

Forestry and Another Act Amendment Bill 2014

Report No. 50

Health and Community Services Committee

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Health and Community Services Committee

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Abbreviations and glossary

Note: terms below in italics are defined terms in legislation

the Bill	Forestry and Another Act Amendment Bill 2104
<i>chief executive</i>	Director-General of the Department of National Parks, Recreation, Sport and Racing
the committee	Health and Community Services Committee
DAFF	Department of Agriculture, Fisheries and Forestry
the department	Department of National Parks, Recreation, Sport and Racing
Forestry Act	<i>Forestry Act 1959</i>
Forestry Regulation	Forestry Regulation 1998
HQPlantations	HQPlantations Pty Ltd
Land Act	<i>Land Act 1994</i>
the Minister	Hon. Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing
Nature Conservation Act	<i>Nature Conservation Act 1992</i>
QPWS	Queensland Parks and Wildlife Service
QTIC	Queensland Tourism Industry Council
RAM Act	<i>Recreational Management Areas Act 2006</i>

Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the Forestry and Another Act Amendment Bill 2014 (the Bill).

The Bill was introduced into the Legislative Assembly by the Minister for National Parks, Recreation, Sport and Racing on 20 March 2014. The committee was required to report to the Legislative Assembly by 26 May 2014.

The Bill amends the *Forestry Act 1959* and *Recreation Areas Management Act 2006*. The majority of amendments transfer provisions about the powers of forest and plantation officers from the Forestry Regulation 1998 to the *Forestry Act 1959*, to comply with modern drafting practice and meet principles set out in the *Legislative Standards Act 1992*.

The Bill also inserts new officer powers into the *Forestry Act 1959* for the management of camping and animals, standardises the offences and penalties under the *Forestry Act 1959* to remove inconsistency in the way the same activity is managed across different classes of land and simplifies commercial activity permit requirements in both the *Forestry Act 1959* and the *Recreation Areas Management Act 2006* to allow for more effective management and generate a financial return to the state.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those who made written submissions on this Bill. Thanks also to officials from the Department of National Parks, Recreation, Sport and Racing who briefed the committee, the committee's staff and the Technical Scrutiny Secretariat.

I commend the report to the House.



Trevor Ruthenberg MP
Chair

Recommendation

Recommendation 1

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The committee recommends that the Forestry and Another Act Amendment Bill 2014 be passed.

1 Introduction and overview of the Bill

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, and consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

1.2 Committee process

The Forestry and Another Act Amendment Bill 2014 (the Bill) was introduced into the Legislative Assembly on 20 March 2014 by the Hon. Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing (the Minister). The Bill was referred to the committee for examination. The committee was required to report to the Legislative Assembly by 26 May 2014.

Officers from the Department of National Parks, Recreation, Sport and Racing briefed the committee on 2 April 2014 (see Appendix B).

The committee called for submissions by notice on its website, and wrote to eight stakeholder organisations to invite submissions. Two submissions were received (see Appendix A). The committee did not hold a public hearing on the Bill.

Transcripts of the briefing provided by the department on 2 April 2014 and the submissions received and accepted by the committee are published on the committee's webpage at www.parliament.qld.gov.au/hcsc.

1.3 Policy objectives

The Explanatory Notes state the main objectives of the Bill are to:

1. *update the Forestry Act 1959 (the Forestry Act) to apply current legislative standards and ensure consistency with contemporary legislation;*
2. *simplify commercial activity permit requirements to reduce red tape;*
3. *clarify and improve the operation of the Forestry Act; and*
4. *make amendments required to allow the remake of the Forestry Regulation 1998.*¹

In his explanatory speech the Minister stated the Forestry Act “is quite old” and that a review of the Act had been undertaken as part of the process of preparing to remake the Forestry Regulation.²

The Forestry Act provides for the reservation, management and protection of State forests and the sale of forest products on State lands, including State forests and timber reserves.³ The Act also provides for the appointment of forest and plantation officers, who can exercise certain powers in the management of these areas. While the majority of these powers are in the Forestry Act, some powers are contained in the Forestry Regulation, which also includes associated offence provisions. The Bill will remove these provisions from the Regulation and place them in the Act.

The Explanatory Notes state that the transfer of these provisions is necessary to “comply with modern drafting practice and to meet the fundamental legislative principles set out in the *Legislative*

1 Explanatory Notes, Forestry and Another Act Amendment Bill 2014, p.1

2 Dickson SL, Forestry and Another Act Amendment Bill-Introduction, Hansard, 20 March 2014, p.837

3 *Forestry Act 1959*, s.1

Standards Act 1992” and to facilitate the remaking of the Regulation, which is due to expire on 31 August 2014.⁴

1.4 Summary of amendments

The majority of amendments transfer provisions about the powers of forest and plantation officers from the Forestry Regulation to the Forestry Act, for the reasons outlined at 1.3. The Bill also inserts new powers into the Forestry Act for the management of camping and animals. These amendments are discussed in chapters 2 and 3.

Further amendments standardise offences and penalties in the Forestry Act with more contemporary legislation, such as the *Nature Conservation Act 1992* (Nature Conservation Act), to provide higher penalties for more serious offences and remove inconsistency in the way the same types of activities are managed across different classes of land. These amendments are discussed in chapter 4.

A third set of amendments simplify commercial activity permit requirements in the Forestry Act and the *Recreational Areas Management Act 2006* (RAM Act), to improve permit administration and allow permit renewals. An overview of these amendments is in chapter 5.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the Bill, information provided by the department in a briefing on 2 April 2014 and the information and views expressed in the two submissions received and accepted.

After considering the policy issues discussed in the following chapters of this report, and considering whether the Bill has sufficient regard to the fundamental legislative principles, the committee decided to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Forestry and Another Act Amendment Bill 2014 be passed.

