# Summary of the Land, Water and Other Legislation Amendment Bill 2013 by Act

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# *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*

## Transfer of land within external boundaries

The Bill streamlines a number of transfer related issues on Aboriginal and Torres Strait Islander lands. For example, simplifying the opening and closing of roads which will shorten the timeframes for transferring the land.

**What is the purpose of this amendment?**

To provide that if a road within the external boundaries of an Indigenous deed of grant in trust (DOGIT) or reserve is closed, then the closed road area is included into the DOGIT or reserve land upon closure of that road. This results in the area of closed road being transferable land under either the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* (the Acts).

It also provides that if any area of land within the external boundaries of an Indigenous DOGIT or reserve land is opened as a road, then the new road area ceases being part of the Indigenous DOGIT or reserve land and as a result is not transferable land under the Acts.

**Why is this amendment necessary?**

Currently when a road is closed or opened, a regulation is required to be made to change the 'transferability' status of the opened or closed road area. The amendments will negate the need for making such regulations.

**What are the benefits from this amendment?**

These amendments are minor technical amendments that replace more onerous and time consuming manual practices. The current processes are more costly and can add to the time it takes to transfer land under the Acts.

State and Local Government, the prospective trustees and the community benefit from these amendments as they reduce the time and cost to undertake these actions and often these actions are required to be completed before the land can be transferred under the Acts.

## Powers to determine land trust membership

The Bill provides land trusts with the power to appoint, remove or suspend members of the land trust. The Minister has been given the power to immediately suspend a member of a land trust.

**What is the purpose of this amendment?**

The purpose of these amendments is to provide all land trusts with the power to appoint, remove or suspend members of the land trust themselves. The amendments also clearly set out the processes for the Minister to suspend or remove a land trust member and to ensure that where there is an immediate risk to trust property from a member then that member can be suspended in a timely manner, but still affording natural justice.

**Why is this amendment necessary?**

Currently land trusts need to adopt rules to provide them with the power to appoint, suspend or remove members – otherwise they do not hold those powers.

Typically trusts only think of adopting these rules at the time they need such powers. This makes the process of adopting such rules contentious as it can be perceived that they are targeting specific individuals. Additionally, when the rules are necessary the process to adopt them can be frustrated by the very members the trust wishes to take action against. Very few of the 74 trusts have adopted such rules.

Where trusts have requested the Minster to take action, the current provisions have proven to be problematical to implement. This is especially the case where urgent action is required due to an immediate risk to trust property.

**What are the benefits from this amendment?**

The proposed amendments will make it practical for land trusts to suspend, remove or appoint members of a land trust themselves. By setting the rules out in the legislation there is a consistent standard for all land trusts and the government can be assured that natural justice is provided to land trust members.

However, there will still remain situations where land trusts are unable to take these actions due to a number of reasons, for example cultural reasons or a quorum of members cannot be achieved. In these circumstances, the Minister will still be able to take the necessary action to ensure the continued operation of the land trust by suspending, removing or appointing a member to the land trust as necessary.

The procedures for immediately suspending a member, suspending a member and removing a member have been clearly separated and set out. Checks and balances have been put in place to provide natural justice. The powers given to the trusts generally mirror the powers the Minister has.

## Continuation of sublease land

Aurukun Shire Lease land and Morning Shire Lease land are transferable lands under the *Aboriginal Land Act 1991*. Mornington Shire Lease land has already been transferred and is now Aboriginal freehold land. Upon transfer, the Shire lease is cancelled. There was doubt about whether subleases of the Shire leases continued post transfer. The Bill addresses this issue and puts beyond doubt that a sublease entered into under the *Aurukun and Mornington Shire Leases Act 1978* continues in force upon the transfer of the Shire lease land under the *Aboriginal Land Act 1991*.

**What is the purpose of this amendment?**

To ensure that subleases on Aurukun Shire Lease land continue post the transfer of that land under the *Aboriginal Land Act 1991* and that subleases that existed on Mornington Shire Lease land, at the time that land was transferred (7 December 2012), are taken to have continued post the transfer.

**Why is this amendment necessary?**

Doubt has been raised as to whether the subleases can continue post transfer. This is because the instrument under which the sublease is created (the Shire lease instrument) no longer exists when the land is transferred and accordingly, the sublease ceases to exist.

**Who benefits from this amendment?**

These amendments benefit lessees of these subleases (who may be government, private or commercial entities) and the community as existing interests and uses will be protected. Without these amendments it might be possible for someone to question the validity of a sublease and therefore the use being made of that land.

## Transfer of claimable land

The Bill designates Starcke National Park as transferable land under the *Aboriginal Land Act 1991* consistent with other parks in the Cape York Peninsula region, which will streamline its conversion to a jointly managed park.

**What is the purpose of this amendment?**

The purpose of the amendment is to change the designation of Starcke National Park from “claimable land” to “transferable land”.

**Why is this amendment necessary?**

The amendment is necessary to enable Starcke National Park and three nearby parks to be transferred to, and jointly managed by, the same Aboriginal landholding body.

**Who benefits from this amendment?**

Aboriginal traditional owners of Starcke National Park and nearby national parks will benefit from having a single landholding body jointly managing all four parks with the State, as this is more efficient than having separate, smaller landholding bodies. The State and the general community will also benefit from the amendment as it will streamline the transfer process and reduce costs.

# *Acquisition of Land Act 1967*

## Ways in which land is to be taken

The Bill provides that where no objections are lodged, the decision to acquire land may be made by the Minister administering the Act. The Minister may delegate this responsibility.

The Act also reflects that the matter will no longer be referred to the Governor in Council for the issue of the gazette resumption notice. Following the approval of the take by the Minister (if there are no objections) or following a section 15 agreement (if all the parties agree) a gazette resumption notice will be published.

**What is the purpose of these amendments?**

The proposed amendments will give the option to shorten approval processes under the *Acquisition of Land Act 1967.* Where there are no objections, the decision to acquire may be made by the Minister or the Minister's delegate. A gazette notice will be published without the need to refer the matter to the Governor in Council.

**Why are these amendments necessary?**

The proposed amendments are made in support of the Queensland Government's Six Month Action Plan July-December 2012 ("cutting red tape and regulation").

**What are the benefits from this amendment?**

These amendments will cut red tape and regulation by simplifying the process of publishing a gazette resumption notice taking the land or easement and consequently lower administrative costs for the State and constructing authorities. Constructing authorities include all local governments as well as entities such as Powerlink and Energex. Constructing authorities will be able to have a shorter lead time and access land earlier, without disadvantaging landholders.

Any public works required to be undertaken by a constructing authority following the taking of land or an easement without the need for Governor in Council approval will be able to be commenced earlier and thereby provide benefits for the public and possible savings for the constructing authority.

## Taking by agreement

The Bill provides for a shortened acquisition process where there are no objections or where the parties agree to the taking of an interest in land. A gazette notice will be published without the need for referral to the Governor in Council. This shortened process will not apply where native title or indigenous interests are involved.

**What is the purpose of these amendments?**

These amendments will create the option for a constructing authority and affected parties to enter into a section 15 Agreement for a constructing authority to take land. A gazette notice will be published without the need to refer the matter to the Minister or the Governor in Council.

The proposed streamlining will reduce the effort in processing acquisitions by agreement in straightforward matters.

**Why are these amendments necessary?**

The proposed amendments are made in support of the Queensland Government's Six Month Action Plan July-December 2012 ("cutting red tape and regulation").

**What are the benefits and who will benefit from this amendment?**

These amendments will cut red tape and regulation by simplifying the process of taking the land or easement and consequently lower administrative costs for constructing authorities.

Constructing authorities include all local governments as well as entities such as Powerlink and Energex. Constructing authorities will be able to have a shorter lead time and access land earlier, without disadvantaging landholders.

# *Cape York Peninsula Heritage Act 2007*

## Map of the Cape York Peninsula Region

The amendment has revised and corrected a map of the Cape York Peninsula Region in order to include the Eastern Kuku Yalanji parks in the region, and provides for the map to be revised from time to time by regulation, in order to streamline future changes to the definition of the region.

**What is the purpose of this amendment?**

The purpose of this amendment is to include the Eastern Kuku Yalanji parks in the Cape York Peninsula Region for the purposes of the *Aboriginal Land Act 1991* and other legislation, and to allow the map that defines the region to be revised by regulation.

**Why is this amendment necessary?**

This amendment is necessary to enable the Eastern Kuku Yalanji parks to be converted to jointly managed national parks (Cape York Peninsula Aboriginal land) in the future. It is also necessary to allow future adjustments to the region's boundary to be made by regulation rather than by an amendment to primary legislation.

**Who benefits from this amendment?**

Aboriginal traditional owners of the Eastern Kuku Yalanji parks will benefit from the opportunity to negotiate the conversion of the parks to jointly managed national parks (Cape York Peninsula Aboriginal land) in the future. The State and the general community will benefit from the streamlining of the process for defining the boundary of the region in future as it will reduce costs.

