

Stock Route Network Management Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Stock Route Network Management Bill 2016.

Policy objectives and the reasons for them

The main purpose of the Bill is to provide a single contemporary Act that manages Queensland's stock route network (the network) and administers stock (travel and grazing) and pasture harvesting activities on the network and other related roads and reserves. Stock includes alpacas, asses, buffaloes, camels, cattle, deer, donkeys, goats, horses, llamas, mules, sheep and vicunas.

The network is made up of an interconnected system of stock routes and reserves for travelling, or moving, stock on foot. Queensland's network covers about 72 000km across 44 local government areas and forms part of a national route for moving stock on foot.

Stock routes are roads or routes ordinarily used by stock and declared under the *Stock Route Management Act 2002* (Stock Route Management Act). The declaration of a road or route as a stock route does not give it a separate land title or tenure. The public may still use the road or route, including as a thoroughfare for walking, cycling or motorised vehicle.

The reserves that form part of the network are reserves under the *Land Act 1994* (Land Act) which can be used by travelling stock. These reserves may have a variety of community purposes under the Land Act and can include camping and water reserves, pasture reserves, trucking reserves, or reserves specifically dedicated for travelling stock.

The network is primarily used by the pastoral industry to move and graze stock as an alternative to moving stock by road or rail transport. While the use of the network to move stock on foot fluctuates, it is vitally important, particularly during periods of drought. Other uses such as road travel, recreation and tourism, along with the presence of many natural and cultural heritage sites or features means a well-managed network is an important outcome for the State.

Stock travel and grazing activities both on and off the network are currently administered under several pieces of legislation, including the Stock Route Management Act, the Land Act, and transport legislation—*Transport Infrastructure Act*

1994 (Transport Infrastructure Act) and *Transport Operations (Road Use Management) Act 1995* (Transport Operations Act).

Currently, the state is responsible for providing support and overall direction for management of the network; setting the fees for stock travel and grazing; providing capital works funding for state owned water facilities supporting the network; and issuing permits for long-term grazing on and off the network. Local governments are the day-to-day managers of the network and are responsible for issuing stock travel and short-term grazing permits for the network; maintaining stock facilities (such as watering points, holding yards and loading ramps) in their areas; and enforcement and compliance. They are also able to issue permits for stock travel and grazing on State-controlled roads with the state's approval.

These arrangements, operating under several pieces of legislation and with multiple government entities issuing approvals, are confusing for users of the network as responsibility for authorising the network's use is unclear. It also can lead to conflicting use of the network. For example, the state and local governments can issue multiple permits over the same area of the network, causing conflict as to which approval has priority use (e.g. a permit issued under the Land Act or the Stock Route Management Act); or which activity has priority use of the pasture resource (e.g. travel or grazing).

The arrangements are also difficult for local governments, as the network managers, to administer. The legislative environment is complex and leads to duplication and unnecessary regulation. It also does not provide contemporary and flexible management, enforcement and compliance arrangements to enable local governments to effectively manage the network and make informed decisions based on local knowledge.

While local governments are the day-to-day managers of the network, they are limited in the fees they can charge for the use of the network and only recover a small proportion of their annual administration and management costs. Currently, 50 per cent of the fees that local governments collect for activities on the network needs to be remitted to the state. The Bill provides for setting fees for travelling, grazing and pasture harvesting activities on the network. It also allows local governments to apply fees for travelling, grazing and pasture harvesting activities on related roads and reserves. Significantly, the Bill will ensure that all revenue raised from travel, grazing and pasture harvesting approvals is retained by the administering local governments.

It has also been highlighted that there is currently no ability to recognise the important natural heritage and cultural heritage features on the network to enable the impact of stock related activities on these features to be mitigated.

