# Land and Other Legislation Amendment Bill 2007

## Explanatory Notes

### General Outline

### Short Title

The short title of the bill is the *Land and Other Legislation Amendment Bill 2007*.

### Policy Objectives

The objectives of the Bill are to amend the:

- *Land Act 1994* to:
  - implement a report on business improvement opportunities for the management of State land which will lead to improved customer service;
  - make amendments to facilitate the introduction of the State Rural Leasehold Strategy;
  - make amendments to enhance dealing with significant developments; and
  - make facilitative changes to the leasehold rental system pending finalisation of a new rental system.
- *Acquisition of Land Act 1967* to:
  - Allow for land taken from a deed of grant in trust to be granted in fee-simple, leased or dedicated under the *Land Act 1994*;
  - Clarify the definition of land; and
  - Allow for land acquired for road purposes and held in fee simple to be dedicated as road by the recording of a dedication notice.

- *Vegetation Management Act 1999* (VMA) and *Integrated Planning Act 1997* to:
  - Allow appeals on applications for relevant purposes (necessary built infrastructure, extractive industry, control of weeds etc.) where the chief executive of the Department of Natural Resources and Water is the assessment manager be directed to the Planning and Environment Court rather than at present to the Building and Development Tribunals;
  - Introduce a simplified process for declaring areas of high conservation value or areas vulnerable to land degradation by allowing property owners to bypass the public notification and submission requirements where they voluntarily nominate their own property for declaration and their property meets the criteria set out under the VMA for declaration;
  - extend the exemption allowing clearing of remnant vegetation to establish a single detached residential dwelling on a lot where a building approval for single residence has been obtained to recognise the special arrangements in Aboriginal and Islander communities to facilitate the provision of community housing;
  - Amend the definition of 'forest practice' to remove doubt that a forest practice can be carried out on indigenous land on which the State no longer owns the trees;
  - Make other minor amendments to clarify the meaning of certain provisions that have led to interpretations contrary to policy intent.
- *Survey and Mapping Infrastructure Act 2003* to enable surveyors to authorise other surveyors to act on their behalf for a period of specified or unspecified time;
- *Surveyors Act 2003* to make it clear that the definition for "professional conduct" and the corresponding term "professional misconduct" include certain requirements detailed in the *Survey and Mapping Infrastructure Regulation 2004;*
- *Transport Infrastructure Act 1994* to facilitate the issue of a deed of grant for the commercial development or provision of community infrastructure in, over, across or under rail or non rail corridor land

- *Land Title Act 1994* to clarify provisions inserted into the Act in 2005.

## Reasons for the Policy Objectives

## Land Act 1994

*Business improvement opportunities for the management of State*

In December 2005, the Director-General of the then Department of Natural Resources, Mines and Water approved a range of business improvement opportunities for the management of State land which would lead to improved customer service. The improvements included recommended amendments to the *Land Act 1994* (LA) to improve administration under that Act.

*Facilitative changes to the leasehold rental system*

Under the *Land Act 1994,* more than 23 000 leases, licences and permits are held for the occupation and use of State Land in various categories including grazing and agriculture, clubs, charities, industrial and tourism. Most commonly rent is based upon a prescribed percentage of the land's unimproved capital value (rent = category % x UV). Due to large increases in valuations, coupled with the effects of the drought, rents for grazing and agriculture leases have been frozen at the amount billed in 2004 (generally using a value calculated using a pre 2004 valuation) for the past two financial years.

Leasehold land rental arrangements are being reviewed as part of a statutory requirement to review the *Land Regulation 1995* which expires on 31 August 2007. However there are some issues that have been identified that will enable a more flexible approach to rental calculations and a broader range of tools for the Government, in particular in consideration of addressing otherwise large increases in rent for rural lessees.

*Enhancing dealing with significant developments*

When granting or approving the transfer of a lease for significant development (such as a marina or residential complex involving a high level of investment and extensive development) the Government needs to be satisfied with the financial and managerial capacity of the lessee undertaking the significant developments. However, a change in the lessee's circumstances (such as a change in corporate control of a company) may adversely impacts on a lessee's financial and managerial

capacity. The Government needs to be satisfied that the lessee still has the capacity to undertake the development.

***Resolution of disputes between head-lessees and sublessees***

At present sublessees are approaching the Department of Natural Resources and Water (NRW) for resolution of disputes with head lessees – these are essentially private commercial disputes. A clear way forward for lessees and sublessees in dispute would assist resolution.

*State Rural Leasehold Strategy*

When finalised the strategy will provide a framework and practical mechanisms for sustainably managing and using state rural leasehold land for present and future generations.

The strategy will focus on achieving:

- improved natural resource management and remediation of leasehold land
- greater industry capability to plan at the property level, resulting in improved profitability, sustainability and certainty
- improved administration of leasehold land to adapt to emerging issues and climate change
- enhanced environmental protection
- increased monitoring of natural resource condition

The strategy is intended to be made up of a number of components, some of which apply to all leasehold land. The existing duty of care condition will continue to apply to all leaseholders and the new remedial action provisions will apply to all leases.

It is anticipated that the strategy will however, give particular emphasis to rural leasehold land – land for which leases have been issued for pastoral, grazing or agricultural purposes. These leases cover about 63 per cent of Queensland, mostly in the north and west and are located predominantly in areas of marginal productivity and fragile ecosystems. Because of this, they are considered the most important group of leases through which to deliver sustainable environmental, social and economic outcomes.

Over the next six years (2007–12), 65 per cent of current leases will be eligible for renewal. This period of renewal provides a major opportunity to progressively review the use of the land, and the terms and conditions under which the government leases rural leasehold land.

Potentially the strategy can use a mix of regulatory and incentive-driven approaches to protect the environmental, social and economic values of rural leasehold land over the long term.

The renewal and conversion of leases over rural leasehold land provides a trigger for reviewing and updating lease conditions, in partnership with leaseholders, to better reflect current natural resource management practices.

The success of a future rural leasehold land strategy relies on government working with leaseholders and other stakeholders in a collaborative arrangement to address the major concerns facing rural leasehold land, and to ensure it is managed and used in an ecologically sustainable way, irrespective of location or land type.

Incentives proposed include maintaining and improving lease security with access to longer lease terms. They also include providing certainty through establishing land management agreements between government and individual leaseholders regarding the leaseholder's obligations to manage the natural resources responsibly.

**Acquisition of Land Act 1967**

The *Acquisition of Land Act* 1967 was included in the report, referred to above under the *Land Act 1994* approved in December 2005 by the Director-General of the then Department of Natural Resources, Mines and Water. The report approved identified business improvement opportunities for the management of State land that would lead to improved customer service.

**Survey and Mapping Infrastructure Act 2003**

The present legislation permits a surveyor to authorise another surveyor to act on that surveyor's behalf. However, for this to occur the subject survey plans affected must be identified in advance by the authorising surveyor. Instances exist where a surveyor may be unable to attend to their practice due to reasons of unforeseen illness for example. Work which is commenced but not yet finalised through to registration may be caught without an authorised surveyor being identified for that particular work. This situation can seriously affect the surveyor's clients particularly where financial considerations are concerned.

**Surveyors Act 2003**

Currently it is not clear that the definition for "professional conduct" and the corresponding term "professional misconduct" include certain

requirements detailed in the *Survey and Mapping Infrastructure Regulation 2004*.

At present the Board cannot confidently perform its statutory function without fear of causing a technical error when assessing complaints against surveyors. The Board has available several levels of assessment, with the most serious charges sometimes involving costly legal representation. There is a need for the legislation to be clarified to remove any doubt in these definitions.

**Transport Infrastructure Act 1994**

NRW observes the following longstanding principles when registering a subdivision of a lot and when requesting Governor in Council to issue a Deed of Grant.

- The requirement for dedicated or easement access when allocating land under the *Land Act 1994*.
- Where the land being allocated does not have access but will be held by the owner of an adjoining parcel, the land being allocated must be amalgamated or tied by covenant with an adjoining parcel.

Under the *Land Act 1994*, *rail and non rail corridor* land is land held under a perpetual lease, declared under or defined in the *Transport Infrastructure Act 1994*.

However, when commercial development occurs in conjunction with this land, it is often not possible or desirable to provide dedicated legal access (and/or support) from within this land. This is due to the lack of space or because of the need for retention of flexibility to allow for possible realignment of track or carriageway in the future, without the need for resumptions of the previous granted access.

Alternatively, if the transport service is operated in a cutting on the railway land, a structure in a volumetric lot above, could bridge the transport land, from adjoining lots without any need for support or access through the railway land.

**Vegetation Management Act 1999 and Integrated Planning Act 1997**

*Appeals to the Planning and Environment Court*

Appeals on broadscale clearing applications received under the ballot process and applications for relevant purposes (necessary built infrastructure, control of weeds, etc.) where the chief executive of the Department of Natural Resources and Water (NRW) is the assessment

manager are directed to Building and Development Tribunals (the Tribunal).

While initially offering a streamlined process for dealing with appeals, it is evident that the Tribunal process is comparatively no less complex than a court of law. There is also potential, or at least the perception, of a conflict of interest. Both the power to appoint general referees to Tribunals, and the defence of decisions against appeals rests with the chief executive of NRW. Given that a decision of the Tribunal can be appealed to the Planning and Environment Court, there is also potential for duplication of process for both NRW and appellants.

*Process for declaring areas of high nature conservation value and areas vulnerable to land degradation*

In May 2004 the government made $12 million in funding available under the Vegetation Incentives Program (VIP) to assist landholders to protect high value native vegetation on their land. This program has now been integrated with the Environmental Partnerships Scheme (EPS) under the Blueprint for the Bush. Receiving funding is conditional on areas being securely and legally protected from future clearing. This can be achieved by declaring the area to be a nature refuge under the *Nature Conservation Act 1992*, placing a covenant over the land, or declaring the area as an area of high conservation value or an area vulnerable to land degradation under the VMA.

The VMA provides criteria that an area must meet to be considered an area of high nature conservation value. The VMA declaration process is lengthy and onerous when applied on an individual property basis due to the notification requirements and a property specific code.

*Clearing for community housing on indigenous land*

Aboriginal and Islander Deed of Grant in Trust (DOGITs) are regulated under the vegetation management framework as 'indigenous land'. Indigenous land is treated in a similar way to freehold land. However, the single residence exemption on freehold land that allows landowners to clear remnant vegetation to establish a single detached residential dwelling on a lot where they have obtained a building approval, does not apply on all indigenous lands because of the absence of multiple lots. Under the relevant Acts, grants of land are comprised of one lot or a small number of lots, which cannot in turn be subdivided in the way freehold land can be subdivided.

*Clarify that a native forest practice can be carried out as exempt development on indigenous land on which the State does not own the trees*

When the VMA was first enacted, an exemption was allowed for clearing for a forest practice on freehold land. The May 2004 amendments saw the extension of this exemption to 'indigenous land' as defined under the IPA and the VMA where the State does not own the trees. However, the definition of forest practice itself refers only to 'freehold land'.

**Land Title Act 1994 (LA)**

Amendments made to the Act made in 2005 require clarification.

## How the Policy Objectives will be achieved

The policy is to be achieved by:

**Land Act 1994**

*Business improvement opportunities for the management of State*

The Bill will implement the report, in particular by:

- divesting from the Governor in Council to the Minister the responsibility for issuing term and perpetual leases and authorising amendments to the particulars of any issued term or perpetual lease (including correcting any error or omission made in the preparation of the lease) under the *Land Act 1994* (LA);
- allowing a reserve to be dedicated, amended, or partially revoked, upon registration of a plan of subdivision. Currently these types of action are effected upon publication of a gazette notice;
- allowing the Governor in Council to issue a deed of grant over an operational reserve and to allow the continuation of any interest in the reserve to the new deed;
- allowing a trustee of trust land to take an action inconsistent with the purpose of the trust provided the Minister has given prior approval to the proposed inconsistent use and the trustee has provided a satisfactory management plan for the trust land;
- clarifying the form under which the State is appointed as trustee of trust land and to allow for the delegation of the trustee's powers to an officer of the department responsible for administration of the land;

— clarifying that the rent the trustee is obliged to obtain for any trustee lease or trustee permit is the most appropriate rent (not necessarily the highest as at present) that can reasonably be obtained having regard to the use and the community benefit and purpose of the trustee lease or trustee permit;

— providing that a plan of subdivision of non-freehold land showing unallocated State land as new road will become dedicated road when the plan, approved by the Minister, is registered;

— allowing a lease to be sold by the chief executive or a local government if the lease may be forfeited;

— making a range of minor amendments to make improvements and take into account computerisation of the Department's recording and work practices and give greater clarification to the original intent of the LA;

— The amendments made to the LA will support the integrity of the land registers kept by the chief executive and will ensure that the land registers are considered by Government departments, the courts and the public as the point of truth with regards to dealing with State land under the LA

*Facilitative changes to the leasehold rental system*

The Bill will provide for changes to the rental system that allow, for categories of leases, licences and permits: averaging of valuations; capping of increases in rent where there would be undue increases; with the ability to phase in changes over a transitional period. Provision is also made to ensure that newly created leases (for example due to a renewal or conversion or re-issue) can also access the capping provision.

In addition, provision is made that will make deferral of rent for hardship easier to access when drought hardship has already been approved under other government schemes.

Other changes made by the Bill to provide for improved and more flexible rental arrangements include quarterly billing in certain cases.

*Enhancing dealing with significant developments*

The Bill provides the Minister, in respect of significant developments, with the power to require a change of circumstances that adversely impacts on the lessee's financial and managerial capacity to be assessed in terms of the

lessee's ongoing suitability. The new provisions will apply for the time taken by the lessee to satisfactorily comply with the extensive development conditions of the lease.

*Resolution of disputes between head-lessees and sublessees*

In relation to disputes with head lessees, amendments in the Bill will require new subleases to include alternative dispute resolution (ADR) provisions. Exception, however, will be given to subleases where a dispute resolution scheme is provided for in other Acts (for example, Residential Tenancies Act 1994). In addition, amendments in the Bill will support disputes affecting existing sublessees without ADR provisions to be settled by mediation. The amendments will not remove the right for a disputant to take court action to enforce rights.

*State Rural Leasehold Strategy*

The Bill enables the statutory obligation on all lessees, licensees or permittees under the Land Act to be articulated in a more comprehensive manner by:

- Providing mandatory requirements for all new term and perpetual leases for rural leasehold land to develop maintain and comply with a land management agreement.
- Enabling the Minister to consider the condition of the leased land when deciding the term of a lease.
- Allowing leaseholders, under certain circumstances, to apply for 10-year lease extensions.
- Enabling the identification of leased land required for future national parks at renewal. The new lease will be granted for a period consistent with the Land Act and strategy framework but when it expires a new lease will not be offered again for that part of the land reserved as a future conservation area.
- Providing a range of new provisions to enable effective compliance and introducing new penalties, particularly for the protection of areas required for future conservation areas.
- Providing a clearer articulation of a lessee's duty of care for the leased land.

**Acquisition of Land Act 1967**

The Bill will amend the Act to:

- allow for land taken from a deed of grant in trust to be granted in fee-simple leased or dedicated under the LA;
- clarify the definition of land; and
- allow for land acquired for road purposes to be dedicated as road by the recording of a dedication notice.

**Vegetation Management Act 1999 and Integrated Planning Act 1997**

*Appeals to the Planning and Environment Court*

The Bill will allow appeals on applications for relevant purposes (necessary built infrastructure, extractive industry, control of weeds etc.) where the chief executive of the Department of Natural Resources and Water is the assessment manager be directed to the Planning and Environment Court rather than at present to the Building and Development Tribunals. The changes will not impact on the three appeals associated with the broadscale clearing ballot process as these have now been finalised, but will direct future development appeals more appropriately to the Planning and Environment Court.

