused or is granted with conditions (which then allows the applicant to apply for review of the decision).

Additional matters to be considered under s 52

Matters that must be considered when deciding an application under clause 52 are listed in clause 53. This allows the proposal to be assessed in light of necessary management constraints and appropriate management standards. The matters include the purpose of the Act, the area's management plan, conservation of natural and cultural resources, amenity of the area and adjacent areas, the likely affect of the proposed use, public health and safety, and any relevant Australian or international standards and intergovernmental agreements.

Grounds for refusal of an application are specified in subclause 53(3). These relate to the applicant's prior performance. They include accumulation of 10 or more demerit points from infringement notices, and any permit suspensions or cancellations or offences against the Act or related legislation occurring within two or three years prior to application, but only provided that these relate to matters relevant to the permit decision.

Existing commercial activity permit taken to be in force while new application is considered

Clause 54 provides that an existing commercial activity permit may continue in force for a limited time if an application for a new permit (to commence immediately after the existing permit) has not been decided before the existing permit's expiry date. This is intended to allow continuity of the commercial operation in the event of any delay in deciding the application.

The existing commercial activity permit is taken to remain in force from the day it would have expired until the new permit is issued, or the application is refused, or the applicant is taken to have withdrawn the application by failing to supply requested additional information, or for no more than an extra three months if none of these apply. Also the permit cannot continue if it is earlier cancelled or suspended.

Commercial activity permit taken to be authorisation under other Acts

Clause 55 recognises that commercial activities in certain areas within a recreation area may need a permit under other particular Acts, and so

provides that a recreation area commercial activity permit is taken to be an authorisation for the activity under the Nature Conservation Act and Forestry Act.

Division 6 General provisions about permits

Chief executive's power to require further information about permit application

Clause 56 provides that further information from the applicant may be requested before a permit application is decided, and can be required to be verified by statutory declaration.

If the application is for a commercial activity permit, the request must be by written notice, with a reasonable period (of at least 20 business days) for the information to be provided. The application is taken to have been withdrawn if the applicant does not comply with the time stated in the notice, unless the period is extended.

For applications other than for commercial activity permits (such as for a camping permit), additional information can be requested verbally, for example to clarify something relating to an application over the counter or by telephone. A response is required within a reasonable period (which may be extended).

Amending permit application

Clause 57 allows an applicant to amend an application, if agreed, before the chief executive has finished considering it. This is a practical provision that allows, for example, an application to be modified in order to overcome some difficulty that might prevent grant of the permit.

Deciding permit application (other than commercial activity permit)

Clause 58 sets out the process for deciding an application for a permit other than a commercial activity permit, including timeframes in subclause 58(3). (Commercial activity permit applications are dealt with in clauses 52 and 53). Matters that must be considered when deciding the application are listed in subclause 58(2). This allows the proposal to be assessed in light of necessary management constraints and appropriate management standards. The matters include the purpose of the Act, the area's management plan,

conservation of natural and cultural resources, amenity of the area and adjacent areas, the likely affect of the proposed use, public health and safety, and any relevant Australian or international standards and intergovernmental agreements.

Steps to be taken after permit application decided (other than commercial activity permit)

Clause 59 relates to permits other than commercial activity permits. If a decision is made to grant a permit with or without conditions, the permit must be issued to the applicant as soon as practicable.

For a group activity permit application, an information notice must be given if the application is refused or conditions applied (which then allows the applicant to apply for review of the decision).

For applications for other permits, advice of the decision does not have to be in writing. This allows an applicant applying by phone for a camping permit, for example, to be advised of the decision by telephone.

Permits

Clause 60 provides that a permit, other than a permit granted by internet or by telephone, must be in writing and include specified details – the issue date, commencement date (if different) and term or expiry date, the name of the permittee and relevant business details, the name of the recreation area and the purpose for which the permit is issued, as well as any conditions that apply.

Minor amendments

Clause 61 provides for minor amendments to be made to a permit by advising the permit holder of the amendment (by written notice for group activity or commercial activity permits). The advice or notice must state the reasons for the amendment. The amendment takes effect on the day the advice or notice is given to the holder, or on the date advised or specified in the notice (whichever is later), and the amendment need not be recorded on the permit in order to be valid. A minor amendment can omit a condition, correct an error or make an insubstantial change not adversely affecting the holder's interests.

Amendments by application

Clause 62 relates to an application for amendment of a permit by the permit holder. The application must be accompanied by the required fee and, for a group activity or commercial activity permit, must be in writing. If the chief executive decides to make the amendment, the permit holder must be advised of the amendment (by written notice for group activity or commercial activity permits). The amendment takes effect on the day the advice or notice is given to the holder, or on the date advised or specified in the notice (whichever is later), and the amendment need not be recorded on the permit in order to be valid.

If the decision is to refuse the application, the chief executive must advise the permit holder. This must be by way of information notice in the case of a group activity or commercial activity permit (which then allows the applicant to apply for review of the decision).

Other amendments (other than immediately)

Clause 63 sets out the process for amendment of a permit initiated by the chief executive (other than an immediate amendment under clause 64), and includes opportunity for representations by the permit holder about the proposed amendment.

Subclause 63(1) lists circumstances in which the chief executive may amend a permit. These include that the chief executive reasonably believes that the permit was obtained because of incorrect or misleading information, the holder has contravened a permit condition, the holder of a commercial activity permit is no longer a suitable person for the permit, or the amendment is necessary with regard to the purpose of the Act. The permit may also be amended if the holder has failed to pay a required fee, provide information under the permit within the required timeframe, or is convicted of an offence against the Act. Additionally, the permit may be amended to secure the safety of a person or a person's property, or to conserve or protect the natural or cultural resources of the recreation area to which the permit relates.

Subclauses 63(2) and (3) specify that the chief executive must give the permit holder notice of any proposed amendment, stating the ground for the proposed amendment and inviting the holder to make representations, within a stated period. If the permit is for a group activity or commercial activity permit, the notice must be in writing and the stated period for written representations must not be less than 20 business days.

Subclause 63(4) provides that the chief executive may, after considering any representations, amend the permit in the way stated in the notice, or in another way having regard to the representations.

Subclauses 63(5) to (8) outline the requirements for notifying the permit holder of the decision regarding any amendments to the permit. If the chief executive makes the amendment, the holder must be advised of the amendment. This must be by information notice for group activity or commercial activity permits (which then allows the holder to apply for review of the decision). The amendment takes effect on the day the advice or notice is given to the holder, or on the date specified in the advice or notice (whichever is later), and the amendment need not be recorded on the permit in order to be valid.

Permit holders must also be advised if the chief executive decides not to make the proposed amendment (in writing for group activity or commercial activity permits).

Immediate amendment or suspension of permits for safety or conservation

Clause 64 allows for immediate amendment of a permit or its suspension to the extent advised, if the chief executive reasonably believes the amendment or suspension is immediately needed to secure the safety of a person or a person's property, because of a fire or other natural disaster, or to conserve or protect the natural and cultural resources of the recreation area.

This provision allows immediate action in urgent and serious circumstances, which do not allow time for advance notice to be given or for representations to be made by permit holders.

The amendment or suspension is effected by advising permit holders, verbally or by signs, that the permit is amended or suspended to the extent advised. It commences when the holder is advised of the amendment or suspension and continues until the chief executive is satisfied the reason for the amendment or suspension no longer exists. A notice must be placed on the Department's web site, as soon as practicable, advising when the amendment or suspension no longer applies.

Cancelling a permit or suspending a permit other than immediately

Clause 65 provides that a permit may be cancelled or suspended other than immediately, to secure the safety of a person or a person's property,

because of a fire or other natural disaster, or to conserve or protect the natural or cultural resources of the recreation area to which the permit relates. The same action can apply if the chief executive reasonably believes that the permit was obtained because of incorrect or misleading information, the holder has contravened a permit condition, the holder of a commercial activity permit is no longer a suitable person for the permit, the holder has failed to pay a required fee or provide information under the permit within the required timeframe, or is convicted of an offence against the Act.

Subclauses 65(2) and (3) specify that the chief executive must give the permit holder notice of the details of any proposed action to cancel or suspend (including the proposed suspension period), and stating the ground for the proposed action and an outline of the facts and circumstances forming the basis for the ground, and inviting the holder to make representations, within a stated period. If the permit is for a group activity or commercial activity permit, the notice must be in writing and the stated period for written representations must not be less than 20 business days.

Subclause 65(4) provides that the chief executive may, after considering any representations, for a proposed suspension, suspend the permit for not longer than the proposed suspension period, and for a proposed cancellation, cancel or suspend the permit.

Subclauses 65(5) to (7) outline the requirements for notifying the permit holder of the decision. If the chief executive decides to suspend or cancel the permit, the holder must be advised. This must be by information notice for group activity or commercial activity permits (which then allows the holder to apply for review of the decision). The suspension or cancellation takes effect on the day the advice or notice is given to the holder, or on the date specified in the advice or notice (whichever is later).

Permit holders must also be advised if the chief executive decides not to take the proposed action (in writing for group activity or commercial activity permits).

Surrendering permits

Clause 66 provides that a permit may be surrendered by the permit holder by returning it with a written notice of its surrender. The permit will no longer have effect from the date given in the notice, or if no date is specified, the day the notice is received.

Replacing permits

Clause 67 allows for a permit holder to apply for the replacement of a damaged, destroyed, lost or stolen permit. The application must be accompanied by any required application fee.

If the chief executive is satisfied that the permit should be replaced, another permit must be issued. If the application for permit replacement is refused, the holder must be provided with notice of the decision within 14 days after the decision is made.

Applications would normally be granted, so grounds for refusal have not been specified. Refusal could occur if the request was unreasonable, for example the permit was about to expire, or if it was established that the application was fraudulent.

Permits and approvals not transferable

Clause 68 states that a permit or written approval issued to a person cannot be transferred to another person.

Part 5 Commercial activity agreements for recreation areas

Commercial activities in recreation areas may be authorised by a commercial activity permit or commercial activity agreement. This part of the Bill applies to commercial activity agreements. A commercial activity is defined in the schedule and may comprise an activity such as a commercial tour, commercial filming, food vending or equipment hire.

