# Land and Other Legislation Amendment Bill 2014

# Explanatory Notes

## Short title

The short title of the Bill is the *Land and Other Legislation Amendment Bill 2014*

## Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- Implement the first phase of state land tenure reforms which improve tenure security for term leases used for agriculture, grazing and pastoral purposes and declared offshore island tourism leases issued under the *Land Act 1994* (Land Act), and begin to reduce red tape and regulatory burden on landholders, business and government.

- Reduce red tape and fix minor drafting errors relating to taking of water and water licencing and confirm validity of particular water licencing decisions.

- Broaden the application of high density development easements and make minor amendments to land titling legislation.

- Amend the *Native Title (Queensland) Act 1993* (Native Title (Queensland) Act) (and supported by amendments to the *Acquisition of Land Act 1967 (*Acquisition of Land Act)) to provide another way in which non-native title rights and interests can be acquired where native title rights and interests are being compulsorily acquired to assist in meeting requirements under the Commonwealth *Native Title Act 1994* (Native Title Act (Cwlth)).

- Clarify the public and environmental purposes for which land may be acquired under the Acquisition of Land Act.

- Validate decisions made regarding later work programs and later development plans under the *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas (Production and Safety) Act and *Petroleum Act 1923* (Petroleum Act) and decisions made regarding later development plans under the *Mineral Resources Act 1989* (Mineral Resources Act).

- Provide greater flexibility to petroleum lease holders in relation to applying for an extension to the production commencement day.

***Phase 1 state land tenure reforms***

The Queensland Government has accepted that reforms to the state land tenure system are well overdue; and late last year, publicly committed to delivering rural land tenure and tourism reforms by mid-2014.

The Bill begins to deliver the Queensland Government's response to the Parliamentary State Development, Infrastructure and Industry Committee's final report (No 25) tabled on 23 August 2013, *Inquiry into the future and continued relevance of government land tenure across Queensland* (the Parliamentary Inquiry). In particular, the Bill implements accepted recommendations number 8 and 24 - the investigation of rolling leases to increase tenure security and investment certainty for rural and tourism tenures; 9 and 25 - the review of trigger points for rural and tourism lease renewals; 14 - incentives for freeholding of pastoral leases; 15 - the review of the corporation and aggregation restrictions.

The Queensland Government has committed to legislative changes to enhance investment opportunity and security of tenure for the state's leasehold estate which covers about 60 per cent of Queensland and affects approximately 6500 term and perpetual lessees used for agriculture, grazing or pastoral purposes and about 60 offshore island tourism leases.

The Bill also supports other key state and federal government programmes and priorities including the: *Queensland Agriculture Strategy – a 2040 vision to double agriculture production* and *DestinationQ Tourism Strategy and Tourism 2020*.

***Taking water and water licencing***

Taking of water

The policy objective of the Bill is to reflect the changes introduced by the *Land, Water and Other Legislation Amendment Act 2013* (Land, Water and Other Legislation Amendment Act). Chapter 2, part 2, division 1A of the *Water Act 2000* (Water Act) gives individuals a statutory right to take or interfere with water for a variety of purposes. This division was introduced by the Land, Water and Other Legislation Amendment Act and replaced section 20 of the Water Act. In doing so, the number of activities authorised by a statutory right was increased.

Subartesian water licencing

Section 20 of the Water Act gives individuals a statutory right to take or interfere with subartesian water for any purpose unless a moratorium notice, water resource plan, wild river declaration or a regulation alters or limits the subartesian water that may be taken or interfered with. The Water Regulation 2002 (Water Regulation) and a number of water resource plans regulate the take of water from several subartesian aquifers across Queensland.

The policy objective of the Bill is to reduce red tape and unnecessary duplication by making the following type of works, (identified in the Water Regulation and water resource plans), 'exempt development' for the purposes of the *Sustainable Planning Act 2009* (Sustainable Planning Act):

- Works that take or interfere with subartesian water:

  - all stock and domestic bores
  - new non stock and domestic bores outside critical setback distances
  - all replacement bores within 10m of original bore
  - pump testing bores
  - monitoring bores.

- Works that take or interfere with artesian water:
  - all monitoring bores.

Validity of particular water licence decisions

A review of a sample of historical administrative decisions made under the Water Act has found that the department failed to take particular factors into account when making water licensing decisions. The review concluded that many water licence decisions were legally deficient in considering one or more of the mandatory decision making criteria that are prescribed by the Water Act. In particular, many of the applications were not scrutinised to the extent considered necessary to ensure that granting the particular licence application would give effect to the Water Act's purpose of promoting the 'efficient use of water'.

This casts doubt on the legal validity of other water licensing decisions made under the Water Act. The Bill provides certainty for the thousands of water licence holders in Queensland by removing any doubt about the validity of water licensing decisions that relate to current water licences.

***Providing certainty and flexibility to certain resource tenure holders***

Validating decisions made regarding later work programs and later development plans

Exploration tenures under the Petroleum and Gas (Production and Safety) Act and the Petroleum Act must have an approved work program. Production tenures must have an approved development plan. Coal and oil shale mining lease under the Mineral Resources Act must have an approved development plan. These plans and programs must provide, among other things, an overview of the activities proposed to be carried out each year and the estimated cost of those activities

Prior to the end of the initial work program period, the authority holder must lodge a later work program. The proposed later work program must be lodged within a certain period before the end of the program period for the current work program. This is the same for development plans.

If a decision is not made to approve or refuse the proposed later work program before the end of the current work program, the authority holder is taken to have a work program and the holder may carry out any authorised activity for the authority. The department and industry have interpreted this to mean the holder can carry out work in accordance with the proposed later work program rather than the earlier, approved, work program. However, the legislation provides that the approval of the proposed later work program takes effect on the date the holder is given notice or a later date that is stated in the notice. There is no express power to approve a later work program from a date in the past, or to allow a proposed new later work program to apply whilst a decision is being made. This brings into question the validity of decisions made regarding later work programs and later development plans. The amendments

will provide certainty to relevant authority holders and remove doubt about the validity of the later work programs and later development plans.

Changes to extending production commencement days for petroleum leases

Currently petroleum lease holders are required to commence production no later than two years after the lease takes effect or as otherwise approved. The Minister may allow production to commence more than two years after the lease takes effect if the Minister is satisfied the holder has entered into a relevant arrangement (a contract or other arrangement to supply petroleum). The specification of a start date for the commencement of production is to ensure that a petroleum lease is granted for the purpose of petroleum production and not as a means to retain land. Commencing production on the specified day is a mandatory condition for petroleum leases. Contravention of the Act exposes the holder to compliance action.

Petroleum lease holders may apply to have the production commencement day extended if they have a relevant arrangement in place to supply petroleum produced from the area of the lease; production is set to commence more than two years after the day the lease takes effect; and the application is made no later than one year before production is to start.

The requirement to commence production no later than two years after the lease takes effect may not always be in the best commercial or production interest of the lease holder especially where several leases are part of one project. In such cases the lease holder may be able to produce enough petroleum to meet its contractual obligations from wells on one lease. Requiring the lease holder to commence production on another lease to meet a legislative requirement could result in raised production costs and inefficient resource use. This could be because the lease holder is producing more than it can sell or it may have to sell the extra petroleum recovered at a lower cost. It may also mean that the lease holder will reduce production on one lease so that it does not produce petroleum across the two leases that is in excess of contractual requirements. This would increase the cost of production as the lease holder would need to mobilise equipment and/or build additional infrastructure to produce from two leases and the flow rate is less than optimal for both leases.

While lease holders who had a relevant arrangement in place prior to the lease taking effect can currently apply to extend the production commencement day, they are required to do so no later than one year before the scheduled commencement day. This might not be possible in all situations such as for large projects with complex and uncertain infrastructure construction timeframes. Another factor is residual uncertainty over production rates from individual wells within a lease as it is difficult to know how much petroleum each well will produce until the well has been drilled and tested. A third reason is that lease holders may need to adjust production rates to meet the needs of overlapping coal tenement holders.

At the moment there is no mechanism for lease holders to apply for an extension less than 12 months prior to the scheduled production commencement day and therefore there is no mechanism to bring the lease back into compliance once the 12 month deadline is missed. Lease holders who entered a relevant arrangement after the lease took effect are currently precluded from applying for an extension.

***High density development easements***

The *Land Title Act 1994* (Land Title Act) was amended in 2013 to streamline the creation of easements for particular high density developments. These high density development easements are created where buildings with a shared wall have been constructed on adjoining lots of a certain size and limit. Currently these easements cannot be created before buildings are constructed, which limits their use in land development projects.