The Bill introduces improvements to the management and administration of the network to ensure Queensland's network has a sustainable future. The key policy objectives are to:

- clarify the roles of the state and local governments for managing and administering the network;
- maintain an integrated and connected state network for travelling stock;
- ensure the network is sustainably managed so it remains available for use;

- manage the network in a way that minimises the impact of stock related activities on other uses of the network and ensures road safety and the operational integrity of the transport network;
- provide for the use of the network for stock related activities;
- recognise the natural heritage and cultural heritage values on the network;
- strengthen local governments' ability to sustainably manage and monitor the network;
- enable local governments to administer stock travel, grazing and pasture harvesting on other roads and reserves that are not part of the network;
- improve the fee framework to reflect the benefits users derive from the network; and
- reduce the regulatory burden on local governments as the day-to-day managers of the network.

Achievement of policy objectives

To achieve the policy objectives, the Bill:

- consolidates and streamlines the provisions for managing travelling stock and grazing activities on the network, currently administered under several pieces of legislation, into one Act;
- establishes the main purpose of the network is for travelling stock on foot, while recognising the other uses of the network;
- provides the state with strategic oversight of the network to maintain an integrated and connected state network for travelling stock by:
 - requiring the Minister to develop a state management plan that sets out the management outcomes necessary to achieve an integrated and connected network;
 - providing a Ministerial power to direct a local government to perform their functions under the Bill, in the unlikely situation where they are not doing so; and
 - maintaining the responsibility for identifying the stock routes and reserves that form the network, with the state to ensure the travel routes remain connected;
- strengthens local governments' role as day-to-day managers of the network by providing for all stock related activities on the network to be authorised by local governments, with the state no longer issuing stock grazing permits for the network;
- provides for the use of the network for stock related activities by:
 - establishing an application and approvals framework to authorise use (Approval types include travel approvals (either standard or slow pace); unfit stock approvals; emergency grazing approvals; short-term grazing approvals; long-term grazing approvals; and harvesting approvals); and
 - Establishing an order of priority for issuing approvals with highest priority being for travelling stock (the use of the network for grazing stock is a secondary purpose and can only be authorised provided the network can continue to support travelling stock);
- minimises the impact of stock related activities on other uses of the network, such as road travel by requiring road safety to be considered before granting an approval for stock to use the network;

- ensures the operational integrity of the state's transport network by requiring the state's consent before a local government can issue an approval for a State-controlled road that is part of the network and allowing the state to require a local government to temporarily restrict or prevent access to a State-controlled road on the network;
- improves local governments' ability to sustainably manage the network by:
 - providing local governments with the ability to manage excess pasture through offering short-term grazing or harvesting approvals;
 - introducing a two-tier classification system for stock routes—primary and secondary (local governments' management efforts will be focused on maintaining stock facilities (including water facilities) on primary stock routes—the most important areas of the network for travelling stock. They will be able to dispose of stock facilities located on the secondary network with the state's approval);
 - providing long-term grazing approvals on secondary stock routes for up to five years and up to one year on primary stock routes; and
 - providing local government with the power to temporarily restrict or prevent stock access to a part of the network in certain circumstances such as natural disasters; because of a decline in water or pasture availability; or for road works;
- allows either local or state significant natural heritage and cultural heritage features of the network to be recognised through special interest areas, with conditions imposed on approvals under the Act to minimise the impact of stock travel, grazing or pasture harvesting on these areas;
- provides contemporary enforcement and compliance powers for local governments including the ability to issue caution and direction notices, along with revised offences with contemporary penalties that reflect the seriousness of the offence; and
- provides clear review processes for decisions made under the Bill, which includes:
 - some decisions being internally reviewable by local government; and
 - identifying which decisions are to be externally reviewed by either the state, the Queensland Civil and Administrative Tribunal (QCAT) or the Magistrates Court (e.g. the state will externally review decisions about travelling and unfit stock).

The Bill also provides a framework for local governments to administer stock travel, grazing and pasture harvesting on other roads and reserves that are not part of the network. These other roads and reserves (related roads or reserves) include roads under local government control; reserves where the local government is the trustee of the reserve; and State-controlled roads (subject to the approval of the chief executive responsible for the Transport Infrastructure Act). The state will no longer issue grazing permits on related roads or reserves.