Division 1 Preliminary

Chief executive may enter into commercial activity agreement

Clause 69 provides that the chief executive may enter into a commercial activity agreement with a person to conduct a commercial activity in a recreation area.

The chief executive may enter into the agreement by using an expression of interest process or an application process. Also, the chief executive may

enter into an agreement with person who holds a commercial activity permit for the area, for example to replace the permit with an agreement.

Restrictions on entering into commercial activity agreement

Clause 70 provides that a commercial activity agreement must be consistent with the Act and the management intent for the recreation area and must not create an interest in land in a recreation area or authorise major earthworks or the installation of a permanent structure. (Major earthworks are earthworks that cause a major disturbance to cultural or natural resources, e.g. construction of a road or drainage channels.)

Subclause 70(3) provides that clauses 50, 52 and 56 apply for the chief executive when entering into a commercial activity agreement, as if references to a 'permit', 'application' or 'applicant' refer to a commercial activity agreement. This allows the chief executive to take account of the same matters in considering a commercial activity agreement as those that are relevant in deciding an application for a commercial activity permit.

Content of commercial activity agreements

Clause 71 states that a commercial activity agreement must include the name of the recreation area, the date the agreement is entered into, its term, the name of the person and the person's business details, the activities authorised under the agreement, any conditions of the agreement and the amount payable to the State under the agreement. The parties to the agreement (i.e. the chief executive and the other party to the agreement) may amend the agreement at any time.

Mandatory conditions of commercial activity agreements

Clause 72 provides that if the chief executive reasonably believes that a commercial activity agreement should be subject to a condition to assist in achieving the purpose of the Act, the chief executive must not enter into an agreement unless it is subject to the condition and the agreement states that a breach of the condition is an offence against the Act.

Division 2 Expression of interest process

Application of division 2

Clause 73 provides that this division applies to an expression of interest process for entering into a commercial activity agreement.

Invitation for submissions

Clause 74 allows the chief executive to limit the expression of interest process to only the holders of a commercial activity permit for the activity for the area, or to invite relevant members of the public to submit an expression of interest.

Subclause 74(3) sets out what must be stated in an invitation, including the recreation area and commercial activity that will be the subject of the agreement, eligible applicants, details of how to make a submission, and the availability of details of matters the chief executive will consider and proposed conditions for the agreement likely to impact on conduct of the activity.

The dictionary in the schedule defines *relevant members of the public* to mean the holders of a commercial activity permit if the process is only open to the holders, or otherwise the members of the public the chief executive reasonably believes would be interested in submitting an expression of interest for the agreement.

Requirements for submissions

Clause 75 requires a submission to be in writing, accompanied by the required fee, and submitted as stated in the invitation under clause 74.

Requirements for process of deciding

Clause 76 states that the chief executive may, subject to clause 70, determine the process used to decide which expressions of interest should be further negotiated, and must have regard to the matters considered in an application for a commercial activity permit and any other matter the chief executive reasonably considers relevant.

Chief executive may request further information

Clause 77 allows the chief executive to ask the submitter to provide further information by a stated date (at least 20 business days after the notice is received). The submission is taken to be withdrawn if the submitter does not (without reasonable excuse), provide the information by the stated date, in which case the chief executive must give the applicant written notice advising that the application is taken to be withdrawn, and the applicant may make a new application. The chief executive may extend the time for the information to be provided.

Amending the submission

Clause 78 states that, if the chief executive agrees, the submitter may amend the submission before the chief executive has finished considering it.

Notice to unsuccessful submitters

Clause 79 requires the chief executive, within 14 days after making a decision under clause 76, to give each unsuccessful submitter a written notice for the decision.

Division 3 Application process**Application of division 3**

Clause 80 provides that division 3 applies to an application process for entering into a commercial activity agreement.

Applying for commercial activity agreement

Clause 81 provides that a person may apply in writing, with the relevant fee, to the chief executive for a commercial activity agreement.

Matters to be considered for application

Clause 82 provides that in considering a commercial activity agreement application, the chief executive must have regard to the matters to be taken account of in considering a commercial activity permit, and other relevant matters.

Chief executive may request further information

Clause 83 allows the chief executive to ask the applicant for further information, to be provided by a stated date (no less than 20 business days after receiving the notice). If the applicant does not, without reasonable excuse, provide the further information on time, then the application is taken to have been withdrawn, in which case the chief executive must give the applicant written notice to this effect and advising that a new application may be made. The chief executive may extend the time for the information to be provided.

Amending the application

Clause 84 provides that if the chief executive agrees, the applicant may amend the application before the chief executive has finished considering it.

Application of s 51 to commercial activity agreements

Clause 85 provides that clause 51 applies when considering the grant of an application for a commercial activity agreement. A reference in clause 51 to a 'permit' is considered to be a reference to a commercial activity agreement, and a reference in clause 51 to 'the applicant' is considered to be a reference to the person seeking to enter into the agreement with the chief executive. Therefore, if the proposed commercial activity under the agreement might restrict the reasonable use of part of the area, the chief executive can require the applicant to give public notice of the proposal and invite submissions to be considered by the chief executive.

Negotiating application for commercial activity agreement

Clause 86 states that the chief executive must consider each application for a commercial activity agreement and decide to either negotiate the signing of a commercial activity agreement or refuse the application.

The chief executive must give the applicant written notice of the decision within 10 business days of making the decision. If the decision is to refuse the application, the notice must be an information notice (which then allows the applicant to apply for review of the decision).

Steps to be taken after application decided

Clause 87 provides that if the chief executive decides, after negotiations, to enter into a commercial activity agreement then this must be done as soon as practicable.

If the chief executive decides to refuse to enter into a commercial activity agreement, then the chief executive must give the applicant an information notice for the decision within 10 business days (which then allows the applicant to apply for review of the decision).

Division 4 Requirements applying to and nature of agreements**Term and review of commercial activity agreements**

Clause 88 states that a commercial activity agreement must not be for a term longer than 10 years. The agreement may allow the term to be extended, so long as the remaining term does not exceed 10 years. The agreement may also provide for review processes.

Nature of commercial activity agreements

Clause 89 provides that, subject to the conditions of the agreement, a commercial activity agreement authorises the party other than the chief executive to conduct the stated activity in the stated recreation area (or part). A commercial activity agreement may also be transferred as provided in division 6.

Division 5 Amendment, termination and suspension of agreement by chief executive**Immediate amendment or suspension of commercial activity agreements for safety or conservation**

Clause 90 provides for immediate amendment or suspension of a commercial activity agreement in order to secure the safety of a person or a person's property, because of a fire or other natural disaster, or to conserve or protect the cultural or natural resources of the recreation area. Advice of

amendment or suspension may be given verbally or by signs, and takes effect immediately after the other party to the agreement is advised, and continues until the chief executive advises otherwise.

This provision allows immediate action in urgent and serious circumstances, which do not allow time for advance notice to be given or for representations to be made by the other party to the agreement.

The effect of the amendment does not depend on the amendment being noted on the agreement. The chief executive must as soon as practicable put a notice on the Department's web site advising when the amendment or suspension no longer applies.

Amending commercial activity agreements (other than immediately)

Clause 91 sets out the process for amendment of a commercial activity agreement initiated by the chief executive (other than an immediate amendment under clause 90), and includes opportunity for representations by the other party to the agreement about the proposed amendment.

Subclause 91(1) lists circumstances in which the chief executive may amend a commercial activity agreement. These include that the chief executive reasonably believes that the agreement was obtained because of incorrect or misleading information, the other party to the agreement has contravened a condition of the agreement, the other party to the agreement is no longer a suitable person, or the amendment is necessary with regard to the purpose of the Act. The agreement may also be amended if the other party to the agreement is convicted of an offence against the Act. Additionally, the agreement may be amended to secure the safety of a person or a person's property, to conserve or protect the natural or cultural resources of the recreation area or if the agreement relates to an area declared a restricted access area or closed to the public.

Subclause 91(2) specifies that the chief executive must give the other party to the agreement written notice of any proposed amendment, stating the ground for the proposed amendment, an outline of the facts and circumstances forming the basis for the ground, and inviting the other party to the agreement to make representations, within a stated period of not less than 20 business days.

Subclause 91(3) provides that the chief executive may, after considering representations, amend the permit in the way stated in the notice, or in another way having regard to the representations.

Subclauses 91(5) to (7) outline the requirements for notifying the other party to the agreement of the decision regarding any amendments to the permit. If the chief executive makes the amendment, the other party to the agreement must be advised of the amendment by information notice (which then allows the holder to apply for review of the decision). The amendment takes effect on the day the notice is given, or on the date specified in the notice (whichever is later), and the amendment need not be recorded on the agreement in order to be valid.

The other party to the agreement must also be advised in writing if the chief executive decides not to make the proposed amendment.

Cancelling commercial activity agreements or suspending authorisations under agreements (other than immediately)

Clause 92 provides that an agreement may be cancelled or the authorisation under the agreement suspended other than immediately, for specified reasons or in specified circumstances, which include to secure the safety of a person or a person's property, because of a fire or other natural disaster, to conserve or protect the natural or cultural resources of the recreation area, if the chief executive reasonably believes that the agreement was obtained because of incorrect or misleading information, the other party to the agreement has contravened a condition of the agreement, or the other party to the agreement is no longer a suitable person.

Other applicable circumstances are if the other party to the agreement is convicted of an offence against the Act, if the chief executive reasonably believes the activities being conducted under the agreement are having an unacceptable impact on the amenity or conservation values of the recreation area, or the activities conducted under the agreement are threatening public health or safety, or the cancellation or suspension is necessary to ensure the fair and equitable access to the area.

Process for cancelling or suspending under s 92

Clause 93 specifies the process for cancelling or suspending an agreement under clause 92. Subclause 93(1) provides that the chief executive may give the other party to the agreement a written notice stating the proposed action, including any proposed suspension period, grounds for the proposed action and circumstances surrounding the decision, and an invitation to make written representations within a stated period (not less than 20 business days after the notice is given).