***The compulsory acquisition of non-native title rights and interests***

Section 144 of the Native Title (Queensland) Act currently provides the power for the compulsory acquisition of native title in relation to land or waters under a number of compulsory acquisition Acts (for example, the Acquisition of Land Act). This power applies even though the compulsory acquisition Act would not otherwise apply to that land.

It does not however currently extend the reach of a compulsory acquisition Act to enable the compulsory acquisition of non-native title rights and interests in relation to the land or waters to which the compulsory acquisition Act does not apply.

Whilst a non-native title right or interest can be acquired in different ways (e.g. through surrender, cancellation, resumption, compulsory acquisition), an option of compulsory acquisition of a non-native title right or interest is not always available under a compulsory acquisition Act. This amendment makes this option available only when compulsorily acquiring native title rights and interests. For example, if native title rights and interests in relation to particular unallocated state land are acquired under the Acquisition of Land Act, all non-native title rights and interests in relation to that unallocated state land may also be acquired at the same time under the Acquisition of Land Act even though that Act would not otherwise apply to the unallocated state land.

As a compulsory acquisition of native title only has the effect of extinguishment under section 24MD (2)(c) of the Native Title Act (Cwlth) when the whole or equivalent part of all non-native title rights and interests are also acquired (whether compulsorily or by surrender, cancellation, or resumption or otherwise), this amendment (together with a supporting amendment to the Acquisition of Land Act) assists in that requirement being satisfied.

***Public and environmental purposes to acquire land***

In the matter of *Lipovsek v BCC* [2013] QSC 185, the applicant successfully challenged, under the *Judicial Review Act 1991* (Judicial Review Act), the exercise of power by the Brisbane City Council (BCC) to resume land under the Acquisition of Land Act for 'environmental purposes'.

In arriving at its decision to set aside BCC's decision and remit it to BCC for further consideration, the Supreme Court also considered whether the headings in Schedule 1 of the Acquisition of Land Act themselves constitute purposes; whether the purpose in the notice of intention to resume (NIR) was too vague; and whether the purpose in the NIR could be read in conjunction with the attached Background Information Document.

The Court's finding places into question the ability of the State government or another constructing authority (such as local governments) to acquire land for environmental purposes.

# Achievement of policy objectives

To achieve the policy objectives the Bill will amend the Land Act, Forestry Act (Forestry Act), Acquisition of Land Act, Land Title Act, Native Title (Queensland) Act, *Nature Conservation Act 1992* (Nature Conservation Act), Water Act, particular subordinate legislation under the Water Act, Mineral Resources Act, Petroleum Act and the Petroleum and Gas (Production and Safety) Act.

***Phase 1 state land tenure reforms***

The Bill amendments primarily focus on the agriculture and tourism pillars of the economy. The Bill implements land tenure solutions to support growth and provide opportunities for these sectors by removing or streamlining onerous tenure administration processes and procedures across the Land Act, Forestry Act, Acquisition of Land Act, and Land Title Act, Nature Conservation Act, and providing another way in which non-native title rights and interests can be acquired where native title rights and interests are being compulsorily acquired and clarifying the powers to acquire land under the Acquisition of Land Act for environmental and public purposes. The major areas of reform are outlined below.

Rolling lease term extension

This reform will introduce a simpler renewal process through rolling lease term extensions for certain term leases issued for agricultural, grazing and pastoral purposes and for all term leases issued for tourism purposes located on declared offshore islands.

For term leases issued for agricultural, grazing and pastoral purposes, rolling term lease extensions will apply only to:

- rural leasehold land covering an area 100 hectares or above; however the Minister may also declare certain agricultural, grazing and pastoral leases below 100 hectares as rolling leases for certain term leases;
- leases not located on Land Act reserves.

This process will be simpler as there will be no requirement for rural leases to enter into a land management agreement at the time of term roll over and no consideration of the most appropriate use and tenure for the land. Effectively, this will reduce the assessment time from years to a matter of weeks.

It is the original term as shown on the instrument of lease that is extended (rolled over) for the same length of time. For example, an original lease grant term of 30 years may be rolled over for an additional 30 years. There will be no limit to the number of times a lease can be extended (rolled over).

These reforms offer investment security for rural and offshore island tourism leases and will significantly reduce the cost and timeframe taken to renew a lease.

Simplifying conversion to freehold title pastoral purpose term leases

These reforms remove an outdated requirement for a pastoral purpose term lease to convert to perpetual lease tenure prior to being able to convert to freehold title. These reforms remove unnecessary regulatory burden on lessees and government. It also reduces the conversion costs for term lessees seeking to convert their tenure to freehold by removing the step of first upgrading the lease to a perpetual tenure.

More flexibility for lease amalgamations

Currently lessees that hold adjoining term leases and perpetual leases issued for the same purpose cannot amalgamate their leases into a single tenure. This out dated approach can stifle business growth and hinder the lessee in optimising business opportunities. The reform will remove this red tape and allow the lessee to consolidate multiple adjoining leases, as long as the leases are held by the same lessee, have been issued for the same purpose and native title has been appropriately addressed. The reform will increase tenure security, enable interests in the "old" term lease to continue as interests in the amalgamated (perpetual) lease, and ensure easements benefiting the term lease will continue upon amalgamation.

Protection of state forest products interests on land being freeholded

The Bill will change the Land Act and the Forestry Act to introduce a forest consent area and a forest consent agreement that will in time replace the use of forest entitlement areas and allow the State to retain its ownership of the forest products when State land is converted to land in fee simple. The forest consent agreement will be registered as a profit a prendre. This arrangement will result in a "cleaner", more efficient and modern tenure being issued to ensure access arrangements and interests in commercial timber are retained by the State and are binding on successors in title even if the underlying tenure is freehold. This reform also assists in streamlining the lease conversion process.

Removing restrictions on eligibility criteria for holding pastoral leases

Currently, the Land Act restricts corporations from holding certain pastoral holdings and also restricts individuals from holding two or more holdings if the aggregation would equate to more than two living areas. These provisions are out-dated, inflexible, anti-competitive and a financial impost for both lessees and government.

This reform will remove the restriction on corporations owning and individuals aggregating pastoral holdings, with socio-economic benefits obtained through increased flexibility for property build-up and modernisation of business structure/ownership arrangements; capitalisation arrangements and succession planning; increased investment opportunities in regional and rural Queensland; cost savings through the reduction of red tape and removal of the need for land dealings and legal manoeuvres designed to circumvent the corporation and aggregation restrictions; minor savings to government in terms of administration costs; and Indigenous corporations being able to hold property for community and business benefit in accordance with their mandates.

Relocating operational matters and removing duplication for land rent and purchase price to regulation

This reform will relocate operational process details related to land rent and purchase price for state land from the Land Act to subordinate legislation. This includes detail about calculating land rents and purchase price and hardship provisions for rent and processes of payment. The government will take the opportunity to streamline and review the rent and

purchase price provisions in the development of the amendment regulation. In particular the government will review land rental arrangements, calculation of purchase price and, hardship relief provisions to remove red tape and unnecessary costs, remove duplication of legislative powers relating to forgiveness of deferred rents, and increase the Queensland Government's capacity to respond more effectively to conditions of hardship.

This reform ensures that operational processes for financial considerations under the Land Act are flexible and responsive in times of natural disaster or hardship, while still respecting the institution of Parliament.

Other minor and technical amendments
The Bill includes transitional provisions for renewed State Rural Leasehold Land Strategy leases which become rolling term leases; removing unnecessary restrictions on the transfer of new leases; and making minor consequential and editorial changes arising from the land tenure reforms.

***Taking water and water licencing***

Taking of water
The amendments will enable the chief executive to put water restrictions in place on water users that take water from a watercourse without the need to obtain an authority. This will result in improved outcomes for the water resource and more equitable management arrangements between different types of water users.

The Bill will amend section 24 of the Water Act to enable the chief executive to limit or prohibit the taking of water authorised by some statutory rights where there is a shortage of water.

Subartesian water licencing
The amendments will remove unnecessary regulatory duplication to industry, community and government that does not result in improved outcomes for the water resource or the client and reduce application processing times for water users. This streamlining of regulatory approvals will provide for greater efficiencies and will allow these works to be regulated solely under the Water Act.

Validity of particular water licence decisions
To achieve its objectives the Bill will provide that particular water licensing decisions made by the Department of Natural Resources and Mines or its predecessors are, and have always been, valid.

***Providing certainty and flexibility to certain resource tenure holders***

Validating decisions made regarding later work programs and later development plans. The Mineral Resources Act, the Petroleum Act and the Petroleum and Gas (Production and Safety) Act will be amended to confirm the validity of decisions made regarding later work programs and later development plans.