*Streamlined process for declaring areas of high nature conservation value and areas vulnerable to land degradation*

The Bill introduces a simplified process that allows landowners to voluntarily nominate their land for declaration under the VMA without the public notification and submissions process. This change will assist those voluntarily seeking to protect high value native vegetation and land vulnerable to land degradation, receive incentives under the Vegetation Incentives Program, Environmental Partnerships Scheme and to secure offset areas as a condition of approvals to clear native vegetation. It will not impact on the existing formal declaration processes.

*Clearing for community housing on indigenous land*

The Bill extends the single residence exemption to the requirement for a permit to clear 'trees' under the *Land Act 1994* to recognise the special housing arrangements in Aboriginal and Islander communities to facilitate the provision of community housing.

*Clarify that a native forest practice can be carried out as exempt development on indigenous land on which the State does not own the trees*

As there is no definitive definition of freehold land, to remove doubt that a forest practice can be carried out on indigenous land on which the State no longer owns the trees, the Bill amends the definition of forest practice to specifically refer to indigenous land.

**Survey and Mapping Infrastructure Act 2003**

The Bill enables an original surveyor to authorise another person(s) to take the necessary action over one or more plans that are specified by the original surveyor and / or that the authorisation be effective for a specified period of time or until revoked by the authorising surveyor. This covers cases where, for example, a surveyor may leave the country for a known period or may be ill for an indefinite period and may need to authorise another surveyor to act in his place and deal with unspecified matters (plans) that require attention by the surveyor.

**Surveyors Act 2003**

The Bill clarifies that the terms "professional conduct" and the corresponding term "professional misconduct" ,which are used as the basis for the Board assessing conduct generally and in particular during consideration of disciplinary matters, includes compliance with Standards made under the Survey and Mapping Infrastructure Act 2003 and the Regulations under that Act.

**Transport Infrastructure Act 1994**

The Bill will add a new provision in Chapter 16 General Provisions of the *Transport Infrastructure Act 1994 (TIA)* that may apply to subdivision of rail and non rail corridor land including volumetric subdivision of the land. Complementary amendments are made to the *Land Act 1994.* The amendment to the TIA will facilitate the commercial development or provision of community infrastructure in, over, across or under rail and non rail corridor land.

## Alternatives to the Bill

There are no alternatives to the amendments made by this Bill.

## Estimated administrative Cost to the Government for implementation

The passage of the Bill will not have any financial impacts. The implementation of the legislation will be undertaken by the Department of Natural Resources and Water from within existing agency resources.

## Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

## Consultation

Community

The following groups have been consulted in result of various aspects of the Bill:

- The Local Government Association of Queensland (LGAQ);
- The Land Information and Titles Customer Consultative Committee comprising representation from the Queensland Law Society Inc., REIQ, LGAQ, UDIA, Australian Spatial Industry Business Association, Australian Finance Conference, and the International Map Trade Association
- The Surveyor's Board of Queensland
- AgForce

Government

Representatives of the following Departments were consulted in relation to the Bill:

- the Premier and Cabinet;
- Local Government, Planning, Sport and Recreation;
- Main Roads;
- Public Works;
- Housing;
- Queensland Transport;
- Queensland Treasury;
- Justice and Attorney General;
- Education and the Arts;
- Primary Industries and Fisheries;
- Emergency Services;
- Employment and Training, Energy;
- Coordinator-General;
- Communities;
- Health;
- Tourism, Fair Trading and Wine Industry Development

### Results of consultation

Community

The majority of those consulted have provided a positive response to the proposed changes. Agforce was consulted in respect of the general principles and formula applicable to rents. Agforce's policy is that rents should not increase by more than CPI.

**Government**

All Departments consulted support the Bill.

# Notes On Provisions

## Part 1 Preliminary

### Short title

Clause 1 provides that the short title of the Act is the Land and Other Legislation Amendment Bill 2007.

### Commencement

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

## Part 2 Amendment of the Acquisition of Land Act 1967

### Act amended in pt 2

Clause 3 provides that this part amends the *Acquisition of Land Act 1967*.

### Amendment of s 2 (Definitions)

Clause 4 amends section 2 of the Act by amending the definition of "land" in section 24 of the Acquisition of Land Act 1967 to include reference to land held in fee simple in trust. The clarification removes any ambiguity about the definition of "land" and supports reference to deed of grant in trust in section 12(4) of the Acquisition of Land Act 1967.

### Amendment of s 12 (Effect of gazette resumption notice)

Clause 5 amends section 12 to provide for a constructing authority to be granted an appropriate tenure for land acquired from a deed of grant in trust.

### Insertion of new s 12B – Particular land may be dedicated as road

Clause 6 provides for a constructing authority to dedicate as road for public use any land taken and held in fee simple for road purposes.

## Part 3 Amendment of the Integrated Planning Act 1997

### Act amended in pt 3

Clause 7 provides that this part amends the *Integrated Planning Act 1997*.

### Amendment of sch 8 (Assessable development and self-assessable development)

Clause 8 amends schedule 8, part 1, table 4, item 1A(c), 1B(b) and 1C(c) and inserts a new item 1A(ca).

Prior to 21 May 2004, trustees of Aboriginal and Torres Strait Islander deed of grant in trust land (DOGITs) were exempt from permit requirements to clear trees under the *Land Act 1994*. Under the new vegetation management framework, Aboriginal and Islander DOGITs are regulated as 'indigenous land'. The definition of indigenous land also includes grants of land under the *Aboriginal Land Act 1991*, *Torres Strait Islander Land Act 1991*, *Local Government (Aboriginal Land) Act 1978* and *Aborigines and Torres Strait Islander (Land Holding) Act 1985*.

Indigenous land is treated in a similar way to freehold land under the vegetation management framework; however, the single residence exemption, which allows landowners to clear remnant vegetation to establish a single detached residential dwelling on a lot where they have obtained a building approval, does not allow for normal residential practices on Indigenous land where communities occupy a single lot. Under the relevant Acts, grants of land are comprised of one lot or a small number of lots, which cannot in turn be subdivided in the same way freehold land can be subdivided.

These amendments extend the single residence exemption to recognise the special housing arrangements in Aboriginal and Islander communities to facilitate the provision of community housing and associated buildings and structures.

The reference to the Standard Building Regulation has been omitted because the *Standard Building Regulation 1993* has been repealed.

## Amendment of sch 10 (Dictionary)

Clause 9 amends various definitions in the Integrated Planning Act 1997 (IPA)'s dictionary as follows:

The definitions of "essential management", "routine management" and "forest practice" are amended to include "vehicular tracks". This is because the definition of a "road" in the IPA is directly linked to the definition of "road" in the *Transport Infrastructure Act 1994*, being areas of land dedicated to public use as a road, including pedestrian and bicycle paths. The intent of the "essential management", "routine management" and "forest practice" definitions is to allow for clearing to maintain and establish public and private roads and tracks. The inclusion of the term "vehicular tracks" in these definitions achieves this intent.

The definition of "forest practice" is also amended to include reference to Indigenous land on which the State does not own the trees. When the *Vegetation Management Act 1999* (VMA) was first enacted, an exemption was allowed for clearing for a forest practice on freehold land. The May 2004 amendments saw the extension of this exemption to 'indigenous land' as defined under the IPA and the VMA, where the State does not own the trees. However, the definition of forest practice itself refers only to "freehold land". To remove doubt that a forest practice can be carried out on Indigenous land, the definition of forest practice is amended to specifically refer to indigenous land.

The definition of "routine management" is amended to remove the phrase "for establishing necessary" and replaced with "to construct necessary built". Under "routine management", clearing to establish necessary infrastructure (other than contour banks, fences or roads) is exempt development if the clearing and the area of infrastructure is less than 2 ha. Prior to 2004, the definition of "routine management" in relation to freehold land included clearing for necessary "built" infrastructure subject to certain area limits and exclusion of endangered vegetation. However in the changes in 2004 the reference to "built" was omitted. Because "infrastructure" is defined under the IPA as including land, facilities, services and works used for supporting economic activity and meeting environmental needs, the definition of the exemption was significantly expanded. The amendment to reinstate "built" in the "routine management" definition ensures the intent of the definition is restored and provides consistency with the VMA.

The replacement of "for establishing" with "to construct" limits clearing to the area required for constructing the built infrastructure. "Establishing" could allow clearing for not only construction of built infrastructure but also for the subsequent operation of infrastructure which is not the intent of the exemption. For example, the construction of a centre pivot irrigator would require only a relatively narrow linear area to be cleared. For the centre pivot irrigator to then operate effectively the area required to be cleared would be a circle with the radius of the length of the irrigator—a much larger area. The addition of "to construct" ensures consistency with a similar change in section 22A(2)(d) of the VMA where the intent is to prevent broadscale clearing by limiting applications to clear to particular relevant purposes.

# Part 4 Amendment of Land Act 1994

### Act amended in pt 4

Clause 10 provides that this part amends the *Land Act 1994*.

### Amendment of s 8 (Definitions)

Clause 11 clarifies that these definitions relate to Part 4.

## Amendment of s 14 (Governor in Council may grant land)

Clause 12 amends section 14 of the Act to legislatively provide for the Governor in Council to grant, in fee simple, land dedicated as a reserve for a non-community public purpose (an 'operational reserve') or rail or non rail corridor land. The grant of non rail corridor land and rail corridor land can only be made to the State.

## Amendment of s 15 (Governor in Council may lease land)

Clause 13 amends section 15 of the Act to provide for the Minister to lease unallocated State land or a reserve. A lease over unallocated State land may be issued for either a term of years or in perpetuity. A lease over a reserve may be issued for a term of years only. The Governor-in-Council will retain the power to issue a freeholding lease under the *Land Act 1994*.

## Amendment of s 16 (Deciding appropriate tenure)

Clause 14 amends s 16 to clarify that the chief executive does not need to undertake an analysis under s 16 if the grant of non-rail corridor land and rail corridor land is to the State.

## Amendment of s 17 (Granting land to the State)

Clause 15 amends section 17 of the Act to clarify that:

- The Governor in Council may grant to the State a deed of grant in fee simple over land dedicated for a non-community public purpose or over non-rail corridor or rail corridor land;
- The Minister may lease unallocated State land to the State.

An operational reserve is a reserve dedicated for a public purpose under the repealed Act and is required by the trustee for service delivery and which is not a community purpose under schedule 1 of the *Land Act* 1994.

Section 17 requires clarification to reflect the proposed addition of power to grant freehold title over an operational reserve and the proposed devolution of power to the Minister to issue term or perpetual leases.

## Amendment of s 18 (Governor in Council may exchange land)

Clause 16 amends section 18 of the Act to clarify the powers of the Governor-in-Council and the Minister with regards to an exchange of land.

### Amendment of s 23 (Reservation for public purpose)

Clause 17 amends s 23 to provide that a reservation for a future conservation area may only be contained in a lease and must identify the particular land reserved. A reservation for a future conservation area may be made only if the department in which the *Nature Conservation Act 1992* is administered has given the Minister the stated required information.

### Insertion of new s 23A – Allocation of floating reservation on plan of subdivision

Clause 18 inserts a new section to clarify that the Minister is the person that allocates any floating reservation on a plan of subdivision. This amendment is required to support and strengthen current administrative processes.

### Amendment of s 24 (Disposal of reservations no longer needed)

Clause 19 amends s 24 to clarify that disposal of a reservation also relates to a reservation in a freeholding lease.

### Amendment of s 25 (Disposal of reservation by sale)

Clause 20 amends s 25 to clarify that the sale also relates to a freeholding lease.

### Insertion of new s 26A – Disposal of redundant reservation

Clause 21 provides for the incorporation of a redundant reservation into a deed of grant or a lease.

### Amendment of s 30 (Object)

Clause 22 amends section 30 of the Act to clarify that a deed of grant can be issued over an operational reserve.

### Replacement of s 31 (Dedication and adjustment of reserves)

Clause 23 omits section 31 of the Act which provides for dedication and adjustment of reserves and replaces it with a new subdivision 1 which deals with reserves generally.

## New Subdivision 1 Reserves generally

### New section 31 – Dedication of reserve

New section 31 provides for the means by which unallocated State land may be dedicated as a reserve for a community purpose or a combination of community purposes. It sets out the process of how a reserve may be dedicated which will now be by either the registration of a dedication notice or a plan of subdivision for the reserve.

Previously, publication of a notice in the gazette has been the accepted practice to publicly record when a reserve has been dedicated. This process was acceptable while there continued to be no central repository for dealings with State land. However, with the addition of a register for unallocated State land to the land registers kept by the chief executive this is no longer the case. The central repository for dealings with State land is now the Automated Titles System (ATS).

The new s 31(1) is intended to mirror the process whereby freehold land may be dedicated upon registration of a plan of subdivision (see s 51 of the *Land Title Act 1994*). The proposed amendment will improve administrative processes by replacing reliance upon publication of a gazette notice for the dedication of a reserve.

### New section 31A – Changing boundaries of reserve

New section 31A allows for the boundaries of a reserve to be changed by registering either an adjustment notice or plan of subdivision.

### New section 31B – Changing community purpose

New section 31B provides for the Minister to change the community purpose of a reserve. At times a reserve needs to be amended to allow for the reserve to be used for a more appropriate purpose. This new section also sets out that the purpose of a reserve that is transferable land can only be changed to either a reserve for the provision of services beneficial to Aboriginal people particularly concerned with the land or a reserve for the provision of services beneficial to Torres Strait Islanders particularly concerned with the land. If a reserve is issued for the aforementioned purposes then it can be changed under this provision only to Aboriginal purposes or Torres Strait Islander purposes.

### New section 31C – Application for dedication or adjustment of reserve

New section 31C sets out who may apply for land to be dedicated as a reserve or to change the purpose or boundaries of a reserve. It also allows the Minister to dedicate land as a reserve or amend the boundaries or purpose of a reserve without receiving an application.

### New section 31D – Notice of proposal to dedicate or adjust reserve

New section 31D sets out who must be advised of the proposal to dedicate or adjust a reserve and what information they must receive relating to the proposal.

### New section 31E – Submissions

New section 31E sets out what requirements must be followed if a person wishes to make a submission against the proposal to dedicate or adjust a reserve.

### New section 31F – Notice of registration of action in relation to reserve

New section 31F sets out who must be given notice of the dedication or adjustment of a reserve.

### Amendment of s 33 (Revocation of reserves)

Clause 24 amends s 33 by deleting mention of the gazette. It also clarifies that the Minister may revoke all or part of a reserve without receiving an application.

### Replacement of s 34 (Revocation of reserve cancels appointments, leases and permits)

Clause 25 replaces existing s 34 and inserts new sections 34, 34A to 34O into the Act.

### New section 34 – Applying to revoke dedication of reserve

New section 34 clarifies that a person may apply for the revocation of all or part of a reserve.

### New section 34A – Notice of proposal to revoke dedication of reserve

New section 34A sets out who must be advised of the proposal to revoke all or part of a reserve and what information they must receive relating to the proposal.

### New section 34B – Submissions

New section 34B sets out what requirements must be followed if a person wishes to make a submission against the proposal to revoke all or part of a reserve.

### New section 34C – Removal of interests before revocation

New section 34C provides that a State lease or an easement existing over the reserve must be resumed or surrendered before the reserve is revoked. A public utility easement however may continue over the unallocated State land when the reserve is revoked. Any permit to occupy existing over the reserve must be cancelled or surrendered before the reserve is revoked.

### New section 34D – Registration revokes dedication of reserve

New section 34D replaces the previous practice of revocation of a reserve by gazette notice and sets out when a reserve may be revoked by a revocation notice or registration of a plan of survey. However if part of a reserve is being revoked and that part of the reserve is part of a lot, then that part of the reserve may be revoked only by registering a plan of subdivision. If a reserve for cemetery purposes is to be revoked, the revocation must be done by regulation.

### New section 34E - Notice of revocation

New section 34E sets out who must receive notice of a revocation of a reserve and what is required in that notice.

### New section 34F – Effect of revocation

New section 34F provides that when a reserve is revoked the reserve ends, all appointment of trustees are cancelled, all trustee leases and trustee permits are cancelled and the land becomes unallocated State land. This clause maintains a current provision.