Subclause 93(2) provides that the chief executive must consider any representations made within the stated period and decide, if the proposed action is still considered to be necessary, to either suspend the authorisation (for no longer than the proposed suspension period) or cancel the agreement in line with the proposed action. Subclause 93(3) provides that the chief executive must give the other party to the agreement an information notice about the decision (which then allows the other party to the agreement to apply for a review of the decision).

Subclause 93(4) provides that the proposed action takes effect when the information notice is given to the other party to the agreement, or the day of effect stated in the notice (the later day).

Subclause 93(5) provides that if the chief executive decides not to take action, the chief executive must give the other party to the agreement written notice of the decision, as soon as practicable.

Subclause 93(6) provides that if the authorisation under a commercial activity agreement is suspended because of the conviction of a person and the conviction is quashed, the suspension period ends on the day the conviction is quashed.

Subclause 93(7) provides that if a commercial activity agreement is terminated because of the conviction of a person and the conviction is quashed, the cancellation has no further effect.

Division 6 Transfer of authorisations under commercial activity agreements

Application to transfer authorisation under commercial activity agreement

Clause 94 provides that the authorisation under a commercial activity agreement may be transferred. Both the seller (the original party to the agreement) and the buyer (the party to whom the authority is being transferred) must apply to the chief executive to approve the transfer and give effect to the transfer as detailed below.

Approval or non approval of transfer

Clause 95 provides that the chief executive may approve the transfer of a commercial activity agreement only if the chief executive is satisfied that the buyer is a suitable person for the commercial activity. The chief

executive must give the seller and the buyer an information notice for the decision if the decision is to refuse the transfer (this then allows the person to apply for review of the decision).

Giving effect to transfer

Subclause 96(1) states that the transfer can only be effected if the transfer has been approved by the chief executive, and all relevant fees have been paid.

Under subclause 96(2), if the seller transfers all of the authorisations under the agreement, the chief executive must cancel the seller's agreement and, if the buyer has a commercial activity agreement, amend the buyer's agreement to reflect the transfer. If the buyer does not have a commercial activity agreement, the chief executive must enter into a an agreement with the buyer for conducting the commercial activity.

Subclause 96(3) provides that if the seller transfers only part of the authorisation under the agreement, the chief executive must amend the seller's commercial activity agreement to reflect the transfer, and if the buyer has a commercial activity agreement amend the buyer's agreement to reflect the transfer. If the buyer does not have a commercial activity agreement, the chief executive must enter into an agreement with the buyer for conducting the commercial activity.

Division 7 General provisions about commercial activity agreements

Declaration of prescribed commercial activity

Clause 97 provides that the chief executive may, by public notice, declare a commercial activity to be a prescribed commercial activity for a recreation area. The chief executive is also required to publish the notice on the Department's website.

This has the effect of allowing the prescribed commercial activity to only be conducted in the area under a commercial activity agreement (or for the remaining term of a pre-existing commercial activity permit).

This allows specified commercial activities at favoured sites with high visitor demand to occur only under agreements which would be negotiated to provide better management outcomes and to also provide benefits the

other parties to the agreements, such as longer-term authorisation of the activities.

Subclause 97(4) outlines factors that the chief executive must take into account when deciding whether to declare a prescribed commercial activity. These factors include the orderly management of the area, conservation of the area, the existing and future amenity of the area and adjacent areas, including cumulative effects, and the likely contributions that potential parties to agreements will make to management of the area.

Commercial activity agreement taken to be authorisation under other Acts

Clause 98 provides that a commercial activity agreement for an activity in a recreation area is, for the *Nature Conservation Act 1992* and *Forestry Act 1959*, taken to be an authorisation for the activity under those Acts.

This provision avoids the need for permit duplication in cases where a national park or State forest is included in a recreation area (such as Fraser Island), by ensuring that the commercial activity agreement for the recreation area can also serve as the required authorisation for a commercial activity under those other Acts.

Part 6 Regulatory and other notices and restricted access areas

Division 1 Regulatory and other notices

Regulatory notices

Clause 99 sets out the process for displaying a notice (a *regulatory notice*) relating to a recreation area. Regulatory notices are signs used to authorise, regulate or prohibit specific activities. They may be used only in relation to a *public health and safety act* (defined in the dictionary in the schedule) or in relation to a specific activity under a provision of the Act that refers to use of a regulatory notice. Subclause 99(3) specifies what must be included in the notice and subclause 99(4) provides that the notice may also state that contravention of the notice is an offence and the penalty for the offence.

If the notice does not state that contravention is an offence and the penalty that applies, then clause 100 will apply.

Regulatory information notices

Clause 100 provides that if a regulatory notice does not state that contravening the notice is an offence and the penalty for the offence, then this information must be included in a *regulatory information notice*, which may also include other things.

The purpose of this provision is to minimise the information needed on each regulatory notice if several regulatory notices for the one purpose are to be used in the same area. For example, one information notice at the entrance to a camping area could state that contravening a regulatory notice prohibiting camping at sites closed for rehabilitation is an offence and the penalty that applies. Each individual regulatory notice then need not carry that information.

Division 2 Restricted access areas

Immediate declaration of restricted access area

Clause 101 provides that all or part of a recreation area may immediately be declared as a restricted access area, by erection or display of a sign (a *restricted access area notice*). The declaration may only be made if access to, or activities in, the area need to be immediately restricted or prohibited to protect a person or property, because of a fire or other natural disaster, or to conserve or protect natural or cultural resources.

The notice must be displayed in or near the entrance to the restricted access area, be clearly visible to passers-by, specify the limits of the area to which the notice applies and detail how access to the area or activities in the area are restricted or prohibited. The notice must also state that the breach of a requirement of the notice is an offence and detail the penalty for the offence.

A copy of the notice must be published on the Department's web site and in other ways the chief executive considers appropriate.

The chief executive must remove the restricted access area notice as soon as satisfied that the reason for making the declaration no longer exists.

Clause 104(1)(b) provides that a declaration under clause 101 may continue for no more than six months. Declaration for a longer period can only occur by regulation in accordance with clause 102.

Declaration of restricted access area (other than immediately)

Clause 102 states that a regulation may, for purposes specified, declare all or part of a recreation area to be a restricted access area, or may declare that an area that has been declared a restricted access area under clause 101 continues to be a restricted access area under this clause.

Subclause 102(2) outlines the purposes for which a regulation may declare a restricted access area; these include the conservation of the cultural or natural resources of the area, protection of individuals from potential danger, protection of facilities in the area, protection of the amenity of an area adjacent to the area or the orderly or proper management of the area.

A regulation may only be made after a consultation process specified in clause 103 has been completed.

The chief executive must as soon as possible after the regulation has effect display a restricted access area notice at or near the entrance to the restricted access area.

Consultation with stakeholders about declarations (other than immediately)

Clause 103 provides that, before a regulation may be made declaring a restricted access area, consultation must occur with the holder of a commercial activity permit or party to a commercial activity agreement if the regulation would significantly affect the nature or extent of activities being or to be conducted under the permit or agreement.

The chief executive must give the holder of the permit or party to the agreement written notice stating that consideration is being given to declaring a restricted access area by regulation and inviting written submissions within a stated period (at least 20 business days).

The chief executive is required to consider any submissions received in response to the notice.

When declarations end

Clause 104 states that the declaration of a restricted area made under clause 101 ends either when the restricted access area notice is removed or 6 months after the notice was displayed (whichever is earlier).

A declaration for a restricted access area made under clause 102 ends on the day that the declaration is revoked.

The chief executive is required to remove the restricted area notice as soon as feasible after a declaration for the restricted access area ends. A notice of the removal must also be published on the Department's web site and in the same way the declaration itself was originally otherwise published.

Division 3 Effect of notices**Restricted access area notices and regulatory notices prevail over permits, agreements, or authorities**

Clause 105 states that if a permit, agreement or authority issued under the Act or another Act is inconsistent with a restricted access area notice or a regulatory notice, then the notice prevails. This is intended to remove any doubt that the notice prevails over any authorisation issued prior to erection of the notice.

Part 7 Offences

Offences in this part have been allocated maximum penalties ranging up to 165 penalty units. Penalties for the upper part of this range are applied to more serious offences, for example, offences that may have significant environmental impacts, represent a significant risk to health or safety, or significantly affect the proper administration of the Act.

Division 1 Access to, using and conduct in recreation areas

Unlawfully entering restricted access area

Clause 106 provides that it is an offence to enter or remain in a restricted access area without reasonable excuse, unless a person has written approval, or has a commercial activity permit or agreement that specifically authorises entry to the restricted access area.

Failing to comply with particular regulatory notices

Clause 107 provides that it is an offence to fail to comply with a regulatory notice about a public health and safety act, unless the person has a reasonable excuse.

Unlawful camping

Subclause 108(1) provides that it is an offence to camp in a recreation area unless authorised by a camping permit, commercial activity permit or commercial activity agreement or a corresponding authority (an authority under another Act).

A corresponding authority could be, for example, a stock grazing permit for a State forest in the area, which allows the permit holder to camp while managing the stock.

However, a permit is not required for sleeping on board a boat below low water mark.

Subclause 108(4) provides that it is an offence to camp in a recreation area contrary to a regulatory notice. For example, a regulatory notice could be used to close a particular campsite in a camping area.

Unlawful use of motor vehicles

Clause 109 provides that it is an offence to take a motor vehicle into, or drive or ride a motor vehicle in, a recreation area unless the vehicle is authorised by a vehicle access permit, commercial activity permit or commercial activity agreement. However this does not apply for the Inskip Peninsula recreation area, another area prescribed under a regulation, or to emergency vehicles.

Unlawful conduct of group activity

Clause 110 provides that it is an offence to conduct a group activity in a recreation area unless the person conducts the activity under a group activity permit, commercial activity permit or commercial activity agreement. Group activity is defined in the dictionary in the schedule, and includes an organised activity, such as a concert, wedding or sporting activity, that may restrict access to, or enjoyment of part of the area by the general public. A permit is not required if an activity will not significantly interfere with general public use of the area.