4 Explanatory Notes, p.1

2 Appointment and powers of officers

The Forestry Act provides for the appointment of forest and plantation officers to exercise functions and powers under the Act.⁵ Forest officers are generally public service employees of the Queensland Parks and Wildlife Service or the Department of Agriculture, Fisheries and Forestry, with responsibility for managing State forest lands. Plantation officers are employees of HQPlantations Pty Ltd (HQ Plantations), which holds a 99 year licence to manage plantation timber within specific State plantation forests.⁶

2.1 Instruments of appointment and identity cards

Clause 4 of the Bill replaces existing section 17 of the Forestry Act with new sections 17 to 17E to clarify matters relating to the appointment of forest officers and to provide for officer identity cards.⁷

Proposed sections 17 to 17B allow the chief executive to appoint a person as a forest or plantation officer if satisfied that the person has the necessary experience or expertise. An officer holds office on the conditions stated in their instrument of appointment, a signed notice or a regulation and stops holding office in accordance with the terms of office, or upon resignation. Both provisions are new.

Proposed sections 17C to 17E introduce new identity card requirements for forest and plantation officers, which replace certificates of appointment under the existing sections 84(3) to 84(5). The Explanatory Notes state identity cards are “far more practical for an officer to carry and use than a paper certificate”.⁸

Identity cards must contain a recent photo and signature, identify the person as a forest or plantation officer under the Forestry Act and include an expiry date. The card may also be used for “other purposes”.⁹ The Explanatory Notes state this will allow officers exercising similar powers under related legislation to carry a single identity card. For example, a ranger may be a forest officer under the Forestry Act, a conservation officer under the Nature Conservation Act and an inspector under the Marine Parks Act.¹⁰

Officers must produce or have their identity card visible when exercising a power in relation to a person, or produce the card at the first reasonable opportunity.¹¹

Officers must return their identity card within 21 days of their office ending, unless they have a reasonable excuse. Failure to return a card can incur a maximum penalty of 50 penalty units, or \$5,500.¹² The committee considered whether this penalty is proportionate during its examination of the application of the fundamental legislative principles (see 5.1).

2.2 General powers

The Explanatory Notes state that while the majority of forest and plantation officer powers are specified in the Forestry Act, the Forestry Regulation currently contains some provisions specifying officer powers. The Bill moves these provisions into the Act, so that all officer powers are consolidated in the Act. This is intended to ensure compliance with the fundamental legislative principle that all legislation has sufficient regard to the rights and liberties of individuals and the

5 *Forestry Act 1959*, s.17 and 18

6 Explanatory Notes, pp.2 and 10

7 Explanatory Notes, p.6

8 Explanatory Notes, p.11

9 Forestry and Another Act Amendment Bill 2014, cl.4 (proposed s.17C)

10 Explanatory Notes, p.11

11 Forestry and Another Act Amendment Bill 2014, cl.4 (proposed s.17D)

12 Forestry and Another Act Amendment Bill 2014, cl.4 (proposed s.17E)

institute of Parliament.¹³ Clauses 5(1) and 6(2) of the Bill amend sections 18 (General powers of forest officers) and 18A (General powers of plantation officers) of the Forestry Act to clarify that an officer's powers may be limited by an instrument of appointment, a signed notice or a regulation.

2.2.1 Warrants

Clause 5 also updates provisions relating to warrants. Clause 5(2) allows any forest officer to execute a warrant. The Explanatory Notes state "this will ensure that warrants can be executed in a timely manner in the event of the forest officer who sought the warrant being unable to perform that function."¹⁴

2.2.2 Powers to direct

Clause 6(1) of the Bill amends section 18A (General powers of plantation officers) of the Forestry Act. Subsections 18A(2)(d) to (f) are omitted. Clause 37 replaces section 84A of the Act with new sections 84A to 84F to update the powers forest and plantation officers may exercise in a state forest, timber reserve or plantation licence area. They include the power to direct a person:

- about the use of a vehicle or vessel if it is necessary to prevent or remedy harm to forest products and waters, to secure the safety of a person or their property, to minimise disturbance to others in the area or to minimise or prevent damage to roads and other infrastructure (s.84A).
- who is reasonably suspected or found to have committed an offence to leave the area and not return for a period of up to six days. The direction can only be given if it is necessary to prevent the continuation of the offence or to secure evidence (s.84B).
- to leave an area, remove their property and not return for a stated period if dangerous circumstances exist or the person's presence may interfere with an emergency or rescue (s.84C).
- who is suspected of or found to be committing an offence, to stop committing the offence or activities related to the offence and to remain in place (s.84D).
- to stop a vehicle or vessel or relocate a vehicle or vessel where an officer reasonably suspects something in or on the vehicle or vessel may provide evidence of an offence (s.84E).

A forest or plantation officer who gives a direction must explain why the direction has been given and warn the person that it is an offence not to comply, unless doing so would endanger the person or property (section 84F). For example, "the officer need not give the warning if this could lead to the person becoming argumentative or aggressive in response, which in turn could put people or property at risk."¹⁵

HQPlantations raised a number of drafting issues about proposed sections 84A to 84D in their submission on the Bill. The department responded to each issue, in correspondence to the committee. Both documents are published on the committee's webpage at <http://www.parliament.qld.gov.au/work-of-committees/committees/H CSC/inquiries/current-inquiries/ForestryAnotherActAB14>.

2.2.3 Power to secure compliance

Forest and plantation officers may take reasonable steps to ensure compliance where they have directed a person to leave an area, either because they are suspected of or found to be committing an offence, or because the officer believes circumstances are dangerous or the person may interfere with an emergency or rescue. This includes using reasonable force and moving the person's property to another place.¹⁶

13 Explanatory Notes, p.2

14 Explanatory Notes, p.12

15 Explanatory Notes, p.24

16 Forestry and Another Act Amendment Bill 2014, cl.37 (proposed s.84(B)and (C))

The Explanatory Notes state the power to secure compliance will only be exercised as a last resort, where it is not possible to obtain police support at the time and where a person's refusal to leave would put others at risk.¹⁷ The Explanatory Notes also state that while this power is new for State forests, "it is an established power in relation to national parks and recreation areas, and has been available to authorised officers for these areas since 2006".¹⁸

2.2.4 Police authority to prosecute

HQPlantations suggested proposed sections 84A to 84D should be amended to provide Queensland Police with the authority to prosecute infringements under the Forestry Act on the plantation licence area.¹⁹

The department advised that an amendment of this nature "would have limited practical effect or benefit" as a police officer could not exercise any forest or plantation officer powers without having specific expertise or training and being specifically empowered by the Police Commissioner.²⁰ The department also stated that police officers are already able to assist in enforcement of the Forestry Act under sections 16 to 18 of the *Police Powers and Responsibilities Act 2000*.²¹

2.3 Fire

2.3.1 Powers

Clause 7 of the Bill omits section 18B of the Forestry Act, which specifies the powers of plantation officers in relation to fire. This section is proposed to be replaced by section 61TW, inserted by clause 25.