# *Foreign Ownership of Land Register Act 1988*

## Definition of interest in land

The Bill excludes from the Foreign Ownership of Land Register those interests in land that do not grant long-term exclusive possession of land – namely, profits a prendre, covenants, plantation licences, and carbon abatement interests.

**What is the purpose of this amendment?**

The purpose of this amendment is to exclude certain interests in land from being recorded in the Foreign Ownership of Land Register.

**Why is this amendment necessary?**

This amendment is necessary because the Foreign Ownership of Land Register is intended to record only interests that give long-term exclusive possession of land. The interests being excluded are secondary interests which do not give the holder possession of the land.

**What are the benefits from this amendment?**

The benefits from this amendment are that the Foreign Ownership of Land Register will record only ownership and interests that give rights similar to ownership, which is the purpose of the register. People who do not hold interests similar to ownership will now not be expected to fill in unnecessary forms.

# *Land Act 1994*

## Trustee leases

The Bill allows local governments and other statutory trustees of trust land to enter into trustee leases and dealings with trustee leases without the need for Ministerial approval, provided the trustee lease or other dealing is made subject to the terms of a relevant Mandatory Standard Terms document.

**What is the purpose of the amendments?**

The purpose of the amendments is to allow local government and other statutory trustees to approve leases and subleases on land using a relevant Mandatory Standard Terms document and without the need for Ministerial approval.

**Why is this amendment necessary?**

The amendment is part of the streamlining processes (red tape reduction) and budget/cost saving measures.

**Who benefits from this amendment?**

The proposed changes will remove an administrative burden and reduce the costs for business, community and government.

Statutory trustees and government departments will have a greater degree of day to day management of trustee leases and their subleases in a manner that is consistent with the scope of the lease (including the purpose, term and extent of the grant). This means that commercial decisions about the land, and registration of the trustee lease approvals, can be made more quickly to the benefit of both the proponent and the trustee.

For government, the amendments are expected to markedly reduce the time taken by the Department of Natural Resources and Mines to administer trustee leases, achieving administrative savings.

## Application process

The Bill streamlines the application processes by providing for a shorter process for making and dealing with applications by requiring applicants to seek third party approvals before the application can be made.

**What is the purpose of the amendments?**

The purpose of the amendments is to allow an applicant, rather than the Department of Natural Resources and Mines, to seek the views of third parties whose interests may be affected by a received application.

**Why are the amendments necessary?**

The amendments are necessary to provide for a more streamlined and flexible process for making and dealing with applications under the *Land Act 1994*.

**What are the benefits from these amendments?**

The streamlined application provisions will mean shorter lead times for decisions on applications to the benefit of both applicants and the government. This will also translate into administrative savings for the State. Applicants will have a better understanding of the way their proposal will impact on the interest of third parties and the likelihood of their application being approved.

## Lease renewal and lease conversion considerations

The Bill removes provisions designed to achieve closer settlement of agricultural areas. With market forces determining that agricultural operations often need to amalgamate to survive, these provisions are outdated.

**What is the purpose of this amendment?**

The purpose of this amendment is to remove the requirement to consider property-build up and subdivision provisions (designed in the past to achieve closer settlement of pastoral, grazing or agricultural areas) when applications for lease renewals or conversions are processed.

**Why is this amendment necessary?**

With market forces determining that farming operations often need to amalgamate to survive, the current provisions are out-dated.

**What are the benefits from this amendment?**

Generally, leases under the *Land Act 1994* are used and sold as a business. The market favours farming businesses being amalgamated to ensure their viability. This amendment will provide lessees with the flexibility to make business arrangements best suited to current market conditions to ensure the viability of their agribusinesses.

## When rent is owing

The Bill confirms that rent is not payable if the lessee has paid the purchase price to freehold the land. This provision addresses the operational issue where rent must sometimes be charged after a landholder has paid to freehold the land. This had occurred whilst waiting for Governor in Council approval and gazettal. In some instances, some lessees had to continue to pay rent for up to eight to ten weeks (e.g. through caretaker periods, Christmas/New year period).

**What is the purpose of this amendment?**

When converting the tenure from leasehold to freehold, the purpose of the amendment is to ensure no rent is imposed on a lessee from the date the lessee has paid the purchase price for the land and fulfilled all conditions of offer for the free holding of the land.

**Why is this amendment necessary?**

Currently, there is a requirement for a lessee to pay rent when it is owing even if there is an action to convert the lease to freehold land. This has resulted in some lessees who have satisfied all conditions of the offer to convert, including payment of the purchase price, still having to pay rent for occupation and use of land until the deed of grant is issued. This is inequitable for lessees.

**Who benefits from this amendment?**

This amendment provides cost savings for lessees converting their lease to freehold tenure.

## Short-term lease extension

The Bill allows a short-term extension of a lease for periods of up to two years, rather than one year. This will mitigate the risk of the lease expiring before it can be renewed.

**What is the purpose of these amendments?**

The purpose of these amendments is to permit the short-term extension of a lease for periods of up to two years, rather than one year, if it appears the lease will expire before finalisation of the application to renew or convert the lease.

**Why are the amendments necessary?**

Generally, consideration of applications to renew or convert a lease can be extensive and time consuming, particularly for rural leases requiring land condition assessments and the negotiation of land management agreements. In some cases, a one year term extension is too short and the Act prohibits exercising a delegated power to extend the term of a lease if it already has been extended.

In addition, rural lessees undertaking or about to undertake lease renewal may seek to have any decision about their lease renewal deferred pending government's response to, and outcomes of, the State Development, Industry and Infrastructure Committee of Parliament's report on the future and relevance of government land tenure across Queensland.

**What are the benefits from these amendments?**

The amendments will provide business certainty for lessees. Both lessees and government stand to benefit from more flexible lease extension provisions which will allow more considered decision-making within the context of the lease renewal process.

## Future Conservation Areas

The Bill repeals the Future Conservation Area provisions and will provide certainty for leaseholders by increasing their security of tenure as well as streamlining the rural leasehold land lease renewal processes under the State Rural Leasehold Land Strategy.

**What is the purpose of the amendments?**

The amendments will repeal the Future Conservation Area provisions which allow the reservation of rural leasehold land, and its acquisition in the future, for the protected area estate at the time the lease is renewed.

**Why are these amendments necessary?**

The Future Conservation Area provisions have created uncertainty amongst leaseholders about the future of their leases even though the provisions permitting all or part of a lease to be reserved for future acquisition for national parks have never been used since they commenced in January 2008.

**What are the benefits from this amendment?**

Leaseholders will benefit from increased security of tenure and business certainty. In addition, a streamlined rural lease renewal process means cost reductions and shorter lead times for decisions on a lessee's lease renewal application.

For government, there will be savings through streamlined processes as assessments for possible national parks will not be undertaken routinely as part of the lease renewal.

However, the repeal of the Future Conservation Area provisions will not impede the protection of areas worthy of conservation. In future, should a leasehold property (or part of the property) be identified as a priority for adding to the conservation estate, the government (through the Department of Environment and Heritage Protection) will stand in the market place independent of the lease renewal process and negotiate purchase of part or all of the lease.

## Land management agreement for rural leases

The Bill amends the provisions relating to rural leasehold land affected by the State Rural Leasehold Strategy to increase the threshold for new or renewed leases requiring a land management agreement to 1,000 hectares or more.

A range of minor and correctional amendments are also contained in the Bill. The Bill contains amendments to the *Land Act 1994* which:

- amend the public utility easement provisions to enable utility easements to be granted to utility providers

- expand the reasons for cancelling a permit to occupy (for example, a permit over a local government road may be cancelled if the local government advises it needs to control the road free from the permit, and a permit over unallocated State land may be cancelled if a section 16 evaluation finds the permit is inconsistent with the most appropriate tenure and use for the land)
- update provisions (for example, replace reference to 'department' in section 63(4) with 'the State') and introduce provisions to the Act's registration chapter (Chapter 6) in line with amendments being made to the *Land Title Act 1994* that are also contained in the Bill (for example severing joint tenancy by transfer).

**What is the purpose of the amendments?**

The amendments are largely aimed at realigning the State Rural Leasehold Land Strategy more closely with government policy commitments by increasing the land area threshold which applies to rural leases for which land management agreements are mandated.

**Why are these amendments necessary?**

The amendments are part of cost saving measures and red tape reduction. Undertaking condition assessments and preparing land management agreements for small rural leases of less than 1000 hectares has proven to be an unjustifiable intensive investment of resources for the State. The amendments will also provide lessees of small rural leases with the ability to cancel an existing land management agreement under certain conditions. Transitional arrangements are also required for renewal applications made before, but not decided on, commencement of the amendments.