The definition of group activity excludes traditional activities of Aboriginal people or customary activities of Torres Strait Islander people.

Unlawfully conducting commercial activity

Clause 111 provides that it is an offence to conduct a commercial activity in a recreation area unless the person conducts the activity under a commercial activity permit or commercial activity agreement. Commercial activity is defined in the dictionary in the schedule, and includes activities such as commercial tours and commercial photography. The definition excludes activities for which the use of the recreation area is not integral to the activity, for example, a scheduled bus service through the area, or commercial fishing other than a fishing tour, and excludes regular news reporting.

Compliance with recreation management conditions

Clause 112 provides that it is an offence for a person acting under a commercial activity agreement, to fail to comply with each *recreation management condition* of the agreement. A recreation management condition is an essential condition of the agreement as provided by clause 72.

Unauthorised interference with cultural or natural resources

Clause 113 provides that it is an offence to interfere with cultural or natural resources of a recreation area without the chief executive's written approval or a corresponding authority (under another Act). Also, taking fish in accord with the Fisheries Act is not an offence under this clause provided that it is not otherwise prohibited in the area under another Act, for example by a zoning plan under the Marine Parks Act.

Unauthorised structures and works

Clause 114 provides that it is an offence to erect or keep a structure, other than a camping structure under a camping permit, or to carry out works in a recreation area without the chief executive's written approval or a corresponding authority (under another Act).

Division 2 Fires

Unlawful lighting of fires

Subclause 115(1) provides that it is an offence to light a fire on a beach adjoining a lake in a recreation area.

Subclause 115(2) creates an offence for lighting a fire or type of fire prohibited by a regulatory notice or by a condition of a permit or authority held by the person.

Subclause 115(3) creates an offence for lighting, keeping or using a fire other than in a barbecue or fireplace provided by the chief executive, or a place that is more than 2m from flammable material (if a barbecue or fireplace is not provided).

However, these offences do not apply to a person acting with the chief executive's written approval, or to a person using a specified cooking or heating appliance or smoking if the person takes reasonable steps to ensure the use or smoking does not result in damage to a cultural or natural resource, or property.

Unattended fires

Clause 116 creates an offence for failing to extinguish a fire before leaving the fire. However this offence does not apply to the person if another person assumes control of the fire.

Unauthorised things relating to fires

Clause 117 provides that it is an offence to deposit a lit or burning substance in a recreation area. However, this does not apply to a person lighting a fire in a specified cooking or heating appliance, in a barbecue or fireplace provided by the chief executive, or, in the absence of a fireplace provided by the chief executive, a fire that is 2m from flammable material.

Division 3 Animals and plants

Unauthorised feeding of animals

Clause 118 creates an offence for feeding an animal that is dangerous, venomous or capable of injuring a person (for example, a dingo or crocodile) in a recreation area. It is also an offence to feed an animal if prohibited by a regulatory notice. For example, a notice may prohibit the feeding of animals to protect their welfare, or to prevent the animals becoming a nuisance to visitors.

However it is not an offence to feed a guide dog in a recreation area, or a domestic dog under control in the Inskip Peninsula recreation area or another recreation area prescribed under a regulation, or an animal taken into the recreation area in accordance with a regulatory notice.

Subclause 118(4) defines *feed*, in relation to animals, to include the use of food to tease or lure the animal, and any attempt to feed the animal.

Unauthorised disturbance of animals

Clause 119 creates an offence for disturbing an animal in a recreation area that is dangerous, venomous or capable of injuring a person, or if a regulatory notice prohibits the disturbance of the animal. However this does not apply to a person who disturbs an animal with the chief executive's written approval or if the disturbance occurs inadvertently.

Food to be kept from animals

Clause 120 creates an offence for failing to ensure food in a person's possession is kept in a way that prevents an animal gaining access to the food, or in a way stated in a regulatory notice. However, this clause does not include food that is being prepared or consumed by a person at the time, food that is lawfully disposed of under the Act, or food given to animals permitted in the area. This clause supplements clause 118.

Restriction on animals in recreation area

Clause 121 creates an offence for taking a live animal into a recreation area or keeping a live animal in a recreation area, without the chief executive's written approval. However, this clause does not include guide dogs, or animals provided for by regulatory notice or regulation, or to fish, sand crabs, mud crabs or bait, lawfully taken in a recreation area or a place

adjacent to the area. (It is proposed that a regulation will allow dogs to be taken into the Inskip Peninsula Recreation Area, as allowed under the current legislation).

Taking into and keeping of, dogs in recreation areas

Subclause 122(1) creates an offence for taking a dog into or keeping a dog in a recreation area unless the dog is under control.

Subclause 122(2) creates an offence for failing to immediately collect and properly dispose of faeces deposited by a person's dog in a recreation area.

Unlawfully bringing plants into recreation areas

Clause 123 creates an offence for taking a plant into a recreation area, unless the plant is for consumption by humans as food or if the person takes the plant into the area in accordance with the chief executive's written approval, a regulatory notice, a corresponding authority or a regulation.

This provision is intended to help prevent the spread of weeds and plant diseases.

Division 4 Pollution and waste

Polluting and misusing water

Subclauses 124(1) and (2) create an offence for polluting a dam, lake or watercourse in a recreation area.

Subclauses 124(3) and (4) stipulate that it is an offence to take water from a lake, watercourse or other water storage other than for personal use within the area, to dam or divert a watercourse, interfere with or damage a water supply or water storage facility, or allow water from a tap to run to waste. However, these are not offences if the person acts with the chief executive's written approval or a corresponding authority (under another Act).

Unlawful disposal of offensive or harmful substances

Clause 125 creates an offence for disposing of a noxious, offensive or harmful substance or animal waste in a recreation area.

However, this offence does not apply to the animal waste of a fish or crab taken in a recreation area, or a place adjacent, if the waste is deposited in a

specifically provided receptacle or as provided by regulatory notice or regulation. It is proposed to allow, by regulation, such waste in to be disposed of in specific areas by burial below high-water mark (as currently allowed).

Dumping or abandoning vehicles or vessels

Clause 126 creates an offence for dumping or abandoning all or part of a vessel or vehicle in a recreation area.

Dumping or abandoning waste material

Clause 127 creates an offence for dumping or abandoning used or waste materials, including building materials, fencing materials, drums or vegetation in a recreation area.

Division 5 Other conduct

Unauthorised use of generators, compressors or motors

Clause 128 creates an offence for using a generator, compressor or other similar motor in a recreation area, other than in accordance with a regulatory notice, the chief executive's written approval, a corresponding authority or a regulation. This is mainly aimed at preventing noise nuisance. It is proposed to allow, by regulation, generators in the Inskip Peninsula Recreation Area (as is currently the case).

Disturbance by radio, tape recorder or sound system

Clause 129 creates an offence for using a radio, tape recorder or other sound amplifier system in a way that may cause unreasonable disturbance to a person or native animal in a recreation area. This is mainly to deal with noise nuisance, but could also include excessive use of taped bird calls used to attract a rare bird within view by invoking the bird's territorial defence behaviour.

Unlawful possession or use of weapons, explosives or traps

Subclauses 130(1) and (2) create an offence for possessing or using a bow, catapult or weapon, an explosive device, or a net, trap or snare within a recreation area. However, the offence does not apply if the possession or

use is authorised by the chief executive's written approval, or under a regulation, or under another Act provided the possession or use is not prohibited in the area by a further Act.

Subclauses 130(3) and (4) create an offence for carrying a loaded spear gun or discharging a spear gun in a recreation area, unless the person is in tidal waters where spear fishing is allowed.

Unauthorised use of recreational craft

Clause 131 creates an offence for using or operating a recreational craft other than under the chief executive's written approval or a regulation. A recreational craft is a hot air balloon, hang-glider, hovercraft, parachute, paraglider, ultralight aircraft or other craft prescribed under a regulation.

Unauthorised landing of aircraft

Subclause 132(1) creates an offence for landing an aircraft in a recreation area other than on a designated landing area, unless the landing is authorised by the chief executive's written approval or an authority under the Forestry Act, Marine Parks Act or Nature Conservation Act. This recognises approvals under those Acts for parts of recreation areas that are State forest, marine park or national park.

Subclause 132(2) defines *designated landing area* for an aircraft or type of aircraft to mean the area designated by the chief executive as an appropriate landing area for the aircraft, details of which are published on the Department's website.

General misconduct

Subclause 133(1) creates an offence for disorderly conduct or behaviour that creates a disturbance or interferes with the safety or health of a person in a recreation area. The offence does not apply if the person has a reasonable excuse.

Subclause 133(2) creates an offence for restricting access to a part of the recreation area or a barbecue, table or other facility or claiming to have exclusive rights to the area or facilities. The offence does not apply if the person has a reasonable excuse, or has the chief executive's written approval.

Subclause 133(3) creates an offence for defecating within 10m of a lake, watercourse, natural water storage, walking track or other facility, other than in a toilet provided. It is an offence to bury human waste within 10m

of a lake, watercourse, natural water storage area, an occupied or established campsite, walking track or other public facility, or a site designated by a regulatory notice as a campsite, unless in a facility provided for the purpose.

It is also an offence to leave human waste unburied. These offences do not apply if the person has a reasonable excuse.

Subclause 133(4) creates an offence for interfering with a building, fence, gate, notice, sign or structure in a recreation area, unless the person has a reasonable excuse to do so.

False or misleading information given by applicant

Clause 134 provides that it is an offence to knowingly make a false or misleading statement when applying for a permit or other authority or in seeking a commercial activity agreement.

False or misleading documents given by applicant

Clause 135 states that it is an offence to provide a document that is known by the person to contain false or misleading information when applying for a permit or other authority or in seeking a commercial activity agreement. However, this does not apply to a person who informs the chief executive, to the best of the person's ability, how it is false and misleading, and provides the correct information if reasonably obtained.