### New section 34G – Person to give up possession

New section 34G provides that once a reserve is revoked a person must vacate the land unless a new tenure is issuing to the trustee of the revoked reserve. A person who fails to give up possession of the land is deemed to be unlawfully occupying the land.

### New section 34H – Dealing with improvements

New section 34H sets out who has the right to remove improvements from the revoked reserve or who has the right to payment for the improvements if the revoked reserve is further dealt with by sale or lease.

## New Subdivision 2 Operational reserves

This new subdivision deals with operational reserves, which are reserves that are used for the provision of services by State or Local Government agencies. Examples of the uses for these reserves are schools, hospitals, police stations, sewerage treatment works etc. These reserves were set apart for a public purpose under the repealed Act. These reserves are not community purpose reserves under this Act and, provided native title issues are satisfactorily addressed, would be more appropriately held by the trustee as freehold land.

### New section 34I - Applying for deed of grant

New section 34I provides that a trustee of an operational reserve may apply for the issue of a deed of grant over the whole of an operational reserve. Application may not be made covering part only of the operational reserve.

### New section 34J – Notice of proposal to issue deed of grant

New section 34J sets out who must be given notice of the proposed issue of a deed of grant and what is required in that notice.

### New section 34K – Submissions

New section 34K sets out what requirements must be followed if a person wishes to make a submission against the proposal to issue a deed of grant over the operational reserve.

### New section 34L – Removal of interests before grant

New section 34L provides that a State lease over the reserve must be resumed or surrendered before the issue of the deed of grant. Any permit to occupy existing over the reserve must be cancelled or surrendered before the issue of the deed of grant.

### New section 34M – Registration of deed of grant revokes reservation and setting apart

New section 34M provides that the deed of grant takes effect upon registration and upon that registration the operational reserve is revoked.

### New section 34N – Notice of registration of deed of grant

New section 34N sets out who must receive notice of a registration of the deed of grant over an operational reserve and what is required in that notice.

### New section 34O – Effect of revocation

New section 34O provides that upon registration of a deed of grant over an operational reserve the reserve is revoked and all appointment of trustees are **cancelled. All trustee leases and easements will carry over to the deed of grant.**

### Amendment of s 35 (Use for community purposes of land granted in trust)

Clause 26 amends section 35 of the Act to clarify the process of adding an additional community purpose for a deed of grant in trust under s 35. A trustee of land granted in trust for a community purpose may apply for the addition of an additional community purpose. The additional community purpose will now be registered by an adjustment notice instead of a gazette notice. The additional community purpose takes effect on the day the adjustment notice is registered. The clarification is required to support proposed administrative consistency under the Act.

### Amendment of s 36 (Amalgamating land with common purposes)

Clause 27 amends s 36 of the Act to clarify that deeds of grant in trust issued under the repealed Act may not be amalgamated with a deed of

grant in trust issued after 1 July 1995. The amendment is made in support of section 67.

A new deed issued under section 358(3)(b) for a deed issued under the repealed Act is, for the purposes of section 36, still considered to be a deed of grant in trust issued under the repealed Act.

### Amendment of s 37 (Removing area from deed of grant in trust)

Clause 28 clarifies that compensation is only payable for improvements or development work that has been lawfully carried out by the trustee or a person who had the trustee's authority to carry out such works

### Amendment of s 38 (Cancelling a deed of grant in trust)

Clause 29 amends s 38 to clarify the process of cancelling a deed of grant in trust.

### Insertion of new ss 38A – 38G

Clause 30 inserts new chapter 3, part 1, division 3, sections 38A to 38G.

### New section 38A – Applying for additional community purpose, amalgamation or cancellation

New section 38A clarifies that a trustee of a deed of grant in trust may apply for an additional community purpose or to amalgamate land common purposes. A person may apply for a cancellation of a deed of grant in trust in accordance with s 38

### New section 38B - Notice of proposal to add community purpose, amalgamate land or cancel

New section 38B sets out who must be given notice of the proposed addition of a community purpose, the amalgamation of land with common purposes or the proposal to cancel the deed of grant in trust and what is required in that notice.

### New section 38C – Submissions

New section 38C sets out what requirements must be followed if a person wishes to make a submission against the proposal to add a additional purpose to a deed of grant in trust or to amalgamate land with common purposes or to the cancellation of the deed of grant in trust.

### New section 38D - Notice of registration action

New section 38D sets out who must receive notice of a registration of an action in relation to a deed of grant in trust and what is required in that notice.

### New section 38E – Effect of cancellation

New section 38E provides that when a deed of grant in trust is cancelled the trust ends, all appointment of trustees are cancelled, all interests in the deed of in trust are cancelled and the land becomes unallocated State land. This clause maintains a current provision.

### New section 38F - Person to give up possession

New section 38F provides that once a deed of grant is cancelled a person must vacate the land. A person who fails to give up possession of the land is deemed to be unlawfully occupying the land.

### New section 38G – Dealing with improvements

New section 38G sets out who has the right to remove improvements from the cancelled deed of grant in trust and who has the right to payment for the improvements if the cancelled deed of grant in trust is further dealt with by sale or lease.

### Insertion of new s 42A – Amalgamating unallocated State land with deeds of grant in trust

Clause 31 inserts new section 42A that of the Act to clarify that deeds of grant in trust issued under the repealed Act may not be amalgamated with a deed of grant in trust issued after 1 July 1995. The amendment is made in support of section 67.

A new deed issued under section 358(3)(b) for a deed issued under the repealed Act is, for the purposes of section 36, still considered to be a deed of grant in trust issued under the repealed Act.

### Amendment of s 43 (Only Parliament may delete land from or cancel an existing deed of grant in trust)

Clause 32 makes an amendment to section 43 of the Act consequential to the insertion of new section 42A into the Act.

### Amendment of s 44 (Appointing trustees)

Clause 33 amends section 44 of the Act to provide for the State to be appointed as trustee of trust land and improve the process of administration by replacing reliance upon publication of a gazette notice to appoint a trustee. The amendment is required to support current Government practice that land held or administered by the State be held in the name of the State of Queensland.

### Amendment of s 45 (Details of trustees)

Clause 34 provides that a change of name of a trustee must be registered.

### Amendment of s 48 (Trustees to give information and allow inspection of records)

Clause 35 amends section 48 of the Act to clarify that a management plan prepared by a trustee of trust land and given to the Minister must be to the Minister's satisfaction. The clarification of section 48 is required to support and strengthen current administrative processes and the proposed amendment to section 52).

### Amendment of s 50 (Vacation of office by trustee)

Clause 36 clarifies that the vacation of office by a trustee must be registered.

### Amendment of s 51 (Removal of trustees)

Clause 37 clarifies that the removal of a trustee from office must be registered.

### Amendment of s 52 (General powers of trustee)

Clause 38 amends section 52 of the Act to clarify that a trustee of trust land may, with the Minister's approval, take an action inconsistent with the purpose of the trust land.

A trustee of trust land is required to manage the trust land in a manner consistent with achieving the purpose of the trust. This requirement does not allow the trust land to be used for an inconsistent purpose. In cases where use of the land is periodic, this requirement limits the trustee's ability to augment trust funds by leasing or licensing the trust land for an inconsistent purpose which does not, however, diminish the purpose of the

trust. The clarification of s 52 is required to expand the powers of a trustee and enable more efficient management of trust land.

### Insertion of new s 53A – State trustee powers and delegation

Clause 39 inserts a new section 53A into the Act to clarify that where the State is trustee of trust land, a Minister may delegate a power of the State to an appropriately qualified officer of the State.

### Amendment of s 55 (Power to surrender)

Clause 40 amends s 55 to clarify that all or part of a deed of grant in trust can only be surrendered if the Minister and all the parties with a registered interest in the deed of grant in trust have given written approval to the surrender.

### Insertion of new ss 55A-55H

Clause 41 inserts new sections 55A-55H into the Act.

### New Section 55A – Applying to surrender

New Section 55A provides that a trustee of a deed of grant in trust may apply to surrender all or part of a deed of grant.

### New Section 55B – Notice of proposal to approve surrender

New Section 55B sets out who must be given notice of a proposal to approve a surrender of a deed of grant in trust and what is required in that notice.

### New Section 55C- Submission

New Section 55C sets out what requirements must be followed if a person wishes to make a submission against the proposal to approve the surrender of a deed of grant in trust.

### New Section 55D – Registration surrenders deed of grant in trust

New Section 55D sets out when a a deed of grant in trust may be surrendered by a surrender notice or registration of a plan of subdivision. However if part of a deed of grant in trust is surrendered and that part of the

deed of grant in trust is part of a lot, then that part of the deed of grant in trust may only be surrendered by registering a plan of subdivision.

### New Section 55E –Notice of Surrender

New Section 55E sets out who must be given notice of the surrender of a deed of grant in trust and what is required in that notice .

### New Section 55F – Effect of surrender

New Section 55F provides that when a deed of grant in trust is surrendered the trust ends, all appointment of trustees are cancelled, all interests in the deed of in trust are extinguished and the land becomes unallocated State land. This clause maintains a current provision.

### New Section 55G – Person to give up possession on surrender

New Section 55G provides that once a deed of grant is surrendered a person must vacate the land unless a new tenure is issuing to the trustee of the surrendered deed of grant in trust. A person who fails to give up possession of the land is deemed to be unlawfully occupying the land.

### New Section 55H – Dealing with improvements

New Section 55H sets out who has the right to remove improvements from the surrendered deed of grant in trust or who has the right to payment for the improvements if the revoked reserve is further dealt with by sale or lease.

### Amendment of s 57 (Trustee leases)

Clause 42 amends s 57 to enable trust land to be leased to the State for transport infrastructure related purposes, even if this purpose is not consistent with the purpose of the trust, with the minimum of administrative process.

### Amendment of s 58 (Other transactions relating to trustee leases)

Clause 43 amends section 58 to further facilitate transport infrastructure, as for clause 43, by extending similar provisions to subleases and sub subleases.

### Amendment of s 60 (Trustee permits)

Clause 44 amends s 60 to state that a permit to occupy must be subject to a registered mandatory terms document and that only permits for more than 1 year need to be registered.

### Amendment of s 63 (Rent to be charged)

Clause 45 amends s 63 to clarify the rent that must be charged for a trustee lease or a trustee permit. The amendment clarifies that the rent must be the most appropriate that can reasonably be obtained, having regard to the use and the community benefit and purpose of the trustee lease or trustee permit. This amendment is intended to support the State's position that the rental for the provision of essential services to the trust land should take into account the use and the community benefit and purpose of the trustee lease or trustee permit.

### Amendment of s 64 (Minister may dispense with approval)

Clause 46 amends s 64 to provide that a reference to a trustee includes reference to a lessee under a trustee lease and that reference to a trustee lease also refers to a sublease of a trustee lease. This section also is amended to state that if there is a registered mandatory standard terms document that applies to trustee leases a trustee must not lease the trust land unless the standard terms document forms part of the trustee lease.

### Amendment of s 74 (Minister may start winding-up)

Clause 47 sets out when a person may be appointed to wind up the affairs of a trust.

### Amendment of s 78 (Winding-up may continue after revocation, cancellation or sale)

Clause 48 amends the section to allow correct terminology. A reserve has to be dedicated to take effect therefore it is the dedication of the reserve that has to be revoked

### Replacement of s 94 (Dedication of road by gazette notice)

Clause 49 omits s 94 and replaces it with a new s 94 that clarifies the process of dedicating land administered under the Act as a road for public use. Under these amendments, a road for public use will now be dedicated

by the registration of a dedication notice or a plan of subdivision in lieu of the previous method of dedication by gazette notice. The amendment will improve dministrative processes by replacing reliance upon publication of a gazette notice for the dedication of a road.

The proposed amendment to s 94 is intended to mirror the process whereby freehold land may be dedicated upon registration of a plan of subdivision (see s 51 of the *Land Title Act 1994*).

### Insertion of new s 97A

Clause 50 inserts a new s 97A – definitions for div 2 – that provides for appropriate definitions for that division.

### Amendment of s 98 (Closure of road by gazette notice)

Clause 51 amends s 98 to provide for the temporary closure of road upon issue of a road licence under the Act. To date publication of a notice in the gazette has been the accepted practice to publicly record when a road has been temporarily closed. This process was acceptable while there continued to be no central repository for dealings with State land. However, this is no longer the case as the central repository for dealings with State land is now the Automated Titles System (ATS).

The proposed amendment will improve administrative processes by replacing reliance upon publication of a gazette notice for the temporary closure of a road and for the re-opening of a road temporarily closed.

### Amendment of s 99 (Application to close road)

Clause 52 omits s 99 and inserts a new s 99 – Application to close road – that allows a public utility provider as well as an adjoining owner to apply for a permanent road closure and clarifies who can apply for a temporary road closure.

### Amendment of s 100 (Public notice of closure)

Clause 53 amends section 100 to clarify that if a road closure application is to proceed that appropriate notice of the application must be given which will allow for objections to the proposal. Definitions have also been added for no-through road and relevant applicant that now includes a public utility provider.

However, where the road closure application applies solely to a 'dead end' street or an area of the road above or below the surface of the road and the applicant is the owner of the land adjoining the road, the requirement to publish the road closure notice in the gazette and place and keep a road closure notice in a conspicuous place on or near the road is considered as being merely a 'red tape' burden.

If the road is not needed for a public way, the Minister may close the road. A 'dead end' street is not a public way but was created to provide access to a lot or a small number of lots. Similarly, the public's right to use a road as a road is unlikely to be diminished by the closure of an area of the road above or below the surface of the road.

### Replacement of ch 3, pt 2, divs 4 and 5

Clause 54 replaces chapter 3, part 2, divisions 4 and 5 with new divisions

## New Division 4 Permanently closed roads

### Section 108 – Permanent closure of road

Section 108 is amended to provide for the permanent closure of a road by the registration of a plan of subdivision.

### New section 109 – Closed road may be dealt with as lot or amalgamated with adjoining land

New section 109 clarifies when an area of closed road must be added to adjoining land or when the closed road can be dealt with as a stand alone parcel of land

### New section 109A – Simultaneous opening and closing of roads – deed of grant land

New section 109A clarifies the process of dealing with a simultaneous opening and closing when the road to be opened is in a deed of grant

### New section 109B – Simultaneous opening and closure of roads – trust land and lease land

New section 109B clarifies the process of dealing with a simultaneous opening and closing when the road to be opened is in a deed of grant in trust or a reserve or a lease.

### New section 109C – Buying or leasing land if closed road amalgamated with adjoining land

New section 109C sets out when the closed road may be sold or leased.

### Renumbering of ch3, pt 2, div 6 (Building of roads in State developments)

Clause 55 renumbers division 6 as division 5

### Amendment of s 115 (Conditions of sale)

Clause 56 amends section 115 to provide that where a lease of unallocated State land is offered by public auction, tender or ballot that the conditions of sale require that for certain rural leases the sale is subject to a condition requiring the lessee to enter in to a land management agreement, and that the lease be subject to a condition requiring that the lessee must maintain an agreement and comply with the agreement. .

### Insertion of new s 120A - Applying for interest in land without competition

Clause 57 provides for a new section 120A that clarifies that a person can apply for land under this division and the interest may be granted without competition and be subject to conditions approved by the Minister.

### Amendment of s 122 (Deeds of grant of unallocated State land)

Clause 58 amends s 122 to provide for a deed of grant over unallocated State land to be issued to a constructing authority without competition if the Minister is satisfied the land is needed for a public purpose.

### Amendment of s 127 (Reclaimed land)

Clause 59 provides for the Minister instead of the Governor in Council to issue leases, over all or part of reclaimed land.

## Amendment of s 129 (Lease for significant development)

Clause 60 provides that a lease for significant development will not be granted if the chief executive is not satisfied, having regard to the independent assessment required under s 129 (1) about the applicant's financial and managerial capabilities.