**Who benefits from this amendment?**

For lessees, a streamlined rural lease renewal process means shorter lead times for decisions on their application for lease renewal or conversion.

For government, there will be savings through streamlined processes and improved business efficiencies as land condition assessments and negotiation of land management agreements need no longer be routinely undertaken as part of lease renewal for some 237 small rural leases.

However, with regards to ensuring the sustainable management of small rural leases, it will still be possible to require a land management agreement for rural leasehold land which suffers from, or is at risk of, land degradation; or if the lessee is using the lease land in a way that is not fulfilling the lessee's duty of care for the land under the *Land Act 1994*.

## Public utility easement provisions

**What is the purpose of this amendment?**

The purpose of this amendment is to expand the definition of public utility provider to include service providers and owners of infrastructure. Similar amendments are being made to the *Land Title Act 1994*.

**Why is this amendment necessary?**

This amendment acknowledges that utility services have expanded from government entities to include co-operatives and private/commercial entities. To facilitate operation of services provided by commercial entities, these entities need to be accepted legislatively as ‘public utility providers’.

**What are the benefits from this amendment?**

The amendments will overcome current legislative constraints by allowing public utility easements to be registered in favour of service providers and owners of infrastructure that may be used by service providers.

## Reasons for cancelling a permit to occupy

**What is the purpose of this amendment?**

The purpose of this amendment is to amend the reasons for cancelling a permit to occupy under section 180 of the *Land Act 1994* to better reflect the position that a permit to occupy is simply a permission to occupy the land.

**Why is this amendment necessary?**

The wording of section 180(1)(c) has raised interpretation concerns in relation to when the chief executive considers the cancellation is in the interest of the State, whether reference to 'interests of the State' means-

- the interests of the State as a landholder; or
- the interests of the State as representative of the public as a whole; or
- the interests of the State in exercise of its duty in facilitating the objects of the Act.

This needs to be clarified. For example, the amendment will confirm that a permit may be cancelled if the chief executive believes the land needs to be allocated to a person who will best facilitate its most appropriate use. A permit to occupy is a transitory 'interest' which does not change the base tenure of the land.

**Who benefits from this amendment?**

Both permittees and administrators of the *Land Act 1994* will benefit from clarity in legislation that a permit to occupy is simply a permission to occupy the land and not an interest in land that may be transferred, mortgaged or leased to another person.

# *Land Title Act 1994*

## Statutory easements

The Bill provides a mechanism for the creation of statutory easements over small terrace type housing lots, containing buildings with shared common walls. This reduces the administrative and compliance burden on business and the land development industry.

**What is the purpose of this amendment?**

The purpose of this amendment is to provide a statutory mechanism to allow developments of small lot subdivisions to provide a cost effective mechanism to register easements that will cover the protection of support, shelter, minor encroachments, maintenance of buildings close to a boundary and roof water drainage. These easements will be able to be registered using a much simplified document and without the need for the easements to be surveyed.

**Why is this amendment necessary?**

An amendment is necessary because currently the *Land Title Act 1994* only enables this type of easement to be created within community titles schemes. This legislative limitation places a restriction on development options available in areas of urban renewal and low cost housing.

**Who benefits from this amendment?**

This amendment will benefit the development industry by providing a greater range of development options for affordable and low cost housing which in turn will benefit both first time new owners entering the housing market and future owners by providing an alternative and cost effective option to purchasing into a community titles scheme development.

## Creation of a non-tidal boundary (watercourse) by plan of subdivision

The Bill allows for the creation of a non-tidal boundary (watercourse) on the registration of a plan. This amendment will facilitate development on land containing a previously undefined watercourse.

**What is the purpose of this amendment?**

The purpose of this amendment is to allow a registered owner to dedicate part of their land as a non-tidal boundary watercourse. The dedication of the land as a non-tidal boundary watercourse will occur on the registration of a survey plan which will have been approved by the Local Government.

**Why is this amendment necessary?**

An amendment is necessary because currently the *Land Title Act 1994* does not have any provision to enable this to occur. Owners of land are restricted in their development options because of this limitation. Currently, owners are forced to identify these areas of watercourses as either recreation reserves or drainage reserves, and this is not an appropriate tenure for this land.

**Who benefits from this amendment?**

This amendment will benefit owners of land wanting to develop their land by providing an improved range of options. There will also be a benefit to the public in that when land development occurs over such land, ownership and responsibility of watercourses will clearly be known.

## Dedication of freehold land as a road

The Bill provides for the dedication of a freehold lot by registration of a dedication notice. This will align with a provision in the *Land Act 1994* for the dedication of unallocated State land as road.

**What is the purpose of this amendment?**

The purpose of this amendment is to allow a registered owner of a freehold lot to dedicate the whole of that lot as road without the requirement for the preparation, lodgement and registration of a survey plan. The dedication will be by way of a simple document with Local Government approval.

**Why is this amendment necessary?**

An amendment is necessary because currently the *Land Title Act 1994* does not have a provision for such a streamlined action. It will now provide for a situation corresponding to similar provisions in the *Land Act 1994*, which has proven to be a cost effective option.

**Who benefits from this amendment?**

This amendment will benefit the registered owner of a lot by providing a cost effective method of dedicating land to new road. The Department of Natural Resources and Mines will also benefit through a more simplified and cost effective registration process.

## Grant of easement by lessee

The Bill provides for creation of an easement for the benefit of a leased area during the term of a registered lease.

A number of minor amendments to the *Land Title Act 1994* are also contained in the Bill which:

- remove obsolete provisions which refer to the issuing of substitute instruments to replace a lost or destroyed instrument. As a result of updated registry practices, there is no longer any need to issue substitute instruments. Previous practice was for certain instruments such as mortgages to be lodged for registration in duplicate, with the endorsed duplicate returned to the lodger after registration. The duplicate then had to be returned to the registry when the mortgage was released, amended or transferred. Current practice is that only one copy of an instrument is lodged

- provide that where a deed of grant takes effect on delivery (as under section 44 of the *Aboriginal Land Act 1991*), notification to the Registrar is required instead of lodging the original deed of grant in the Titles Registry

- clarify that planning approval is not required for registration of a plan if there is an exemption under other legislation. For example, Part 6 of the *State Development and Public Works Organisation Act 1971* identifies the role of the Coordinator-General as an approving authority for State Development Areas. Currently, the provisions in the *Land Title Act 1994* do not recognise this authority and the exemption from planning approval, therefore a general provision should be included

- modify a requirement applying where a joint tenant wishes to sever the joint tenancy by registering a transfer, so that a reasonable attempt must be made to give a copy of the transfer to the other joint tenants

- clarify when an instrument of amendment of lease may be registered to provide for a further lease term resulting from the exercise of an option. Where an option to renew under a

registered lease is exercised, the parties may give effect to the further term by registering an amendment of the lease. The instrument of amendment must be lodged within the 'term' of the lease which is defined in section 67 as including a period of possession following exercise of an option. It is not clear how this section is to operate in all cases, particularly where a lease contains more than one option to renew

- provide for the manner in which notification of certain matters relating to caveats must be given to the Registrar. For example, a caveator who does not want their caveat to lapse after three months must give notification to the Registrar that court proceedings have been started to establish the interest claimed under a caveat. To ensure that such notifications are formally recorded on the relevant title as soon as they are received, registry practice is to require notification to be given by lodging a prescribed form, rather than by mail or another method. It is desirable for this practice to be a legislative requirement, to provide certainty as to the time of notification

- provide that the Registrar may remove a caveat without a request being made if a transfer by mortgagee is lodged that is registrable and the interest claimed in the caveat cannot be sustained against the new registered owners

- clarify that statutory easements for support applying to a community titles schemes include party wall easements; the common law interpretation of an easement for support would suggest that this type of easement would also include support for a party wall. Currently, the provisions are not suitably specific to recognise party walls as being included in easements for support

- clarify and update the categories of witnesses to instruments. For example, the list of qualified witnesses includes 'lawyer', 'barrister', 'solicitor' and 'legal practitioner'. Since the *Legal Profession Act 2007* came into effect, these are now all covered by the term 'lawyer'. Also, clarification is needed that the categories 'justice of the peace' and 'commissioner for declarations' are limited to persons holding those offices under Queensland legislation

- update a provision relating to how powers of attorney (or certified copies) deposited in the registry are dealt with. Section 133 contemplates the original power of attorney being lodged and a certified copy being kept in the registry when the original is returned to the lodger. Registry practice has been updated so that a copy certified in accordance with the *Powers of Attorney Act 1998* may be lodged instead of the original and only an electronic image of the certified copy is kept in the registry

- make minor corrections to terminology in two sections, for example, the heading for section 151 incorrectly refers to 'transferee's notice' instead of 'settlement notice'

- provide for an additional exception from the requirement to deposit a certificate of title. Where a certificate of title has been issued for a lot, it must be returned for cancellation to allow an instrument to be registered for the lot. There are a number of exceptions, such as where the lodged instrument is the transfer of a registered lease. Additional exceptions will be for instruments dealing with other secondary interests, namely easements and profits a prendre in gross (i.e. those that do not benefit other land) and carbon abatement interests

- provide that the regulated fees for obtaining copies of publicly available documents from the register must be paid when the documents are provided under a subpoena or other court process. On a few occasions, persons who are parties to court proceedings (to which the

Registrar is not a party) have obtained copies of a large number of registered documents under a subpoena or other court process. These documents are publicly available upon payment of the regulated fee, either from departmental service centres or through on-line service providers. Any amount payable for production of documents under the relevant court rules is usually minimal. Use of the court process may be a way of circumventing the requirement to pay the regulated fees. Also, complying with the process in the manner (physical delivery of documents to the court) and within the timeframes required by the court is onerous for the Registrar, given that these documents can be quickly and efficiently obtained through other channels.