Fraudulent claims for replacement permit

Clause 136 creates an offence for fraudulent claims that a permit or other authority has been damaged, destroyed, lost or stolen.

Permit or corresponding authority must be available for inspection

Clause 137 provides that it is an offence for a person conducting an activity under a group activity permit, commercial activity permit or corresponding authority, to fail to produce for inspection, the permit or authority or a copy or details of it, and personal identification including a colour photo, unless the person has a reasonable excuse.

Written approval must be available for inspection

Clause 138 provides that it is an offence for a person conducting an activity under a written approval to fail to produce for inspection, the approval or a copy, unless the person has a reasonable excuse.

Commercial activity agreement must be available for inspection

Clause 139 provides that it is an offence for a person conducting an activity under a commercial activity agreement, to fail to produce for inspection, the agreement, or a copy or details of it, and personal identification including a colour photo, unless the person has a reasonable excuse.

Failing to comply with conditions of permit or authority

Subclause 140(1) provides that it is an offence for a person acting under a permit or other authority to fail to comply with the conditions of the permit or authority, unless the person has a reasonable excuse. Clause 112 relates to breach of a condition of a commercial activity agreement.

Requirement to notify chief executive of particular changes

Clause 141 requires the holder of an authority to notify the chief executive of changes to the holder's name, address and if the holder is a corporation, changes to the person in charge of the activity carried out under the authority. If the change relates to a matter stated on the authority the holder must apply to the chief executive for an amendment to reflect the change.

Division 6 Demerit points for offences**Demerit points**

Clause 142 indicates the demerit points that are accumulated in relation to infringement notices issued (and paid) under the *State Penalties Enforcement Act 1999*. (The accumulation of 10 or more demerit points in 3 years may, under clause 53, be a ground for refusal to grant an application for a commercial activity permit).

Part 8 Investigation and enforcement

Division 1 Authorised officers

Appointment and qualifications

Clause 143 specifies that a public service employee, or another individual with necessary expertise or experience (and with that individual's consent) may be appointed as an authorised officer.

Appointment conditions and limit on powers

Clause 144 provides that an authorised officer holds office on any conditions stated in the officer's instrument of appointment, a signed notice given to the officer, or a regulation. Any such authorisation may limit the officer's powers.

Issue of identity card

Clause 145 states that the chief executive must issue an identity card to each authorised officer, which must contain a photograph of the officer, the officer's signature, identify the individual as an authorised officer under the Act and include an expiry date. A single identity card may be issued for the Act and other purposes (in order to reduce the need for multiple cards).

Production or display of identity card

Clause 146 requires that an officer must clearly display or produce an identity card when exercising a power in relation to a person. If it is not practicable to produce the identity card at this time, the card must be produced at the first reasonable opportunity. The card does not have to be displayed in relation to entering places mentioned in clause 150(1)(b) or 150(2). This relates to an officer entering land around premises or entering a place open to the public to contact the occupier regarding consent to enter.

When authorised officer ceases to hold office

Clause 147 specifies that an authorised officer ceases to hold office under a condition of office (including when the term of office ends) or when the officer resigns.

Resignation

Clause 148 provides that an authorised officer may resign by signed notice given to the chief executive.

Return of identity card

Clause 149 requires that an authorised officer must return their identity card within 21 days after ceasing to hold office, unless the individual has a reasonable excuse.

Division 2 Powers of authorised officers**Subdivision 1 Entry to places****Power to enter places**

Clause 150 provides that an authorised officer may enter a place if its occupier consents to the entry, or it is a public place and open to the public, or the entry is authorised by warrant, or it is the place of business of a commercial activity permit holder or a party to a commercial activity agreement and the place is open for business, or required to be open for inspection under the permit or agreement. A place of business does not include a part of the place where an individual resides.

Subclause 150(2) provides that an authorised officer may enter land around premises or a place open to the public in order to contact the occupier regarding consent to enter.

Subdivision 2 Procedure for entry**Entry with consent**

Clause 151 outlines the procedure for entering a place with the occupier's consent. Before asking for consent, the officer must tell the occupier the purpose of the entry and that the occupier is not required to consent. If the consent is given, the officer may ask the occupier to sign an acknowledgement of the consent, which must include specified matters. A copy of a signed acknowledgement must be immediately provided to the occupier.

Subclause 151(6) states that if an issue arises in a proceeding about whether the occupier consented, in the absence of a signed acknowledgment, the onus of proof rests with the person relying on the lawfulness of the officer's entry.

Application for warrant

Clause 152 provides that an authorised officer may apply to a Magistrate by written application for a warrant for a place that states the grounds on which the warrant is sought. The application must be sworn. The Magistrate may refuse to consider the application until further information is provided in the way required by the Magistrate.

Issue of warrant

Clause 153 provides that a warrant may be issued only if the Magistrate is satisfied that there are reasonable grounds for suspecting there are things or activities that may provide evidence of an offence which are at the place, or will be at the place, within the next 7 days.

Subclause 153(2) outlines the things that must be stated in the warrant.

Application by electronic communication and duplicate warrant

Clause 154 provides that an application for a warrant may be made, in certain circumstances, by phone, fax, email, radio, videoconferencing or another form of electronic communication, and sets out the requirements that apply to issuing a warrant by electronic communication.

Defect in relation to a warrant

Clause 155 provides that a defect that does not affect the substance of the warrant in a material particular does not invalidate the warrant.

Warrants procedure before entry

Clause 156 sets out the procedure that must be followed by an authorised officer before entering a place under warrant. However, an officer need not comply with these requirements if the officer believes that immediate entry to the place is required to ensure the effective execution of the warrant.

Subdivision 3 Powers after entry

General powers after entering places

Clause 157 describes the general powers of an officer who enters a place under clause 150, including to search the place.

Power to require reasonable help or information

Clause 158 provides that an authorised officer may require the occupier of the place or a person at the place to give the officer reasonable help to exercise a power under clause 157(3), or obtain information relating to compliance with the Act.

It is an offence to fail to comply without reasonable excuse and when making the requirement, the officer must warn the person of this. Subclause 158(4) provides that it is a reasonable excuse for an individual if complying might incriminate the individual.

Subdivision 4 Other powers

Power to give direction to leave camping site for protection, safety or minimising disturbance

Clause 159 provides that an authorised officer may give a person camping in a recreation area an oral or written direction for the person and accompanying persons to vacate the camping site in order to protect the area's natural and cultural resources, or to secure the safety of a person or a persons property, or to minimise disturbance to others. The direction must state the reason why it is being given. It is an offence to fail to comply with the direction without reasonable excuse.

This provision is intended to deal with urgent situations that come to an officer's attention after a person has set up camp, such as the need to protect rare ground-nesting birds, or to respond to a bushfire threat, or to reduce disturbance to others from a camper's use of a noisy generator. To the greatest extent possible, advance actions, such as the closure of particular areas or sites, will be used to avoid the need to direct people to move.

Power to give direction to leave camping site for person camping at same site for long periods

Clause 160 provides that an authorised officer may give a person camping in a recreation area a direction for the person and accompanying persons to vacate the camping site and move to another available camping site for a stated time.

However the direction may only be given if the officer reasonably believes that the same camp has been in place for 30 days or more and it is necessary or desirable to free the site for use by other people, or the site is being degraded by the camping equipment at the site or there is a health or safety concern. Also, another camping site must be available to which the person could move.

The direction must be in writing and state the reason why it is being given. It is an offence to fail to comply with the direction without reasonable excuse.

This power allows action, if necessary, in situations where the same camp has been in place for an extended period, for example where camping permits that follow on from each other are obtained by more than one person associated with the camp.

Power to give direction about fires

Clause 161 states that an authorised officer may direct a person apparently in charge of a fire to reduce or extinguish the fire, if the officer reasonably believes it to be a hazard to the area, a person or property, for instance, if a prevailing strong wind was thought likely to carry wind-borne embers away from the fire. It is an offence to fail to comply with the direction.

Power to give direction about dogs

Clause 162 states that an authorised officer may direct a person in control of a dog in a recreation area to remove the dog from the area if the dog is there unlawfully, is causing nuisance or disturbance, or is a danger to other persons, other dogs or wildlife. The person must remove the dog from the area and ensure the dog is not returned to the area within 24 hours after its removal. It is an offence to fail to comply with the direction.

Power to stop persons

Clause 163 provides that if an authorised officer finds a person committing an offence or the officer reasonably suspects the person has just committed

an offence, the officer may require the person to stop and not to move on for as long as reasonably necessary for the officer to exercise the officer's powers. It is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

Power to require name and address

Clause 164 provides that an authorised officer may require a person to provide the person's name and address if the officer finds the person committing or about to commit an offence, or in circumstances that lead the officer to suspect the person has committed an offence. The officer must warn the person it is an offence to fail to state the person's name or address unless the person has a reasonable excuse. The officer may also require the person to give evidence of the correctness of the information if the officer suspects it is false and it would be reasonable to expect the person to be able to give the evidence.

Failure to give name or address

Clause 165 creates an offence for failing to comply with a requirement made under clause 164, unless the person has a reasonable excuse.

However, if a suspected offence that gave rise to the requirement is not proved, then the failure to give the name and address is not an offence. The suspected offence would need to be proved before the offence of failing to provide name and address could be determined.

Power to require information about contravention

Clause 166 provides that an authorised officer may require a person to give information about a contravention of the Act. It is an offence to fail to comply without reasonable excuse, and when making the requirement, the officer must warn the person of this. Subclause 166(5) provides that it is a reasonable excuse for an individual if complying might incriminate the individual. Any documents provided may be copied by an officer and kept only as long as is reasonably necessary to make the copy.

Power to give direction to leave recreation area

Subclauses 167(1) and (2) provide that if an authorised officer finds a person committing an offence or reasonably suspects the person to have just committed an offence, then the officer may direct the person to immediately leave all or part of a recreation area. The direction may only

be given if the officer believes it is reasonably necessary to prevent further offences or to secure evidence.

Subclause 167(3) states that the person must comply with the direction and not re-enter the area, or part, within 24 hours. It is an offence to fail to comply.