Changes to extending production commencement days for petroleum leases

The amendments will provide a head of power for the regulation to prescribe a shorter time period for lease holders to apply for an extension to the production commencement day. This will give lease holders more time to apply. The amendments will allow all lease holders with a relevant arrangement in place to apply for an extension.

The requirement for the lease holder to prove they have a relevant arrangement in place to supply petroleum produced from the area of the lease will remain in place. Further, the amendments will also provide that the Minister may refuse the application if the Minister reasonably believes that the relevant arrangement is not an arms-length commercial transaction or the supply under the arrangement is unlikely to be carried out. This will act as a safe guard against lease holders who may be stalling production and reserving petroleum where there is no contract in place.

A transitional amendment is included to allow lease holders who are unlikely to meet their production arrangements prior to the commencement of these amendments, because they do not satisfy the requirements to apply for an extension. If the Minister decides not to grant the extension then appropriate compliance action may be taken. This is to allow any current issues to be addressed.

***High density development easements***

This Bill will expand the operation of a streamlined method introduced in 2013 for creating easements for particular high density developments under the Land Title Act.

Amendments will allow easements to be created where buildings have not yet been constructed but relevant planning laws allow construction of this type. Other amendments are required to improve clarity and consistency in provisions of the Land Title Act.

***The compulsory acquisition of non-native title rights and interests***

Through amending section 144 of the Native Title (Queensland) Act (together with a supporting amendment to the Acquisition of Land Act), the Bill provides another way in which the requirement, under section 24MD (2)(b) of the Native Title Act (Cwlth), that the whole or equivalent part of all non-native title rights and interests are also acquired (whether compulsorily or by surrender, cancellation, or resumption or otherwise), can be satisfied for the compulsory acquisition of native title to have the effect of extinguishment. It does this by providing a way to compulsorily acquire a non-native title right or interest (only when compulsorily acquiring native title rights and interests) where such an option is not currently available under the particular compulsory acquisition Act.

***Public and environmental purposes to acquire land***

The Bill will amend the Acquisition of Land Act to clarify the environmental purposes (such as the management and protection of the seashore and land adjoining the seashore) and public purposes (such as access to enable the management and protection of the seashore) for which the State government or another constructing authority (such as local government) can acquire land.

## Alternative ways of achieving policy objectives

The Queensland Government may only deal with state land as established under legislation. The policy objectives for phase 1 land tenure reform can only be achieved by legislative amendment.

There were no other ways to achieve the policy objectives for the amendment to section 24 under the Water Act relating to the taking of water. In order to achieve timely and cost effective implementation of provisions contained within a number of different instruments this Bill was considered the most effective way of achieving the policy objectives.

An alternate way to achieve the subartesian works triggers was to separately amend the Sustainable Planning Regulation 2009, the Water Regulation and the water resource plans that regulate subartesian water: Barron, Burdekin, Burnett, Fitzroy, Georgina and Diamantina, Gulf, Mary, Mitchell, Moreton, Pioneer Valley, Whitsunday and Wet Tropics. This would have involved having fourteen amendment processes running concurrently and, in the case of the water resource plans, could have taken years to complete. This alternate option would have also been very expensive for government with the consultation requirements and general resourcing running to the tens of thousands of dollars.

An alternative way of confirming the validity of particular water licensing decisions in Queensland is to review each individual water licensing decision. As there are approximately 24 000 water licences in Queensland this option is not feasible.

In relation to the compulsory acquisition of non-native title rights and interests, this could only be achieved by legislative amendment as the policy objective is to provide for the compulsory acquisition of non-native title rights and interests at the same time as compulsorily acquiring native title rights and interests in relation to land or waters.

There is no other way to validate decisions made regarding later work programs and later development plans or to change the criteria for applying for an extension to the production commencement day.

## Estimated cost for government implementation

There will be minor costs associated with changes to systems and information materials to provide for changes to tenure arising from the phase 1 land tenure reforms. These costs will be met within the existing budget allocation.

There is no cost for government implementation of changes relating to the taking of water and water licensing.

There is no implementation cost associated with the amendments to resource legislation, the amendments relating to high density development easements under the Land Title Act, amendment to the Native Title (Queensland) Act or the Acquisition of Land Act.

# Consistency with fundamental legislative principles

This Bill has been examined for compliance with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* and has addressed the following issues:

*Whether the Bill adversely affects rights and liberties or imposes obligations retrospectively*

Clause 132 Validation of particular decisions about water licences
Clause 132 of the Bill potentially breaches the principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. In this case retrospectivity is required to remove any doubt about the validity of water licensing decisions that relate to current water licences. In doing so the provision provides certainty for the holders of the approximately 24 000 current water licences.

Importantly, the validation provided by this clause does not apply to decisions that, within six months of the decision, were the subject of internal review or consideration by a court. This ensures that existing rights of appeal provided in both the Water Act and the Judicial Review Act are preserved and that current appeals can continue to be considered on their merits.

Clauses 116, 123 and 128 Validation of decisions regarding later work programs and later development plans
The amendments proposed in clauses 116, 123 and 128 will validate decisions made regarding later work programs and later developments plans. This is needed to ensure tenure holders who have received approvals for later work programs or later development plans will be able to continue with their operations unaffected. It is not anticipated that this benefit to resource holders would be to anyone's disadvantage, because it validates the existing and accepted understanding of the resource interest holders and the department. It provides certainty to landholders, tenure holders and government.

Clause 129 Changes to extending production commencement days for petroleum leases
The proposed amendment in clause 129 provides the petroleum lease holders who did not make an application to change their production commencement day in time, including those whose production commencement day has already passed, with 6 months from the commencement of the clause to make an application. In the meantime these holders will be taken to be in compliance in meeting their obligation to commence production. For those whose production commencement day has already passed, there is in effect a retrospective alteration of their statutory obligation as in existence before the Act commences. This amendment will give an opportunity to petroleum lease holders to apply to change their production commencement day to ensure they remain compliant.

It is not envisaged that this amendment could disadvantage anyone. However, if such a disadvantage emerged, there is an opportunity for it to be considered via section 175AC of the Petroleum and Gas (Production and Safety Act), which states that the Minister, in deciding whether or not to change the production commencement day, must consider the public interest. The amendment will not have detrimental effects but rather provides investment certainty to resource companies.

# Consultation

***Phase 1 state land tenure reforms***

There has been no community or stakeholder consultation on the specific provisions of the Bill relating to the phase 1 land tenure reforms. However, the provisions reflect stakeholder aspirations and the Queensland Government's response to the Parliamentary Inquiry. Media coverage of the government's reform agenda indicates support for the land tenure reforms.

***Taking water and water licencing***

Key water stakeholders have been consulted as a part of developing the proposed subartesian amendments. These include: AgForce, Queensland Farmers Federation, Queensland Resources Council, Australian Petroleum Product and Exploration Association Ltd., Local Government Association of Queensland, SunWater and SEQ Water. Support was expressed for the proposed amendments. Consultation has been undertaken with a number of key officers within the Department of State Development, Infrastructure and Planning.

No consultation has occurred on the amendment that confirms the validity of particular water licence decisions.

***Providing certainty and flexibility to certain resource tenure holders***

No consultation has occurred on the amendment to confirm the validity of later work programs and later development plans. The amendment regarding applying for an extension to the production commencement day stemmed from concerns raised by several tenure holders.

***High density development easements***

Targeted stakeholder consultation has been undertaken in relation to amendments to high density development easements.

***The compulsory acquisition of non-native title rights and interests***

No specific consultation has occurred on this amendment.

***Public and environmental purposes to acquire land***

Brisbane City Council has been consulted with in relation to amendments to the Acquisition of Land Act pertaining to the purpose for which land may be taken. Brisbane City Council supports the amendments.

# Consistency with legislation of other jurisdictions

***Phase 1 state land tenure reforms***

In Australia each jurisdiction is responsible for establishing and maintaining legislation that provides a secure system of land tenure in their jurisdiction. While jurisdictional land tenure legislation has some fundamental similarities (e.g. using the Torrens land titling system, similar types of tenure such as freehold, lease, and licence or permit tenures on crown land) each jurisdiction has tailored their legislation to suit and respond to the unique attributes of their jurisdiction and the policy directions of their respective governments.

The concept of rolling term leases is applied in South Australia and Western Australia. However, Queensland's rolling term leases have been tailored to improve processes and deliver on security of tenure in the state.

***Taking water and water licencing***

The Bill is specific to the State of Queensland, and is not uniform with, or complementary to, legislation of the Commonwealth or another state.

***Providing certainty and flexibility to certain resource tenure holders***

The amendments relate to Queensland-specific provisions, which are not uniform with, or complementary to, legislation of the Commonwealth or another state.