## Insertion of new s 130A - Change of financial and managerial capabilities of lessee of lease for significant development

Clause 61 inserts a new section 130A. Under this section the Minister may make a note on the Land Lease Register against a significant development lease that this section applies to that significant development lease. The Minister may remove the note if satisfied after having regard to the nature and terms of the significant development and lease that a note is no longer required in the circumstances.

The Minister is required to give the lessee 14 days notice prior to making the note on the Land Lease Register. If the Minister makes a note the Minister is required to give the lessee written notice of the decision and the reasons for the decision. In the event that a lessee objects to the Minister making a note the lessee can appeal against the decision. It is an original decision as listed in schedule two and is a decision which may be appealed in accordance with the process outlined in chapter 7 part 3.

Once a note has been made on the Land Lease Register, the lessee must notify the Minister regarding any change of substance in the financial and managerial capabilities of the lessee. If a lessee without reasonable excuse fails to notify the Minister of a change of substance in the financial and managerial capabilities of the lessee the Minister may seek an independent assessment of the financial and managerial capabilities of the lessee.

If the lessee fails to notify the Minister of a change of substance in the financial and managerial capabilities of the lessee and that change can reasonably be expected to adversely affect the lessee's ability to meet the lessee's obligations under the lease then the lease may be forfeited under chapter 5, part 4.

## Amendment of s 136 (Conditions of offer and lease)

Clause 62 amends section 136 to provide that where a registered owner or lessee is granted an additional area, the offer of the additional area is subject to a condition requiring the lessee to enter in to a land management agreement, and that the lease be subject to a condition requiring that the lessee must maintain an agreement and comply with the agreement.

Where the additional area is amalgamated with another lease, the new lease, containing the original leased land and the additional area, is subject to a condition requiring that the lessee must maintain a land management agreement and comply with the agreement.

It also provides for where an additional area is tied to other leasehold land, both leases are subject to a condition requiring that the lessee must maintain a land management agreement and comply with the agreement.

### Insertion of new s 138A - Restriction on commencement of lease or permit

Clause 63 provides for a new section 138A that makes it clear that the term of a lease, licence or permit offered or sold does not start until the offeree has complied with the conditions of the sale or offer.

### Amendment of s 144 (Division applies only to leases for grazing or agriculture)

Clause 64 amends section 144 of the Act (Division applies only to leases for grazing or agriculture) to remove any doubt that when a lease is referred to in sections 145,146,147 or 149 it includes a sublease and where a lessee is referred to in sections 147,149 or 151 it includes sublessee.

### Replacement of s 153 (Leases must be used for purpose issued)

Clause 65 amends s 153 to ensure that the purpose of a lease is stated in the lease.

### Amendment of s 154 (Minister may approve additional purposes)

Clause 66 amends s 154 to ensure that if a lease purpose is to have additional purposes added, all those with a registered interest in the lease must consent to the change before the Minister considers the change. It also provides for the registration of those changes.

### Amendment of s 155 (Length of term leases)

Clause 67 amends s 155 to provide that generally a term lease for rural leasehold land will be for a period of not more than 30 years. However a

term lease may be issued for up to 40 years where the Minister considers that the land is in good condition.

50 year terms are available where the Minister considers that the land is in good condition and, in particular circumstances, a conservation agreement and/or a indigenous access and use agreement has been entered into.

### Insertion of new ss 155A to 155E

Clause 68 inserts new sections 155A to 155E.

### New section 155A – Extending particular term leases for a term of up to 40 years

New section 155A provides that for the one-off extension of a lease term for certain rural leasehold land where the lease land is brought to good condition within 10 years of the start of the lease. The extension can be made for a period of not more than 10 years where the Minister is satisfied that the lessee has complied with a land management agreement and the lease land is in good condition.

### New section 155B - Extending particular term leases for a term of up to 50 years

New section 155B provides for the one-off extension of a lease term where the term of the lease was originally granted for between 30 and 40 years or has been extended under section 155A.

The Minister may extend the lease for a period of not more than10 years where the land management agreement contains a commitment by the Minister to extend the lease and:

- if suitable, all or part of the land is subject of a conservation agreement or conservation covenant; and
- if appropriate, an indigenous access and use agreement relating to the land has been entered into; and
- the lease land is in good condition.

### New section 155C – Registration and taking of effect of extension

New section 155C provides that an extension of the term of a lease under sections 155A or 155B must be registered as soon as practicable after it is made and that the extension takes effect from the day it is registered.

### New section 155D – Power to reduce term of extended term lease

New section 155D provides that the Minister may reduce the term of a lease extended under section 155A or 155B by an amount no more than the extended lease period where the Minister is satisfied that the lessee has not maintained the land in good condition or in the case of an indigenous access and use agreement it is no longer in effect in relation to the lease land.

### New section 155E – Provisions about reduction

New section 155E provides for notice, appeal and registration when the Minister decides to reduce the term of a lease. It also clarifies that there is no fee and no compensation relating to such a reduction.

### Insertion of new s 157A - Chief executive's approval required for renewal

Clause 69 inserts a new s 157A that provides that a term lease is renewed only if the lessee applies and an offer is made and accepted.

### Amendment of s 158 (Application to renew lease)

Clause 70 amends s 158 to have applications made to and considered by the chief executive instead of the Minister. It also provides that a renewal application cannot be made if the lease contains a reservation that all the land is a future conservation area.

### Amendment of s 159 (Issues the Minister must consider)

Clause 71 amends s 159 by inserting a new heading and clarifies that it is now the chief executive who must consider when deciding whether or not to offer a new lease, including the condition of the leased land, the extent to which the leased land suffers from, or is at risk of, land degradation and the natural environment values of the lease land.

It also clarifies that it is the Environmental Protection Agency that supplies the information to enable the Minister to consider whether part of the lease is needed for environmental or nature conservation purposes before making a decision to offer a new lease.

These amendments also provide if a lease contains a reservation that part of the leased land is a future conservation area a new lease cannot be offered for that part.

### Insertion of new s 159A - Provisions for decision about most appropriate form of tenure

Clause 72 inserts a new section that clarifies that when deciding the most appropriate tenure for renewal under s 159 (1) (m), section 16 applies This new section also clarifies that if the renewal application is for a lease over a reserve the trustee of the reserve must be consulted.

### Amendment of s 160 (Written notice of Minister's decision)

Clause 73 amends s 160 to have written notice of an offer come from the chief executive instead of the Minister.

### Insertion of new s 160A - Land management agreement condition for particular offers

Clause 74 inserts a new section 160A to provide that the offer of a new lease over certain rural leasehold land is subject to a condition that the proposed lessee enters into a land management agreement for the land to which the lease is to apply.

### Replacement of s 162 (Acceptance of offer)

Clause 75 omits s 162 and inserts new s 162 to reflect that leases will now be issued by the Minister instead of the Governor in Council. Acceptance of offer is now covered in another part of the Bill

### Insertion of new s 162A - Conditions imposed on particular new leases

Inserts a new section 162A to provide that leases for certain rural leasehold land are subject to the conditions that the lessee maintain a current land management agreement during the term of the lease, and comply with the terms of the agreement.

### Insertion of new s 165A - Chief executive's approval required for conversion

Clause 76 inserts a new s 165A to provide that a lease may be converted under this division only if the lessee has applied and an offer has been made and accepted.

### Amendment of s 166 (Application to convert lease)

Clause 77 amends s 166 to clarify which lessees can and cannot apply to convert and to reflect the change of power from the Minister to the chief executive as the entity that considers applications to convert.

### Amendment of s 167 (Issues the Minister must consider)

Clause 78 amends section 167 to change the power to consider issues from the Minister to the chief executive, and then to clarify the issues the chief executive must consider when deciding whether or not to offer to convert certain leases, including the condition of the leased land, the environmental values of the leased land and the extent to which the leased land suffers from, or is at risk of, land degradation.

It also clarifies that it is the Environmental Protection Agency that supplies the information to enable the Minister to consider whether part of the lease is needed for environmental or nature conservation purposes before making a decision to offer to renew a lease.

These amendments also provide if a lease contains a reservation that part of the leased land is a future conservation area a new lease or deed of grant cannot be offered for that part.

### Amendment of s 168 (Written notice of Minister's decision)

Clause 79 amends s 168 to change the power to make offers and notification from the Minister to the chief executive.

### Insertion of new s 168A - Land management agreement for new perpetual lease

Clause 80 inserts a new section 168A to provide that the offer of a new perpetual lease for certain rural leasehold land is subject to a condition that the proposed lessee enters into a land management agreement for the land to which the lease is to apply. The new section also provides that perpetual leases for certain rural leasehold land are subject to the conditions that the

lessee maintain a current land management agreement and comply with the terms of the agreement.

### Amendment of s 169 (Conditions of freehold offer)

Clause 81 amends s 169 by removing reference to the Nature Conservation Act 1992 as a definition of a conservation agreement is now defined in schedule 6.

### Amendment of s 170 (Purchase price if deed of grant offered)

Clause 82 amends s 170 to change the power relating to purchase price from the Minister to the chief executive.

### Amendment of s 172 (Acceptance of offer)

Clause 83 amends s 172 to reflect that leases will now be issued by the Minister and not the Governor in Council.

### Insertion of new s 173A - Short term extension

Clause 84 inserts a new s 173A that allows for extensions of leases when a conversion application has not been finalised before a lease is due to end. This matches a similar provision already in the Act under s 164 for lease renewals.

### Amendment, relocation and renumbering of s 175 (Forest entitlement areas)

Clause 85 moves provisions relating to forest entitlement areas to a different part of the Act, at the same time fixing the numbering in accordance with the change.

### Relocation and renumbering of s 176 (Effect of resumption of forest entitlement area)

Clause 86 moves provisions relating to forest entitlement areas to a different part of the Act, at the same time fixing the numbering in accordance with the change.

### Insertion of new ch 4, pt 3, divs 4 to 7

Clause 87 inserts a new chapter 4, part 3, divisions 4 to 7. In effect this moves (and updates) dealing with subdivision of leases and amalgamation of leases from chapter 6 to chapter 4, and provides for the additional miscellaneous provisions.

## New Division 4 Subdividing leases

### New section 175 - When a lease may be subdivided

New section 175 sets out when a lease may be subdivided.

### New section 176 - Application to subdivide

New section 176 sets out how applications are made and what information must accompany them.

### New section 176A - General provisions for deciding application

New section 176A provides for the terms and conditions of approval of a subdivision, including making provision for dealing with existing land management agreements.

### New section 176B - Criteria for deciding application

New section 176B provides for the planning and access issues that must be considered in deciding an application, as well as making it clear that s 159 about renewals still applies.

### New section 176C - Specific grounds for refusal

New section 176C provides for a refusal where an application has already been decided and nothing has changed since that refused application.

### New section 176D - Notice of decision

New section 176D provides for notice and offers and explanations for refusal.

### New section 176E - Appeal against refusal

New section 176E sets out when appeal is available about a decision to refuse an application.

### New section 176F - Acceptance of subdivision offer

New section 176F sets out that an offer is only considered accepted if there has been compliance with the conditions of the offer.

### New section 176G - Issuing of new leases

New section 176G provides that the Minister may issue the leases and provides for the registration issues related to the issue of the new leases.

### New section 176H - Restriction on transferring new leases

New section 176H Provides that if a lease is subdivided under the Act then the subdivided leases should stay in the same ownership for a reasonable period of time unless special circumstances exist such as a family arrangement.

### New section 176I - Power to waive fees if chief executive requested application

New section 176I provides for the chief executive to waive fees associated with the subdivision when the request for the subdivision was made by the chief executive (for example to facilitate a Government specified outcome).

## Division 5 Amalgamating leases

### New section 176J - When leases may be amalgamated

New section 176J sets out the conditions when leases may be amalgamated.

### New section 176K - Application to amalgamate

New section 176K sets out how applications are made and what information must accompany them.

### New section 176L - General provisions for deciding application

New section 176L provides for the terms and conditions of approval of an amalgamation, including making provision for dealing with existing land management agreements.

### New section 176M - Criteria for deciding application

New section 176M provides for the planning issues that must be considered in deciding an application, as well as making it clear that s 159 about renewals still applies.

### New section 176N - Roads

New section 176N sets out how existing roads are to be dealt with in considering an amalgamation application.

### New section 176O - Specific grounds for refusal

New section 176O sets out when appeal is available about a decision to refuse an application.

### New section 176P - Notice of decision

New section 176P provides for notice and offers and explanations for refusal.

### New section 176Q - Appeal against refusal

New section 176Q sets out when appeal is available about a decision to refuse an application.

### New section 176R - Acceptance of amalgamation offer

New section 176R provides that the offer is only accepted if the applicant complies with the conditions of the offer.

### New section 176S - Issuing of amalgamated lease

New section 176S provides that the Minister may issue the lease and provides for the registration issues related to the issue of the new lease.

### New section 176T – Power to waive fees if chief executive requested application

New section 176T provides that if the chief executive requested the amalgamation then the chief executive may waive all or part of any fees relevant to the amalgamation

## New Division 6 Land management agreements

### New section 176U - Making and registration of agreement about land management

New section 176U provides that the Minister and the lessee of a lease may make or amend a land management agreement however the agreement or amendment has effect only if it is registered.

### New section 176V - Purposes of a land management agreement

New section 176V outlines the purposes of a land management agreement.

### New section 176W – Content of land management agreement

New section 176W details what matters a land management agreement may include and enables the chief executive to issue guidelines about the content and preparation of land management agreements.

### New section 176X – Review of land management agreement

New section 176X requires the Minister to review a lessees performance in complying with a land management agreement at least every 10 years.

## New Division 7 Miscellaneous provisions

### New section 176Y - Part does not affect amounts owing relating to leases

New section 176Y clarifies that existing obligations to pay rent or another amount owing are not limited by applications under this part (other than s 154) or the ending of the lease under this part.

### New section 176Z - When payment obligations end if lease ends under part

New section 176Z clarifies that the obligation to pay future rent or other amounts that may become payable, end on the day before the day on which the lease ends.

### New section 176ZA - Overpayments relating to former lease

New section 176ZA provides for repayment of legitimate overpayments in relation to actions under this part.

### Amendment of ch 4, pt 4, Permits

Clause 88 inserts correct terminology

### Amendment of s 177 (Chief executive may issue permit)

Clause 89 amends section 177 of the Act to clarify that a permit can issue over 2 or more reserves provided the reserves are dedicated for the same purpose and are held by the same trustee. The amendment also provides that permits for more than 12 months only need to be recorded in land registry.

### Insertion of new ss177A- 177D

Clause 90 a inserts new sections 177A to 177D into the Act which deal with permits to occupy unallocated State land, a reserve or a road.

### New section 177A Applying for permit

New section 177A states that a permit to occupy can be over unallocated State land, a reserve or a road.

### New section 177B Notice of intention to issue permit

New section 177B sets out who must be given notice of the proposed issue of a permit to occupy unallocated State land, a reserve or a road and what is required in that notice

### New section 177C Submissions

New section 177C sets out what requirements must be followed if a person wishes to make a submission against the proposal to issue a permit to occupy unallocated State land, a reserve or a road.

### New section 177D Notice of permit

New section 177D sets out who must be given notice of the issue of the permit and if the permit is for more than 12 months the notice must state the day the permit was registered.

### Replacement of s 180 (Cancellation or surrender of permit)

Clause 91 replaces section 180 of the Act (Cancellation or surrender of a permit to occupy unallocated State land, a reserve or a road) with new sections 180 to 180H.

### New section 180 When permit may be cancelled or surrendered

New section 180 details when a permit to occupy unallocated State land, a reserve or a road may be cancelled or surrendered.

### New section 180A Applying to cancel or surrender permit

New section 180A details who may apply to cancel or surrender a permit to occupy unallocated State land, a reserve or a road.

### New section 180B Notice of proposal to cancel or approve surrender

New section 180B sets out who must be given notice of a proposal to cancel or approve the surrender of a permit to occupy unallocated State land, a reserve or a road and what is required in that notice .