Subclause 167(4) provides that, in circumstances that may endanger a person or person's property, (such as a bushfire) the officer may direct the person to leave the area. Subclause 167(5) allows an authorised officer to direct a person to leave a recreation area in instances where the person may interfere with an emergency or rescue activity. Subclauses 167(6) and (7) provide that failure to comply with the direction is an offence, and that an officer may take the steps that appear to be reasonable and necessary in order to secure compliance with the direction.

Power to stop and search vehicle, vessel, aircraft or recreational craft

Clause 168 applies to situations where an authorised officer suspects on reasonable grounds that a vehicle, vessel, aircraft or recreational craft is being used or has been used for an offence or that evidence of an offence may be found. The officer may enter or board the vehicle, vessel, aircraft or recreational craft and exercise general powers set out in clause 157(3), for example to search it. Clause 172 allows evidence found during the search to be seized.

If the vehicle, vessel, aircraft or recreational craft is moving or about to move, the officer may signal the driver to stop it.

Subclause 168(4) creates an offence if the person does not obey the signal unless the person has a reasonable excuse. It is a reasonable excuse that to stop immediately would endanger someone, provided the driver then stops as soon as practicable.

Power to require driver or person in control of vehicle, vessel, aircraft or recreational craft to give reasonable help

Clause 169 provides that an authorised officer may require the person in control of a vehicle, vessel, aircraft or recreational craft to give the officer reasonable help to enter or board it, and to bring it under control for a reasonable time to enable the officer to exercise powers in relation to it.

Non-compliance without reasonable excuse is an offence.

Power to give direction about vehicle, vessel, aircraft or recreational craft

Clause 170 provides that an authorised officer can give a person in control of a vehicle, vessel, aircraft or recreational craft in a recreation area an oral or written direction, or a direction in a way that sufficiently shows the officer's intention (e.g. by use of a sign or signal) if the officer believes it is reasonably necessary, for example to protect cultural or natural values, for the safety of a person or property or to minimise disturbance to persons in the area. The direction may require the person to remove the vehicle, vessel, aircraft or recreational craft from the area.

Subclause 170(5) creates an offence for not complying with the direction, unless the person has a reasonable excuse. It is not a reasonable excuse that the person holds an authority, for example a permit, that allows use of the vehicle, vessel, aircraft or recreational craft in the area.

Subdivision 5 Power to seize evidence**Seizing evidence at a place entered under s150**

Clause 171 sets out instances where an officer may seize evidence from a place, entered under clause 150 (power to enter places).

Seizing evidence on or in vehicle, vessel, aircraft or recreational craft entered or boarded under s 168

Clause 172 provides that an officer may seize a thing on or in a vehicle, vessel, aircraft or recreational craft entered or boarded under clause 168(2) (power to stop and search vehicles and vessels) if the officer reasonably believes the thing is evidence of an offence.

Powers in support of seizure

Clause 173 provides that, to enable a thing to be seized, an authorised officer may provide written notice to the person in control of the thing requiring the person to take it to a specified reasonable place at a specified time, and where necessary remain in control of the thing. Requirements may be made orally and followed by written notice as soon as practicable, if requirement by written notice is not immediately practicable.

Subclause 173(3) creates an offence for not complying with the requirement without reasonable excuse.

Subclause 173(4) provides that requirements under this clause are not limited to one instruction per person or thing, if further requirements are necessary and reasonable.

Securing seized things

Clause 174 provides that an authorised officer may move a seized thing from where it was seized or take reasonable action, or direct a person in charge of the thing to take reasonable action, to restrict access, or prevent or mitigate damage to it, or for equipment - make it inoperable.

Subclause 174(2) creates an offence for not complying with the direction.

Tampering with seized things

Clause 175 provides that it is an offence for a person to tamper or attempt to tamper with a seized thing subject to restricted access, or with seized inoperable equipment, or to tamper with something restricting access to it, without an authorised officer's approval.

Receipt for seized things

Clause 176 states that, for seized things, an authorised officer must give a receipt to the person from whom it was seized. If this is not practicable, the officer must leave the receipt, which must describe items seized and their condition, at the place of seizure in a conspicuous and reasonably secure way. This does not apply if it would be impracticable or unreasonable to give the receipt given the thing's nature, condition and value.

Authorised officer may dispose of natural resources unlawfully taken

Clause 177 provides that an authorised officer may deal with or dispose of any natural resources seized under the Act believed to have been taken unlawfully, if considered necessary for the welfare of the resource, or to conserve the resource or environment.

This would allow, for example, the officer to replant native plants that have been unlawfully removed from within the recreation area.

Forfeiture of seized things

Clause 178 provides that a thing seized under subdivision 5 (power to seize evidence), and not disposed of under clause 177, is forfeited to the State if

the owner (including the person in possession or control of the thing) cannot reasonably be found, or if the thing cannot be returned after making reasonable efforts, having regard to the thing's nature, condition and value. An officer need not make efforts to return the thing, if this is considered unreasonable (e.g. the owner has moved to another country).

Dealing with forfeited things

Clause 179 provides that things that are forfeited to the State become the State's property and can be dealt with as the chief executive considers appropriate.

Return of seized things

Clause 180 provides that if a seized thing is not disposed of under clause 177 or forfeited under clause 178, then the authorised officer must return it, to the person from whom it was seized, 6 months after its seizure. If proceedings have been started within this time, then the thing must be returned at the end of the proceedings and any appeal. However, if the officer is no longer satisfied that retaining the thing as evidence is necessary, then the thing (unless disposed of or forfeited) must be returned immediately.

Access to seized things

Clause 181 provides that, if reasonable to do so, an authorised officer must allow the person from whom a thing was seized to inspect it (until it has been disposed of, forfeited, or returned) and to copy it if it is a document.

Division 3 Dealing with abandoned property and unauthorised structures and works

Abandoned property

Clause 182 states that if an authorised officer reasonably believes that property has been abandoned in a recreation area and needs to be removed, the officer may seize the property and take reasonable steps to remove it, or give the person responsible for the property written notice to take reasonable action to remove it and restore the place as nearly as practicable to its former state. The written notice must state a reasonable period

whereby the removal must occur (no less than 20 business days after the notice is given or displayed).

If the name of the person responsible for the property is not known, the notice may be displayed in a prominent position on the property (if practicable), or in a newspaper circulating in the locality (if the property is believed to have a market value of more than \$500).

Subclause 182(5) creates an offence for not complying with the notice, unless the person has a reasonable excuse.

Subclause 182(6) provides that if the property is not removed within the time stated in the notice then the officer may seize the property and take reasonable steps to remove it.

Removal of unauthorised structures and works

Clause 183 provides that an authorised officer may seize and take reasonable and necessary steps to remove a structure unlawfully erected, or a work that has been unlawfully carried out, in a recreation area, if the officer believes it needs to be removed from the area. If the work cannot be removed the officer may stabilise or rehabilitate the work. The officer may give the person responsible for the structure or works a notice directing the person to remove the structure or works, or stabilise the works, within a reasonable stated period (at least 20 business days after the notice is given or displayed).

If the name of the person responsible for the structure or works is not known, the notice may be displayed in a prominent position on the structure or works if practicable, or in a newspaper circulating in the locality (if the property is believed to have market value of more than \$500).

Subclause 183(5) creates an offence for not complying with the notice, unless the person has a reasonable excuse.

Subclause 183(6) provides that if the notice is not complied with then the officer may seize the structure or works, and anything in the structure, and take reasonable steps to remove it, or if a work cannot be removed, stabilise or rehabilitate it.

Application of ss 174 to 176 to seized property, structures or works

Clause 184 provides that clauses 174 to 176 (securing things, tampering with things and giving a receipt) apply to property, structures or works seized under clauses 182 or 183.

Notice of seizure for property, structures, works or things with market value of more than \$500

Clause 185 provides that if an authorised officer reasonably believes the total market value of everything seized under clause 182 or clause 183 is more than \$500, then the officer must give the owner written notice of its seizure.

If the owner's name is not known, the notice must be circulated in a newspaper throughout the State, and may also be displayed in a prominent position on a permanent feature as close as possible to the place where the property, structure, works or thing was found. The notice must state that the owner may claim it within 2 months after the notice is given, or it may be disposed of.

Release of seized property, structures, works or things

Clause 186 provides that if a person claims seized property, a structure, works or thing, the chief executive may release it to the person only if satisfied the person has a right to it and the person pays the chief executive's reasonable costs of seizing, removing and holding it, giving related notices and restoring the place from which it was removed.

Procedure if seized property, structures, works or things are not claimed or are of little value

Clause 187 provides that if the owner of property, a structure, works or thing (with a total market value of more than \$500) does not claim it within 2 months of being given notice of its seizure, then the chief executive may sell it in the way the chief executive considers will best realise its market value. However, before selling it, the chief executive must publish a notice in a newspaper circulating generally in the State, that identifies it and states how and when it is to be sold. The sale date must not be less than 20 business days after the notice has been published. If it is not sold then the chief executive may dispose of it.

Subclause 187(5) provides that property, a structure, works or thing with a market value of not more than \$500, may be sold in a way the chief executive considers will best realise its market value, without publishing a notice of sale. If the chief executive considers the cost of selling it would exceed its market value, it may be disposed of.

Compensation is not payable for sale or disposal under this clause.

Application of proceeds of sale

Clause 188 sets out the order in which proceeds from the sale of property, a structure, works or thing must be applied. Proceeds must first be applied to pay expenses incurred in its sale; then to pay for the cost of seizing, removing and holding it, and giving notices, then to pay for the cost of any restoration work for the site from which it was removed, then any balance may be paid to the owner of the property.

Division 4 General enforcement matters

Authorised officer's obligation not to cause unnecessary damage

Clause 189 states that an officer must take all reasonable steps to avoid damage to property, a structure, works or thing in exercising a power under division 2 or 3.