For stock travel, grazing or pasture harvesting only on related roads and reserves, the Bill provides local governments with the flexibility to make a local law under the *Local Government Act 2009* or *City of Brisbane Act 2010* (the Local Government Acts) to establish their own approval processes or adopt those provided under the Bill.

The Bill also establishes a fee and revenue framework. Under the framework, the state will regulate the fee for a travel approval to use the network in recognition of stock travel on the network being a state interest.

Local governments will have the power to set certain fees as follows:

- an application processing fee;
- an approval fee for pasture harvesting;
- an approval fee for grazing on the network at or above a minimum fee set by the state under a regulation; and
- approval fees for stock travel and grazing on related roads and reserves.

Local governments have the power to waive fees (e.g. due to hardship) under the *Statutory Instruments Act 1992* (Statutory Instruments Act).

All fees from applications and approvals; amounts payable under water facility agreements; and penalties or fines will be paid direct to the relevant local government. Local governments will retain all these funds. Where the funds have been derived from the network, the local government must use the funds for the administration, maintenance or improvement of the network and stock facilities in the local government's area. The Bill also allows a local government to recover outstanding debts through small claims procedures (e.g. as a minor civil dispute through QCAT) or as overdue rates under the Local Governments Acts, depending on the circumstances in which the debt arose.

To reduce duplication and unnecessary regulation, the Bill also streamlines powers between the Act and the Local Government Acts. Rather than establish separate, additional provisions in the Bill, wherever possible, local governments will use their existing powers under their Local Government Acts. For example, local governments will not have to reappoint authorised persons under the Act where they have already appointed authorised persons under the Local Government Acts.

Alternative ways of achieving policy objectives

Legislative amendment is required to achieve the identified policy objectives. Due to the extent of the legislative changes required to achieve the policy objectives, a new Stock Route Network Management Bill, rather than amendment of the existing Stock Route Management Act, is the preferred approach. The Bill consolidates administration and management of the network previously dealt with under the Stock Route Management Act, the Land Act, the Transport Infrastructure Act, and the Transport Operations Act, into one Act.

Estimated cost for government implementation

The Department of Natural Resources and Mines (the department) will work closely with the Local Government Association of Queensland (LGAQ), local governments, other relevant stakeholders and state government departments to implement the new arrangements provided in the Bill. Local governments are already administering many of the arrangements provided for in the Bill. However, the new arrangements and requirements for local government provided for in the Bill will be phased in over time to ensure a smooth transition for local governments and network users. This phased

in transition is expected to minimise the initial up-front implementation costs for local governments.

The department will continue to provide and maintain the Stock Route Management System (the system) for use by local governments. Local governments already have access to this system under the existing arrangements. This system allows local governments to identify stock and pasture condition on the network; record and issue all travel, grazing and pasture harvesting approvals; and record water facility agreements. It can also be used to issue approvals on-line. The system is also an important monitoring, enforcement and compliance tool for local governments as it records network usage, and provides up-to-date information for local governments on travelling stock, grazing activities and pasture conditions on the network.

Under the Bill, local governments will be required to use the system for issuing and recording approvals to use the network. For issuing approvals on related roads and reserves that do not form part of the network, local governments will have the option of using the system or establishing their own system. This minimises the need, and associated costs, of setting up individual local government systems.

The department will be updating the system to reflect the new requirements of the Bill, further minimising implementation costs for local governments. All approval forms, guidance materials and training required for local governments to use the system will also be provided by the department.

Further, the department will also provide assistance, training and support for local governments about the new requirements in the Bill, for example, for deciding approvals, review processes for decisions made under the Act and undertaking compliance and enforcement. All these implementation activities will be undertaken within the department's existing budget.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. However, some of the provisions of the Bill, may be seen as departures from the FLPs. Clauses of the Bill in which FLP issues arise, together with the justification for any departure are outlined below.