### New section 180C Submissions

New section 180C sets out what requirements must be followed if a person wishes to make a submission against the proposal to cancel or approve the surrender of a permit to occupy unallocated State land, a reserve or a road.

### New section 180D When cancellation or surrender is effective

New section 180D provides that cancellation of a permit to occupy unallocated State land, a reserve or a road is effective by registering a cancellation notice. The surrender of a permit may be effected by registration. The cancellation or surrender is effective on the day of registration.

### New section 180E Notice about cancellation or surrender

New section 180E sets out who must receive notice of the cancellation or surrender of a permit to occupy unallocated State land, a reserve or a road.

### New section 180F Effect of cancellation or surrender

New section 180F provides that when a permit to occupy unallocated State land, a reserve or a road is cancelled or surrendered, the permit ends, the permittee is divested of any interest in the permit land. If the permit is cancelled no compensation is payable.

### New section 180G Permittee to give up possession on cancellation or surrender

New section 180G provides that once a permit to occupy unallocated State land, a reserve or a road is cancelled or surrendered all people must vacate the land. A person who fails to give up possession of the land is deemed to be unlawfully occupying the land.

### New section 180H Dealing with improvements

New section 180H sets out who has the right to remove improvements from the unallocated State land, a reserve or a road. The owner may only remove the improvements with the written approval of the Minister. If the Minister does not give that approval or the improvements are not removed within a specified period, the improvements become the property of the State.

### Amendment of s 181 (Rent periods)

Clause 92 amends s 181 to allow for alternative periods for payment of rent (for example quarterly instead of annually) in circumstances prescribed under the regulation.

## Amendment of s 183 (Rent payable generally)

Clause 93 amends s 183 to allow for a valuation other than the current valuation to be used in determining rent, for example a valuation calculated by averaging valuations over a period of say 3 or 5 years. The provision also makes it clear that this does not apply to set rents (under s 183A).

## Amendment of s 183A (Rent payable in special cases)

Clause 94 amends s 183A to alter the heading to "Set rents"; to remove the provision that enabled the Minister to freeze rents (as there are now alternative ways to address undue increases in rent included at s 183AA); and to clarify the rents to which s 183 does not apply. It also provides for a designated officer rather than the Minister to set rents.

## Insertion of new s 183AA - Protection against particular undue rental increases

Clause 95 includes a new s 183AA that allows the Minister to cap rental increases for a category of tenure, when the Minister decides that the increase to a category of tenure would result in an undue increase for a rental period. The new section provides a formula for the rent in these circumstances, which is the lesser of the rent calculated under s 183 and the previous year's rent increased by a prescribed percentage. This clause also provides for such a cap to be able to apply to new leases that are the result of an existing lease being renewed or converted or reissued for some reason, enabling a "notional" previous year's rent to be calculated where otherwise there would be no actual previous year's rent.

## Amendment of s 185 (Development and Investigation concessions)

Clause 96 amends s 185 to provide for a designated officer rather than the Minister to fix rents under this section.

## Amendment of s 190 (When rent is owing)

Clause 97 amends s 190 to allow for delays in paying rents to be acceptable where there are exceptional circumstances that make it practically impossible to make the payment on time, for example during a natural disaster.

### Amendment of s 192 (Deferral of rent and instalment payments for hardship)

Clause 98 amends s 192 to enable the Minister to grant a deferral of rent on the basis of evidence that the applicant for the deferral is receiving some other form of financial assistance under a State or Commonwealth scheme for a relevant hardship, for example, under the Exceptional Circumstances scheme. This amendment is intended to make applications for deferral less complex than at present.

### Amendment of s 195 (Penalty interest on outstanding rent and instalments)

Clause 99 amends s 195 to provide for a designated officer rather than the Minister to extend the time for payment of rent and instalments.

### Amendment of s 196 (Minister may take action for non-payment)

Clause 100 amends s 196 to provide for a designated officer rather than the Minister to take action for non payment of rent and instalments. It also clarifies a reference to another part of the Act.

### Amendment of s 197 (Notice of intention to cancel)

Clause 101 amends s 197 to provide for a designated officer rather than the Minister to give notice of intention to cancel and related actions.

### Amendment of s 198 (Minister may reinstate if payment made)

Clause 102 amends s 198 to provide for a designated officer rather than the Minister to take reinstatement action.

### Insertion of new ch 5, pt 1A

Clause 103 Inserts a new chapter 5, part 1A – Future conservation areas.

# New Part 1A Future conservation areas

### New section 198A - Management principles

New section 198A establishes the management principles for future conservation areas.

### New section 198B - Protection of reservation for future conservation area

New section 198B provides for a penalty where a lessee does an act, makes an omission or allows someone else to do an act or make an omission that is inconsistent with the management principles under section 198A.

### Replacement of ch 5, pt 2, div 1 (General conditions)

Clause 104 provides for a replacement of chapter 5, part 2, division 1 – General mandatory conditions.

# New Division 1 General mandatory conditions

### New section 198C - Operation of div 1

New section 198C allows for a new category of lease, licence and permit conditions to be known as "mandatory conditions".

### New section 198D - Mandatory conditions need not be registered

New section 198D makes it clear that mandatory conditions are binding even though not registered.

### Amendment of s 199 (Duty of care condition)

Clause 105 amends section 199 to clarify what a lessee's duty of care is in relation to a lease issued for agricultural, grazing or pastoral purposes.

### Insertion of new s 199A (Land may be used only for tenure's purpose)

Clause 106 inserts a new s 199A that makes it clear that a lease, licence or permit may only be used for the purpose for which the tenure was issued, and that a tenure issued for "pastoral purposes" may only be used for grazing and/or agricultural purposes.

### Replacement of ch 5, pt 2, div 2 hdg (Other conditions)

Clause 107 provides for a replacement of chapter 5, part 2, division 2 – Other conditions.

## New Division 2 Imposed conditions

### New section 202A - Operation of div 2

New section 202A provides for a new category of "imposed" conditions that bind lessees, licensees and permittees.

### New section 202B - Imposed conditions must be registered

New section 202B provides that imposed conditions must be registered.

### Amendment of s 203 (Typical conditions)

Clause 108 amends section 203 to clarify that a lease may be subject to conditions about the preparation, maintenance, implementation and review of a land management agreement.

### Replacement of ch 5, pt 2, div 3 hdg (Changing conditions)

Clause 109 replaces chapter 5, part 2, division 3 – Changing conditions.

## New Division 3 Changing and reviewing imposed conditions

### Replacement of s 210 (Changing conditions)

Clause 101 amends s 210 (power to change imposed conditions of lease, licence or permit by agreement) to provide for the power for a designated officer to change imposed conditions of a lease, licence or permit with the lessee's, licensee's or permittee's agreement. The section also provides for a lessee, licensee or permittee may also apply to change conditions, and that changes to conditions must be registered.

### Amendment of s 211 (Conditions must be reviewed)

Clause 111 replaces section 211 to require that a review of the conditions of a lease issued over rural leasehold land which is subject to a land management agreement must be carried out in conjunction with the review of the land management agreement under new section 176X.

### Amendment of s 212 (Minister may change conditions after review)

Clause 112 amends s 212 to reflect the introduction of the concept of imposed conditions.

### Replacement of ss 213 and 214

Clause 113 replaces sections 213 and 214 with a new section 213 and a new Division 5 - Remedial Action.

### New section 213 Obligation to perform conditions

New section 213 provides for the introduction of land management agreements and the concepts of mandatory and imposed conditions.

## New Division 5 Remedial action

### New section 214 - Minister's power to give remedial action notice

New section 214 provides the Minister with the power to give a lessee or licensee a remedial action notice and establishes the grounds for giving such a notice. It also provides that remedial action may require the lessee to enter into a new or amended land management agreement where one already exists.

### New section 214A - Steps required before giving remedial action notice

New section 214A outlines the steps required for the Minister to take if it is proposed to issue a remedial action notice.

### New section 214B - Appeal against decision to give remedial action notice

New section 214B provides that a lessee or licensee may appeal against the decision to give a remedial action notice.

### New section 214C - Additional condition of lease or licence to take required remedial action

New section 214C provides that on registration of the notice, it is a condition of the lease or licence that the lessee or licensee takes the action required under the notice.

### New section 214D - Failure to comply with remedial action notice

New section 214D establishes the penalties for failure to comply with a remedial action notice.

### New section 214E -Power to reduce term of lease or impose additional conditions

New section 214E provides the Minister with the power to reduce the term of the lease or impose additional conditions where a conviction is made

against a lessee or licensee for failing to comply with a remedial action notice.

### New section 214F - Provisions about reduction or additional conditions

New section 214F clarifies that where the Minister decides to reduce the term of, or impose additional conditions on, a lease the Minister must give written notice to the lessee of the decision and the reasons for it. It also provides that the lessee may appeal against the decision.

### Amendment of s 234 (When lease may be forfeited)

Clause 114 amends section 234 to clarify that a lease may be forfeited if a lessee is convicted of an offence under 198B or fails to comply with a remedial action order. However, a breach of a condition that a lessee comply with a land management agreement for the lease is not grounds for forfeiture but may be dealt with a remedial action notice

### Amendment of ch 5, pt 4, div 2 hdg (Forfeiture of leases generally)

Clause 115 amends the heading to clarify that this division refers to forfeiture for non payment

### Replacement of s 234A (Non-application of div 2)

Clause 116 clarifies that this divisions relates to non payment

### Amendment of s 235 (Notice of forfeiture for outstanding amounts)

Clause 117 amends sections 235 to require the Minister to advise the local government if the Minister intends to forfeit the lease or the Minister intends to refer the matter to the court. The clarification is required to support and strengthen current administrative processes and support the proposed amendment to section 236 and section 239(b) of the *Land Act 1994*

### Amendment of s 236 (Minister's options if amount unpaid)

Clause 118 amend sections 236 to also allow the chief executive or the local government to sell the lease if the lease may be forfeited.

### Insertion of new ch 5, pt 4, div 2A hdg and s237A

Clause 119 inserts new Heading  Division 2A  Forfeiture of leases by referral to court.

### New section 237A - Application of div 2A

New section 237A clarifies that this division only applies to lease forfeiture under section 234(b), (c),(d) or (f)

### Amendment of s 238 (Application to the court for forfeiture)

Clause 120 amends sections 238 to require the Minister to advise the local government if the Minister intends to forfeit the lease or the Minister intends to refer the matter to the court.  The clarification is required to support and strengthen current administrative processes and support the proposed amendment to section 236 and section 239(b) of the *Land Act 1994*).

### Amendment of s 239 (Governor in Council's options if court decides on forfeiture)

Clause 121 amends section 239 to clarify that the options that may be exercised under the section may be exercised by the Governor-in-Council with regards to freeholding leases and by the Minister with regards to term and perpetual leases.

### Omission of s 240 (Publication of notice of forfeiture)

Clause 122 replaces this section as it was a duplication of a later section

### Amendment of ch 5, pt 4, div 3, hdg (Forfeiture of leases for repeated convictions for vegetation clearing offences)

Clause 123 amends the heading to cover offences relating to reservations for future conservation areas.

### Omission  of s 240E - (Publication of notice of forfeiture)

Clause 124 omits this section

### Insertion of new ch 5, pt 4, div 3A

Clause 125 inserts a new division  3A  Sale of lease instead of forfeiture

## New Division 3A Sale of lease instead of forfeiture

## New Subdivision 1 Sale by lessee

### New section 240E Sale by lessee

New section 240E provides that a lessee may apply for permission to sell the lease and if approved written notice of such approval must be given to any mortgagee and relevant local authority.

## New Subdivision 2 Sale by mortgagee

## New Subdivision 3 Sale by local government

### New section 240G - Application

New section 240G provides the process for the sale of a lease by a local government

### New section 240H - Notice of approval

New section 240H sets out who must be given notice of the approval for the sale by the local authority

### New section 240I - Sale of lease

New section 240I sets out the process for the sale and how the proceeds of the sale are to be distributed.

## New Subdivision 4 Sale by chief executive

### New section 240J - Application of subdiv 4

New section 240J provides that subdivision 4 applies if the Minister has allowed the chief executive to sell the lease under section 236 or 239 (b)(iv).

### New section 240K - Notice that chief executive may sell

New section 240K provides the process by which the chief executive must notify persons with a registered interest in a lease of the Minister's decision to allow the chief executive to sell the lease. The chief executive's notice must also state whether the chief executives proposes to enter into possession of the lease or whether the chief executive proposes to enter into a transition to sale agreement with the lessee. Section 240K also provides the matters which must be included in the chief executive's notice.

### New section 240L - Entry into possession and sale

New section 240L applies if the chief executive enters into possession of the lease. The chief executive must advise the lessee that the chief executive is entering into possession and the lessee must, upon notification of the chief executive entering into possession, vacate the lease. To facilitate appropriate administration of the lease the Minister may change the conditions to which the lease will be subject while under the administration of the chief executive. However, despite the chief executive entering into possession of the lease the chief executive does not become liable to pay any amounts payable by the lessee in relation to the lease. For example, where the chief executive enters into possession of a lease the chief executive will not incur any liability in relation to a registered mortgage or a registered sublease. Where the chief executive has entered into possession of the lease to sell the lease the chief executive must execute the transfer of the lease.

### New section 240M - Transition to sale agreement

New section 240M applies where the chief executive and the lessee have entered into a transition to sale agreement.

Until the chief executive sells the lease the Minister may review the imposed conditions of the lease and change imposed conditions provided they are registered to ensure proper administration of the lease. This provision also outlines the matters which may be stated in the transition to sale agreement including rent, the lessee remaining in possession, and who will carry out administrative obligations and performance of the lease conditions. Where the lessee and the chief executive have entered into a transition to sale agreement, the chief executive must execute the transfer of the lease.

### New section 240N - Advice about entering transition to sale agreement

New section 240N will only apply where a written notice under section 240K has been issued which states that the chief executive proposes to enter a transition to sale agreement with the lessee. The lessee is required to advise whether or not the lessee wishes to enter into the agreement. However if the lessee does not wish to enter the transition to sale agreement or the chief executive and lessee are unable to agree on the terms of the agreement the chief executive may enter into possession of the lease and sell the lease unless the Minister withdraws the decision and takes an alternative action under section 236. Where the lease is allowed to be sold by the chief executive under section 239(b)(iv) the designated person may withdraw the decision to allow the chief executive to sell the lease and take another action under section 239.

### New section 240O - Making and registration of transition to sale agreement

The chief executive may enter into a transition to sale agreement or amend a transition to sale agreement only with the Minister's approval. Further, a transition to sale agreement including any amendment will only have effect if it is registered.

### New section 240P - Auction or sale of lease

New section 240P provides the manner in which the chief executive may sell the lease. The lease must first be offered for sale by public auction. The chief executive must publish a notice which meets certain criteria including outlining the conditions that will attach to the lease on transfer after sale. These conditions must be registered to take effect. Such conditions as stated in the sale notice may be different from the imposed conditions applying to the lease before the sale. Sections 114(1), 116 and 117 will also apply to the sale with the necessary changes. If the sale of the lease is not completed within 2 years after this subdivision applies the Minister may withdraw the decision and take an alternative action under section 236. If the sale of the lease is not completed within 2 years after this subdivision applies where the lease is allowed to be sold by the chief executive under section 239(b)(iv) the designated person may withdraw the decision to allow the chief executive to sell the lease and take another action under section 239.

### New section 240Q - Disposal of proceeds of sale

New section 240Q outlines how any proceeds from a sale by the chief executive are to be applied.

### New section 240R - Protection from liability

New section 240R provides protection from civil liability for the chief executive in particular circumstances. If civil liability is prevented from attaching to the chief executive by operation of subsection (1), the liability instead attaches to the State.