Notice of damage

Clause 190 provides that if an authorised officer, or person acting under the direction of an authorised officer damages property a structure, works or thing (other than damage the officer reasonably believes is trivial), then the officer must immediately give notice to the owner. If the officer believes the damage was caused by a latent defect or circumstances beyond the officer's control, this may be stated in the notice.

Subclause 190(4) provides that if immediate notice is impracticable, then the officer must leave the notice in a conspicuous and reasonably secure way where the damage happened.

Compensation

Clause 191 provides that a person may claim compensation from the State if the person incurs loss or expense because of the exercise of a power under division 2, subdivision 1, 3 or 5, or for loss or expense incurred in complying with a requirement made of the person under one of those subdivisions. Compensation may be claimed by way of Court proceedings.

False or misleading information given to authorised officer

Clause 192 creates an offence for knowingly providing false or misleading information to an authorised officer.

False or misleading documents given to authorised officer

Clause 193 creates an offence for knowingly providing a document that contains false or misleading information to an authorised officer. This offence does not apply if the person advises the officer how it is false or misleading and, if reasonably possible, gives the correct information.

Obstructing an authorised officer

Clause 194 creates an offence for obstructing an authorised officer in the exercise of a power, unless the person has a reasonable excuse. An officer who, having been obstructed, decides to proceed in exercising the power, must warn the person that obstruction without reasonable excuse is an offence and that the officer considers the person's conduct is an obstruction.

Impersonating an authorised officer

Clause 195 creates an offence for pretending to be an authorised officer.

Part 9 Legal proceedings

Division 1 Evidence

Application of div 1

Clause 196 provides that this division applies to a proceeding under the Act.

Appointments and authority

Clause 197 provides that it is not necessary to prove the appointment of the Minister, chief executive or an authorised officer, or their authority to do anything under the Act, unless a party gives reasonable notice that proof is required.

Signatures

Clause 198 provides that a signature purporting to be the signature of the Minister, the chief executive or an authorised officer, is evidence of the signature it purports to be.

Evidentiary matters

Subclause 199(1) provides that a certificate signed by the chief executive or an authorised officer relating to a matter specified in the subclause is evidence of the matter.

Subclause 199(2) states that evidence that a regulatory notice or restricted access area notice was erected or displayed is evidence that this was done by the chief executive.

Subclause 199(3) provides that a statement in a complaint starting proceedings is evidence of the date the relevant matter came to the complainant's knowledge, and occurred in the stated recreation area or restricted access area.

Division 2 Offence proceedings

Summary proceedings for offences

Clause 200 states that proceedings for an offence are to be taken in a summary way under the *Justices Act 1886*. Commencement of proceedings must be within 1 year of the offence or within 1 year after the offence comes to the complainant's knowledge but not more than 2 years after the offence.

Allegations of false or misleading information or documents

Clause 201 provides that in a complaint for an offence involving information or documents that were 'false or misleading' it is not necessary to specify which, i.e. false or misleading.

Responsibility for acts or omissions of representatives

Clause 202 applies in a proceeding for an offence. It states that an act or omission by a person's representative is taken to be done or omitted to be done by the person, unless the person proves that reasonable diligence by the person could not have prevented the act of omission by the representative. If it is necessary to prove a person's state of mind about a particular act or omission, it is enough to show that the action or omission was done by the representative within the representative's authority and that the representative had the state of mind.

This clause is intended to ensure that a person exercises proper diligence with respect to the person's representatives. For example, an employer can be taken to be guilty of an offence committed by an employee if the employer has failed to take reasonable measures to ensure compliance with the Act by the employee.

Executive officers responsible for ensuring corporation complies with Act

Clause 203 provides that the executive officers of a corporation must ensure the corporation complies with the Act. If a corporation commits an offence, each executive officer of the corporation also commits the offence of failing to ensure the corporation complies with the provision. Also, evidence that the corporation has been convicted of an offence against the Act, is evidence each executive officer committed the offence of failing to ensure the corporation complies with the Act.

However, it is a defence for an executive officer to prove they exercised reasonable diligence to ensure the corporation complied with the provision or the officer was not in a position to influence the conduct of the corporation.

This clause is intended to ensure that executive officers of a corporation exercise proper diligence to ensure the corporation complies with the Act.

Holder of authority responsible for ensuring Act complied with

Clause 204 provides that the holder of an authority must ensure that everyone acting under the authority complies with the Act. If another person does not comply with the authority or the Act relating to the authority, the holder of the authority commits the offence of failing to ensure that person complied with the authority and the Act. Evidence that another person has been convicted of an offence against the Act while acting under the authority, is evidence that the authority holder committed the offence of failing to ensure that person complied with the authority and the Act.

However, it is a defence for the holder of the authority to prove the offence was committed without the holder's knowledge and the holder exercised reasonable diligence to ensure the other person complied with the provision.

This clause is intended to ensure that the holder of an authority exercises proper diligence to ensure persons acting under the authority comply with the Act.

Responsibility for offences committed with use of vehicle, vessel, aircraft or recreational craft

Clause 205 provides that each person responsible for a vehicle, vessel, aircraft or recreational craft (the owner, person in control or operator) must ensure that it is not used to commit an offence. If another person uses a vehicle, vessel, aircraft or recreational craft in committing an offence, each person responsible for the vehicle, vessel, aircraft or recreational craft also commits an offence of failing to ensure that the other person complies with the provision.

Also, evidence that the other person has been convicted of an offence against the Act, is evidence that each responsible person committed the offence of failing to ensure that the person complies with the provision.

However, it is a defence for a person responsible for a vehicle, vessel, aircraft or recreational craft to prove they exercised reasonable diligence to ensure the other person complied with the provision, or the person was not in a position to influence the conduct of the other person.

Division 3 Internal reviews

Divisions 3 relates to internal reviews and appeals. Division 4 provides that an appeal to a Magistrate may be made following an internal review if a person is unsatisfied with the outcome of the review.

Appeal process starts with internal review

Clause 206 states that all appeals against an appellable decision must initially be by way of internal review. An appellable decision is a decision of the chief executive for which an information notice must be given.

Applying for an internal review

Clause 207 sets out the process for an internal review. Application for an internal review must be made within 28 days after the person is given the information notice and be supported by enough information to enable the chief executive to decide the application. However, the chief executive may extend the time for applying for an internal review. An application for internal review does not suspend the appellable decision.

Subclause 207(4) states that an application must be dealt with by a person other than the person who made the appellable decision and that this person must be in an equal or more senior position to the person who made the appellable decision. This applies despite delegation of powers provisions in section 27A of the *Acts Interpretation Act 1954*. Review of a decision made personally by the chief executive does not have to be undertaken by a more senior person.

Review decision

Subclause 208(1) provides that if the chief executive is satisfied that an applicant has made proper application, then the chief executive must review the appellable decision and make a review decision within 28 days. The chief executive may confirm or amend the appellable decision or substitute another decision.

Subclause 208(2) states that the chief executive must provide the applicant with notice of the review decision (a review notice) within 14 days after making the review decision.

Subclause 208(3) states that the review notice provided to the applicant must state the reason for the review decision, that the applicant has 28 days to appeal against the decision to the Magistrates Court, and how to appeal the decision.

Subclause 208(4) provides that if the chief executive does not comply with the requirements outlined in subclause (1) and (2) then at the chief executive is taken to have confirmed the appellable decision.

Subclause 208(5) states that for the purposes of an appeal to a Magistrates Court, the review decision is the original appellable decision (if confirmed by the review), or the amended appellable decision (if amended by the review).

Stay of operation of appellable decision

Clause 209 states that an applicant who has made an application for an internal review can immediately apply to the Magistrates Court for a stay (suspension) of the appellable decision. The Court may suspend the appellable decision to ensure the effectiveness of the review and any later appeal to the Court. The suspension may be given on conditions which the Court considers suitable, will operate for a period of time fixed by the Court and can be revoked or amended by the Court.

Division 4 Appeals

Who may appeal

Clause 210 states that any person who has applied for the internal review of an appellable decision and is not satisfied with the review decision may appeal to the Magistrates Court.

How to start an appeal

Subclause 211(1) states that an appeal may be started by filing a notice of appeal with the registrar of either the Magistrates Court at the place where the person resides or carries on business or the Magistrates Court in Brisbane and complying with the applicable rules of the Court. The

subclause does not limit a provision in another law relating to where a proceeding may be started in a Magistrates Court.

Subclause 211(3) states that the notice of appeal must be filed within 28 days after the day the person is given a review notice for the review decision against which they wish to appeal, or if a person is not given a review notice, within 28 days of becoming aware of the review decision.

The Court may at any time extend the period for filing a notice of appeal.

Hearing procedures

Clause 212 states that in deciding an appeal the Court has powers equal to the entity that made the decision being appealed. The Court is not bound by the rules of evidence but must comply with natural justice. If the appeal is by a rehearing, the Court will make a decision based on the material provided to the entity that made the decision being appealed against and any additional evidence permitted by the Court.

Stay of operation of decision

Clause 213 states that the Court may grant a stay (suspension) of the operation of the decision appealed against in order to secure the effectiveness of the appeal. The suspension of the decision may be given on conditions that the Court considers appropriate, will operate for a period of time fixed by the Court and may be revoked or amended by the Court.

Powers of court on appeal

Clause 214 provides that in deciding the appeal, the Magistrates Court may confirm the review decision, set aside the review decision and substitute another decision, or set aside the review decision and return the matter to the chief executive with the directions the Court considers appropriate. If the Court substitutes another decision, the substituted decision is taken to be the decision of the chief executive. The Court may make an order for costs.

Appeals from Magistrate Court's decision

Clause 215 provides that an appeal may be made to the District Court against a decision of the Magistrates Court, but only on a question of law.

Part 10 Miscellaneous

Division 1 Camping notices and tags

E-permit camping areas

Clause 216 states that an *e-permit camping notice* may be erected or displayed in (or near the entrance to) a recreation area for the purpose of identifying the area as an e-permit camping area for a stated period, and stating the procedures to be followed, conditions that apply, and penalty for camping without a permit. An *additional conditions notice* may also be displayed.