Whether legislation has sufficient regard to the rights and liberties of individuals—*Legislative Standards Act 1992*, section 4(2)(a)

Fencing under a directions notice

Under clauses 75 and 76, an authorised person is empowered to give a person a directions notice requiring them to build or restore a fence on a boundary of the network to a stock-proof condition. Fencing is important for effective management of the network. It ensures that travelling stock do not wander on to adjacent properties or that stock from adjacent properties do not stray onto the network and illegally graze.

It is also important for public and road safety given the unpredictable nature of stock interacting with motor vehicle and other forms of transport.

Failing to comply with the directions notice is an offence. Where a person fails to comply, the authorised person is empowered to enter the land and carry out the required action under clause 77. The reasonable costs are payable by the landowner to the local government. Should a landowner not pay the costs, then the debt may be dealt with by the local government as if they were overdue rates and remain a charge on the land or recovered by the local government through a small claims process (e.g. as a minor civil dispute through QCAT).

The decision to issue the directions notice is reviewable firstly by the local government that issued the direction notice. The internal review decision about the directions notice can also then be appealed to the QCAT. However, an authorised person can only issue a directions notice where they reasonably believe a person is committing or has committed an offence (e.g. unauthorised grazing) or immediate action is necessary to prevent or minimise land degradation on the network. If a person fails or refuses to construct the fence, the local government has little option but to have it constructed or repaired to ensure compliance with the Act and to effectively manage access to, and use of, the network.

Seizing, disposing or destroying stray stock

Chapter 5, part 3 of the Bill includes provisions that empower an authorised person to seize stock on the network, where a person, after having been given a notice, has failed to remove the stock or the stock are stray stock. Stray stock are unauthorised stock on the network or travelling stock that have been left behind or abandoned. While compensation is not payable for stock sold or otherwise disposed of, if the stock are stray stock, the authorised person must firstly make reasonable enquiries to identify the owner of the stock prior to seizing. Also, the owners (if identified) must be given notice and an opportunity to claim the stock. The Bill also provides that any proceeds of sale (if relevant), remaining after seizure expenses are paid, is given to the owner of the stock, if identified.

Public safety and the operational integrity of the transport network (for all types of traffic) needs to be ensured when managing the network and may be threatened by the unpredictability of stray stock. It is considered to be in the public interest for certain individual rights to be displaced when public safety must be protected—such as when an authorised person reasonably believes it is necessary to destroy stray stock that pose a risk to the safety of the public and it is not practicable to seize the stock and arrange for the owner of the stock to urgently remove the stock (e.g. the owner cannot be identified).

Non-payment of compensation for certain decisions

Clause 102 provides that a person may claim compensation from the local government if the person incurs loss because of the exercise, or purported exercise, of a power by an authorised person, including the loss arising from complying with a requirement made of the person under the Act, other than under sections 11, 14, 18, 25, 81 and 82.

For sections 11 and 14, the non-payment of compensation is considered justified as imposing maintenance conditions on special interest areas containing natural heritage or cultural heritage special features meets the overall policy intent of the regulatory regime. It also complies with community expectations for appropriate management of the network, including the need to maintain natural heritage and cultural heritage on the network.

For section 18, the non-payment of compensation is considered justified as access to part of the network can only be restricted or prevented on a temporary basis (up to 84 days), and only for a prescribed reason, such as for public safety in the event of a flood or fire; where the road forming part of the network needs to be closed to all forms of traffic; or because of a temporary decline in the pasture or water on part of the network. Temporarily restricting or preventing access to the network is a necessary management tool both to maintain the network for its main purpose for travelling stock and to regulate access to the network in situations necessary for public and road safety.

For section 25, the non-payment of compensation is considered justified for the suspension or termination of a water facility agreement, as the Act clearly states when a water facility agreement is terminated (i.e. the giving of a notice; changes in ownership; or at the end of the term of the agreement as agreed between the parties). Parties are aware of their rights before entering into such an agreement.

For section 81, while compensation is not payable for stock sold or otherwise disposed of, any proceeds of sale (if relevant) remaining after seizure expenses are paid, is given to the owner of the stock, where the owner is identified. This provision is only used after the owners of the stock are given an opportunity to claim the stock.