***High density development easements***

The amendments relate to Queensland-specific provisions, which are not uniform with or complementary to legislation of the Commonwealth or another state.

***The compulsory acquisition of non-native title rights and interests***

The amendments to section 144 of the Native Title (Queensland) Act (together with a supporting amendment to the Acquisition of Land Act) are consistent with the Native Title Act (Cwlth).

***Public and environmental purposes to acquire land***

The amendment to the Acquisition of Land Act in relation to acquiring land for public and environmental purposes is not inconsistent with legislation in other Australian jurisdictions, (although the scope of the provisions, the acquisition processes and compensation entitlements may vary between states).

# Reasons for non-inclusion of information

No information relevant to the Bill has been deliberately withheld from the Bill.

# Notes on provisions

## Part 1

### Short Title

*Clause 1* states that when enacted, the Bill will be cited as the *Land and Other Legislation Amendment Bill 2014.*

### Commencement

*Clause 2* provides for part 3; part 4 (other than sections 22, 76, 79 and 84); and sections 125 to 127 and 129 to commence on a day to be fixed by proclamation. All other provisions in the Bill will commence on the day of assent.

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

### Act Amended

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

### Insertion of new s 4A and 4B

### Taking non-native right or interest

*Clause 4* inserts section 4A and section 4B which support the amendment to section 144 of the Native Title (Queensland) Act at clauses 117 and 118. These provisions apply to the taking of non-native title right and interest where it happens under a compulsory acquisition Act (also see sub-section 4A(4)) and is either authorised under section 144(1)(b) of the Native Title (Queensland) Act or authorised under the compulsory acquisition Act and happens at the same time as the taking under that Act of the native title right and interest (sub-section 4A(1) and sub-section 4B(1)) .

Sub-section 4A(2) provides that the compulsory acquisition Act, including –"to the extent appropriate, this Act" (i.e. the Acquisition of Land Act), must be applied to the taking of the non-native title right or interest to the greatest practicable extent as if the right or interest were land to which the compulsory acquisition Act otherwise applies. For example, where a non-native title right or interest (apart from a resource interest) is taken under the Acquisition of Land Act, the compensation provisions that apply to land under that Act will also apply to the greatest practicable extent to the non-native title right or interest taken. Also, in using the words "to the extent appropriate, this Act", it recognises that a compulsory acquisition Act (other than the Acquisition of Land Act) applies provisions of the Acquisition of Land Act to varying extents to aspects of the taking. The extent to which the Acquisition of Land Act applies depends upon the interaction between those two Acts.

Sub-section 4A(3) provides that despite the Acquisition of Land Act or any other compulsory acquisition Act, the non-native title right or interest is completely extinguished, when the

taking has effect, to the extent it relates to land stated in the gazette resumption notice (sub-section 4A(5)).

**Insertion of new s 4B Taking non-native title right or interest that is a resource interest**

In addition to the provisions of section 4A applying, section 4B provides some further provisions specifically in relation to when the non-native title right or interest taken is a resource interest.

Subsection 4B(2) provides for the entity taking the resource interest to give the relevant chief executive (sub-section 4B(4)) for the resource interest a written notice about the details of extinguishment, that asks for recording of the extinguishment in the appropriate register and that is accompanied by a certified copy of the gazette resumption notice.

Sub-section 4B(3) provides that compensation for the taking of a resource interest is limited to that which applies under the relevant resource interest compensation provision. For example, section 10AAD, Mineral Resources Act.

**Amendment of s 5 (Purpose for which land may be taken)**

*Clause 5* omits section 5(3) and (4) and inserts a new subsection (3) as part of amendments clarifying the powers of the state or constructing authority to acquire land and the purposes for which land may be acquired (refer to clause 6).

**Amendment of sch 1(Purposes for taking land)**

*Clause 6* amends schedule 1 to clarify the environmental purposes for which land may be taken under the Acquisition of Land Act and inserts a new purpose (relating to recreation beaches) under Schedule 1 part 6.

**Amendment of sch 2 (Dictionary)**

*Clause 7* makes consequential amendments to the dictionary at Schedule 2 by inserting new definitions in relation to clause 4.

**Part 3 Amendment of Forestry Act 1959**

**Act amended**

*Clause 8* provides for the amendment of the Forestry Act.

**Amendment of s 35 (Granting of permit for land within State Forest)**

*Clause 9* amends section 35 to confirm that a term lease under the Land Act may be granted, extended or renewed only if the grant, renewal or extension would not prejudice or oppose the objects of the Forestry Act. Under the amendments to this section any extension of a term lease will be made only with the agreement of the chief executive under the Forestry Act.

**Amendment of s 36 (Dealings with respect to timber reserves)**

*Clause 10* inserts a new note for subclause (3) to recognise rolling term leases, confirming that no term lease under the Land Act may be granted, extended or renewed without the prior approval of the chief executive under the Forestry Act.

**Amendment of s 39A (Forest entitlement areas)**

*Clause 11* amends section 39A to extend the provisions relating to forest entitlement areas to include forest consent areas. This extension will mean that the chief executive's authority under the section will now include freehold land that is a forest consent area. A forest consent area is that part of the land subject to a forest consent agreement under new section 61JA (clause 16 refers).

**Amendment of s 39B (Rights and liberties of contracting party in respect of forest entitlement areas)**

*Clause 12* amends section 39B to extend the provisions relating to forest entitlement areas to include forest consent areas. This extension will mean that the rights and liberties of contracting parties in respect to forest entitlement areas may be extended to forest consent areas.

**Amendment of s 39C (Interpretation)**

*Clause 13* extends the definition of contracting party to include land that is a forest consent area.

**Amendment of s 45 (Forest products etc. which are the property of the Crown)**

*Clause 14* amends section 45 to confirm that forest products on all forest consent areas at all times remain the property of the state.

**Insertion of new s 53A**

*Clause 15* inserts a section to create offence provisions for interference with forest products on a forest consent area.

**Amendment of s 61J (Agreement about forest products)**

*Clause 16* replaces section 61J by introducing new provisions (sections 61J to 61JB) that expand the power of the state to deal with and protect its interest in forest products on land being converted to freehold. Whereas, currently, the Forestry Act and the Land Act require the creation of a forest entitlement area, with subsequent difficulties in getting the land owner to purchase the area when the state no longer requires the area, this new provision will enable the lessee under the Land Act to purchase land containing forest products and for the state to retain its ownership of the forest products and to safeguard its right to deal with the forest products.

The state will protect its interest in the forest products under the terms of a forest consent agreement that will be registered as a profit a prendre, binding the owner and all successors in title.

**Amendment of s 61RH (Events that are compensation events)**

*Clause 17* amends section 61RH to reflect that a term lease mentioned under section 35(5) may be renewed or extended under the Land Act.

**Amendment of s 72 (Wild stock)**

*Clause 18* amends section 72 to confirm the section will apply to forest consent areas.

**Amendment of s 75 (Removal of trespassers)**

*Clause 19* amends section 75 to confirm the section will apply to forest consent areas but only with the agreement of the landholder.

A**mendment of s 77 (Persons found in possession of forest products)**

*Clause 20* amends section 77 to confirm the section will apply to forest consent areas.

**Amendment of sch 3 (Dictionary)**

*Clause 21* amends the dictionary of the Forestry Act by inserting new definitions in support of the amendments required for the introduction of a forest consent area and a forest consent agreement.

**Part 4 Amendment of Land Act 1994**

**Act amended**

*Clause 22* provides for the amendment of the Land Act.

**Amendment of s 25 (Disposal of reservations by sale)**

*Clause 23* amends section 25 as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation 2009 (Land Regulation).

**Amendment of s 26A (Disposal of redundant reservation)**

*Clause 24* amends section 26A as a consequence of the relocation of purchase price provisions from the *Land Act 1994* to the Land Regulation.

**Amendment of s 26B (Forest entitlement areas)**

*Clause 25* amends section 26B as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation.

**Amendment of s 28 (Interaction with native title legislation)**

*Clause 26* amends section 28 to confirm that particular leases under the Act may have their term extended rather than being renewed.

**Amendment of s 34IA (Particular matters about issue of a deed of grant)**

*Clause 27* amends section 34IA as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation.

**Amendment of s 69 (What is unimproved value)**

*Clause 28* amends section 69 as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation.

**Amendment of s 109C (Buying or leasing land if closed road amalgamated with adjoining land)**

*Clause 29* amends section 109C as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation.

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

*Clause 30* amends section 115 to reflect the changes being made to the land management agreement provisions. A land management agreement will now only be required more as a tool for compliance.

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

*Clause 31* amends section 122 as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation.

**Amendment of s 127 (Reclaimed land)**

*Clause 32* amends section 127 as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation.