**What is the purpose of this amendment?**

The purpose of this amendment is to allow a person who holds a registered lease of freehold land to grant an easement which will end no later than the end of the lease.

**Why is this amendment necessary?**

An amendment is necessary because currently the *Land Title Act 1994* requires an easement to be signed by the registered owner, so a lessee under a registered lease cannot grant an easement.

**Who benefits from this amendment?**

This amendment will benefit both owners and registered lessees of freehold land as an easement, which will affect only a lessee's rights, will be able to be granted by the lessee without any involvement of the registered owner.

## Minor amendments

**What is the purpose of these amendments?**

The purpose of the minor amendments is to omit obsolete provisions, clarify and update a number of provisions and to allow improvements in processes for particular titles registry dealings.

**Why are these amendments necessary?**

These amendments are necessary to ensure that provisions of the legislation are unambiguous and up-to-date.

**Who benefits from these amendments?**

Legal practitioners, surveyors and members of the public preparing and lodging land title dealings for registration will benefit from the improved clarity (for example, as to when a plan of survey lodged for registration does not need local government approval) and from improvements in certain processes, for example, in relation to a joint tenant severing the joint tenancy by registration of a transfer.

# *Land Valuation Act 2010*

## Market survey reports

The Bill allows a market survey report to include sales that have occurred outside of a particular local government area (this could apply to large western grazing land where sales evidence can be limited to complex properties such as major shopping centres, where there will often only be a small number of sales in Australia). This flexibility ensures that the Valuer-General is provided with an appropriate market survey report that establishes and supports a market level/trend and allows for an accurate assessment of the probable impact on values.

**What is the purpose of this amendment?**

A market survey report is provided by operational valuers to the Valuer-General and includes details of sales of land that have occurred in a local government area since the last annual valuation. The report provides an assessment of the probable impact of those sales on the value of land if an annual valuation was made.

The definition of the report is being amended to provide the flexibility for a report to include not only sales of land that have occurred within the subject local government area, but also sales that have occurred elsewhere in Queensland or other Australian jurisdictions.

**Why is this amendment necessary?**

There may be no sales evidence available for certain property types (e.g. far western grazing or complex commercial properties like major shopping centres) in a particular local government area. Without sales evidence the valuer is unable to provide a market survey report.

**What are the benefits of this amendment?**

This will assist in providing the Valuer-General with market survey reports that establish and support a market level/trend and allow for a more accurate assessment of the potential impact on values if an annual valuation was made.

## Properly made objection

The Bill clarifies that a separate objection must be lodged for each valuation to ensure that there is an opportunity for information relevant to the particular valuation to be included with the objection.

**What is the purpose of this amendment?**

The purpose of this amendment is to clarify that a separate objection must be lodged for each valuation.

**Why is this amendment necessary?**

One of the intentions of the new objection process implemented as part of the introduction of the *Land Valuation Act 2010* was to improve the quality of the objection decision-making process by obtaining more accurate and detailed information ‘up front’ with lodgment of the objection.

To achieve this there is the requirement to obtain specific information concerning each valuation however the Act does not specify that a separate objection should be lodged per valuation.

**What are the benefits of this amendment?**

The provision of specific information on an objection, relative to the particular valuation being contested, will allow for a more informed decision making process. This will result in more efficient processes leading to better quality objection decisions for the landowner.

## Immunity of Chairperson

The Bill corrects an unintentional drafting omission to provide that chairpersons appointed for an objection conference have immunity from civil liability for an act or omission made honestly and without negligence.

**What is the purpose of this amendment?**

To provide that chairpersons appointed for objection conferences to valuations greater than $5 million have immunity from civil liability for an act or omission made honestly and without negligence.

**Why is this amendment necessary?**

There have been concerns raised by appointed chairpersons that the *Land Valuation Act 2010* does not provide immunity in the event of a potential civil proceeding being brought against them.

**What are the benefits of this amendment?**

Appropriately qualified individuals will consider applying for appointment as a chairperson in the future without the concern associated with a lack of immunity.

The provision of immunity promotes an underlying principle of the *Land Valuation Act 2010* that the chairperson is truly independent.

## Appeal to the Land Court

The Bill clarifies that a separate appeal form must be lodged for each objection decision that is being appealed to the Land Court. This ensures that the Valuer-General has as much specific information as possible to enhance preparations for each appeal.

**What is the purpose of this amendment?**

The purpose of this amendment is to clarify that a separate appeal must be lodged for each objection decision that is being appealed to the Land Court.

**Why is this amendment necessary?**

To enable the Valuer-General (as the respondent) to prepare for an appeal, it is important to obtain as much specific information as possible for each appeal. The *Land Valuation Act 2010* does not explicitly state that there is a requirement for a separate form for each appeal to an objection decision.

**What are the benefits of this amendment?**

This amendment will ensure that the Valuer-General has as much specific information as possible to enhance preparation for each appeal. This should streamline the appeal process.

## Modernising address for service

The Bill amends the *Land Valuation Act 2010* to provide land owners with the flexibility to amend their service address to an electronic address (e.g. email or digital mailbox). If this occurs, valuation information will be provided by electronic delivery to that address. Land owners who do not provide an electronic service address will continue to be posted a hardcopy valuation notice.

**What is the purpose of this amendment?**

The *Land Valuation Act 2010* is being modernised to provide land owners with the flexibility to amend their service address to an electronic address (e.g. email or digital mailbox).

**Why is this amendment necessary?**

The Act does not provide the flexibility to utilise modern electronic delivery mechanisms such as the transmission of a hyperlink that provides access to a website where the relevant information can be made available.

**Who benefits from this amendment?**

This amendment provides the flexibility for an owner to provide an electronic service address such as an email address, internet protocol address or the address of a digital mailbox.

If an owner provides an electronic service address then notices or other documents under the *Land Valuation Act 2010* could either be transmitted as an attachment or could be accessed via a hyperlink transmitted to the address.

Owners who do not provide an electronic service address will continue to be posted hardcopy valuation notices.

## Substituted service

The Bill amends an incorrect reference to service address in the substituted service provision. The reference to service address is being amended to the address of the relevant land which provides a more appropriate alternative for substituted service.

**What is the purpose of this amendment?**

This amendment provides for alternative methods of service of notices or documents under the *Land Valuation Act 2010* when the use of the service address has failed and the Valuer-General is aware that the owner is absent from the State or cannot be found.

The amendment replaces an incorrect reference to service address with the address of the relevant land.

**Why is this amendment necessary?**

As the service address is associated with ordinary service, it is not applicable to substituted service. This would be simply repeating a method of service that had already failed.

**What are the benefits of this amendment?**

The inclusion of the address of the relevant land provides a viable alternative for the service of documents under the *Land Valuation Act 2010*.

# *Petroleum Act 1923* and *Petroleum and Gas (Production and Safety) Act 2004*

## Conversion of petroleum wells

These Acts have been amended to provide a more streamlined process for the conversion of petroleum wells to water supply bores or water observation bores. Minor amendments to the *Water Act 2000* will support the amendments to the petroleum legislation, to allow the transfer of the converted petroleum well to a landholder to use as water bore. These amendments will not negate the need to obtain a water entitlement if required.

**What is the purpose of this amendment?**

One of the key purposes of the amendments is to allow petroleum tenure holders to convert petroleum wells, including coal seam gas wells, to water observation bores or water supply bores.

**Why is this amendment necessary?**

Currently, a petroleum tenure holder, who has drilled a petroleum well, may only convert a petroleum well to a water supply bore if the conversion is completed by, or under the supervision of, a licensed water bore driller.

The requirement to have a licensed water bore driller on site is recognised as imposing additional time, cost and practical constraints on petroleum tenure holders. This requirement also achieves little substantial benefit, given the equipment, expertise and competencies of the petroleum well driller.