For section 82, the non-payment of compensation for the destroying of stray stock is considered justified as stray stock are only destroyed by an authorised person when it is not practicable to arrange for the owner to urgently remove the stock and the stock pose a risk to the safety of the public. Public safety and the operational integrity of the transport network (for all types of traffic) needs to be ensured when managing the network and may be threatened by the unpredictability of stray stock.

Legislation makes rights and liberties, or obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review —*Legislative Standards Act 1992*, section 4(3)(a)

Certain decisions not subject to internal review

Clause 105 of the Bill provides that internal review by a local government of certain local government decisions is not available under the Act. However, a review of the decisions may still be sought under the *Judicial Review Act 1991*.

A decision by a local government to refuse to issue an approval to use part of the network to which access is temporarily prevented, is not reviewable. Preventing access to part of the network is necessary in particular situations, such as in the interests of public safety because of a fire or flood, or road works. To allow internal

review may compromise the achievement of the management regime for the network as established by the Act.

The imposition of a maintenance condition in relation to a state special interest area is not internally reviewable by a local government. The maintenance condition for a state special interest area is in effect, decided by the state under the Act, and a local government is required to impose the condition on an approval. The local government does not have any discretion as to whether to impose the condition or not. A decision by the state (through the relevant chief executive) to require a local government to impose a condition on an approval to maintain the natural or cultural heritage of a state special interest area is a regulatory tool to ensure the state's interests are protected.

Similarly, a local government decision under clause 18 (to impose a restrictive condition on an approval because network access is temporarily restricted; or not issue, suspend or cancel an approval because network access is temporarily prevented) is not reviewable by a local government where these decisions are because of a notice under clause 17. Under clause 17, the state (through the chief executive of transport) may give a local government a notice requiring the local government to temporarily restrict or prevent access to a State-controlled road that is part of the network. The local government does not have any discretion whether to temporarily restrict or prevent network access in these circumstances. The ability for the chief executive (transport) to require a local government to temporarily restrict or prevent access to the network is to ensure the operational integrity of the state's transport network.

A decision about a travel or unfit stock approval made by the actual chief executive officer of a local government is not internally reviewable. This is because, where the actual chief executive officer has made the decision, there is no more senior local government officer available to review the decision. However, in this situation, the Bill still provides that the decision can be externally reviewed.

Consultation

The severe drought conditions in 2002-03 saw heavy use of the network, which exposed a number of issues in the existing management of, and legislation regulating, the network. Since then, there has been extensive consultation and work undertaken to identify ways to improve how the network is managed. Consultation has included ongoing engagement with key stakeholders including the Local Government Association of Queensland (LGAQ), AgForce, conservation organisations, local governments, Aboriginal groups and drovers.

The then Minister convened a Stock Routes Assessment Panel comprising local government representatives and a number of private sector stakeholders to propose policy reforms and a fee framework. The report of the panel and a subsequent Regulatory Impact Statement (RIS) were publicly released and submissions were sought in 2009-10.

This culminated in the introduction of the Stock Route Network Management Bill 2011 (2011 Bill) to Parliament in September 2011. The Bill was reviewed by the then

Parliamentary Transport and Local Government Committee, which recommended the Bill be passed by Parliament subject to the recommendations made in the committee's report. The Bill lapsed in March 2012 with the end of the 53rd Parliament.

In 2012, there was a parliamentary inquiry into the future and continued relevance of government land tenure across Queensland undertaken by the State Development, Infrastructure and Industry Parliamentary Committee (the Committee). The existing arrangements for administering the network were considered as part of the inquiry. In May 2013, the Committee released its final report which included a recommendation that the Queensland Government reintroduce the 2011 Bill, subject to the recommendations made on the 2011 Bill by the former Transport and Local Government Committee. However, public submissions contributing to the inquiry, highlighted several shortcomings with the existing management of, and legislation regulating, the network.