Proposed section 61TW allows a forest officer (in relation to a State forest, timber reserve or forest entitlement area) or a plantation officer (in relation to a plantation licence area) to put out a person's fire or direct the person to put out their fire or reduce its intensity, if the fire is not authorised or is or may become a hazard. The officer may also direct the person to not light another fire.²²

As with other powers, the officer does not need to give a warning if it is not possible to do so without endangering the safety of a person or property.²³

2.3.2 Controlling fires

Clause 28 of the Bill inserts new sections 62A to 62C in the Forestry Act to assist with fire control. The new sections provide that a person must:

- not light a fire in a forest recreation area except in a provided barbeque or fireplace (s.62A). This restriction does not apply to a person using an approved appliance or smoking product if the person takes reasonable steps to ensure no damage occurs in the immediate or adjacent area.
- put out a fire they have lit or have control over, in a State forest, timber reserve or forest entitlement area, before leaving the area, unless someone else assumes control of the fire or they have a reasonable excuse or (s.62B). For example, it would be a reasonable excuse to leave a fire unattended for a short time to give first aid to a seriously injured camper.²⁴
- not leave certain lit, burning or combustible materials in a State forest, timber reserve or forest entitlement area. This restriction does not apply to a person using an approved appliance or lighting a fire in a provided barbeque or fireplace (s.62C).

17 Explanatory Notes, pp.24 and 25

18 Explanatory Notes, pp.24 and 25

19 Submission 2, HQPlantations, p.2

20 Department of National Parks, Recreation, Sport and Racing, Correspondence, 5 May 2014, Attachment, pp.2-3

21 Department of National Parks, Recreation, Sport and Racing, Correspondence, 5 May 2014, Attachment, p.3

22 Forestry and Another Act Amendment Bill 2014, cl.25 (proposed s.61TW)

23 Explanatory Notes, pp.16 and 17

24 Explanatory Notes, p.17

3 Managing pollution, waste, camping and grazing

Clause 31 inserts a new Part 7A relating to pollution and waste in State forests and timber reserves and a new Part 7B relating to requirements about camping. The Explanatory Notes state that the provisions included in these parts are consistent with equivalent provisions for the management of protected areas under the Nature Conservation Act.²⁵

3.1 Pollution and waste prohibitions

Part 7A includes new sections 69A to 69J, which allow for improved management of pollution and waste issues. The new sections provide that in a state forest or timber reserve a person must not:

- pollute a dam, lake or watercourse (s.69B)
- take water from a dam, lake or watercourse, other than for personal use or to water an animal that they have bought into the area (s.69C(1)(a))
- dam or divert a watercourse, damage a water supply or storage facility or allow water from a supply or facility to run to waste (s.69C(1)(b)(c) and (d))
- use a herbicide, pesticide, or another harmful, offensive or noxious substance (s.69E)
- bury or dispose of a harmful, offensive or noxious substance or parts of an animal (s.69F)
- abandon a vehicle (s.69G) or waste materials (s. 69H(1))
- defecate within 10 metres (or a greater distance stated on a regulatory notice) of a dam, lake, watercourse or walking track, other than in a toilet facility provided (s.69H(2)(a))
- bury human waste within 10 metres (or a greater distance stated on a regulatory notice) of a dam, lake, watercourse, campsite, walking track or other public facility, except in a facility provided for the purpose (s. 69H(2) (b))
- leave human waste unburied (s. 69H(2) (c))
- break glass or allowing another person to break glass (s.69I), or
- leave litter in the area, other than in a litter bin provided, or dispose of litter in a way contrary to a regulatory notice (s.69J).

The new sections also allow the chief executive to prohibit people entering a dam, lake or watercourse, or going onto its bed or bank (by way of a regulatory notice) and a forest or plantation officer to direct a person to remove their litter.²⁶

Prohibitions relating to pollution and waste under sections 69C, 69D(3), 69E, 69F(b) and 69H(1) do not apply to a person whose actions are allowed either under an authority granted under the Forestry Act or an agreement with a plantation operator for a licence area or are undertaken in the course of performing duties under the Forestry Act.²⁷

3.2 Views of submitters

3.2.1 Misusing water

HQPlantations suggested section 69C should be re-named “Taking water” and amended to allow a plantation licensee to take water for fire protection, road construction and maintenance within the licence area. HQPlantations stated that the plantation licence and related agreements do not expressly allow a plantation licensee to take water from within the licence area, that the Forestry Act does expressly provide for the granting of rights to take water and that, with the exception of a forest or plantation officer taking water to put out a fire under 61TW, it is difficult to see how the exemptions in section 69A could apply.²⁸

25 Explanatory Notes, p.18

26 Forestry and Another Act Amendment Bill 2014, cl.31 (proposed s.69D and 69J)

27 Forestry and Another Act Amendment Bill 2014, cl.31 (proposed s.69A)

28 Submission 2, HQPlantations, p.1

In response, the department advised that the section heading in the Bill is appropriate and should be retained as section 69C covers various matters, some of which do not involve “Taking water”. For example, section 69C(1)(c) provides that a person must not damage a water supply or storage facility.²⁹

The department stated that section 69A “allows for arrangements that would provide a plantation licensee with access to water for fire protection and road construction and maintenance purposes.” The department advised that 69A(1)(a) and 69A(1)(b) allow for an authority or agreement to authorise a plantation operator (including a Plantation Licensee) to take water for fire protection and road construction and maintenance purposes.”³⁰