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

*Clause 33* amends section 136 to reflect the changes being made to the land management agreement provisions. A land management agreement will now only be required more as a tool for compliance.

**Replacement of ch4, pt 2 (Eligibility to hold land)**

*Clause 34* amends chapter 4, part 2 of the Act in consequence of the repeal of the corporation and aggregation restrictions.

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

*Clause 35* amends section 155 to provide for greater consistency in the length of term for which a lease may be granted in consequence of the introduction of new rolling term lease provisions, at the same time removing the need for mandatory land management agreements for rural leasehold land.

**Amendment of s 155AA (Application of division 1B)**

*Clause 36* amends section 155AA to restrict the ability to extend the term of a lease under division 1B to leases that have not been extended under the new rolling term lease provisions in recognition of the state government's commitment to extending those leases with registered land management agreements where the agreement provides for the extension of the lease.

This means that a rolling term lease for rural leasehold land that is extended under the rolling term lease extension provisions are excluded from being extended under the terms of the registered land management agreement. Therefore, extensions under division 1B would need to be applied for before the lease is rolled over.

**Insertion of new s 155CA (Non-application of division to particular term lease)**

*Clause 37* inserts section 155CA to confirm that a reduction in the term of a lease under division 1C cannot be applied to the term of a lease extended under the new rolling term lease provisions.

**Amendment of s 155D (When Minister may reduce)**

*Clause 38* amends section 155D taking into account the amendments made by clause 46 of the Bill.

**Replacement of ch4, pt 3, div 2 hdg**

*Clause 39* amends the heading for chapter 4, part 3, division 2 of the Act to reflect the introduction of the rolling term lease provisions.

**Amendment of s 157 (Expiry of lease)**

*Clause 40* amends section 157 to take into account that a lease may have had its term extended under the Act.

**Insertion of new ch 4, pt 3, div 2, sdiv 2 hdg and s 157AB**

*Clause 41* inserts new section 157AA to confirm that subdivision does not apply to rolling term leases (rolling term leases are to be dealt with under the new subdivision 3, sections 164-164G).

**Amendment of s 157A (Chief executive's approval required for renewal)**

*Clause 42* provides for editorial and technical amendments to paragraph (b) of section 157A (1) and to subsection 157A(2).

**Omission of s 160A (Land management agreement condition for particular offers)**

*Clause 43* removes the conditional requirement to enter into a land management agreement when a lease for rural leasehold land is being renewed. The amendments to the land management provisions under the Act will support that land management agreements in the future will be used more as a tool of compliance.

**Amendment of s 162 (Issuing a new lease)**

*Clause 44* makes a technical amendment to section 162 to recognise the relocation of the purchase price and rental provisions to the Land Regulation.

**Omission of s 162A (Conditions imposed on particular new leases)**

*Clause 45* omits the condition requiring a land management agreement when a lease for rural leasehold land is being renewed. The amendments to the land management provisions under the Act will support that land management agreements in the future will be used more as a tool of compliance.

**Replacement of s 164 (Short term extension)**

*Clause 46* inserts a new subdivision 3 and 4 providing for the extension of term leases used for agriculture, grazing or pastoral purposes (except those for rural leasehold land less than 100 ha or on Land Act reserves) and term leases for tourism purposes on declared offshore islands – rolling term leases.

These new subdivisions have been introduced in support of the state government's policy to provide greater security of tenure for its lessees and others who have invested in the leasehold estate in Queensland.

Under subdivision 3, a term lease will remain a term lease under the Act but the process of renewing all term leases will now be finalised by extending the term of the lease in the leasehold land register. In the last twenty (20) years of the term of the lease the lessee may apply for the roll over (extension) of the term of the lease. An earlier application may be made if the Minister is satisfied that special circumstances exist. The application is made to the chief executive.

A lessee may not apply for the extension of the term of a lease if the lessee has entered into an agreement with the Minister under section 327A of the Land Act to surrender the whole of the lease.

The term may be extended up to and including the number of years shown on the instrument of lease/tenure document as the original term of the lease. As a matter of procedure, it will

not be necessary to conduct an assessment for land condition or the most appropriate use and tenure as part of the extension process.

The original term of the lease does not include extensions to the term of lease authorised under previous laws, for example, section 20 of the *Land Act Amendment and Primary Producers' Assistance Act 1971 (No 32)* and section 5 of the *Land Act Amendment Act 1986 (No 31)*.

The original term of the lease will also not include an extension of the term made under Chapter 4 Part 3 Division 1B of the Land Act.

There is no limit to the number of times a lessee may apply to extend ('roll over') the term of the lease. The term of the extension commences immediately after the lease would have otherwise have expired.

For term lease for agriculture, grazing or pastoral purposes issued over rural leasehold land that are less than 100 hectares, the lease may be approved by the Minister as a rolling term lease if the chief executive considers the most appropriate tenure and use for the land is a term lease for agriculture, grazing or pastoral purposes. On approval the small area rural lease becomes a rolling term lease for the purposes of the Act. As soon as practicable after approval, the small area rural lease must be identified in the leasehold land register as a rolling term lease.

This section also allows for a notice of expiry to be given not later than two years before the lease is due to expire.

A rolling term lease extended under subdivision 3 continues without the need for a new lease instrument to be issued and is subject to the same conditions, interests, priorities etc., that were in place previous to the extension.

Lessees entitled to extend the term of their leases under chapter 3, part 4, division 1B will still be entitled to extend the term under that division. However, this entitlement ends if they extend the term of their lease under the new rolling term lease provisions.

New subdivision 4 provides for a current application for a term lease renewal may be dealt with as an extension application.

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

*Clause 47* amends section 166 to remove the restriction on the ability of the lessee of a pastoral lease to convert the lease directly to freehold. Currently, the Act requires the lessee to apply to convert the lease to a perpetual lease and then make a further application to convert the perpetual lease to freehold.

**Amendment of s 168 (Notice of chief executive's decision)**

*Clause 48* amends section 168 to provide that where an application for conversion to freehold of a term lease issued for tourism purposes is made, and the lease is on an offshore island, the Governor in Council's prior approval of the conditions of offer is required.

**Omission of s 168A (Land management agreement for new perpetual lease)**

*Clause 49* removes the conditional requirement to enter into a land management agreement when a lease is being converted to a perpetual lease. The amendments to the land management provisions under the Act will support that land management agreements in the future will be used more as a tool of compliance.

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

*Clause 50* amends section 169 to provide for an offer to freehold a lease to contain a condition that the lessee enters into a forest consent agreement.

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

*Clause 51* amends section 170 as a consequence of the relocation of the purchase price provisions from the Act to the Land Regulations 2009.

**Amendment of s 171 (When offer has been accepted)**

*Clause 52* amends section 171 to ensure that a forest consent agreement under the Forestry Act is entered into prior to the land being granted in fee simple. This will ensure that the State's interests in forest products on land that is being freeholded are protected.

**Omission of ss 173A & 174**

*Clause 53* repeals sections 173A and 174 in recognition of the new rolling term lease arrangements and to remove the requirement for approval to transfer freeholded leases as part of the repeal of the corporation restrictions.

**Amendment of s 176A (General provisions for deciding application)**

*Clause 54* amends section 176A in support of implementation of the rolling term lease provisions. A rolling term lease that is subdivided will result in each new lease remaining a rolling term lease regardless of its size. The subdivision offer must state the imposed conditions of each new lease and its term.

**Omission of s 176H (Restriction on transferring new leases)**

*Clause 55* repeals section 176H that restricted the transfer of a new lease within the first five years. This is being omitted to reduce red tape.

**Amendment of s 176K (Application to amalgamate)**

*Clause 56* amends section 176K to allow adjoining leases issued for the same purpose to be amalgamated.

**Amendment of s 176L (General provisions for deciding application)**

*Clause 57* amends section 176L to reflect that where a term and perpetual lease are amalgamated, the amalgamated lease is a perpetual lease. The amendment also removes the requirement for the amalgamated lease to have a land management agreement in place if the lease is for rural leasehold land, reflecting the policy position that land management agreements will be more a compliance tool.

**Amendment of s 176U (Making and registration of agreement about land management)**

*Clause 58* omits section 176U subsection 3 that is made redundant by section 279.

**Amendment of s 176UA (Power to require land management agreement in particular circumstances)**

*Clause 59* amends section 176UA to reflect that land management agreements will in the future be used more as a tool of compliance.

**Amendment of s 176W (Content of land management agreement)**

*Clause 60* amends section 176W to reflect that land management agreements will be used in the future as a tool of compliance rather than a mandatory requirement for rural leasehold land.