In mid-2014, the Department of Natural Resources and Mines released, for public consultation, a discussion paper titled '*Queensland state land – Strengthening our economic future*' outlining a range of potential state land reforms. The discussion paper specifically sought feedback on the existing network framework, as well as other state land matters. While there was general support for the policy objectives of the 2011 Bill, public consultation highlighted that the legislation and processes that drive the administration and management of the network could be further streamlined.

In developing the Bill, the Department of Natural Resources and Mines has consulted extensively with key stakeholder groups—the LGAQ, local governments, AgForce, drovers, conservation organisations and Native Title representative bodies—regarding proposed changes to the management and administration of the network.

The Office of Best Practice Regulation (OBPR) was consulted in relation to the regulatory impact statement system. The OBPR advised that, given the extensive consultation and analysis that had already been undertaken on relevant issues associated with regulatory impact assessment, the proposed Bill was unlikely to benefit from further analysis and assessment under the regulatory impact statement process.

Consistency with legislation of other jurisdictions

New South Wales, South Australia and the Northern Territory are the other Australian jurisdictions with stock routes legislation comparable to Queensland. In general, legislation in these jurisdictions govern the management and use of travelling stock reserves and stock watering under permit systems. However, each jurisdiction has a different approach to the design of the permit system, the fee frameworks and the governance arrangements.

Given the difference in legislative approaches, the Bill is specific to the State of Queensland. While the Bill is not uniform with legislation that applies in these other jurisdictions, it is complementary to the objective of maintaining a national stock route network for moving stock on foot. It provides Queensland with the legislative basis for retaining the network as a public asset by better regulating its use.

Notes on provisions

Chapter 1 Preliminary

Short title

Clause 1 establishes, upon commencement of the Bill, that the short title of the Act is the *Stock Route Network Management Act 2016*.

Commencement

Clause 2 provides that the Act will commence on a day fixed by proclamation.

Purposes of Act

Clause 3 establishes the purposes of the Act and how those purposes are to be achieved.

The main purpose of the Act is the management of the network for its main use for travelling stock and its secondary use for grazing stock. Stock includes alpacas, asses, buffaloes, camels, cattle, deer, donkeys, goats, horses, llamas, mules, sheep and vicunas.

The network includes roads, routes and reserves that are ordinarily used by travelling stock. Travelling stock means to move the stock on foot, and includes overnight or intermittent resting of the stock while moving the stock on foot. Grazing stock refers to the static pasturing of stock within a defined area.

Another purpose of the Act is managing the network to minimise the impact from stock (travel and grazing) and pasture harvesting activities on the other uses of the land that comprises the network. Other uses of the land may include use by motor vehicles and recreational horse riding. Similarly, another purpose of the Act is managing the network in a way that ensures safety of other road users (road safety) and the operational integrity of the transport network. The transport network for example includes roads, such as State-controlled roads, and rail networks. Other purposes of the Act are to enable related roads or reserves to be used for stock (travel and grazing) and pasture harvesting activities; and recognising other values on the network including special features of natural heritage and cultural heritage.

The land that comprises roads, routes and reserves identified as part of the network have multiple other purposes and uses, other than for stock (travel and grazing) or pasture harvesting activities. Identifying a road as a stock route, and therefore part of the network, only identifies roads that are suitable for travelling stock and does not impact on the public right of way or use for other purposes. The other purposes of the Act recognise this and provide the foundation for a number of management provisions throughout the Act, which consider uses of the land that are not regulated by this Act. For instance, access restrictions to part of the network under the Act do not close or prevent access to the road to use as an ordinary road. The stock route remains a road

for public use. Existing arrangements to permanently close roads under the Land Act remain unchanged. The intention is to minimise conflicts between land uses.

There are a number of special features of natural heritage and cultural heritage that define the values and history of the network. Previously, these values have been not been considered in managing the network. These values are recognised and considered when approving stock and pasture harvesting related activities on the network under the Act.

The clause also provides how the purposes of the Act are to be achieved. This is intended to guide decision-makers and provide a foundation for further actions taken under the Act. The clause includes identification and sustainable management of the network. It also specifies that sustainable management includes establishing principles and providing for strategic planning (through a State management plan) for the network's management. Sustainable management also includes enabling local governments to manage parts of the network. A local government's proximity to, and local knowledge of, situations that may affect the network and special features in their area enable them to provide more effective and sustainable network management.