The department also advised that these provisions are not a new restriction - they replace existing section 13(1) of the Forestry Regulation, which prohibits the taking of water in a State forest other than for immediate domestic use (unless allowed under a permit or other authority under the Forestry Act or another Act).³¹

3.2.2 Abandoned vehicles

HQPlantations also suggested section 69G (Abandoning vehicles) should be amended to authorise forest and plantations officers to arrange for the removal of a vehicle which they reasonably believe has been abandoned. HQPlantations state vehicles are commonly abandoned in forest areas and create a serious fire risk as they are often burnt.³²

The department advised that an amendment is unnecessary as section 74 of the Forestry Act already provides a process for the removal of abandoned property and other things, such as vehicles.³³

3.3 Notices

Clause 9 amends sections 34AA of the Forestry Act to provide for the display of a regulatory notice³⁴ in a State forest, timber reserve and forest entitlement area. Regulatory notices are currently only used in State forests. This amendment will allow for consistent use of notices across all forestry areas.³⁵ Clause 9 also specifies the activities which may be prohibited or regulated by a regulatory notice. These include provisions relating to vehicle use, bringing in animals, lighting or keeping a fire, using stoves, lanterns and other appliances and entering a dam, lake or watercourse.

Clause 10 amends section 34AB of the Forestry Act to require the display of an information notice, in conjunction with a regulatory notice, in a State forest, timber reserve and forest entitlement area. Information notices are currently only used in State forests. Information notices must be displayed near each entrance to the area and state that it is an offence to not comply with a requirement in a regulatory notice.

3.4 Camping

3.4.1 Permits

Part 7B, inserted by clause 31, includes new sections 69K to 69S, which deal with camping activities.

The new sections provide that in a State forest or timber reserve a person must not camp unless they have a camping permit, the chief executive’s written approval or other authority under the Forestry Act. They also allow a person to camp under a lease under the Land Act, an appropriate agreement with a plantation operator for a licence area, or to perform duties under the Forestry Act (s.69K(1)).

29 Department of National Parks, Recreation, Sport and Racing, Correspondence, 5 May 2014, Attachment, p.1

30 Department of National Parks, Recreation, Sport and Racing, Correspondence, 5 May 2014, Attachment, p.1

31 Department of National Parks, Recreation, Sport and Racing, Correspondence, 5 May 2014, Attachment, p.1

32 Submission 2, HQPlantations, p.1

33 Department of National Parks, Recreation, Sport and Racing, Correspondence, 5 May 2014, Attachment, p.2

34 Regulatory notices are signs regulating access to and use of the area (Explanatory Notes, p.12).

35 Explanatory Notes, p.13

Proposed sections 69M and 69O will require a person holding a camping permit, approval or other authority to comply with the conditions of the permit and attach camping tags to their tent, caravan or other camping equipment immediately after making camp. Proposed sections 69N, 69R and 69S will make it an offence to allow more people to camp than is stated on the permit, to display a camping tag if a camping permit is not held, or to tamper with a camping tag on camping equipment.

3.4.2 E-permits and self-registration

Clause 12 replaces existing section 34H of the Forestry Act to provide for the display of a camping notice near the entrance to a State forest, which specifies that the forest, or an area in the forest, is an e-permit or self-registration camping area.³⁶ The camping notice must specify particular matters, including the procedures to be followed by campers, the penalty for camping without a permit and the camping fee for a self-registration area. The Explanatory Notes state that this provision “achieves consistency with equivalent camping areas in protected areas such as national parks.”³⁷

Clause 13 inserts new sections 34I and 34J to support camping in these areas by requiring the chief executive to provide camping forms in a sealed and secure container in self-registration camping areas and camping tags in e-permit camping areas.

Clause 15 replaces section 35A of the Forestry Act, which provides for self-registration camping, with new sections which:

- allow camping permits to be granted by phone, internet or self-registration (s.35A)
- require the issue of a camping permit with a camping tag when the permit is granted (s.35B)
- limit camping to the number of people and days stated in the permit application (s.35C).

The Explanatory Notes state these processes are consistent with processes for protected areas under the Nature Conservation Act.³⁸

3.5 Powers to direct

Proposed section 69P allows a forest officer to direct a person to leave a camp site in a State forest, timber reserve or licence area, with all of their property, and not return for up to 6 days if it is necessary to ensure the health and safety of the person or their property, minimise disturbance to people in the area or protect the area’s forest products and waters. It is an offence not to comply with this direction, unless the person has a reasonable excuse.³⁹

A direction may be given orally or in writing. The Explanatory Notes state that oral directions may be “appropriate and necessary in emergency situations, such as an approaching cyclone or a bushfire, particularly where large numbers of campers are involved”.⁴⁰

As with other powers, the officer does not need to give a warning if it is not possible to do so without endangering the safety of a person or property. For example, where an officer needs to move quickly between locations to direct campers to leave because of an approaching cyclone, people querying a warning may delay the officer and put people or property at risk.⁴¹

Proposed section 69Q allows a forest officer to direct a person who has been at a camp site for 30 days or more to leave and not return for a stated period to allow another person to use the site, to protect health or safety or because the natural condition of the site has been or is being degraded. The direction must be in writing and can only be given if there is another part of the area available

36 An e-permit camping area is an area for which a camping permit can be obtained by phone or internet and a self-registration camping area is an area where a person may register and pay on site (Explanatory Notes, p.13).

37 Explanatory Notes, p.13

38 Explanatory Notes, p.14

39 Forestry and Another Act Amendment Bill 2014, cl.31 (proposed s.69P(3))

40 Explanatory Notes, p.21

41 Explanatory Notes, p.21

for the person to camp. The officer must explain why the direction has been given and warn that it is an offence not to comply.