**Insertion of new s 176XA**

*Clause 61* inserts a new section 176XA to reflect that land management agreements will in the future be used more as a tool of compliance and existing land management agreements may be cancelled, with the lessee's agreement, if the Minister is satisfied the land management agreement is no longer required.

**Amendment of s 176Z (When payment obligations end if lease ends under part)**

*Clause 62* provides for an editorial amendment to section 176Z.

**Amendment of s 176ZA (Overpayments relating to former lease)**

*Clause 63* amends section 176ZA by removing reference to a provision that is being moved to the Land Regulations 2009 (refer clause 64).

**Omission of ch5, pt 1 (Rents)**

*Clause 64* removes chapter 5, part 1 land rental provisions from the Act as part of amendments to relocate the land rental provisions from the Act into the Land Regulation (clause 90 also refers).

**Amendment of s 198C (Operation of div 1)**

*Clause 65* amends section 198C in support of the placement of particular conditions for leases, licences and permits in regulation (clause 64 refers).

**Omission of s 201A (Land management agreement condition)**

*Clause 66* repeals section 201A in support of land management agreements being used in the future more as a tool of compliance.

**Amendment of s 202A (Operation of div 2)**

*Clause 67* amends section 202A in support of the placement of particular conditions for leases, licences and permits in regulation (clause 70 refers).

**Amendment of s 203 (Typical conditions)**

*Clause 68* repeals section 203(g) in support of land management agreements being used in the future more as a tool of compliance.

**Amendment of s 211 (Reviewing imposed conditions of leases)**

*Clause 69* amends section 211 to reflect the changes being made to the land management agreement provisions, i.e. the use of land management agreements more as a tool of compliance.

**Insertion of new ch5, pt2, div 3A (Regulated conditions)**

*Clause 70* inserts new provisions (sections 212A-212C) relating to the placement of particular conditions for leases, licences and permits in regulation. The regulation may impose a condition on a category of leases, licences or permits. Unless it is removed, the condition is binding on the land holder irrespective of whether or not the condition is registered. The purpose of the regulation may have regard to the tenure type; the rental category; the geographic location of the tenure; whether the tenures have been subjected to a particular event such as drought; or, a combination of any of these matters. Regulated conditions need not be registered.

**Amendment of s 213 (Obligation to perform conditions)**

*Clause 71* amends section 213 to extend the definition of term "conditions" to include conditions prescribed in regulation (regulated conditions).

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

*Clause 72* amends section 234 as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation.

**Amendment of s 240Q (Disposal of proceeds of sale)**

*Clause 73* amends section 240Q in line with section 438 that states all rents, instalments, penalties, interest, and fees payable under the Act are debts payable to the State.

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

*Clause 74* amends section 249 in recognition of the new provisions implementing the new rolling term lease provisions.

**Amendment of s 279 (Registration of land management agreements and transition to sale agreements)**

*Clause 75* amends section 279 in recognition of land management agreements being used in the future more as a tool of compliance. Clause 67 also inserts a new subsection providing that a registered land management agreement is an interest for the purposes of the Land Act.

**Amendment of s 284 (Entitlement to search a register)**

*Clause 76* amends section 284 to clarify a provision about how searches may be undertaken or copies of documents obtained under that section. This amendment is similar to the amendment made to section 35 of the Land Title Act.

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

*Clause 77* removes section 290F(6) as part of measures to increase security of tenure for lessees over the long term.

**Amendment of s 290FA (Taking effect of plan of subdivision)**

*Clause 78* omits section 290FA.

**Amendment of s 308 (Withdrawing lodged document before registration)**

*Clause 79* amends section 308 to clarify wording. This amendment is similar to the amendment made to section 159 of the Land Title Act.

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

*Clause 80* is an editorial amendment needed to remove reference to repeated provisions and reflect the introduction of section 202AA.

**Replacement of s 348 (Disposal of proceeds of sale)**

*Clause 81* amends section 348 to remove from doubt that any outstanding rent, interest or charge owing to the state is a debt owing to the state.

**Omission of ss 373E and 373F**

*Clause 82* repeals sections 373E and 373F as part of amendments under the Bill relating to the introduction of a forest consent agreement under the Forestry Act. This amendment will enable lessees of primary industries to enter into a profit a prendre with interested parties in the same manner that the owner of a primary industry of freehold land may.

**Amendment of s 373G (Profit a prendre by registration)**

*Clause 83* amends section 373G to provide that a lease may be made the subject of a profit a prendre for a forest consent agreement without the Minister's written approval.

**Amendment of s 377 (Registering personal representative)**

*Clause 84* amends section 377 which provides for the circumstances in which the personal representative of a deceased lessee or holder of an interest may be recorded. The amendment will provide consistency where the personal representative has obtained, in another jurisdiction, probate of the will which could be resealed in Queensland under the *British Probates Act 1898*. It will no longer be necessary for the personal representative to actually have the probate resealed in Queensland before they can be recorded on title. This amendment is similar to the amendment made to section 111 of the Land Title Act.

**Amendment of s 420C (Requirements for making application)**

*Clause 85* amends section 420C to provide the power for the chief executive to refuse to process an application if the lease is in arrears.

**Amendment of s 422 (Appeal process starts with internal review)**

*Clause 86* makes a technical amendment to section 422 to recognise the relocation of the purchase price and rental provisions to the Land Regulation.

**Amendment of s 423 (Who may apply for review etc.)**

*Clause 87* makes a technical amendment to section 423 to recognise the relation of the purchase price and rental provisions to the Land Regulation.

**Replacement of s 434 (Meaning of unimproved value)**

*Clause 88* inserts three new provisions.

New section 434 defines the extent of the application of rolling term leases to leases issued for tourism purposes.

New section 434A provides for the declaration of an island as a regulated island to which rolling term leases will apply by regulation.

New section 434B provides for short-term extensions to be available for any application dealing with a renewal, extension, conversion, subdivision or amalgamation of a term lease.

New section 434C provides for the change of status of particular land under the Forestry Act or the Nature Conservation Act.

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

*Clause 89* amends section 442 as a consequence of the relocation of purchase price provisions from the Land Act to the Land Regulation.

**Amendment of s 448 (Regulation-making powers)**

*Clause 90* amends section 448 to extend the powers of the Governor-in-Council to list in a new Schedule 1B matters relating to the payment and collection of rent and instalments under the Land Act. The amendment forms part of the relocation of operational land rental, instalment and purchase price provisions from the Act into subordinate legislation.

**Amendment of s 457 (Terms of pre-Wolfe freeholding leases)**

*Clause 91* amends section 457 as a consequence of the relocation of purchase price and land rent and instalment provisions from the Land Act to the Land Regulation.

**Amendment of s 462 (Terms of post-Wolfe freeholding leases)**

*Clause 92* amends section 462 as a consequence of the relocation of purchase price and land rent and instalment provisions from the Land Act to the Land Regulation.

**Amendment of s 466 (Terms of grazing homestead freeholding leases)**

*Clause 93* amends section 466 as a consequence of the relocation of purchase price, land rent and instalment provisions from the Land Act to the Land Regulation.

**Amendment of s 481 (Cancellation)**

*Clause 94* amends section 481 as a consequence of the relocation of purchase price, land rent and instalment provisions from the Land Act to the Land Regulation.

**Amendment of s 487 (Existing concessions continue)**

*Clause 95* amends section 487 as a consequence of the relocation of purchase price, land rent and instalment provisions from the Land Act to the Land Regulation.

**Amendment of s 504 (Changing tenures of port lands)**

*Clause 96* amends section 504 as a consequence of the relocation of purchase price, land rent and instalment provisions from the Land Act to the Land Regulation.

**Insertion of new ch 9, pt 1M**

*Clause 97* inserts a new part (part 1M) under chapter 9 dealing with transitional provisions for the *Land and Other Legislation Amendment Act 2014*. Sections 521K defines new terms for the purposes of part 1M; sections 521ZL to 521ZM detail how current applications and lease offers that have been made for the renewal of a term lease and which are not finalised before the commencement of the rolling term lease provisions may be dealt with.

Section 521ZN provides for the ending of mandatory condition under the repealed section 176H. Section 521ZO provides transitional regulation making powers to facilitate the relocation of land rental and purchase price provisions to the Land Regulations 2009.

**Amendment of sch 1 (Community purposes)**

*Clause 98* makes a minor editorial amendment to Schedule 1.

**Amendment of sch 1A (Provisions that include mandatory conditions for tenures)**

*Clause 99* amends Schedule 1A to reflect changes to land management agreements being more of a compliance tool in future.

**Insertion of new sch 1B (Regulation about the payment of collection of rent and instalments)**

*Clause 100* inserts new Schedule 1B listing matters that a regulation about the payment and collection of rent and instalments may include. New Schedule 1B reflects the matters currently dealt with under the Land Act. This amendment supports the relocation of the land rental provisions from the Act into subordinate legislation.