**Who benefits from this amendment?**

Landholders will benefit from the amendments, as the amendments streamline the requirements for a petroleum tenure holder to convert a petroleum well to a water bore.

This will particularly advantage those landholders in areas where water is a precious commodity, as the additional time, cost and practical constraints on petroleum tenure holders will be alleviated, giving the petroleum tenure holder more inclination to convert a petroleum well to a water bore and transfer this to the landholder.

## Pipelines transporting produced water

The Bill provides that the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) applies to produced water pipelines that contain gas, whilst the *Work Health and Safety Act 2011* (WHS Act) applies to pipelines transporting produced water without gas.

The need for this amendment was identified during the Parliamentary Committee hearing into the *Mines Legislation (Streamlining) Amendment Bill 2012* (Streamlining Bill). The Streamlining Bill unintentionally excluded pipelines carrying produced water, which includes coal seam gas (CSG) water, from the definition of operating plant. The result was that these pipelines are subject to the WHS Act. This unnecessarily complicates matters for CSG companies because untreated CSG water pipelines are laid in the same trench as gas pipelines (which are regulated under the P&G Act) and both are typically constructed out of the same material.

Industry agreed that water pipelines containing gas should be regulated solely by the P&G Act. Different companies also indicated they have different points in their operating facilities at which the water is free of gas. In order to cater for the differences, the Bill places an obligation on the operator to indicate in the safety management plan the pipelines that transport produced water together with gas.

**What is the purpose of this amendment?**

The purposes of this amendment are to address concerns raised by stakeholders during the Parliamentary Committee hearing into the Mines Legislation (Streamlining) Amendment Bill 2012 (Streamlining Bill) and to ensure all facilities that may still have residual gas related risks such as pipelines carrying untreated CSG water from the well head to treatment facilities are regulated under the *Petroleum and Gas (Production and Safety) Act 2004*.

**Why is this amendment necessary?**

The need for this amendment was identified during the Parliamentary Committee hearing into the Streamlining Bill. The Streamlining Bill unintentionally excluded pipelines carrying produced water, which includes CSG water, from the definition of operating plant. The result was that these pipelines are subject to the *Work Health and Safety Act 2011*. This unnecessarily complicates matters for CSG companies because untreated CSG water pipelines that transport produced water together with gas are laid in the same trench as gas pipelines (regulated under the a *Petroleum and Gas (Production and Safety) Act 2004*) and both are typically constructed out of the same material.

Industry agreed that water pipelines containing gas should be regulated solely by the *Petroleum and Gas (Production and Safety) Act 2004*.

**What are the benefits and/or who benefits from this amendment?**

This amendment ensures all pipelines carrying produced water where petroleum may be present will be captured under the *Petroleum and Gas (Production and Safety) Act 2004* and regulated by inspectors with expertise in petroleum and gas. Also, as these pipelines are normally laid alongside the gas pipelines it is simpler for operators and regulators to have one regulatory regime apply.

# *River Improvement Trust Act 1940*

The *River Improvement Trust Act 1940* allows River Improvement Trusts (statutory bodies) to protect and improve rivers, repair and prevent damage to rivers and prevent or mitigate flooding of land by riverine flood. The Bill streamlines a number of governance and administration requirements for River Improvement Trusts.

Generally the objectives of the amendments are to:

- modify the appointment process for certain members, particularly replacing Governor in Council approval with Ministerial approval
- remove the requirement for a government representative member/chair from the trust membership, and replace the position with a community member and provide for the election of the chair from within the trust membership
- provide a framework for decision making about the duration and appointments of members
- provide for the Minister to determine the appropriate level of local government representation and non-local government membership on a trust
- modify the approval process for the annual works program, particularly removing the requirement for ministerial endorsement whilst maintaining the requirement for approval of the Director-General
- provide for the Minister to approve the upper limits of fees and allowances payable to members of a trust, instead of the Governor in Council by regulation
- insert a new requirement for a trust meeting to be held at least twice each financial year
- replace a reference to “chairperson” of the local government to “mayor”.

**What is the purpose of these amendments?**

The purpose of these amendments is to improve the governance of river improvement trusts and administrative processes.

**Why are these amendments necessary?**

The amendments are necessary as, under the current legislation, there are a number of appointment related powers exercised by the Governor in Council that are contributing to time and resource inefficiencies, in addition to unnecessary government representation on trusts, and uncertainty surrounding terms of appointment and other administrative matters.

**What are the benefits from these amendments?**

The key benefits of these amendments include the removal of time consuming and unnecessarily burdensome requirements for trust governance and administration. Specifically, the changes will enhance the efficiency of the appointment process and the determination of fees and allowances, as decisions will no longer be made through regulation by the Governor in Council. It will also be easier to gain approval of annual works programs as the chief executive’s approval is considered sufficient. An increased representation of community interests within trust memberships will enhance decision making as there will be a broader range of skills and experiences to draw from.

# *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the *Sustainable Planning Act 2009*

The amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the *Sustainable Planning Act 2009* provide for the extension of due dates and sunset clauses.

The amendments will extend an existing temporary water approval process in South East Queensland (SEQ) under which distributor-retailers (i.e. Queensland Urban Utilities and Unitywater) rely on local governments to issue approvals on their behalf.

The amendments will also extend a legislative deadline in relation to the making of infrastructure plans by distributor-retailers and the councils (Gold Coast, Logan and Redland City Councils) which established water businesses after the breakup of the Allconnex Water Distributor-retailer.

**What is the purpose of this amendment?**

The SEQ distributor-retailers (Unitywater and Queensland Urban Utilities) and their owner councils have been operating under a temporary assessment process to deal with the water and sewerage issues in development applications. This relies on councils issuing development approvals that are based on technical advice from the relevant distributor-retailer. This will be replaced by a streamlined water approval process, but additional time is needed to develop the necessary legislation and for stakeholders to prepare for its introduction. It is therefore proposed to extend the life of the temporary assessment process that would otherwise expire in mid-2013, until March 2014.

The distributor-retailers and the three SEQ councils are required to adopt infrastructure plans, known as Water NetServ Plans, by mid-2013. It is proposed to extend this date to align with the commencement of the streamlined water approval process in March 2014.

**Why is this amendment necessary?**

The existing temporary water approval process in SEQ will lapse on 30 June 2013 and the amendments proposed by the *Land, Water and Other Legislation Amendment Bill 2013* will extend the life of the interim process to 1 March 2014.

This will allow time to develop the legislation for the replacement streamlined water approval process with practical input from the development industry, councils and distributor-retailers. This extension of time ensures the water and sewerage issues associated with development applications continue to be dealt with from mid-2013 onwards until the proposed streamlined water approval regime is in place on 1 March 2014.

There is also a legislative deadline in relation to plan making for distributor-retailers and ex-Allconnex councils (Gold Coast, Logan and Redland City Councils). Each of these water entities are required to develop and adopt a coordinated infrastructure and business plan, called a Water NetServ Plan by 1 July 2013. This amendment will extend this deadline from 1 July 2013 to 1 March 2014, to align with the commencement of the streamlined water approval regime. This will also give the ex-Allconnex councils (Gold Coast, Logan and Redland City Councils) the additional time they have requested to develop their Water NetServ Plans.

**What are the benefits from this amendment?**

The extension of the legislative timelines for the existing temporary water approval process in SEQ and the Water NetServ Plan will:

- enable the development industry, councils and distributor-retailers to have practical input into the development of legislation for the streamlined water approval system
- allow all stakeholders to prepare for the implementation of this new system; and
- ensure that the short extension of the life of the temporary approval process will allow water and sewerage issues associated with development applications to be dealt with in the meantime.

# *Water Act 2000*

## Regulation of levees

The Bill provides a definition of a levee, identifying that a development permit under the *Sustainable Planning Act 2009* will be required (to construct a new levee or modify an existing levee) where the development is assessable development under the *Sustainable Planning Act 2009*, and a power to prescribe categories of levees based on risk assessment criteria. The creation of different categories of levees will enable different levels of assessment under the Sustainable Planning Regulation 2009.

**What is the purpose of these amendments?**

The purpose of the amendments is to progress the Queensland Floods Commission of Inquiry recommendations that relate to levees and to provide a consistent definition of levee and assessment process for all levees in Queensland.

**Why are the amendments necessary?**

The Queensland Floods Commission of Inquiry, in its final report on 16 March 2012, determined that levees can create a number of problems:

- flood mitigation levees designed to provide protection from water breaking out of rivers and creeks may increase flood heights on the other side of the river. In some places this may be significant
- if levees are overtopped, the damage caused by the water's breakout can be considerable
- individuals or communities protected by a levee may become complacent, assuming that the levee will protect against all flood.

The Commission found inconsistency in the approach to control the development of levees and disputes as to who should impose that control. It concluded that the patchwork of (the then) Department of Environment and Resource Management and council approvals, and in some areas a complete absence of regulation, is not conducive to consistent decision making. The potential impact of levees on flooding means that those issues should be resolved.