Camping tag must be available

Clause 217 states that *camping tags* must be available in an accessible and conspicuous position in or near each e-permit camping area. Notice of the locations where camping tags are available must be given to people who have applied or intend to apply for a camping permit for an e-permit camping area, including publishing the locations on the Department's website.

Self-registration camping areas

Clause 218 states that a self-registration camping notice may be erected or displayed in (or near the entrance to) a recreation area for the purpose of identifying the area as a self-registration camping area for a stated period, and stating the procedures to be followed, conditions that apply, fee payable and penalty for camping without a permit. Camping forms meeting specified requirements, and a secure camping fee container, must be made available.

Division 2 Records and information

Records and other information to be kept

Clause 219 requires the holder of a commercial activity or group activity permit to keep and store records, and include information in the records as prescribed in a regulation about the activities authorised and conducted

under the permit. The holder is also required to provide information about the activities in the manner, at the time and accompanied by the relevant fees prescribed under a regulation. It is an offence not to comply.

Interfering with record

Clause 220 states that a person must not (without a reasonable excuse) interfere with a record. This includes defacing or erasing an entry, or removing an entry (other than to give a record or copy of it to the chief executive). Interfering with the record other than as allowed is an offence.

Notice of damage to, or loss or destruction of, record

Clause 221 states that the holder of a commercial activity or group activity permit must immediately give written notice to the chief executive, if they become aware of any damage to or loss of a record book that they are required to keep. Failure to do so is an offence.

Requirement to produce or surrender record

Clause 222 states that a person required to keep a record, must produce the record for inspection if asked by an authorised officer. A person must also surrender the record to the chief executive if asked by the chief executive in writing. Failure to comply is an offence.

Confidentiality of information

Clause 223 applies to a person who in performing functions under the Act or the repealed Act, obtained information about another persons affairs or a matter declared by the chief executive to be confidential (due to the potential risk to the wellbeing of a cultural or natural resource that disclosure may cause).

Subclause 223(2) states that it is an offence for a person to disclose this information to anyone else unless the disclosure is made under a circumstance outlined in subclause 223(3).

Division 3 Other miscellaneous provisions

Advisory committees

Clause 224 states that the Minister may establish advisory committees to obtain views about recreation area issues.

Delegation by Minister

Clause 225 states that the Minister may delegate the Minister's powers under the Act to a public service officer who is appropriately qualified (i.e. has relevant qualifications, experience or standing appropriate to exercise the power). The delegation of a power by the Minister may permit the subdelegation of this power to another appropriately qualified public service officer.

It has not been necessary to include delegation of the chief executive's powers in the Bill because this is provided for by section 57 of the *Public Service Act 1996*.

Chief executive's power to carry out works

Clause 226 states that the chief executive may carry out any works in a recreation area that the chief executive considers necessary or desirable to achieve the purpose of the Act. This power is subject to requirements relating to the purpose of the Act in clause 4, including the need to have regard to the interests of area land-holders and to ensure that the management of the recreation area is not incompatible with the tenure of the land and conditions applying to the tenure.

Liability of State

Clause 227 states that the State is not legally liable for an act or omission on private land (land other than State land) simply because the land is part of a recreation area.

Protecting officials from liability

Clause 228 states that an official is not civilly liable for an act or omission made under the Act, if the act or omission was made honestly and without negligence, and any liability attaches instead to the State. Subclause 185(3) defines 'official' in this context.

Immunity from prosecution

Subclause 229(1) states that an authorised person is not liable to be prosecuted for an offence against the Act, for any act done or omitted to be done in exercising a power or performing a function under the Act.

Subclause 229(2) states that a person is not liable to be prosecuted for an offence under the Act if acting under the direction of the Minister, chief executive or an authorised officer and the offence was committed under this direction.

Subclause 229(3) defines the term ‘authorised person’ in this context.

Recreation areas management fund

Clause 230 states that the Recreation Areas Management Board Fund which was established under the repealed Act, continues as the Recreation Areas Management Fund and that the *Financial Administration and Audit Act 1977* applies to the fund.

The clause specifies the way in which the fund will operate (which is the same way as the fund operates under the repealed Act. Amounts paid into the fund include revenue from recreation area fees and charges. Money from the fund can be used only for the purpose of the Act.

Approved forms

Clause 231 states that the chief executive may approve forms for use under the Act.

Regulation-making power

Clause 232 states that the Governor in Council may make regulations under the Act. Matters that a regulation may be made about include, but are not limited to:

- the entry to or use of (including conduct of persons in) a recreation area;
- implementing and enforcing compliance with approved management plans;
- the records and information required to be kept by persons entering or using a recreation area;
- fees and charges, refunds, and the waiver of fees.

Subclause 232(3) states that a regulation may prescribe a maximum penalty for the contravention of a regulation of not more than 20 penalty units.

Part 11 Transitional provisions

Dissolution of Queensland Recreation Areas Management Authority

Clause 233 states that the Queensland Recreation Areas Management Authority established under the repealed Act will be dissolved and its members go out of office on the commencement of the clause.

Dissolution of Queensland Recreation Areas Management Board

Clause 234 states that the Queensland Recreation Areas Management Board established under the repealed Act will be dissolved and its members go out of office on the commencement of the clause. Additionally on commencement of the clause the State will be substituted for the Board in all agreements to which the Board was a party and the assets, rights and liabilities of the Board will be transferred to the State.

Existing recreation areas continue

Clause 235 states that a recreation area established under the repealed Act that was in existence immediately before the commencement of the clause continues to exist and may be amalgamated, divided or revoked under this Act.

Existing consents and agreements about the inclusion of land in recreation areas continue

Clause 236 states that a consent given or agreement entered into about the inclusion of land in a recreation area made under the repealed Act that was in force immediately before the commencement of this clause continues subject to this Act.

Existing management plans continue

Clause 237 states that management plans in force under the repealed Act immediately before the commencement of the clause continue in force and are taken to have been made under this Act. Subclause 194(3) states that the plan may be amended or repealed under the Act and should be read with the changes needed to adapt its operation to the Act.

Management plans being prepared

Clause 238 provides that a management plan in preparation under the repealed Act can be completed and approved under the Act, without the process having to recommence.

Existing permits, approvals and agreements continue

Clause 239 states that a permit in force under the repealed Act immediately before the commencement of this clause continues under the Act. Generally, permits maintain the same title, however a commercial tour operator permit and temporary commercial tour operator permit will be taken to be a commercial activity permit, and a service permit will be taken to be vehicle access permit. Similarly, existing approvals are taken to continue in force, as are agreements authorising commercial activities.

Existing applications for permits, approvals and agreements continue

Clause 240 provides that existing valid applications for a permit, an approval or an agreement to carry out a commercial activity are taken to be applications made under the Act, and applicants do not need to reapply.

Existing directions, requirements, notices and decisions continue

Clause 241 states that a direction, requirement, notice or decision made by the Authority, the Board, the Minister or an authorised officer is taken to have been given or made under the Act, if its effect is not exhausted at the commencement of the clause.

Existing authorised officers continue

Subclause 242(1) states that a person who was an appointed officer under clause 22(1) of the repealed Act, continues to be considered an authorised

officer appointed under the Act, if they were an authorised officer immediately prior to the commencement of the clause.

Subclause 242(2) states that a person who was an authorised officer under clause 22(3)(a) of the repealed Act continues to be considered an authorised officer under the Act for a period of 1 year from the commencement of this clause.

Subclause 242(3) states that for part 6, an identity card issued under the *Nature Conservation Act 1992* to a person taken to be an authorised officer under clause 22(3) of the repealed Act, is taken to be an identity card issued under the Act.

Existing legal proceedings continue

Clause 243 states that any legal proceedings by or against the Queensland Recreation Areas Management Authority or the Queensland Recreation Areas Management Board that could have been started or were in progress prior to the commencement of the Act can be progressed or continued by or against the State.

Existing advisory committee continues

Clause 244 states that on commencement of this clause an advisory committee established under the repealed Act and currently in existence will continue as an advisory committee established by the Minister under clause 224.

References to Recreation Areas Management Act 1988

Clause 245 states that a reference to the repealed Act, in an Act or document, should be taken to be a reference to the Act if the context allows.

References to Queensland Recreation Areas Management Authority

Clause 246 states that a reference to the Queensland Recreation Management Authority in an Act or document should be taken to be a reference to the State, if the context allows.

References to Queensland Recreation Areas Management Board

Clause 247 states that a reference to the Queensland Recreation Areas Management Board in an Act or other document should be taken to be a reference to the chief executive, if the context allows.

References to Queensland Recreation Areas Management Board Fund

Clause 248 states that a reference to the Recreation Areas Management Board Fund in an Act or document is taken to be a reference to the Recreation Areas Management Fund (i.e. established under clause 230).

Application of particular sections

Subclause 249(1) states that for abandoned property, clause 182 applies regardless of whether the property was abandoned prior to or after the commencement of this clause or the declaration of the recreation area.

Subclause 249(2) states that for unlawful structures and works, clause 183 applies regardless of whether the structures were erected or works carried out prior to the commencement of this clause or the declaration of the recreation area.

Transitional regulation-making power

Clause 250 states that a transitional regulation may be made to allow or make possible the doing of anything to achieve the transition from the operation of the repealed Act to the operation of the Act. Such a regulation may only be made where the Act does not make the provision or sufficient provision. Transitional regulations may have retrospective operation only to the date that the Act commences. A transitional regulation must declare that it is a transitional regulation and any transitional regulation will expire 12 months after day the Act commences.

Part 12 Repeal and consequential amendments

Act repeal

Clause 251 states that the *Recreation Areas Management Act 1988* No.110 is repealed.

Amendment of Mineral Resources Act 1989

Clause 252 updates a reference to the repealed Act in section 396 of the Mineral Resources Act.

Amendment of Police Powers and Responsibilities Act 2000

Clause 253 updates a reference to the repealed Act in section 61(e) of the Police Powers and Responsibilities Act.

Schedule Dictionary

The Dictionary includes definitions of terms used in the Bill.