**Amendment of sch 2 (Original decisions)**

*Clause 101* omits entries for sections 170(3), 222(6) and 226(5) as a consequence of the relocation of purchase price and land rent provisions to the Land Regulation; and inserts new 164C(7) and 170 (2) to provide an appeal provision for refusal to grant an extension of a lease under the new rolling term lease provisions.

**Amendment of sch 6 (Dictionary)**

*Clause 102* makes consequential amendments to the dictionary by omitting obsolete terms, amending current ones or inserting new definitions.

## Part 5 Amendment of Land Title Act 1994

**Act amended**

*Clause 103* provides for the amendment of the Land Title Act.

**Amendment of s 35 (Entitlement to search register)**

*Clause 104* amends section 35 to clarify a provision about how searches may be undertaken or copies of documents obtained under that section.

**Amendment of s 63 (Transfer of mortgaged lot)**

*Clause 105* amends section 63 to clarify the provision and ensure that it applies in all circumstances in which a registered mortgagee of a lot becomes registered owner of the lot.

**Amendment of s 82 (Creation of easement by registration)**

*Clause 106* amends section 82 to correct a reference.

**Amendment of s 90 (Surrendering an easement)**

*Clause 107* amends section 90 to clarify provisions inserted into the Land Title Act in 2013 relating to the granting of an easement by a lessee and ensure they align with other easements in relation to requirements for surrender and consent of mortgagees and sublessees.

**Amendment of s 90A (When easement over registered lease ends)**

*Clause 108* amends section 90A to clarify that an easement which either burdens or benefits a registered lease ends when the lease ends.

**Amendment of s 94 (Meaning of high-density development easement)**

*Clause 109* amends section 94 to broaden the application of high density development easements to where there are no buildings with shared or common walls constructed on the subject adjoining small lots, but there is an approved planning instrument in place approving these types of buildings to be built on the subject lots.

**Amendment of s 95 (Easement for support)**

*Clause 110* amends section 95 to correct a reference.

**Amendment of s 111 (Registering personal representative)**

*Clause 111* amends section 111 which provides for the circumstances in which the personal representative of a deceased registered proprietor may be recorded. The amendment will provide consistency where the personal representative has obtained, in another jurisdiction, probate of the will which could be resealed in Queensland under the *British Probates Act 1898*. It will no longer be necessary for the personal representative to actually have the probate resealed in Queensland before they can be recorded on title.

**Amendment of s 149 (Registrar may withdraw instrument)**

*Clause 112* amends section 149 as a consequence of amendments in clause 113.

**Amendment of s 159 (Withdrawing lodged instrument before registration)**

*Clause 113* amends section 159 to clarify wording.

**Amendment of s 189 (Matters for which there is no entitlement to compensation)**

*Clause 114* amends section 189 to clarify that paragraph (g) of subsection (1) relates to where there is either an excess or a shortage in area of a lot according to a lodged plan.

## Part 6 Amendment of Mineral Resources Act 1989

**Act amended**

*Clause 115* provides that this part amends the Mineral Resources Act.

**Insertion of new s 386Q**

*Clause 116* inserts new section 386Q into the Act to provide that the notices of approval given under section 318EH are valid.

## Part 7 Amendment of Native Title (Queensland) Act 1993

**Act amended**

*Clause 117* provides for the amendment of the Native Title (Queensland) Act.

**Amendment of s 144 (Compulsory acquisition of native title)**

*Clause 118* amends section 144 of the Native Title (Queensland) Act to provide another way in which non-native title rights and interests can be acquired where native title rights and interests are being compulsorily acquired to assist in meeting requirements under the Native Title Act (Cwlth).

Whilst a non-native title right or interest can be acquired in different ways (e.g. through surrender, cancellation, resumption, compulsory acquisition), an option of compulsory acquisition for a non-native title right or interest is not always available under a compulsory

acquisition Act. This amendment makes this option available only when compulsorily acquiring native title rights and interests.

It does this by extending the reach of a compulsory acquisition Act to compulsorily acquire non-native title rights and interests in relation to the land and waters at the same time native title rights and interests are being compulsorily acquired (subsection 144(1)(b)). Section 144 already extended the reach of a compulsory acquisition Act to compulsorily acquire native title rights and interests in relation to any land or waters (now subsection 144(1)(a)).

To remove any doubt, the clause provides (as already provided for native title rights and interests now in subsection (2)(a)) that all non-native title rights and interests in relation to the land may be acquired in accordance with sub-section (1)(b) under a compulsory acquisition Act even though the Act would not otherwise apply to the land (subsection 2(b)). This is illustrated by an example included in the section which provides that if native title rights and interests in relation to particular unallocated state land are acquired under the Acquisition of Land Act, all non-native title rights and interests in relation to that unallocated state land may also be acquired at the same time under that Act even though the Acquisition of Land Act would not otherwise apply to the unallocated state land.

The power to take non-native title rights and interests under a compulsory acquisition Act pursuant to this section can only be exercised where native title rights and interests are also being compulsorily acquired in relation to the land or waters under that Act.

As a compulsory acquisition of native title only has the effect of extinguishment under section 24MD(2)(c) of the Native Title Act 1993 (Cwlth) when the whole or equivalent part of all non-native title rights and interests are also acquired (whether compulsorily or by surrender, cancellation, or resumption or otherwise), this amendment assists in that requirement being satisfied.

To support this amendment, clause 4 inserts two provisions in the Acquisition of Land Act related to the taking of non-native title rights and interests.

This clause also amends subsection 144(4) to exclude the Land Act from the definition of a 'compulsory acquisition Act' as its resumption provisions mainly deal with the ending of interests. This clause also corrects a spelling error and omits a reference to a repealed Act.

## Part 8 Amendment of Nature Conservation Act 1992

### Act amended

*Clause 119* provides that this part amends the Nature Conservation Act.

### Amendment of s 37 (Chief executive's powers to renew existing authorities for national parks)

*Clause 120* amends section 37 in support of the extension of the term of a lease under the rolling term lease provisions of the Land Act and ensures that any extension will be made only with the agreement of the chief executive under the Nature Conservation Act.

**Amendment of s 38 (Leases may be granted under Land Act 1994)**

*Clause 121* amends section 38 in support of the extension of the term of a lease under the rolling term lease provisions of the Land Act and ensures that any extension will be made only with the agreement of the chief executive under the Nature Conservation Act.

## Part 9 Amendment of Petroleum Act 1923

**Act amended**

*Clause 122* provides that this part amends the Petroleum Act.

**Insertion of new ss 128A-128B**

*Clause 123* inserts new sections 128A and 128B into the Act.

New section 128A provides that the notices of approval given under section 25F are valid.

New section 128B provides that the notices of approval given under section 53G are valid.

## Part 10 Amendment of Petroleum and Gas (Production and Safety) Act 2004

**Act amended**

*Clause124* provides that this part amends the Petroleum and Gas (Production and Safety) Act.

**Amendment of s 175AA (When holder may apply to change production commencement day)**

*Clause 125* amends section 175AA by removing the requirement that holders of petroleum leases may only apply to change the production commencement day if the day by which petroleum production under the lease is to start is more than two years after the day the lease took effect. This will allow petroleum lease holders who entered into a relevant arrangement after the lease took effect to apply to change the production commencement day. This is because under section 123(7) only those holders who had entered into a relevant arrangement before the grant of the lease can have a production commencement day that is more than years after the day the lease takes effect.

The amendment will also provide a head of power for a regulation to prescribe a shorter time period in which lease holders can apply for a change to the production commencement day.

**Amendment of s 175AB (Requirements for making application)**

*Clause 126* amends section 175AB to make it a requirement for those lease holders who did not provide the Minister with information, documents or instruments detailing all relevant

arrangements relating to the lease prior to the grant of the lease to provide that information when seeking a change to the production commencement day. This will allow the Minister to determine whether the relevant arrangement is an arms-length commercial transaction.

Lease holders who provided the information regarding a relevant arrangement prior to the grant of the lease do not have to supply the information again if there has been no change to the arrangement. In this instance the holder will need to lodge a written declaration that no change has been made.

If the relevant arrangement has changed since the grant of the lease the holder will need to provide the Minister with details of the changed arrangement.

**Amendment of s 175AC (Deciding application)**

*Clause 127* amends section 175AC by inserting a new subsection (4) to provide for when the Minister may refuse an application to change the production commencement day. This is similar to what is provided under section 122. The purpose of this subsection is to ensure a change to the production commencement day can only be granted when the Minister is satisfied there is a genuine relevant arrangement to sell petroleum from the lease concerned. This is to prevent lease holders from retaining land when they would otherwise have to relinquish.