Clause 36 of the Bill inserts a new section 75A which allows forest officers and plantation officers to direct a person to remove an animal (other than stock) from an area and not return within 24 hours. The power applies if the animal is there unlawfully, has been causing a disturbance, is a danger to people, property or other animals or is in danger of injury. The Explanatory Notes state this recognises the right of other people and wildlife in the area to be protected from nuisance and danger, such as an aggressive dog in a day use area.⁴²

3.6 Permits in timber reserves

Clause 14 of the Bill amends section 25 of the Forestry Act to allow the chief executive to grant an occupation permit, camping permit, stock grazing permit and apiary permit in a timber reserve. Currently these permits can only be granted for State forests. Clause 14 also extends the maximum period for a stock grazing permit from seven to ten years. The Explanatory Notes state this will achieve consistency with stock grazing permits granted under the Nature Conservation Act.⁴³

42 Explanatory Notes, p.23

43 Explanatory Notes, p.13

4 Commercial activity permits

4.1 Current regulation

The Nature Conservation (Administration) Regulation 2006, the Forestry Regulation and the RAM Act provide for commercial activities in protected areas, State forests and recreation areas, if authorised by a commercial activity permit or agreement.⁴⁴

4.2 Proposed amendment to Forestry Act

Clause 35 of the Bill inserts new sections 73A to 73F into the Forestry Act. Section 73B replaces commercial activity provisions currently in the Forestry Regulation 1998. Relevant provisions from the Forestry Regulation will be omitted at the same time as the replacement provisions in the Forestry Act take effect. Both steps will occur by proclamation on the same day.⁴⁵

Proposed section 73(B)(1) states a person must not conduct an activity for gain (a commercial activity) in a State forest or timber reserve. Examples of commercial activity include the hire or sale of goods, commercial photography, a guided tour, safari, scenic flight, cruise or excursion, advertising or promoting the use of a State forest as part of one of those activities, or as a feature associated with a resort or tourist facility on land adjoining the State forest.

The restrictions on a commercial activity would not apply if:

- it is authorised under a permit or other authority under the Forestry Act
- filming or photography involves 10 or less people and does not involve building permanent structures, using large generators or power sources or using vehicles, except for transport or camping
- the chief executive is reasonably satisfied that the use of the State forest or timber reserve is incidental
- the filming or photographing of an event is in order to inform the public.⁴⁶ The Explanatory Notes state this allows for commercial news reporting of unexpected events, such as a fire or accident.⁴⁷

4.2.1 Filming and photography

During the public briefing the department stated that commercial filming and photography does not currently require a permit if two or less people are involved and that increasing the threshold to no more than 10 people is low risk and “will reduce red tape for business and remove an administrative burden for the department”.⁴⁸ The Explanatory Notes also state that a review of commercial activity permits in this area found that the large majority were for activities involving ten people or less.⁴⁹

Clause 46 of the Bill amends the definition of commercial activity permit in the RAM Act to replace two persons with 10 people in relation to commercial filming and photography permit requirements.

The Queensland Tourism Industry Council (QTIC) supports these amendments.⁵⁰

44 Explanatory Notes, p.5

45 Explanatory Notes, p.22

46 Forestry and Another Act Amendment Bill 2014, cl.35 (proposed s.73B(2) and (3))

47 Explanatory Notes, p.22

48 Mr Ben Klaassen, Deputy Director-General, Queensland Parks and Wildlife Service, Department of National Parks, Recreation, Sport and Racing, *Public Briefing Transcript*, 2 April 2014, p.4

49 Explanatory Notes, p.6

50 Submission 1, QTIC, p.1

4.3 Renewal of commercial activity permits

4.3.1 Current legislation

There is no process, under either the Forestry Act or RAM Act, to enable a commercial activity permit holder who wants to continue to undertake the same activity in the same location to apply for renewal. Permit holders must make a new application. The department advised the committee during the public briefing that certain amendments:

*will enable simple renewal of an existing commercial activity permit at a reduced application fee provided the activities carried out under the renewed permit remain substantially the same. This will save operators time and money and allow the department to process such applications more quickly.*⁵¹

4.3.2 Permit renewal under the Forestry Act

Clause 17 inserts a new Subdivision 2 in Division 2 of Part 4 of the Forestry Act (comprising sections 40A to 40D) to provide for the renewal of an existing commercial activity permit.⁵² The renewal provisions include:

- a permit holder may apply to renew a permit before it expires; the existing permit continues for up to three months, until a decision is made or the application is withdrawn (s.40A)
- the chief executive may amend or omit permit conditions for reasons of safety, proper management of the area, to conserve or protect resources or because a breach of a condition of the existing permit (s.40B)
- a renewed permit commences the day after the previous permit would have expired (s.40C(3)(a))
- a renewed permit cannot include new activities or locations, or an increased scale of activities (s.40C(3)(b)). The Explanatory Notes state this “reflects the intention that the simple renewal process will apply only to permits that will remain substantially unchanged.”⁵³
- if an application for renewal is refused the applicant must be given a notice which states the reasons for refusal; the applicant may apply for a new permit (s.40C(4))
- a new or renewed permit under the Forestry Act may be combined with a commercial activity permit under the Nature Conservation Act or RAM Act. This could occur “if the commercial activity extends over an area managed under these Acts, for example, a guided tour over a State forest and national park, or over a State forest and recreation area.”⁵⁴

4.3.3 Permit renewal under the RAM Act

Part 3 of the Bill (comprising clauses 42 to 26) amends the RAM Act to provide a process for the renewal of an existing commercial activity permit.⁵⁵ The process is outlined in clause 45, which inserts new sections 55B to 55E. The provisions are almost identical to the Forestry Act commercial activity permit renewal process described in section 4.3.2 above.