The Commission concluded that structural measures, such as levees, are one of the four main threads of best practice floodplain management outlined in *Floodplain Management in Australia: best practice and guidelines* (SCARM Report 73). It found that if it is appropriate that levees form

part of a council's floodplain management plan, it is also appropriate that levees be regulated. The fact that levees affect watercourses makes them a necessary part of any consideration of flooding in a catchment.

**What are the benefits from these amendments?**

The amendments will enable a consistent and state-wide regulation of levees. All levees in Queensland will be assessed, for the first time against a single definition of levee. In addition, in conjunction with amendments to be made later in the year following public consultation, all levees throughout Queensland will be assessed against one code under the development approval processes of the *Sustainable Planning Act 2009*.

Levees may cause damage far from their locations. As an adjustment to the natural watercourse, they can affect the entire catchment in which they are located. The Queensland Floods Commission of Inquiry concluded that the propensity of levees to cause damage to other property supports the argument for consistent and state-wide regulation.

## Water licence renewals

The Bill extends the life of all current water licences to 30 June 2111. Any new water licences will also be granted until 30 June 2111, unless a new licence granted under a water resource plan, resource operations plan or wild river declaration states otherwise.

**What is the purpose of this amendment?**

The purpose of this amendment is to extend the expiry date of water licences to 30 June 2111. This will apply to all new and existing water licences with the exception of new water licences issued under a water resource plan, resource operations plan or wild river declaration which may specify an earlier expiry date.

**Why is this amendment necessary?**

Water licences are currently granted for 10 years for non-stock and domestic purposes and 20 years for stock and domestic purposes. This was originally to enable a review, if the licensee sought renewal, of the wider water management implications of the licence. However, water resource plans and resource operations plans currently cover 90% of the State and are the principal water planning mechanism for ensuring sustainable management and allocation of water in Queensland. As a result, the current 10 or 20 year expiry and renewal cycle for water licences is no longer required to implement natural resource management policy aimed at the sustainable management and allocation of water.

**What are the benefits from this amendment?**

Extending water licence renewals will reduce the regulatory burden on licensees by removing the need to consistently apply for renewals, and enable the department to reduce the administrative costs from the processing of renewals.

## Removing the requirement for a water licence for associated water

The Bill removes the requirement for a petroleum tenure holder to obtain a water licence for the supply of associated water to other users. The amendments to the *Water Act 2000* are supported by amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and where practicable, the *Petroleum Act 1923*.

**What is the purpose of this amendment?**

The purpose of this amendment is to remove the requirement on a petroleum tenure holder to obtain a water licence for the supply of associated water to landholders whose property does not overlap the tenure.

**Why is this amendment necessary?**

Currently, a petroleum tenure holder may provide associated water to a landholder whose land overlaps the petroleum tenure without authorisation under the *Water Act 2000*. However, a water licence is required if the water is provided to another landholder whose property does not overlap the tenure. The original rationale for requiring water licences is no longer valid as potential impacts from groundwater extraction associated with petroleum operations are now dealt with under Chapter 3 of the *Water Act 2000*.

**Who will benefit from this amendment?**

This amendment will cut red tape and regulation for petroleum tenure holders by removing the restrictions on petroleum tenure holders around the supply of associated water to landholders.

## Removing the requirement for licences to interfere for watercourse diversions associated with resource activities

The Bill removes the requirement for a resource activity tenure holder to hold a water licence to interfere with the flow of water in a watercourse via a diversion on tenure. Instead, the interference will be authorised through the grant of an environmental authority under the *Environmental Protection Act 1994*.

**What is the purpose of this amendment?**

The purpose of this amendment is to exempt the holder of an environmental authority for a resource activity under the *Environmental Protection Act 1994* from the requirement to obtain a water licence to interfere with water to divert a watercourse under the *Water Act 2000*.

**Why is this amendment necessary?**

This amendment is necessary to remove the current dual requirement to hold a water licence to interfere with water under the *Water Act 2000* and an environmental authority under the *Environmental Protection Act 1994*. The assessment of impacts associated with interfering with the flow of water by watercourse diversions will now be assessed and authorised with other environmental impacts as part of a single process for granting an environmental authority. The environmental authority will be conditioned accordingly.

**What are the benefits from this amendment?**

This amendment will cut red tape and regulation for the proponent of a resource activity by removing the overlapping requirement to hold two different authorisations when diverting a watercourse to undertake operations.

## Removing the requirement for a riverine protection permit to destroy vegetation

The Bill removes the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring. Clearing of vegetation in a watercourse, lake or spring will be regulated solely under the existing vegetation management framework, that being under the *Vegetation Management Act 1999* and the *Sustainable Planning Act 2009*.

**What is the purpose of this amendment?**

The purpose of this amendment is to ensure that the clearing of vegetation in a watercourse, lake or spring is regulated under one regulatory framework, by removing the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring under the *Water Act 2000*.

**Why is this amendment necessary?**

Currently, a person undertaking vegetation clearing in a watercourse, lake or spring is required to consider the requirements of two different frameworks – the *Water Act 2000*, and the *Vegetation Management Act 1999* in conjunction with the *Sustainable Planning Act 2009*. Although in most cases the two frameworks work together, a person may be required to obtain both a riverine protection permit and a vegetation clearing permit.

**What are the benefits from this amendment?**

This amendment will simplify the approval process for landholders so that only one regulatory framework (the *Vegetation Management Act* 1999 and the *Sustainable Planning Act* 2009) will apply when undertaking vegetation clearing in a watercourse, lake or spring.

## Expiry of water resource plans

The Bill provides the Minister with more flexibility to prioritise the review and replacement of water resource plans. It removes water resource plans from the automatic expiry provisions of the *Statutory Instruments Act 1992*, and enables the Minister to postpone the expiry of a water resource plan under the *Water Act 2000* for up to 10 years.

**What is the purpose of this amendment?**

The purpose of this amendment is to provide the Minister with greater flexibility to manage the expiry of water resource plans under the *Water Act 2000*.

**Why is this amendment necessary?**

The expiry of water resource plans is currently regulated under the *Statutory Instruments Act 1992* which provides for their expiry after ten years. With numerous water resource plans due for expiry over the coming years, the *Statutory Instruments Act 1992* restricts the department in prioritising the review and replacement of water resource plans. For example, while water resource planning efforts of the department could be more effectively focused on one water resource plan in need of amendment or review, the expiry of another plan demands the department's planning attention and resources.

**What are the benefits from this amendment?**

The amendment will allow the Minister to manage the expiry of water resource plans, by postponing the expiry of water resource plans (where appropriate), under the *Water Act 2000.* This will enable the department to better manage its state-wide water resource planning program by prioritising the review and replacement of those plans in need of immediate review, targeting resources to where they are most needed and of where they are the most benefit to the State.

## Land and water management plans

The Bill removes the requirement for water entitlement holders proposing to undertake irrigation to prepare land and water management plans. Water Use Plan provisions are retained to deal with any threats of land degradation that may arise.

**What is the purpose of this amendment?**

The purpose of this amendment is to remove the Land and Water Management Plan (LWMP) framework from the *Water Act 2000*. As a result, irrigators will self-manage the risks of land and water degradation associated with irrigation water use. The Minister will retain the power to prepare Water Use Plans which, after consultation with interested parties, would declare certain standards for land and water use in an area.

**Why is this amendment necessary?**

The *Water Act 2000* currently provides a framework for the use of water for irrigation in certain circumstances. As the current framework is not achieving its intended objectives and imposes a regulatory burden on irrigators, it is proposed to remove the requirement for entitlement holders proposing to undertake irrigation to prepare LWMPs.

**Who benefits from this amendment?**

Landholders will benefit from the reduction of the regulatory and financial burden that the preparation of a LWMP imposes, and the ability to utilise less onerous, but effective alternative mechanisms.

## Facilitating the conversion of water authorities to two-tier co-operative structures

The Bill will enable an entity that does not own infrastructure to hold a distribution operations licence. This will facilitate the conversion of category 2 water authorities to two-tier co-operative structures. The amendments will allow the water infrastructure owner (the holding co-operative) to nominate another entity (such as the trading co-operative) to hold the distribution operations licence under the *Water Act 2000*.

**What is the purpose of this amendment?**

The purpose of this amendment is allow the holder of a distribution operations licence to be an entity other than the owner of the water infrastructure.

**Why is this amendment necessary?**

This amendment is necessary to facilitate the conversion of a category 2 water authority under the *Water Act 2000* to an alternative two-tier co-operative structure involving a holding co-operative (which will own the water infrastructure) and a trading co-operative (which will provide water services to customers). It will allow the owner of water infrastructure (the holding co-operative) to which a distribution operations licence or proposed distribution operations licence relates to nominate an entity (the trading co-operative) to hold the licence and provide the water services.