### Replacement of ch 5, pt 4, div 4 hdg - (Effort of Forfeiture)

Clause 126 replaces the wording of the heading to Forfeiture

### Insertion of new s 240S - (Notice of forfeiture)

Clause 127 inserts a new s 240S provides for a lessee of a forfeited lease as well as any mortgagee or relevant local government must be given written notice that the lease is forfeited. The forfeiture notice must also be published in the gazette.

### Amendment of s 241 (Effect of forfeiture)

Clause 128 amends s 241 by replacing incorrect terminology of a lease.

### Amendment of s 243 (Improvements on forfeited lease)

Clause 129 amends 243 to allow the lessee of a forfeited lease to apply to remove the improvements.

### Amendment of s 244 (Sale by mortgagee instead of forfeiture)

Clause 130 amends s 244 by clarifying that it is now the Minister who approves the sale of the lease by the mortgagee in lieu of the previous provision where this action was taken by the Governor in Council.

### Amendment of s 246 (Application of division)

Clause 131 (The number of this clause is duplicated later in the Bill) which is to be renumbered amends terminology in this section

### Amendment of s 249 (Payment by the State for improvements)

Clause 132 amends s 249 to clarify that payment by the State for improvements also include a expired or surrendered term lease that was for agricultural or grazing purposes. This section also now includes leases for rural leasehold land mentioned in s 160A (1)

### Insertion of new ch 5, pt 6

Clause 133 inserts a new chapter 5, part 6 to provide for the protection of monitoring sites established on lease land, licence land or permit land.

## New Part 6 Protection of monitoring sites

### New section 252 - Prohibition on interfering with monitoring marker or device

New section 252 outlines the penalty for interfering with a monitoring marker or device.

### New section 253 - Evidentiary provision for proceedings under s 252

New section 253 outlines the matters to be considered evidence in a proceeding for an offence against section 252(2).

### Amendment of s 275 (Registers comprising land registry)

Clause 134 amends sections 275 to replace reference to the register of easements over unallocated State land with reference to a register of unallocated State land. The amendment supports the position that the Automated Titles System (ATS) is the central repository for dealings with State land.

### Amendment of s 276 (Registers to be kept by chief executive)

Clause 135 amends sections 276 to replace reference to the register of easements over unallocated State land with reference to a register of unallocated State land. If land becomes, and remains, unallocated State land as a result of extinguishment of a tenure, including the absolute surrender of freehold land, the chief executive may record the particulars of

the land in the register of unallocated State land. The particulars of the register will include the particulars of any registered public utility easement over the unallocated State land.

### Insertion of new s 277A

Clause 136 clarifies that tenure documents and reserve documentation must be registered.

### Amendment of s 278 (Particulars that must be recorded)

Clause 137 This is an editorial amendment in line with other amendments to the Act relating to the registration of details.

### Replacement of s 279 (Recording issue and end of tenures)

Clause 138 omits the current section 279 of the Act and replaces the provision with a section that provides for the registration of a land management agreement or a transition to sale agreement and for the registration of any amendment or cancellation of the agreements.

Section 279 replaced by this clause was replaced because the provision is no longer needed. Under the amendments to the Act, a tenure will be extinguished upon registration of a document that terminates the tenure. For example, under section 34D, the revocation of a reserve takes effect on the day a revocation notice or plan of subdivision revoking the reserve is registered. New section 277A ensures the tenure document for a granted tenure and the document evidencing the dedication of a reserve must be registered.

### Amendment of s 286B (Requiring plan of survey to be lodged)

Clause 139 amends section 286B to reflect the introduction of the definition of 'lease land' in schedule 6 of the Act.

### Amendment of s 287 (Registered documents must comply with particular requirements)

Clause 140 clarifies section 287(1)(b) to instruct that a document lodged for registration must comply with the directions of the chief executive about how the document must be filled in and how information to be included in or given with the document must be included or given.

## Amendment of s 290F (Plan of subdivision may be registered)

Clause 141 amends section 279F to support the intended position that, other than the exceptions given under section 290FA, the plan of subdivision takes effect from registration. The amended section supports the introduction of other provisions, for example, the dedication of land as a road under section 290JA(3).

## Insertion of new s 290FA - Taking effect of plan of subdivision

Clause 142 introduces a provision to replace omitted section 330(c). New section 290FA allows the chief executive to cancel registration of a plan of subdivision if the plan was registered for the purpose of issuing a deed of grant, deed of grant in trust or a lease and the particulars of the deed or lease are not recorded in the appropriate register.

## Amendment of s 290J (Requirements for registration of plan of subdivision)

Clause 143 amends section 290J of the Act to clarify the requirements for registering a plan of subdivision under section 290J of the *Land Act 1994*. The amendment introduces a provision that-

- requires a licensee of an occupation licence to agree to a plan of subdivision if it is proposed that the occupation licence will be surrendered in whole or in part upon registration of the plan of subdivision; and
- requires the Minister to make a statement on the plan of subdivision identifying which lots created by the plan of subdivision are subject to the title reference for the lease, licence, reserve or unallocated State land affected by the subdivision.

The amendment is required to support the amendments being made by this Bill whereby an occupation licence may be surrendered wholly or partly upon registration of a plan of subdivision.

## Replacement of s 290K (Particulars to be recorded on registration of plan)

Clause 144 replaces section 290K of the Act (particulars to be recorded on registration of plan) with new sections 290JA, 290JB and 290K.

### New section 290JA - Dedication of public use land in plan

New section 290JA applies to the dedication of land to public use in a registered plan of subdivision. If the dedication is for a reserve or road, the coming into effect of the plan operates without anything further. Any easement for providing access or right of way on land dedicated as a road is extinguished to the extent that it is on the lot or part of a lot dedicated as a road.

### New section 290JB - Access for public use land

New section 290JB provides that a plan of subdivision providing for the dedication of a lot to public use other than as a road may only be registered in certain specified circumstances.

### New section 290K - Particulars to be recorded when registered plan takes effect

New section 290K details the particulars that are to be recorded when a registered plan of subdivision takes effect.

### Amendment of s 294 (Chief executive may require public notice to be given of certain proposed action)

Clause 145 amends section 294 of the Act (Chief Executive may require public notice to be given of certain proposed action). The amendment removes from the list of things for which the chief executive may ask the applicant to give public notice the issue of a substitute tenure document or other registered document or dispensing with production of a document

### Amendment of s 294B (Building management statement may be registered)

Clause 146 amends section 294B of the Act to clarify the original intent of the section. The intention of section 294B) was to extend the potential ambit of a Building management statement (BMS). Provided at least one of the lots to which the BMS applies is wholly or partly contained in, or containing, a building, the BMS was intended to apply to a vacant lot where a development approval exists which contemplates the construction of a building or part of a building on that lot subsequently. The amendment ensures that the provision operates as intended.

### Omission of s 296 (Tenure document to be returned to land registry)

Clause 147 does away with an old provision requiring a tenure document to be returned. Tenure documents are no longer issued.

### Amendment of s 299 (When a document is registered)

Clause 148 amends section 299 of the Act which provides that a document is registered when the particulars about the document are recorded in the relevant register by providing that the section applies subject to the new section 299A.

### Insertion of new s 299A - No registration in absence of required approval or consent of Minister

Clause 149 inserts a new section 299A into the Act which provides that a document is not registered even though the particulars about the document are recorded in the relevant register in the absence of a required approval or consent of the Minister.

### Omission of s 312 (Substitute document)

Clause 150 omits section 312 of the Act which empowered the chief executive to issue a substitute document where the chief executive is satisfied a tenure document or other registered document can not be further endorsed or has been lost or destroyed.

### Insertion of new s 318A - Minister may lodge mandatory standard terms document

Clause 151 inserts a new sectio 318A into the Act which enables the Minister to lodge or amend a standard terms document containing terms the Minister considers are necessary inclusions in the terms of a document creating an interest of any type under the Act.

### Insertion of new s 320A - Conflict with mandatory standard terms document

Clause 152 inserts a new section 320A into the Act which provides if there is a conflict between a mandatory standard terms document created under the new section 318A and the terms included in another document, the mandatory terms document prevails.

### Amendment of s 321 (Withdrawal or cancellation of standard terms document)

Clause 153 amends section 321 of the Act to enable the chief executive or the Minister to cancel a registered standard terms document . The amendment is consequential to the introduction by this Bill of a new section 318A which enables the Minister to lodge a mandatory standard terms document.

### Amendment of s 322 (Requirements for transfers)

Clause 154 amends s 322 to clarify that the Minister may require that the lodgement of the transfer must be accompanied by a statutory declaration signed by the incoming lessee or licensee stating the incoming lessee or licensee is aware of any land management agreement for the lease, or the licence and the level of compliance with the agreement. It also clarifies that the minister's approval is not needed to transfer a mortgage.

### Insertion of new s 322A (Severing joint tenancy by transfer)

Clause 155 has been inserted to enable a joint tenancy to be severed by transfer and thereafter the tenancy becomes tenants in common. This provides more flexibility and less bureaucracy

### Amendment of s 325 (Effect of registration of transfer)

Clause 156 amends section 325 to clarify that an incoming lessee is bound by the terms of any land management agreement on registration of the transfer.

Similarly, where the subject of the transfer is a term lease over rural leasehold land the and the transferor is a party to an indigenous land use agreement then the incoming lessee is taken to be a party to the indigenous land use agreement in place of the transferor and the rights and responsibilities of the transferor under the agreement become the rights and responsibilities of the transferee.

It is a condition of the lease that the incoming lessee must, within 28 days, give written notice of the transfer and of the effect of the above to the native title group and any other native title parties to the indigenous land use agreement and the native title registrar.

### Insertion of new s 326A - Disclosure of information to proposed transferee of lease or licensee

Clause 157 inserts a new 326A that indicates that, while other information may be provided to a transferee, the transferor's personal details may not [for privacy reasons]

### New section 327 - Absolute Surrender of deed of grant

Clause 158 replaces section 237 of the Act (Surrender of lease or deed of grant) with new sections 327 to 327I.

### New section 327A - Surrender of lease

New section 327A enables all or part of a lease to be surrendered absolutely or conditionally with the Minister's written approval.

### New section 327B - Application to surrender

New section 327B provides that a lessee may apply to surrender all or part of a lease.

### New section 327C - Notice of proposal to approve surrender

New section 327C sets out who must be given notice of a proposal to approve the surrender of all or part of a lease and what is required in that notice

### New section 327D - Submission against proposal to approve surrender

New section 327D sets out what requirements must be followed if a person wishes to make a submission against the proposal to approve the surrender of all or part of a lease.

### New section 327E - Registration surrenders lease

New section 327E provides that all or part of a lease may be surrendered by registering a surrender notice or plan of subdivision. If part of the lease being surrendered is part of a lot, the part of the lease may only be surrendered by registering a plan of subdivision. The surrender takes effect on the day the surrender notice or plan of subdivision is registered.

### New section 327F Notice of surrender

New section 327F sets out who must receive notice of the surrender of all or part of a lease and what is required in that notice.

### New section 327G - Effect of surrender

New section 327G provides that when all or part of a lease is surrendered the land the subject of the surrender becomes unallocated State land.

### New section 327H - Person to give up possession on surrender

New section 327H provides that once all or part of a lease is surrendered all people must vacate the land. A person who fails to give up possession of the land is deemed to be unlawfully occupying the land.

### New section 327I - Dealing with improvements

New section 327I sets out who has the right to remove improvements from the surrendered lease. The owner may only remove the improvements with the written approval of the Minister. If the Minister does not give that approval the improvements become the property of the State. The owner does have the right to payment for the improvements.

### Amendment of s 328 (Surrender of subleases)

Clause 159 amends section 328 to provide for a sublease to be wholly or partly surrendered by operation of law. The clarification is required to support more efficient administration of State land.

### Amendment of s 329 (Notice of surrender of needed)

Clause 160 Amends section 329 due to new section 327A

### Amendment of s 330 (Requirements for effective surrender)

Clause 161 amends section 330 to require any grantee of an easement or profit a prendre whose interest will be adversely affected by the surrender to give written approval to the surrender. The clarification is required to protect the registered interest of any grantee of an easement or profit a prendre whose interest would be adversely affected by registration of the surrender.

### Amendment of s 332 (Subleases require Minister's approval)

Clause 162 amends section 332 of the Act (subleases require Minister's approval) to empower the Minister to refuse to approve a sublease of a lease if the Minister is satisfied that the subleasing would be inappropriate, having regard to the purpose and conditions of the lease.

### Replacement of s 333 (General authority to sublease)

Clause 163 replaces section 333 of the Act (General authority to sublease) with a new section 333 dealing with general authority to lessee for particular dealings. The new section is expanded so that Minister can not only give general authority to sublease if the Minister considers appropriate but also to transfer or amend a sublease.

### Amendment of s 334 (When subleasing is totally prohibited)

Clause 164 amends section 334 of the Act which prohibits a lessee from subleasing a lease if the Act forbids subletting or the lease contains a condition specifically forbidding subletting. The amendment clarifies that the section only applies to leases issued under this Act.

### Amendment of s 334A (Application to sub-subleases)

Clause 165 amends section 334A of the Act (Application to sub-lease). The amendments are consequential to the amendments being made by this Bill to sections 332, 333 and 334 of the Act.

### Insertion of new ch 6, pt 4, div 3A

Clause 166 inserts a new chapter 6, part 4, division 3A which deals with mediation for disputes about terms of particular subleases.

## New Division 3A Mediation for disputes about terms of particular subleases

### New section 339A - Application of div 3A

New section 339A defines the type sublease and the nature of dispute to which new division 3A applies. Specifically, new division 3A will apply to a dispute regarding the terms of a sublease, other than a sublease of trust

land, where the dispute cannot be dealt with through an applicable dispute resolution process under another Act or under the sublease itself.

### New section 339B – Mediation

New section 339B sets out the methodology for the mediation of a dispute to which new division 3A applies. Specifically, the chief executive may, upon request from a party to such a dispute, refer the matter to mediation to be conducted by a person agreed to by the parties to the dispute or an appropriately qualified mediator appointed by the chief executive. The mediation process and costs thereof are to be agreed to by the mediator and the parties. Importantly, the parties must participate in the mediation good faith. A lessee who fails to do so is taken to have contravened a provision of the Act in relation to the lease.

### Amendment of s 346 (Sale of mortgaged lease)

Clause 167 amends s 346 to clarify that the lodgement of the transfer must be accompanied by a statutory declaration signed by the incoming lessee stating the incoming lessee is aware of any land management agreement for the lease, or the licence and the level of compliance with the agreement.

### Omission of ch 6, pt 4, divs 5 & 6

Clause 168 omits divisions 5 and 6

### Amendment of s 358 (Changing deeds of grant—change in description or boundary of land)

Clause 169 amends section 358 by introducing a provision which allows trustee of a deed of grant in trust to surrender the land contained in the trustee's deed of grant in trust if the description of the land is no longer correct because of an absorption of all or part of a reservation under chapter 2, part 2a. The clarification is required to support more efficient administration of State land.

### Insertion of new s 358C - Correction of minor error in deed of grant

Clause 170 inserts new section 358C in response to the introduction of the provisions under clauses 21 and 56. A trustee of a deed of grant in trust will be allowed to surrender the land contained in the trustee's deed of grant in trust if the description of the land is no longer correct because of an

absorption of all or part of a reservation under chapter 2, part 2, the inclusion of closed road or the simultaneous opening and closing of road under chapter 3 part 2 division 3.

### Amendment of s 359 (Correcting or cancelling deeds of grant)

Clause 171 amends section 359 in response to the introduction of new section 358C.

### Amendment of s 360 (Governor in Council may change leases)

Clause 172 amends section 360 to limit the extent of the provision to freeholding leases in response to the introduction of sections 360A and 360B. The provisions of section 360(1) have been amended to be more appropriate to a freeholding lease.

### Insertion of new ss 360A to 360F

Clause 173 inserts new sections 360A to 360F into the Act

### New section 360A - Minister may change term leases, other than State leases, or perpetual leases

New section 360A applies to the amendment of a perpetual lease or a term lease other than a State lease over a reserve. Subsection (2) applies to the amendment of the description of a lease under this section by registering a plan of subdivision.