Proposed section 55E provides that the chief executive is not required to give the permit holder an information notice about the renewal, or refusal to renew, a commercial activity permit. The Explanatory Notes state that “if the applicant is dissatisfied with the renewal decision, the applicant can apply for a new permit, as indicated in section 55(4). The new permit application will then be subject to complete assessment, with opportunity for review of the new permit decision.”⁵⁶

51 Mr Ben Klaassen, *Public Briefing Transcript*, 2 April 2014, p.4

52 Explanatory Notes, p.14

53 Explanatory Notes, p.15

54 Explanatory Notes, p.15

55 Explanatory Notes, p.27

56 Explanatory Notes, p.28

4.3.4 Other amendments to the RAM Act

Clause 43 amends section 35 to provide that a commercial activity permit expires either at the end of its term or, where a renewal application has been made, when the chief executive makes a decision or 3 months from when the permit would have otherwise expired, whichever occurs first.⁵⁷

Clause 44 amends section 55A to recognise that, under the Forestry Act, commercial activity permits may apply to timber reserves as well as State forests.⁵⁸

The QTIC supports amending the Forestry Act and RAM Act to allow for commercial activity permit renewals, where permit holders will continue to undertake the same activity in the same location.⁵⁹

57 Forestry and Another Act Amendment Bill 2014, cl.43

58 Forestry and Another Act Amendment Bill 2014, cl.44

59 Submission 1, QTIC, pp.1-2

5 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

5.1 Maximum penalty for not returning an identity card

Proposed section 17E of the Bill requires that once a person’s appointment as a forest or plantation officer ends, the person must, unless they have a reasonable excuse, return their identity card within 21 days. The maximum penalty for not returning a card within this period is 50 penalty units, or \$5,500.

The committee considered whether proposed section 17E infringes on the rights and liberties of officers by introducing a penalty that is disproportionate to the offence committed or unfair in relation to a lack of exemptions.

The Explanatory Notes acknowledged that this may be an issue and stated “if circumstances result in a former officer being unable to return their card within the 21 day period, the circumstances can be taken into account, thereby affording the individual natural justice”.⁶⁰ An example of a reasonable excuse was also provided namely, when a person’s wallet containing the card has been stolen.⁶¹

The committee noted that the maximum penalty for a conservation officer not returning an identity card is the same under the *Nature Conservation Act*.⁶²

The committee considered, on balance, that proposed section 17E has sufficient regard to rights and liberties of individuals.

5.2 Maximum penalties for offences

The Bill contains several proposed new and amended penalties for offences, which are shown at Appendix C.

The committee considered whether these penalties infringe on the rights and liberties of individuals by introducing penalties that are disproportionate to the offence committed.

The Explanatory Notes stated current maximum penalties for a range of offences in State forests are significantly lower than penalties for similar offences in more contemporary legislation, such as the *RAM Act* and the *Nature Conservation Act*. Most of the offences are currently in the *Forestry Regulation*, where the maximum penalty is 10 penalty units, or \$1100. The *Forestry Act* does not allow penalties of more than 20 penalty units for offences in regulations made under the Act.⁶³ Those penalties are “an inadequate disincentive to someone committing potentially serious offences”. The proposed relocation of offences to the Act and increased penalties for serious offences creates a disincentive and is consistent with the (former) Scrutiny of Legislation Committee’s preference for penalties above 20 penalty units to be in primary legislation.⁶⁴

The committee noted that several of the penalties proposed by the Bill involve prohibited acts such as lighting fires in a State forest, which have the potential to cause considerable damage and expense, and that the penalties for these types of offences now align with similar offences in the

60 Explanatory Notes, p.9

61 Explanatory Notes, p.11

62 *Nature Conservation Act 1992*, s.130(3)

63 Explanatory Notes, pp.4-5

64 Explanatory Notes, p.5

Nature Conservation Act and RAM Act. The committee considered, on balance, that the proposed new and amended penalties are commensurate with the offences and therefore have sufficient regard to rights and liberties of individuals.

5.3 Powers of forest and plantation officers

Clauses 25, 31, 36 and 37 insert provisions relating to the powers of forest and plantation officers to give directions regarding the management of fire, campsites and animals, and contain associated penalties for not complying with such a direction.

The committee considered whether clauses 25, 31, 36 and 37 allow for the appropriate delegation of administrative power. The Explanatory Notes state that, where practicable, a direction will be given in writing, will state the reason why it has been given and warn that it is an offence to fail to comply and that oral directions may be necessary or appropriate in emergency situations, such as an approaching cyclone or bushfire. The Explanatory Notes also stated that the provisions allow for fair treatment of individuals by recognising that a person may have a reasonable excuse for not complying with an officer's direction.⁶⁵

The committee considered, on balance, that the powers afforded to forest and plantation officers under clauses 25, 31, 36 and 37 appear reasonable.

5.4 Regulatory notices

Clause 9 of the Bill allows regulatory notices to be used in timber reserves and forest entitlement areas, in addition to their present use in State forests.

The committee considered whether this allows for the appropriate delegation of administrative power. The Explanatory Notes acknowledged that this may be an issue and stated that this provides for a consistent management approach over forestry lands and that the delegation to use regulatory notices will be at the same level as currently applies in State forests.⁶⁶

The committee is satisfied that the delegation to use regulatory notices is at an appropriate level.

5.5 Appointment and qualifications of forest and plantation officers

Proposed section 17 of clause 4 of the Bill allows the chief executive to appoint a person as a forest or plantation officer if satisfied that the person has the "necessary expertise or experience".

The committee considered whether this allows for the appropriate delegation of administrative power as the chief executive is not expressly required to take qualifications into account when appointing a person as a forest or plantation officer, despite the section heading (Appointment and qualifications) suggesting otherwise.

The committee appreciates that a person's qualifications are relevant to determining whether they are suitable to carry out a function or power and that the term qualification is explicitly identified in many legislated appointment provisions.

The committee notes, however, that different drafting styles are applied to appointment provisions in relevant contemporary legislation. For example, under the Nature Conservation Act the Minister may appoint a person who has "satisfactorily completed a course of training approved by the Minister" as a conservation officer and a "qualified" person as an honorary protector. In addition the committee notes the definition of *appropriately qualified* in the *Acts Interpretation Act 1954*, which includes:

⁶⁵ Explanatory Notes, p.9

⁶⁶ Explanatory Notes, p.9

(a) for a function or power – means having the qualifications, experience or standing appropriate to perform the function or exercise the power;⁶⁷

The committee considered, on balance that the appointment provisions included in the Bill are adequate and that the term “necessary expertise or experience” can include consideration of a person’s qualifications.