**What are the benefits from this amendment?**

The amendment will benefit category 2 water authorities looking at converting to two-tier co-operative structures and transitioning to a more contemporary corporate governance arrangement.

## Amendment to section 20 – Low risk activities

The Bill expands the application of section 20 to allow certain low risk activities to be undertaken without a water entitlement. Low risk activities are those that pose minimal risk to the sustainable management of water resources if undertaken without a resource entitlement.

**What is the purpose of this amendment?**

The purpose of this amendment is to allow certain low risk activities to be undertaken without a water entitlement.

**Why is this amendment necessary?**

This amendment is necessary to reduce the regulatory burden on clients undertaking low risk activities. Low risk activities are those that pose minimal risk to the sustainable management of water resources if undertaken without a water entitlement.

**Who will benefit from this amendment?**

This amendment will benefit, for example:

- petroleum tenure holders constructing water monitoring bores or water observation bores
- constructing authorities operating public showers or toilets

- Aboriginal or Torres Strait Islander parties taking or interfering with water for traditional activities or cultural purposes
- persons undertaking certain activities prescribed under a regulation. Such activities could include dairy wash downs, weed wash downs, filling chemical spray units
- persons undertaking routine testing of firefighting equipment.

## Dealing with surrendered or forfeited interim water allocations

Interim water allocations are water entitlements that exist in water supply schemes. Prior to this Bill, the chief executive was required to sell any interim water allocations that were surrendered or forfeited. The Bill provides the chief executive with flexibility when dealing with surrendered and forfeited interim water allocations thereby allowing better resource management outcomes to be achieved.

**What is the purpose of this amendment?**

The purpose of this amendment is to provide alternative options to the current statutory requirement for the chief executive to sell surrendered or forfeited interim water allocations.

**Why is this amendment necessary?**

Currently, the chief executive must sell a surrendered or forfeited interim water allocation by public auction, public ballot or public tender. It is not always desirable for these to be sold, for example, where the supply of water under interim water allocations in a particular water supply scheme is over allocated or not very reliable. Instead, the interim water allocation could be cancelled, potentially increasing the reliability of supply for other users in the water supply scheme.

**What are the benefits of this amendment?**

This amendment will provide flexibility to the chief executive in dealing with surrendered or forfeited interim water allocations. In some cases, this will allow the chief executive to deliver improved resource management outcomes.

## Declared catchment areas

Due to changes to regulatory approaches, developed since 1990, it is considered that the management of land use, and protection of water quality in water supply storages is better and more appropriately managed under the *Sustainable Planning Act 2009* and the *Environmental Protection Act 1994* instead of through declared catchment areas. The Bill amends the *Water Act 2000* to remove the provisions relating to declared catchment areas.

**What is the purpose of this amendment?**

The purpose of this amendment is to remove the declared catchment area provisions from the *Water Act 2000* due to the overlap of responsibility and regulation for the management of water quality and land use in these catchments.

**Why is this amendment necessary?**

The declared catchment area provisions were originally established to control land use activities on those areas that may have adverse impact on water quality in a water storage, lake or groundwater area. However, water quality legislation under the *Environmental Protection Act 1994* and land use legislation under the *Sustainable Planning Act 2009* and local government planning schemes have created an overlap in regulation.

**What are the benefits from this amendment?**

The removal of declared catchment areas will help remove overlap in the regulation of activities posing a risk to water quality in a designated area. This will help interested parties to better understand the nature of their obligation, and reduce the burden on the department in administrating declared catchment areas.

## Category 1 water boards

The Bill amends the *Water Act 2000* to ensure governance arrangements for Category 1 Water Boards are consistent. The objectives of the proposed amendments are to:

- allow for more independent skill based boards
- improve the governance arrangements of the category 1 water authorities
- achieve consistency of the appointment process of the boards of the category 1 water authorities.

A range of minor and correctional amendments are also contained in the Bill. These include amendments to the *Water Act 2000* which:

- amend sections 22, 23 and 25 to correct an inconsistency between the authorisation and offence provisions
- amend section 223 to enable a water licence to be transferred, amended or amalgamated where provided for by regulation, irrespective of whether a water resource plan applies to the licence
- amend the definition of publish to provide the department with flexibility when publishing notifications
- allow the chief executive to correct any inconsistencies between a water resource plan and a resource operations plan without notification. For example, a change to a nominal entitlement of water due to typographical error or an incorrectly applied provision of the plan or some other error in the decision making process
- clarify that a development approval does not provide an entitlement to resources
- allow water authorities converting to an alternative institutional structure to convert directly to private contacts
- remove the requirement for the chief executive to give the registrar of titles notice of the grant of a water licence or interim water allocation and the subsequent requirement for the registrar to record the notices in the land register.

**What is the purpose of this amendment?**

The purpose of this amendment is twofold. Firstly, it aims to make consistent the board appointment processes for Category 1 water authorities. Secondly, it aims to allow the changing of the composition of the Gladstone Area Water Board.

**Why is this amendment necessary?**

This amendment is necessary to remove the inconsistency in the board appointment processes for Category 1 water authorities. It will make the nomination of Category 1 water authorities board chairpersons consistent. Currently, the Gladstone Area Water Board chairperson is nominated by the Chief Executive and the Mount Isa Water Board chairperson is nominated by the board. The amendment will also ensure that the composition of the Boards is consistent.

**What are the benefits from this amendment?**

This amendment will ensure the governance arrangements for Category 1 Water Boards are consistent by removing the unnecessary inconsistency.

## Minor amendments to sections 22, 23 and 25

**What is the purpose of this amendment?**

The purpose of this amendment is to clarify that:

- for section 22 – it is an offence for a person to take or interfere with water in contravention of a notice published by the Minister to prohibit the taking of or interference with water because there is a shortage of water or there is a thing in harmful quantities in water.
- for section 23 – it is an offence for a person to take or interfere with water in contravention of a regulation limiting the take of or interference with water if there is a shortage of water or a thing in harmful quantities in the water.
- for section 25 – it is an offence to take water in contravention of a notice published by the chief executive due to a shortage of water.

**Why is this amendment necessary?**

This amendment is necessary to correct an inconsistency between the authorisation and offence provisions.

**What are the benefits from this amendment?**

This amendment will correct a drafting error.

## Section 223 – Water Licence Transfers

**What is the purpose of this amendment?**

The purpose of this amendment is to enable all or part of a water licence to take water not managed under a water resource plan to be transferred, amended or amalgamated.

**Why is this amendment necessary?**

This amendment is necessary to enable a water licence to which a water resource plan does not apply to be amended or amalgamated as part of the transfer process. That is, to enable a person to amalgamate or amend their existing licence with a licence that will be transferred or as a result of a licence transfer.

**What are the benefits from this amendment?**

This amendment will streamline processes and save a person the time and costs associated with making a separate amendment and/or amalgamation application associated with the transfer of a water licence.

## Public Notices

**What is the purpose of this amendment?**

The purpose of this amendment is to provide flexibility to the department to tailor the notification method to the intended audience when publishing notices to inform the public.

**Why is this amendment necessary?**

The *Water Act 2000* currently places a significant emphasis on newspaper publication in informing the public under the current publishing requirements. Newspaper publication may no longer be as effective in informing the public as it previously was, and therefore it is no longer appropriate for the department to be strictly bound to newspaper publication. Other alternative methodologies, such as internet, SMS and email, provide the benefit of allowing timely communication and transfer of information to specific targeted audiences.

**What are the benefits from this amendment?**

The department will be able to deliver increasingly targeted and timely publication of information to the general public through the new flexible publishing framework, benefiting both the department and public. The most appropriate means of communication for each public notification will be identified at the time of publication and will reflect the local conditions and needs of the intended audience. Providing this flexibility will also ease the regulatory burden on the department and clients by enabling innovative, effective and cost effective methods of publication to be used.

## Amendment of Resource Operations Plan

**What is the purpose of this amendment?**

The purpose of this amendment is to allow the department to correct inconsistencies between a water resource plan and a resource operations plan, without having to undertake the full resource operations plan notification process.

**Why is this amendment necessary?**

An amendment to a resource operations plan currently requires the preparation of an overview report to be publically published for comment due to the sensitive nature of affecting individuals' water rights or the management of water resources. However, this can prove particularly onerous in certain situations, for instance where corrections need to be made due to typographical or oversight errors.

**Who benefits from this amendment?**

The department will benefit from this amendment as the current amendment process is an unnecessary burden in certain situations, and provides no additional benefit to the community.

## Relationship to *Sustainable Planning Act 2009*

**What is the purpose of this amendment?**

The purpose of this amendment is to clarify that the holding of a development approval granted under the *Sustainable Planning Act 2009* does not in itself qualify the holder to a water entitlement under the *Water Act 2000.*

**Why is this amendment necessary?**

Amendments being made to the *Sustainable Planning Act 2009* will remove the requirement for resource consent in respect to water, to be granted under the *Water Act 2000*, before development approval is granted.