New subsection (6) provides that the Minister may not change the production commencement day to a day before the decision is made.

New subsection (7) provides that in circumstances where an application is made to change the production commencement day and the production commencement day for the petroleum lease has passed, the lease holder is taken not to have breached section 154(1) until the Minister makes a decision and, if there is an appeal of the decision, when the appeal is finalised.

**Insertion of new ss 851AB-851AC**

*Clause 128* inserts new sections 851AB to 851AC into the Act.

New section 851AB provides that all approvals given under section 58 are valid.

New section 851AC provides that all approvals given under section 149 are valid.

**Insertion of new s 851AD**

*Clause 129* inserts new sections 851AD into the Act.

New section 851AD provides petroleum lease holders who had not commenced petroleum production as required under section 154(1) six months from the day the amendment commences to apply for a change to the production commencement day.

Petroleum lease holders who are unlikely to start production on or before the production commencement day unless it is changed to a later date and either cannot apply under section

175AA because the holder cannot meet the conditions or the holder will not be able to apply before the start of the one year, or shorter prescribed period, mentioned in section 175AA(b) will also have six months, from the day section 851AD commences, to apply.

If the petroleum lease holder does not makes an application under section 175AA as provided for under section 851AD(2) the holder is not in breach of section 154(1) until six months after the commencement of this section.

If the petroleum lease holder makes an application under section 175AA as provided for under section 851AD(2) the holder is not in breach of section 154(1) until the Minister makes a decision or after the appeals process is finalised.

## Part 11 Amendment of Water Act 2000

**Act amended**
*Clause 130* states that this part amends the *Water Act 2000*.

**Amendment of s 24 (Limiting taking of water under s 20A(s))**

*Clause 131* amends section 24 of the Water Act to provide the chief executive a head of power to limit or prohibit the taking of water authorised by some statutory rights where there is a shortage of water.

**Insertion of new ch 2, pt 6, div 3A (Validation provision)**

*Clause 132* inserts a new chapter 2, part 6 division 3A into the *Water Act 2000*. New division 3A provides that particular water licensing decisions made by the responsible department are, and have always been, valid. Decisions validated by this clause include a range of water licensing decisions made by the chief executive under chapter 2, part 6 of the Water Act.

Chapter 2, part 6 of the Water Act provides the framework for authorising the take of/interference with water through a water licence. In doing so, chapter 2, part 6 provides a process for obtaining a water licence as well as processes for dealing with a water licence by, for example, amendment, amalgamation and subdivision. As a result, a water licence can be altered by a variety of decisions.

As a review of historical administrative decisions made under the Water Act has found that many water licence decisions were legally deficient in considering one or more of the mandatory decision making criteria that are prescribed by the Water Act, to provide certainty to existing water licence holders it is necessary to provide for the validation of all types of licensing decisions that relate to the grant of, or approval to deal with, current water licences.

Importantly, the validation provided by this clause does not apply to decisions that, within six months of the decision, were the subject of internal review or consideration by a court. A six month period is sufficient to capture the existing timeframes for appeal (for example, under section 863 of the Water Act an application for internal review of a water licensing decision must be made within 30 business days) and provide some flexibility to extend the timeframes as appropriate. This provision also ensures that existing rights of appeal provided in both the

Water Act and the *Judicial Review Act 1991* are preserved and that current appeals can continue to be considered on their merits.

## Part 12 Amendment of subordinate legislation

### Division 1 Amendment of Sustainable Planning Regulation 2009

#### Regulation amended

*Clause 133* states that this part amends the Sustainable Planning Regulation 2009.

#### Amendment of sch 3 (Assessable development, self-assessable development and type of assessment)

*Clause 134* amends the water related works triggers in schedule 3 of the Sustainable Planning Regulation 2009 to provide for an exemption from having to obtain development approval for an 'exempt bore'.

#### Amendment of sch 26 (Dictionary)

*Clause 135* amends schedule 26 of the Sustainable Planning Regulation to include definitions for 'aquifer monitoring bore' and 'exempt bore'.

### Division 2 Amendment of Water Regulation 2002

#### Regulation amended

*Clause 136* states that this division amends the Water Regulation 2002.

#### Amendment of s 23 (Conditions of water bore driller's licence-Act, s 302)

*Clause 137* amends section 23 to correct the reference to the works trigger stated in the *Sustainable Planning Regulation 2009*.

#### Amendment of s 62 (Code for self-assessable development – Act, s 1014)

*Clause 138* amends section 62 to correct the reference to the works trigger stated in the *Sustainable Planning Regulation 2009*.

#### Amendment of s 102 (Declared subartesian area-Act, s 1046)

*Clause 139* amends section 102 to provide for the works exemptions for 'exempt bores' in schedule 11: declared subartesian areas.

**Insertion of new s 102A**

*Clause 140* inserts a new provision to provide for the setting of critical setback distances for non-stock and domestic subartesian water bores. Outside of these critical distances the works become exempt development for the purposes of the *Sustainable Planning Act 2009*.

**Replacement of sch 11 (Subartesian areas)**

*Clause 141* replaces schedule 11 to provide for the works exemptions for 'exempt bores' for each subartesian area managed in the schedule.

**Amendment of sch 17(Dictionary)**

*Clause 142* amends schedule 17 (dictionary) to include definitions for 'critical distance', 'exempt bore', and 'non-stock or domestic water bore' and 'replacement bore'.

**Division 3 Amendment of Water Resource (Barron) Plan 2002**

**Plan amended**

*Clause 143* states that this division amends the *Water Resource (Barron) Plan 2002*.

**Amendment of s 51 (Relationship with Sustainable Planning Act 2009)**

*Clause 144* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 4 Amendment of Water Resource (Burnett Basin) Plan 2000**

**Plan amended**

*Clause 145* states that this division amends the *Water Resource (Burnett Basin) Plan 2000*.

**Amendment of s 30F (Relationship with Sustainable Planning Act 2009)**

*Clause 146* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 5 Amendment of Water Resource (Fitzroy Basin) Plan 2011**

**Plan amended**

*Clause 147* states that this division amends the *Water Resource (Fitzroy) Plan 2011*.

**Amendment of s 117 (Relationship with Sustainable Planning Act 2009)**

*Clause 148* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 6 Amendment of Water Resource (Great Artesian Basin) Plan 2006**

**Plan amended**

*Clause 149* states that this division amends the *Water Resource (Great Artesian Basin) Plan 2006.*

**Amendment of s 35 (Relationship with Sustainable Planning Act 2009)**

*Clause 150* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'aquifer monitoring bores'.

**Division 7 Amendment of Water Resource (Gulf) Plan 2007**

**Plan amended**

*Clause 151* states that this division amends the *Water Resource (Gulf) Plan 2007.*

**Amendment of s 83 (Relationship with Sustainable Planning Act 2009)**

*Clause 152* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 8 Amendment of Water Resource (Mary Basin) Plan 2006**

**Plan amended**

*Clause 153* states that this division amends the *Water Resource (Mary Basin) Plan 2007.*

**Amendment of s 79 (Relationship with Sustainable Planning Act 2009)**

*Clause 154* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 9 Amendment of Water Resource (Mitchell) Plan 2007**

**Plan amended**

*Clause 155* states that this division amends the *Water Resource (Mitchell) Plan 2007.*

**Amendment of s 59 (Relationship with Sustainable Planning Act 2009)**

*Clause 156* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 10 Amendment of Water Resource (Moreton) Plan 2007**

**Plan amended**

*Clause 157* states that this division amends the *Water Resource (Moreton) Plan 2007.*

**Amendment of s 84 (Relationship with Sustainable Planning Act 2009)**

*Clause 158* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 11 Amendment of Water Resource (Pioneer Valley) Plan 2002**

**Plan amended**

*Clause 159* states that this division amends the *Water Resource (Pioneer Valley) Plan 2002*.

**Amendment of s 49ZC (Relationship with Integrated Planning Act 1997)**

*Clause 160* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 12 Amendment of Water Resource (Wet Tropics) Plan 2013**

**Plan amended**

*Clause 161* states that this division amends the *Water Resource (Wet Tropics) Plan 2013*.

**Amendment of s 62 (Relationship with Sustainable Planning Act 2009)**

*Clause 162* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.

**Division 13 Amendment of Water Resource (Whitsunday) Plan 2010**

**Plan amended**

*Clause 163* states that this division amends the *Water Resource (Whitsunday) Plan 2010*.

**Amendment of s 78 (Relationship with Sustainable Planning Act 2009)**

*Clause 164* amends the provision relating to the works triggers for subartesian works in the water resource plan to provide for 'exempt bores'.