Subsection (3) applies to the amendment of a lease by registering an adjustment notice.

### New section 360B - Minister may change State lease

New section 360B applies to the amendment of a State lease over a reserve. The provisions of section 360B(1) are the amendments appropriate to a State lease over a reserve.

### New section 360C - Applying to amend description of lease

New section 360C sets out who may apply for the amendment of a lease under section 360, 360A or 360B.

### New section 360D - Notice of proposal to amend lease

New section 360D sets out who must be advised of the proposal to amend the description or anything else in a lease under section 360, 360A or 360B and what information they must receive relating to the proposal.

### New section 360E Submissions

New section 360E sets out what requirements must be followed if a person wishes to make a submission against the proposal to amend a lease under section 360, 360A or 360B.

### New section 360F Notice of registration of amendment of lease

New section 360F sets out who must be given notice of the amendment of a lease under section 360, 360A or 360B.

### Amendment of s 361 hdg (Definitions)

Clause 174 amends section 361 omitting the definition of public utility provider which has been relocated to schedule 6 of the Act.

### Amendment of s 372 (End and continuation of easements)

Clause 175 is self explanatory

### Insertion of new s 373AA - Particular matters about easements and permit land

Clause 176 inserts new section 373AA to allow an easement to be registered over permit land without the permittee's consent and confirms the rights of the grantee of an easement prevail over the occupation rights under the permit.

### Amendment of s 383 (Power of attorney)

Clause 177 amends section 383 by confirming that an individual as trustee can not, under a power of attorney, authorise a person to act on the trustee's behalf.

### Insertion of new s 389B - Effect on writ of execution of transfer after sale by chief executive

Clause 178 amends section 389B to ensure that a transfer of a lease by the chief executive under chapter 5 part 4 division 3A may be registered even if a writ of execution has been registered in relation to the lease. The amendment allows the chief executive to cancel the writ on registration of the transfer by the chief executive

### Insertion of new ch 6, pt 4, div 11A

Clause 179 inserts a new division dealing with caveats.

## New Division 11A Caveats

## New Subdivision 1 Caveats generally

Although the particulars of interests in State land are held in the registers kept by the chief executive under section 276, no provision exists that enables the State to lodge a caveat on a title for the State land if the State considers registration of any further dealings with the land may be contrary or prejudicial to the interest of the State. Division 11A is introduced to remedy that matter and, where it is currently considered appropriate, the right to lodge a caveat on a title for State land is also being extended to other parties.

### New section 389C - Requirements of caveats

New section 389C is self explanatory

### New section 389D - Lodging caveat

New section 389D provides for the persons who may lodge a caveat

### New section 389E - Notifying caveat

New section 389E is self explanatory

### New section 389F - Effect of lodging caveat

New section 389F details the effect of lodging a caveat, when a caveat ceases to have effect, and which documents may be registered even if a caveat has been registered in the appropriate register. Subsection (4) provides that the exceptions given under subsection (3)(c), (d) and (e) do not apply to a caveat lodged by the chief executive under section 389L.

### New section 389G - Withdrawing caveat

New section 389G is self explanatory

### New section 389H - Removing caveat

New section 389H is self explanatory

### New section 389I - Cancelling caveat

New section 389I allows the chief executive to cancel a caveat when requested to do so provided certain conditions have been met and requires the chief executive to give at least 7 days notice before cancelling a caveat.

### New section 389J - Further caveat

New section 389J allows the Supreme Court to extend a caveat on the same grounds or substantially the same grounds as relied on in a previous caveat which has either been withdrawn, removed or cancelled.

### New section 389K - Notices to the caveator

New section 389K deals with notices to caveators and the service of those notices under this division. A discretion is given to the chief executive as to the manner in which notice is given notice to a caveator. Subsections (3) and (4) deal with the change of name and address of a caveator and the noting of those changes on the caveat.

## New Subdivision 2 Chief executive's caveat

### New section 389L - Chief executive may prepare and register caveat

New section 389L allows the chief executive to prepare and register a caveat over a State tenure in favour of the State. In particular circumstances, the chief executive may also prepare and register a caveat to prevent a dealing with a State tenure where that tenure, in the chief executive's opinion, belongs to the State, a person who is intellectually impaired, or who is absent from the State.

If a State tenure is to be extinguished by, for example, forfeiture, surrender or resumption, the chief executive may prepare and register a caveat in the appropriate register to prevent registration of a dealing contrary to the interest of the State.

### Amendment of s 390A – Special provision for transport land

Clause 180 amends section 390A by allowing the State as lessee of a perpetual lease for marine facility purposes to lodge a document listed under subsection (1) in the land registry and have that document registered without having to first obtain the Minister's approval.

### Insertion of new s 390B - Particular dealing with rail land

Clause 181 inserts new section 390B which will allow the chief executive to amend the particulars of a perpetual lease for rail land if part of the lease has been granted in fee simple to the State. All registered interests affecting the rail land granted in fee simple become registered interests in the issued deed.

### Insertion of new s 391A - General provision about approvals

Clause 182 inserts a new section which removes from doubt the right of the Minister or chief executive to condition an approval to the conditions the Minister or chief executive considers appropriate.

### Amendment of s 392 (Delegation by Minister)

Clause 183 amends section 392 of the Act consequential to other amendments being made by the Bill. The power to defer rent payments in

section 192, which is being given to the Minister, is added to the list of matters the Minister may not delegate.

As the Minister now grants leases and not the Governor in Council, the power to grant a lease has been included in the list of those functions that the Minister may not delegate. Nor may the Minister delegate those new powers in the Bill associated with extending the term of a lease, reducing the term or imposing additional conditions.

In addition, the previous power to delegate in relation to rail land, to an officer of the relevant department associated with the *Transport Infrastructure Act 1994*, has been extended more generally to other leased land held by the State in association with the performance of functions under a relevant Act.

### Amendment of s 393 (Delegation by chief executive)

Clause 184 amends section 393 of the Act consequential to other amendments being made by the Bill. The power to appoint a person as a mediator under section 339B (3)(a)(ii)which is being given to the Chief Executive, is added to the list of matters the Chief Executive may not delegate.

### Replacement of s 394 (Committee of review)

Clause 185 replaces section 394 with new sections 394 and 394A.

### New section 394 - Committees

New section 394 provides for the establishment of the State Rural Leasehold Land Advisory Committee and regional committees to support the Advisory Committee.

### New section 394A – Ministerial guidelines about what constitutes a good condition for lease land

New section 394A enables the Minister to make guidelines about what constitutes good condition for lease land for a lease. Before making the guidelines the Minister must seek advice from the advisory committee under section 394 about the appropriateness of the guidelines.

If, under the Act, the Minister may consider or must be satisfied that the lease land for a particular lease is in good condition, the Minister may have regard to the guidelines.

### Amendment of s 400 (Power to enter land, generally)

Clause 186 amends section 400 to legislatively provide for the establishment of monitoring sites for the purposes of assessing land condition, and monitoring performance with land management agreements and the Act.

### Amendment of s 404 (No trespassing)

Clause 187 amends s 404 to make it clear that the existence of an offer does not make it lawful to trespass.

### Insertion of new ss 405A and 405B

Clause 188 inserts sections 405A and 405B to clarify that the powers of the chief executive with regards to dealing with unlawful occupation of unallocated State land, trust land and roads

### New section 405A - Exercise of chief executive's powers under division

New section 405A provides for a clarification of the exercise of the chief executive's powers to deal with unlawful occupation of unallocated State land, trust land and roads under the Act. Where land has been dedicated as a reserve under the trusteeship of a trustee or has been dedicated as a road and is under the control of a local government, the new section supports that the chief executive's powers are in addition to the powers of a trustee under the Land Act 1994 and a local government under the Local Government Act 1993 to deal with unlawful occupation.

### New section 405B - Occupation fee for unlawful occupation by offeree until grant of tenure

New section 405B provides for the chief executive to charge a reasonable fee for unlawful occupation of land to cover the period between the time a person has unlawfully occupied the land and the time the person has accepted an offer of tenure in relation to the land.

### Amendment of s 406 (Notice to person to leave land, remove structures etc.)

Clause 189 amends section 406 of the Act to provide for a regulation to set out the required time provided to a person to comply with a trespass. For

transient occupants of unallocated State land, trust land and roads the present 28 day requirement of sections 406(4) is too long to enable effective action to be taken to address this form of trespass. As the extent and nature of trespass situations varies from transient occupations, not involving any improvements on the land, to the construction of major buildings and infrastructure, the time allowed to comply with a trespass notice needs to be varied to match the circumstances. The regulation will set out a required time for each trespass related act set out in section 404(1).

### Insertion of new ch 7, pt 2A

inserts new chapter dealing with applications

## 'Part 2A General provisions for applications

### New section 420A - Application of pt 2A

New section 420A applies to the making of applications under this Act

### New section 420B - Application guidelines

New section 420B clarifies that the chief executive may keep guidelines about how applications should be made

### New section 420C - Requirements for making an application

New section 420C clarifies that if there is a requirement for making an application then such application must be to the chief executive , in the approved form and must be accompanied by the prescribed fee.

### New section 420D - Refusal of frivolous or vexatious applications

New section 420D provides for the refusal of frivolous and vexatious applications.

### New section 420E - Request to applicant about application

New section 420E this provision is self explanatory

### New section 420F - Refusing application for failure to comply with request

New section 420F provides that if a person does not comply with a request in relation to their application , their application may be refused

### New section 420G - Particular criteria generally not exhaustive

New section 420G provides that the decision maker may consider other criteria in making their decision

### New section 420H - Particular grounds for refusal generally not exhaustive

New section 420H clarifies the position of the decision maker in regards to the refusal of an application.

### New section 420I - General power to impose conditions

New section 420I clarifies that the decision maker may, when making a decision in regards to an application, may condition the approval.

### Insertion of new s 441A - Requirement for making conditional offers_

Clause 191 inserts new s 441A that clarifies where offers are subject to conditions, the offer lapses if the conditions are not complied with.

### Amendment of s 442 (Lapse of offer)

Clause 192 amends s 442 to provide more flexibility if being able to extend offers, and if offers are extended it clarifies that the price or premium can be amended.

### Amendment of s 468 (Existing leases continue)

Clause 193 amends s 468 to clarify that a grazing homestead perpetual lease can be used for grazing and/or agriculture.

### Amendment of ch 8, pt 5, div 1, Occupation licences and permits

Clause 194 removes permits from this division.

### Replacement of s 481 (When occupation licence may be cancelled)

Clause 195 provides for the Minister to cancel a occupation licence in this section.

### New section 481 - Cancellation

New section 481 clarifies when a occupation license may be cancelled

### New section 481A - Absolute surrender

New section 481A provides for the surrender of all or part of an occupation licence.

### New section 481B - Application to cancel or surrender

New section 481B this provision is self explanatory**.**

### New section 481C - Notice of proposal to cancel or surrender

New section 481C This provision clarifies who must be given notice of the proposal to cancel or surrender an occupation licence and what is required in that notice.

### New section 481D - Submissions

New section 481D sets out what requirements must be followed if a person wishes to make a submission against the proposal to cancel or surrender a occupation licence.

### New section 48IE - Registration cancels occupation licence

New section 481E sets out when a occupation licence may be cancelled by registering a cancellation notice or a plan of subdivision. However if only part of a occupation licence is being cancelled, the cancellation may only be made by registering a plan of subdivision. The cancellation takes effect on the day the cancellation notice or plan of subdivision is registered.

### New section 481F - Registration surrenders occupation licence

New section 481F sets out when a occupation licence may be surrendered by registering a surrender notice or a plan of subdivision. However if only part of a occupation licence is being surrendered, the surrender may only be made by registering a plan of subdivision. The surrender takes effect on the day the surrender notice or the plan of subdivision is registered.

### New section 481G - Notice of cancellation or absolute surrender

New section 481G sets out who must be given notice of the surrender or cancellation of an occupation licence and what is required in that notice .

### New section 481H - Effect of cancellation or absolute surrender

New section 481H provides that when a occupation licence is cancelled or surrendered the occupation licence ends, the licensee is divested of any interest in the occupation licence and for a cancellation no compensation is payable. The land becomes unallocated State land. or if the land was subject to a designated occupation licence the land remains a forest reserve, a State forest or timber reserve.

### New section 481I - Person to give up possession on cancellation or absolute surrender

New section 481I provides that once a occupation licence is cancelled or surrendered a person must vacate the land. A person who fails to give up possession of the land is deemed to be unlawfully occupying the land.

### New section 481J - Improvements

New section 481J sets out that the licensee has the right to remove improvements from the cancelled or surrendered occupation licence and that the person has the right to payment for the improvements if the land is further dealt with by sale or lease.

### Insertion of new ch 8, pt 5, div hdg

Clause 196 inserts a new heading Division 1A Permits

### Amendment of s 495 hdg (Definitions)

Clause 197 inserts for division 2.

### Amendment of s 503B hdg (Definitions)

Clause 198 inserts for division 2A

### Insertion of new ch 9, pt 1D

Clause 199 inserts new Part 1D.

# New Part 1D Transitional provisions for Land and Other Legislation Amendment Act 2007

## New Division 1 General transitional provisions

### New section 521E - Divesting and vesting trust land

New section 521E allows for trust land mentioned in s 44(2)(c) or (e) that was held by a trustee representing the State then on commencement of this section the trust land is vested in the State and that the vesting must be registered by the chief executive.

### New section 521F - Existing leases exempted from particular amendments

New section 521F sets out which leases are exempted from these amendments

### New section 521G – Offer of additional area

New section 521G clarifies which sections do not apply to an offer of an additional made before the commencement of this section

### New section 521H - Forfeiture for outstanding amount

New section 521H clarifies that if the Minister has given notice of his intent to forfeit a lease under s 235(1) or 238(2) before the commencement of this new provision , the previous provisions continue to apply to the forfeiture of the lease.

### New section 521I – Requirements for plan of subdivision

New section 521I section 290J as in force before the commencement of this section continues to apply to a plan of subdivision if it was lodged in the land registry prior to commencement

### New section 521J –Non-application of s 299A to particular documents

New section 521J clarifies that section 299A does not apply to a document if the particulars about that document are recorded in the relevant register before this section commenced.

### New section 521K - Application made before commencement

New section 521K clarifies that an application made prior to the commencement of this section and has not been finalised by the time this provision commences then the application continues under the old provisions unless the applicant asks for the new provisions to apply.

### New section 521L - Continuance of power to substitute particular tenure or registered documents

New section 521L clarifies that certain documents can still be replaced by a substitute document

### New section 521M - Permits to occupy and unallocated State land

New section 521M clarifies that where a permit to occupy was issued over unallocated State land, the land remains unallocated State land.

### New section 521N - Dealing with disputes under particular subleases

New section 521N provides for the dealing with disputes with subleases in force prior to the commencement of the section

### New section 521O Exclusion of imposed condition reviews for particular leases

New section 521O provides that section 211 (Conditions must be reviewed) does not apply to a lease that started before 1 July 1995.

### Amendment of sch 1 (Community purposes)

Clause 200 inserts new community purposes into the schedule of reserves for community purposes

### Insertion of new schedule 1A - Provisions that include mandatory conditions for tenures

Clause 201 inserts a new Schedule 1A listing which provisions include mandatory conditions for tenures

### Amendment of sch 2 (Original decisions)

Clause 202 amends schedule 2 by deleting and adding provisions relating to original decisions

### Amendment of sch 6 (Dictionary)

Clause 203 amends the schedule (Dictionary) to insert new definitions and amend existing definitions as required by the amendments in the Bill.

## Part 5 Amendment of Land Title Act 1994

### Act amended in pt 5

Clause 204 provides that this part amends the *Land Title Act 1994*.