⁶⁷ Acts Interpretation Act 1954, section 27A

Appendices

Appendix A – List of Submissions

Sub #	Submitter
001	Queensland Tourism Industry Council
002	HQPlantations

Appendix B – Witnesses at public briefing

Public briefing – 2 April 2014, Brisbane
Queensland Parks and Wildlife Service Department of National Parks, Recreation, Sport and Racing <ul style="list-style-type: none">• Mr Ben Klaassen, Deputy Director-General• Mr Todd Kelly, Manager, Policy and Legislation Unit• Mr Bob Hoey, Team Leader, Policy and Legislation Unit

Appendix C – Proposed new or amended offence provisions

Clause	Offence	Proposed maximum penalty
4	17E If a person stops being a forest officer or plantation officer, the person must return the person's identity card to the chief executive within 21 days after the office ends, unless the person has a reasonable excuse.	50 penalty units (\$5,500)
25	New 61TW(4) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction— (a) immediately after the direction is given; or (b) if the direction includes a time within which the person must comply, within that time.	165 penalty units (\$18,150)
27	62(1) A person must not light, maintain or use a fire in a State forest, timber reserve or forest entitlement area that is likely to burn off or clear any vegetation in the State forest, timber reserve or forest entitlement area.	165 penalty units (\$18,150)
27	62(1A) A person must not allow another person to light, maintain or use a fire in a State forest, timber reserve or forest entitlement area that is likely to burn off or clear any vegetation in the State forest, timber reserve or forest entitlement area.	165 penalty units (\$18,150)
28	New 62A(2) A person must not light, maintain or use a fire in a forest recreation area, other than in a fireplace or barbecue provided by the chief executive.	165 penalty units (\$18,150)
	New 62B(2) The person must put the fire out before leaving the fire, unless the person has a reasonable excuse.	165 penalty units (\$18,150)
	New 62C(1) A person must not leave any of the following in a State forest, timber reserve or forest entitlement area— (a) a lit match, pipe, cigar, cigarette or tobacco; (b) hot ashes; (c) a burning or smouldering substance; (d) a substance or device that ignites on impact or by spontaneous combustion.	165 penalty units (\$18,150)
	New 62C(3) A person must not put non-combustible material in a fire in a State forest, timber reserve or forest entitlement area. <i>Examples of non-combustible material—</i> a can, bottle, brick or piece of steel	20 penalty units (\$2,200)
31	New 69B(1) A person must not pollute a dam, lake or watercourse in a State forest or timber reserve.	50 penalty units (\$5,500)
	New 69C(1) A person must not— (a) take water from a dam, lake or watercourse in a State forest or timber reserve, other than— (i) for personal use within the State forest or timber reserve; or (ii) to water an animal that the person brought into the State forest or timber reserve; or (b) dam or divert a watercourse in a State forest or timber reserve; or	50 penalty units (\$5,500)

Clause	Offence	Proposed maximum penalty
	(c) damage a water supply or storage facility in a State forest or timber reserve; or (d) allow water from a water supply or storage facility in a State forest or timber reserve to run to waste.	
	New 69D(3) A person must not contravene a regulatory notice under subsection (1).	50 penalty units (\$5,500)
	New 69E A person must not use a herbicide, pesticide or another harmful, offensive or noxious substance in a State forest or timber reserve.	120 penalty units (\$13,200)
	New 69F A person must not bury or otherwise dispose of the following in a State forest or timber reserve— (a) a harmful, offensive or noxious substance; (b) the carcass, offal or skeleton of an animal.	120 penalty units (\$13,200)
	New 69G(1) A person must not abandon a vehicle, or part of a vehicle, in a State forest or timber reserve.	120 penalty units (\$13,200)
	New 69H(1) A person must not abandon waste materials in a State forest or timber reserve.	120 penalty units (\$13,200)
	New 69H(2) A person in a State forest or timber reserve must not— (a) defecate within the prescribed minimum distance of a dam, lake, watercourse or walking track in the State forest or timber reserve; or (b) bury human waste within the prescribed minimum distance of— (i) a dam, lake or watercourse in the State forest or timber reserve; or (ii) an occupied or established camp site; or (iii) a camp site designated by a regulatory notice as a camp site; or (iv) a walking track or other public facility; or (c) leave human waste unburied.	50 penalty units (\$5,500)
	New 69I(1) A person must not break glass in a State forest or timber reserve, unless the person has a reasonable excuse.	30 penalty units (\$3,300)
	New 69I(2) A person must not allow another person to break glass in a State forest or timber reserve, unless the person has a reasonable excuse.	30 penalty units (\$3,300)
	New 69J(1) A person must not leave litter brought into a State forest or timber reserve, unless the person has a reasonable excuse. <i>Example of reasonable excuse—</i> the person has collected litter from public land next to the State forest or timber reserve and brings the litter into the State forest or timber reserve to put it in a litter bin.	20 penalty units (\$2,200)
	New 69J(2) A person must not, unless the person has a reasonable excuse, leave litter in a State forest or timber reserve— (a) other than in a litter bin; or (b) in contravention of a regulatory notice.	20 penalty units (\$2,200)