**Who benefits from this amendment?**

This amendment will benefit interested parties in water related infrastructure by clarifying the associated legal requirements.

## Alternative Institutional Structure

**What is the purpose of this amendment?**

The purpose of this amendment is to enable water authorities converting to an alternative institutional structure to manage a water supply scheme using private contracts for the supply and management of water.

**Why is this amendment necessary?**

In the instance where a water authority of only a small number of landholders wishes to transfer to an alternative institutional structure for the supply and management of water amongst themselves, the creation of an entity as currently required may not be suitable. Due to the small size of parties, in some situations it may be beneficial for the parties to enter into a contract amongst themselves.

**What are the benefits and/or who benefits from this amendment?**

This amendment will allow water authorities that have only a very small amount of landholders in the authority areas to manage water supply in a more personal, intimate manner through a contract without being required to set up a formal entity as currently provided for by the *Water Act 2000*.

## Section 1007 – Records to be kept in registries

**What is the purpose of this amendment?**

The purpose of this amendment is to remove the requirement for the chief executive to give the registrar of titles notice of the grant of a water licence or interim water allocation, and remove the requirement for the registrar to record the notices in the land register.

**Why is this amendment necessary?**

This amendment is necessary to reduce duplication as information about water licences and interim water allocations is already publically available by searching the water entitlement registration database.

**What are the benefits of this amendment?**

The amendment will reduce administrative burden and duplication.

# *Water Supply (Safety and Reliability) Act 2008*

## Facilitating two tier co-operative structures

The Bill makes a range of amendments to the *Water Supply (Safety and Reliability) Act 2008* (the Act) to facilitate the conversion of the Pioneer Valley Water Board (a category 2 water authority under the *Water Act 2000*) to a two-tier co-operative structure involving a holding co-operative and a trading co-operative.

The amendments will enable an entity that does not own infrastructure to be registered as a service provider, if they are nominated by the infrastructure owner and prescribed under regulation to be a 'related entity' of the infrastructure owner. A range of consequential amendments are made to ensure that the registered service provider has all the powers and can perform all of the functions of a service provider under the Act despite not being the infrastructure owner.

**What is the purpose of this amendment?**

The purpose of this amendment is to facilitate the conversion of the Pioneer Valley Water Board from a category 2 water authority under the Water Act 2000 to a two tier co-operative structure involving a holding co-operative (which will own infrastructure) and a trading co-operative (which will provide services to customers). Currently, the Act does not sufficiently accommodate conversion of a water authority into two separate entities, where one owns infrastructure and the other operates the infrastructure and provides services to customers.

The Act is amended in a number of ways to:

- provide for an entity that is nominated by a relevant infrastructure owner and prescribed under regulation as a 'related entity' of the infrastructure owner to be registered as a service provider
- enable service provider registration details to be updated by a prescribed related entity where it is a registered service provider
- enable the transfer of service provider registration to occur in different circumstances with or without a transfer of infrastructure
- ensure a prescribed related entity that becomes a registered service provider has all the powers of a service provider and can perform all of the functions of a service provider under the Act despite not being an infrastructure owner
- recognise and accommodate the relationship between the relevant infrastructure owner and the prescribed related entity in the context of the regulatory framework
- provide for existing statutory plans and approvals for Pioneer Valley Water Board to transition on the changeover day to the entity which will be the registered service provider.

**Why is this amendment necessary?**

The Act specifies that certain owners of infrastructure for the supply of a water or sewerage service must be registered as service providers before commencing to supply the service. Registered service providers have statutory powers under the Act, for example, relating to access and control of their infrastructure and must also meet a range of statutory planning and reporting obligations.

In order to accommodate the two-tier co-operative structure (which separates ownership of infrastructure from the service provider functions), it is necessary to amend the Act to enable an entity that does not own infrastructure to be a registered service provider and have all the statutory powers and obligations of a registered service provider.

**What are the benefits from this amendment?**

Government policy is that the functions of category 2 water authorities should, where appropriate, transfer to alternative institutional structures as negotiated between the water authorities, the State and local governments. The Pioneer Valley Water Board is the first category 2 water authority in Queensland to convert to a two-tier co-operative structure.

The two tier or dual co-operative model has been established in other jurisdictions, namely in New South Wales with the Coleambally Irrigation scheme. It is expected the arrangement will deliver greater financial security for the Pioneer Valley irrigation scheme through a reduction in the taxation liability applicable to the asset owning holding (or 'mutual') co-operative. Customers within the scheme will therefore be the primary beneficiaries from the amendments. Conversion of category 2 water authorities to non-statutory arrangements also reduces the regulatory burden on the entities and on government.

## Definition of dual reticulation

Dual reticulation involves the supply of high quality recycled water into premises through a separate network of pipes for use in toilet flushing, cold water supply to washing machines, garden watering and external wash down to reduce demand on drinking water. However, as there is currently no definition of dual reticulation, a range of schemes supplying water for industrial uses and open space irrigation may be inadvertently caught as dual reticulation schemes triggering

regulatory requirements applicable only to high risk schemes such as dual reticulation schemes. The Bill inserts a definition for ‘dual reticulation’ to clarify which recycled water schemes are considered to be dual reticulation schemes.

**What is the purpose of this amendment?**

The purpose of this amendment is to clarify which recycled water schemes are considered to be, and regulated as, dual reticulation schemes. The amendment also clarifies both the transitional period for schemes that are currently inadvertently caught as dual reticulation and the transitional period for schemes that actually supply by way of a ‘dual reticulation system’.

**Why is this amendment necessary?**

Because of the potential for inappropriate use and risk of cross-connection with drinking water pipes, dual reticulation schemes are subject to more stringent requirements to ensure public health risks are minimised and managed. A definition for ‘dual reticulation system’ is needed to ensure that these more stringent requirements only apply to schemes that actually supply water by way of a ‘dual reticulation system’ and not schemes that, for example, supply recycled water through a separate network of pipes to irrigate sugar cane.

The amendment is also needed to clarify transitional provisions. When the recycled water provisions were introduced, the Act provided a short transitional period for schemes that supplied recycled water to irrigate minimally processed food crops or for dual reticulation. An extended transitional period was given to certain lower-risk recycled water schemes to develop a recycled water management plan or to apply for an exemption from this requirement. However, because the Act used a broad reference to dual reticulation rather than a definition of it, schemes that supplied recycled water through a separate network of pipes were potentially caught as dual reticulation schemes. As a result, these inadvertently caught schemes could have been ineligible for the extended transitional period. The amendment is needed to clarify both the transitional period for schemes that were inadvertently caught as dual reticulation, and the transitional period for schemes that actually supply water by way of a ‘dual reticulation system’.

**What are the benefits from this amendment?**

A definition of ‘dual reticulation system’ will ensure that certain recycled water schemes are not inadvertently caught as a dual reticulation scheme and subject to more stringent requirements. For example, schemes inadvertently caught may supply recycled water through a reticulation network to irrigate sporting fields, golf courses and agricultural land. The amendments will also clarify that the extended transitional period applies to schemes that were inadvertently caught as a dual reticulation scheme. Recycled water providers are therefore the primary beneficiaries of the amendments which clarify and apply the more stringent regulatory requirements to schemes which pose a higher level of risk to public health.

# *Vegetation Management Act 1999*

## Clearing associated with a watercourse

The Bill amends the *Vegetation Management Act 1999* in accordance with recent advice that decisions made under the Act relating to clearing associated with watercourses shown on the 'Vegetation Management Watercourse Map' could be invalidated. This relates only to applications lodged and decided between 6 November 2009 and 25 October 2012, due to small differences between the watercourse definition in the regional vegetation management codes and the official name of the watercourse map. The amendment does not change the policy or intent of the operation of the Act.

**What is the purpose of this amendment?**

The Bill amends the Vegetation Management Act 1999 to clarify that any reliance by the chief executive on the Vegetation Management Watercourse Map for assessment purposes is taken to be valid, irrespective of how the Vegetation Management Watercourse Map may have previously been referred to.

**Why is this amendment necessary?**

To put beyond doubt that decisions made under the Act relating to clearing associated with watercourses shown on the Vegetation Management Watercourse Map are valid. This relates only to applications lodged and decided between 6 November 2009 and 25 October 2012, due to small differences between the watercourse definition in the regional vegetation management codes and the official name of the watercourse map. The amendment does not change the policy or intent of the operation of the Act, the extent of watercourses considered under the Act nor includes any new requirements.

**Who benefits from this amendment?**

This amendment benefits both the applicant and the department as it removes any doubt as to the name of the Vegetation Management Watercourse Map, and that any development assessment decisions made by the Department of Natural Resources and Mines are valid.