### Amendment of s 10 (Form of instruments)

Clause 205 corrects a minor drafting error in section 10(1) of the Act. The section currently provides that an instrument lodged by a person or issued by the registrar must comply with the directions of the registrar about:

- how the appropriate form must be filled in; **or**
- (ii) how information to be included in or given with the instrument must be included or given.

The amendment will replace the ‘or’ with an ‘and’.

## Amendment of s 50 (Requirements for registration of plan of subdivision)

Clause 206 amends section 50 of the *Land Title Act 1994* to provide for the Minister to approve a plan of subdivision registered to effect a surrender of all or part of a deed of grant in trust under section 55 of the *Land Act 1994*. In addition, registration of a plan of subdivision to effect a surrender of all or part of a deed of grant in trust does not need local government approval required under section 50(h) and (i) of the *Land Title Act 1994.*

The proposed amendment is required to support more efficient administration of State land and support the proposed amendments to the *Land Act 1994.*

## Amendment of s 51 (Dedication of public use land in plan)

Clause 207 amends section 51 of the *Land Title Act 1994* to support the position that where public use land is identified for a community purpose and the plan is approved by the Minister, registration of the plan dedicates the identified land as a reserve for the community purpose shown.

## Amendment of s 54A (Building management statement may be registered)

Clause 208 amends section 54A of the Act to clarify the original intent of the section. The intention of section 54A(4) was to extend the potential ambit of a Building management statement (BMS). Provided at least one of the lots to which the BMS applies is wholly or partly contained in, or containing, a building, the BMS was intended to apply to a vacant lot where a development approval exists which contemplates the construction of a building or part of a building on that lot subsequently.

Currently subsection (3) could allow a building management statement to apply to a vacant lot for which no development approval exists. The amendment ensures that the provision operates as intended.

## Amendment of s 189A (Payment to compensated mortgagee)

Clause 209 changes the heading of this section.

# Part 6 Amendment of Survey and Mapping Infrastructure Act 2003

### Act amended in pt 6

Clause 210 provides that this part amends the *Survey And Mapping Infrastructure Act 2003.*

### Amendment of s 32 (Authority for cadastral surveyor to act for another in particular circumstances)

Clause 211 provides for a cadastral surveyor to authorise a second surveyor to deal with requirements of registering authorities regarding a survey plan. This could when the surveyor is going on leave or travelling interstate or overseas. The amendment removes the need for an authorisation to specify the plan or plans to which it relates. It provides more flexibility by allowing the cadastral surveyor to authorise another surveyor for a period of time or from a particular time, until ended by the cadastral surveyor

The original surveyor must advise the Surveyors Board of Queensland of the authorisation. When an authorisation is ended by the original surveyor, the Board must again be advised so that the registering authorities can be informed.

# Part 7 Amendment of Surveyors Act 2003

### Act amended in pt 7

Clause 212 provides that this part amends the *Surveyors Act 2003*

### Amendment of s 75 (Carrying out a cadastral survey)

Clause 213 is amended by removing the descriptive term “personal” in regard to supervision recognising that varying levels of supervision may be required for different levels of competency. For example, a newly registered surveying graduate who has recently completed a degree will most likely require direct personal supervision in the field. However, as the person gains experience and understanding, the nature of the supervision

may change. In this case, the supervising surveyor would still need to check the graduate's calculations and decisions about the reinstatement of boundaries, but this could be done in the office.

## Insertion of new s 188A - Board may make guidelines

Clause 214 allows for the Board to make guidelines, consistent with the purpose and functions of the Board.

In particular guidelines may be made to assist registrants comply with the code of practice. The code supplements the Act and Regulations in articulating what is acceptable professional conduct for registrants. However, the code is written in general terms and the Board may consider it necessary from time to time to provide more detailed guidance regarding one aspect of the code. Guidelines on how the code of conduct might be interpreted and complied with support the performance monitoring and disciplinary functions of the Board.

This guideline making power also provides the mechanism for the Board to develop and deliver a range of material on how surveyors can effectively supervise different categories of registrants or registrants seeking endorsement, in order to ensure that the supervision delivers two outcomes, namely (a) survey quality and (b) surveyor competence.

The guidelines will not be enforceable but will assist in clarifying matters to registered persons.

## Amendment of sch 3 (Dictionary)

Clause 215 modifies the definition term for "professional conduct" and "professional misconduct". Firstly the amendment makes it clear that the terms incorporate a responsibility for all aspects of a survey including those instances where a survey is carried out by a supervised person. The provision of adequate supervision commensurate with the supervised registrant's level of competency therefore becomes a matter for consideration in assessing professional conduct.

Secondly the amendment broadens the definition to incorporate compliance with the *Survey and Mapping Infrastructure Act 2003* and in so doing clarifies the scope of what constitutes professional conduct.

The effect of this change is that the Board can deal with non-compliance with the Act and Regulation by registered persons through its disciplinary processes. This will relate particularly to Part 3 of the Act "Carrying out surveys", and Parts 2 and 4 of the Regulation – "Principles to be applied in

carrying out surveys" and "Provisions about survey standard and survey guideline matters".

# Part 8 Amendment of Transport Infrastructure Act 1994

### Act amended in pt 8

Clause 216 provides for this part to amend the Transport Infrastructure Act 1994.

### Insertion of new s 477A - Power to deal with particular land

Clause 217 will facilitate the commercial development or provision of community infrastructure in, over, across or under transport land. The chief executive may request the Governor in Council to approve the land held by the State in fee simple.

# Part 9 Amendment of Vegetation Management Act 1999

### Act amended in pt 9

Clause 218 provides for this part to amend the *Vegetation Management Act 1999.*

### Insertion of new pt 2, div 4, sdiv 1 hdg

Clause 219 inserts a new subdivision heading to provide a distinction between the existing declaration provisions by Governor in Council or Minister and the proposed declarations by the chief executive.

### Insertion of new pt 2, div 4, sdiv 2

Clause 220 inserts a new subdivision heading for declarations by the chief executive and inserts new sections 19E to 19M. In May 2004 the government made $12 million in funding available under the Vegetation

Incentives Program (VIP) to assist landholders to protect high value native vegetation on their land. This program has now been integrated with the Environmental Partnerships Scheme (EPS) under the Blueprint for the Bush. Receiving funding is conditional on areas being securely and legally protected from future clearing. This can be achieved by declaring the area to be a nature refuge under the *Nature Conservation Act 1992*, placing a covenant over the land, or declaring the area as an area of high conservation value under the *Vegetation Management Act 1999* (VMA).

The VMA provides criteria that an area must meet to be considered an area of high nature conservation value or an area vulnerable to land degradation. The VMA declaration process is lengthy when applied on an individual property basis due to the notification and property specific code requirements.

The amendments under this subdivision enable a simplified process, based on the current declaration provisions, that allows landowners to voluntarily nominate their land for declaration under the VMA without the public notification and submissions process. This change will assist those voluntarily seeking to protect high value native vegetation and land vulnerable to land degradation, receive incentives under the VIP, EPS and to secure offset areas as a condition of approvals to clear native vegetation. It will not impact on the existing formal declaration processes which remain unchanged.

## New Subdivision 2 Declarations by chief executive

### New section 19E - Request for declaration

New section 19E sets out the specific elements to be included in the request for a declaration, including a management plan. It also prescribes the information to be included in the management plan to ensure the declared area is managed to meet the purposes of either conservation of high nature conservation value or prevention of land degradation. The management plan is a mandatory component of the declaration that must clearly define the outcomes and goals of the declared area, including measurable performance indicators. For example, a clear outcome could be that an area returns to remnant status and this will be achieved by the area being mapped as remnant on a regional ecosystem map certified by the chief executive. The management plan also contains a requirement for the proponent to provide information to allow the chief executive to map the declared area. This will be used by the chief executive to produce a

category 1 area Property Map of Assessable Vegetation (PMAV) when the declaration is made, pursuant to section 20B of the VMA. The management plan can be used to restrict or promote certain activities and access to ensure the management outcomes are achieved. For example, if a proponent proposes to declare an area of non remnant vegetation on freehold land to secure an offset area as a condition of approval to clear an endangered regional ecosystem, they could propose restricting the use of certain exemptions provided in schedule 8, part 1, table 4, item 1A of the *Integrated Planning Act 1997* (IPA). This provision does not override the IPA.

### New section 19F - Making declaration

New section 19F provides for the process by which the chief executive makes the declaration, including the giving of a written notice. However, it is not intended that the chief executive can declare an area where the interests of the State may be affected, such as where a proponent seeks to declare a property where the declaration may hinder the development of a state significant project

### New section 19G - Particular criteria for declaration

New section 19G outlines the particular criteria for which the declaration can be made. These criteria are the same as Section 19 of the existing declarations made by the Governor in Council or the Minister, with the exception that subsection 19G(1)(b)(vi) has been added to allow for declarations in areas other than subsections 19G(1)(b)(i) to (v) where it can be demonstrated that the proposed declared area contributes to the conservation of the environment. The information provided by the proponent in their initial request for declaration will form the basis of this consideration by the chief executive.

### New section 19H - Code for clearing of vegetation

New section 19H provides guidelines for the making and amendment of a declared area code, including a clear written agreement provision whereby the declared area code—if prepared—will be proposed to the proponent for their scrutiny and agreement before the declaration is made. The declared area code is not part of the management plan, rather it is used to assess the clearing of vegetation made assessable under schedule 8, part 1, table 4 of the IPA. Amendments provided for in s 22A further restrict the relevant purposes that can be applied for in declared areas declared under this subdivision. The section also provides that, in the absence of a declared

area code being prepared, the relevant regional vegetation management code will be the code for the clearing of vegetation in the area.

### New section 19I - Amendment of management plan

New section 19I provides for the amendment of the management plan for the declaration—by agreement—with the owner and the chief executive. For example, if the management plan requires amendment due to unforseen circumstances, it can be amended by agreement between the owner and the chief executive. Unforseen circumstances could include natural events such as drought, fire or weed invasion or achieving individual management outcomes before a stated timeframe. The amendment provision ensures there is flexibility to ensure the management plan remains up to date. It is not intended to provide for erosion of the management intent or outcomes for the area.

### New section 19J - When management plan stops having effect

New section 19J provides for the circumstances when the management plan stops having effect. This is restricted to when the management plan ends under its terms, or when the declaration ends under section 19L. This section emphasises the importance of defining the management outcomes and goals of the declared area, including measurable performance indicators as required in section 19E.

### New section 19K - Recording of declared areas and management plans

New section 19K provides for the recording of declared areas and management plans in the Land Registry. Prospective purchasers will be advised through the title search of the presence of a declaration and associated management plan and where further details of the declaration and management plan can be obtained. This information is important to the property market as future owners will be bound by the plan and declaration.

### New section 19L - Ending declaration

New section 19L outlines the circumstances when a declaration can end. This section emphasises the importance of defining the management outcomes and goals of the declared area, including measurable performance indicators as required in section 19E. It is intended that the chief executive can end a declaration where the interests of the State—such

as the development of a state significant project—are hindered by the presence of a declared area. However, where the declared area code recognises state significant projects as a relevant purpose, the proposed development could be assessed against the code, with the ability to offset the area. In these cases, revoking a declaration may not be necessary.

### New section 19M - Information to be available for inspection

New section 19M provides that the chief executive must make the declaration notice, management plan and declared area code for each declaration available for public inspection and purchase.

### Amendment of s 20B (When chief executive may make property map of assessable vegetation)

Clause 221 omits section 20B(2) as the definition of "unlawfully cleared" has been included into the current "unlawfully cleared" definition in the dictionary of the VMA.

### Amendment of s 20E (When maps may be revoked)

Clause 222 amends s 20E to update references to reflect other changes in this Bill,

Subclause (6) provides for the revocation of a PMAV. This ensures consistency with the provision for the removal of a declaration under section 19L. However, it is envisaged that a PMAV would continue to have effect until the vegetation is mapped as remnant on a regional ecosystem map

### Amendment of s 22A (Particular vegetation clearing applications may be assessed)

Clause 223 amends s 22A to replace "establishing necessary built structure" with "constructing necessary built infrastructure", this is consistent with earlier amendments to the IPA. The replacement of "for establishing" with "to construct" limits clearing to the area required for constructing the built infrastructure. "Establishing" could allow clearing for not only construction of built infrastructure but also for the subsequent operation of infrastructure which is not the intent of this provision. For example, the construction of a centre pivot irrigator would require only a relatively narrow linear area to be cleared. For the centre pivot irrigator to then operate effectively the area required to be cleared would be a circle

with a radius equivalent to the length of the irrigator—a much larger area. To remove doubt the term "built infrastructure" includes public and privately owned buildings, pipelines, dams and powerlines. The term does not include agricultural purposes such as growing crops in the soil and pasture for stock. The addition of "to construct" also ensures consistency with the definition of routine management in the IPA where the term built infrastructure is also used. In addition "Vehicular track" has been added to section 22A(2)(d) because the ordinary meaning of "road" only allows clearing of roads for public uses. The intent of this provision is to allow for clearing applications to maintain and establish public and private roads and tracks. The inclusion of the term "vehicular track" achieves this intent.

Subclause (2) inserts a new section 22A(2C) to restrict the relevant purposes that a vegetation clearing application can be lodged for in areas declared to a declared area by the chief executive under division 4, subdivision 2 of the VMA.

## Amendment of s 22C (Modifying Planning Act effect of appeal rights on ongoing applications (assessment manager))

Clause 224amends s 22C to remove the terms "ongoing" and "an ongoing application" and replaces them with "particular" and "a vegetation clearing application that is for a relevant purpose under section 22A" respectively. The definition of "ongoing application" was originally created to distinguish non-broadscale applications from broadscale applications. This distinction is no longer needed.

The clause also amends s 22C to replace "a tribunal" with "the Planning and Environment Court under the Planning Act, section 4.1.27". Under section 22C(1) and (2) of the VMA, an appeal relating to an ongoing application for which the chief executive of the Department of Natural Resources and Water is the assessment manager may only be made to a tribunal. This was to facilitate the phase out of broadscale clearing by the end of 2006. With the end of broadscale clearing, to avoid perceived conflicts of interest with the Department constituting tribunals and to avoid duplication, appeals for future vegetation clearing applications will be directed back to the Planning and Environment Court.

## Amendment of s 22D (Modifying Planning Act effect of appeal rights on ongoing applications (concurrence agency))

Clause 225 amends s 22D to be consistent with the amendments to 22C.

**Insertion of new pt 6, div 4**

# 'Division 4 Transitional provision for Land and Other Legislation Amendment Act 2007

## New section 84 Existing appeals under s 22C

Clause 226 inserts a new section 84 to allow for any existing appeals that have been lodged with the tribunal and have not been decided, to carry on as if the *Land and Other Legislation Amendment Act 2007*, part 8, had not commenced.

## Amendment of schedule (Dictionary)

Clause 227 amends the schedule (Dictionary) to insert new definitions and amend existing definitions as required by the amendments in the Bill.

The definitions for "declared area code", "ongoing application" and "unlawfully cleared" are omitted.

New definitions for "conservation agreement", "conservation covenant", "natural environmental values", "declared area code", "indigenous access and use agreement", "proponent", "road" and "unlawfully cleared" are provided. "Unlawfully cleared" has been amended to incorporate the provisions of a contravention of a tree clearing provision under the *Land Act 1994*. This has been an existing definition located elsewhere in the Act, and is now inserted into the dictionary. In order to be consistent with the IPA, the same definition of "road" has been included in the VMA.

The definitions "category 1 area", "category 2 area", category 3 area", "declared area" and "forest practice" are amended. The amendment to "category 1 area" includes an insertion for the definition of category 1 area for areas subject to compliance notices under the VMA or enforcement notices under the IPA. This insertion achieves the similar intent as the inclusion of areas that have been "unlawfully cleared" for the definition of a category 1 area. It will allow the making of a Property Map of Assessable Vegetation as a category 1 area under s 20B(1)(f) for compliance and enforcement notices. This PMAV and subsequent category 1 area will ensure that clearing in areas subject to these notices will remain assessable development.