Clause	Offence	Proposed maximum penalty
	<p>New 69J(4) A person given a direction under subsection (3) must, unless the person has a reasonable excuse, comply with the direction—</p> <ul style="list-style-type: none"> (a) immediately after the direction is given; or (b) if the direction includes a time within which the person must comply, within that time. 	20 penalty units (\$2,200)
	<p>New 69K(1) A person must not camp in any part of a State forest or timber reserve (the relevant area), unless the person—</p> <ul style="list-style-type: none"> (a) is camping under a camping permit for the relevant area; or <p><i>Note—</i></p> <p><i>See the Recreation Areas Management Act 2006, section 40, for camping permits issued under that Act.</i></p> <ul style="list-style-type: none"> (b) has the chief executive's written approval to camp in the relevant area; or (c) is camping in accordance with— <ul style="list-style-type: none"> (i) an authority (such as an agreement, contract, permit, licence or lease) under this Act; or (ii) a lease under the Land Act 1994; or (iii) an agreement entered into with a plantation operator for a licence area, to the extent that the agreement is consistent with the licence or sublicense, and related agreement for the licence area; or (d) is acting in the course of performing duties under this Act. 	20 penalty units (\$2,200)
	New 69K(3) A person must not camp in a State forest or timber reserve contrary to a regulatory notice.	80 penalty units (\$8,800)
	<p>New 69L A person must not camp in a forest entitlement area, unless the person—</p> <ul style="list-style-type: none"> (a) is camping with the chief executive's written approval; or (b) is a lessee or owner of the land containing a forest entitlement area, or a person camping with the lessee or owner; or (c) is acting in the course of performing duties under this Act. 	80 penalty units (\$8,800)
	New 69M A person camping in a State forest or timber reserve under a camping permit must comply with the conditions of the permit.	10 penalty units (\$1,100)
	<p>New 69N(1) The holder of a camping permit must not allow more people to camp under the permit or approval than—</p> <ul style="list-style-type: none"> (a) for an e-permit camping area—the number of people stated by the holder in the application for the permit; or (a) for a self-registration camping area—the lower of the following— <ul style="list-style-type: none"> (i) the number of people stated on the camping form for the permit; (ii) the number of people stated on the camping notice for the area as the maximum number of people who may camp under a camping permit in the area. 	20 penalty units (\$2,200)
	<p>New 69O(1) Immediately after a person who is camping under a camping permit makes camp, the person must attach the camping tag for the permit, in a conspicuous position, to—</p> <ul style="list-style-type: none"> (a) the tent, caravan or other structure that the person is camping in; or (b) if the person is not camping in a tent, caravan or other structure—a 	2 penalty units (\$220)

Clause	Offence	Proposed maximum penalty
	vehicle or equipment that the person is using for camping.	
	New 69O(2) The person must take reasonable steps to ensure the camping tag remains displayed at the person's camp while the person is camping under the permit.	2 penalty units (\$220)
	New 69P(3) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction— (a) immediately after the direction is given; or (b) if the direction includes a time within which the person must comply, within that time.	50 penalty units (\$5,500)
	New 69Q(3) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction— (a) immediately after the direction is given; or (b) if the direction includes a time within which the person must comply, within that time.	50 penalty units (\$5,500)
	New 69R A person must not attach a camping tag to a tent, caravan, structure, camping equipment or vehicle in a State forest or timber reserve unless the person holds a camping permit for the area.	20 penalty units (\$2,200)
	New 69S(1) A person must not, unless a person has a reasonable excuse, tamper with a camping tag displayed on a tent, caravan, structure, camping equipment or vehicle being used for camping.	20 penalty units (\$2,200)
35	New 73B(1) A person must not conduct an activity for gain (a commercial activity) in a State forest or timber reserve. Examples of commercial activity— <ul style="list-style-type: none"> the hire or sale of goods or services commercial photography a guided tour, safari, scenic flight, cruise or excursion advertising or promoting the use of a State forest or timber reserve as part of a tour, safari, scenic flight, cruise or excursion advertising or promoting the use of a State forest or timber reserve as a feature associated with a resort or tourist facility on land adjoining the State forest or timber reserve 	165 penalty units (\$18,150)
	New 73C(1) A person must not conduct an activity involving a group of people in a State forest or timber reserve (the area) that may restrict access to, or affect the enjoyment of, the area by the general public, having regard to— (a) the location of the area; and (b) the number of members of the general public that are likely to be in the area when the activity is being conducted.	50 penalty units (\$5,500)
	New 73D(1) A person must not possess, have control over, or use any of the following items in a State forest or timber reserve, unless the person has a reasonable excuse— (a) a weapon within the meaning of the Weapons Act 1990, schedule 2; (b) an axe, hoe, knife, mattock, pick, saw, shovel or other implement;	120 penalty units (\$13,200)

Clause	Offence	Proposed maximum penalty
	<ul style="list-style-type: none"> (c) a trap, snare, net or birdlime; (d) a poison within the meaning the Health (Drugs and Poisons) Regulation 1996, appendix 9; (e) an explosive within the meaning of the Explosives Act 1999; (f) a decoy; (g) anything else that can be used to take, or help take, wildlife or forest products. 	
	<p>New 73E(2) Subsection (1) does not apply if the person—</p> <ul style="list-style-type: none"> (a) is authorised to bring the plant to the place under an authority (such as an agreement, contract, permit, licence or lease) under an Act; or (b) is acting in the course of performing duties under this Act. 	50 penalty units (\$5,500)
	New 73F(1) A person must not build or keep a structure or other works in a State forest, timber reserve or forest entitlement area.	165 penalty units (\$18,150)
36	<p>New 75A(3) A person given a direction under this section must, unless the person has a reasonable excuse—</p> <ul style="list-style-type: none"> (a) comply with the direction— <ul style="list-style-type: none"> (i) immediately after the direction is given; or (ii) if the direction includes a time within which the person must comply, within that time; and (b) ensure the animal is not returned to the relevant area within 24 hours after its removal. 	40 penalty units (\$4,400)
37	84A(4) A person must comply with a direction given under this section, unless the person has a reasonable excuse.	50 penalty units (\$5,500)
	<p>84B(4) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction—</p> <ul style="list-style-type: none"> (a) immediately after the direction is given; or (b) if the direction includes a time within which the person must comply, within that time. 	50 penalty units (\$5,500)
	<p>84C(4) A person given a direction under this section must, unless the person has a reasonable excuse, comply with the direction—</p> <ul style="list-style-type: none"> (a) immediately after the direction is given; or (b) if the direction includes a time within which the person must comply, within that time. 	80 penalty units (\$8,800)
	84D(3) A person given a direction under this section must comply with the direction, unless the person has a reasonable excuse.	100 penalty units (\$11,000)
	84E(6) A person in control of a vehicle or vessel must comply with a direction under this section, unless the person has a reasonable excuse.	100 penalty units (\$11,000)