Achieving the purposes of the Act also includes establishing an order of priority of its uses; providing for the administration of the use of related roads or reserves; providing for compliance monitoring and enforcement of compliance; as well as recognising special interest areas of natural heritage and cultural heritage on the network. These measures are designed to recognise and address the network's other uses to create a more holistic management approach to the network.

Principles for the administration of this Act

Clause 4 states that any action taken under the Act must be taken in a way that is consistent with the listed principles. The first principle mandates the maintenance of the integrity and connectivity of the network for travelling stock. Other principles aim to ensure: road safety and the operational integrity of the transport network (both on and off the network); the network is sustainably managed for use now and in the future in line with the order or priority for use. Sustainable management of the network will ensure future users of the network have the same opportunity to use the network as the current users.

Another principle of the Act is that users of the network pay a reasonable amount which is reflective of the benefit users receive from using the network. The amounts paid by the users are to help maintain the network.

Underpinning the Act is the principle that the use of the network is subject to an order of priority for how approvals may be issued. The order of priority is firstly afforded to a travel approval for travelling stock; secondly, an unfit stock approval for travelling stock that become unfit stock or an emergency grazing approval; thirdly, short-term or long-term grazing approvals; and lastly, harvesting approvals.

The principles reinforce and support the purposes of the Act by ensuring decision-makers refer to them when considering taking any actions under the Act.

Act binds all persons

Clause 5 provides that the Act binds all persons, including the State and to the extent permitted, the Commonwealth and other States.

Dictionary

Clause 6 provides that definitions for particular words used in the Act are in the dictionary in schedule 1.

Chapter 2 Stock route network

Part 1 Identifying the stock route network

Stock route network register

Clause 7 requires the chief executive of the department administering the Act to keep a stock route network register (the register) of the roads, routes and reserves that make up the network. The register will be the reference point for which roads, routes and reserves are part of the network, although the chief executive may reflect the register in an administrative map.

The register must state the location of each of the stock routes and reserves and whether a stock route has a primary or secondary classification. The chief executive does not classify a reserve that is part of the network, as under the definition of a reserve, the reserve will reflect the classification of the stock route it is next too. For example, a reserve near a primary stock route will be a primary reserve, and a reserve near a secondary stock route will be a secondary reserve. If a reserve is near a primary and secondary stock route, then the reserve takes on the highest classification.

The register must also include whether local government have decided to temporarily restrict or temporarily prevent access to a part of the network.

Additionally, for each special interest area (state or local) on the network, the register must state: its location; the basis on which the area has been registered as a special interest area (i.e. the special feature of natural heritage or cultural heritage); and whether the area is a local or state special interest area. The clause also provides that the register must contain any other information required to be registered under the Act.

The chief executive must also ensure the register is publicly available on the department's website.

The requirements for the register establish a single point for obtaining information about the location and management of the network.

Registering stock routes and reserves

Clause 8 provides that the chief executive may register a road or route that is ordinarily used for travelling stock as part of the network, if the road or route is suitable for travelling stock (for example: existing stock routes or routes historically used to travel stock). Not all roads are suitable to be stock routes. Upon registration, these roads or routes are stock routes under the Act.

The chief executive may also register a reserve as part of the network, if the reserve may be used for travelling or grazing stock under the Land Act. A reserve can be registered regardless of its dedicated community purpose under the Land Act, so long as the use by travelling or grazing stock is not inconsistent with the community purpose.

Registration of the road, route or reserves does not affect (extinguish or suppress) native title as the registration does not change the tenure of the land.

Transitional provisions under the Act provide that existing stock routes under the Stock Route Management Act, and reserves near these stock routes that may be used for travelling or grazing stock, will be automatically registered on commencement of the Act. If the chief executive decides to register a road, route or reserve after the commencement of the Act, then the chief executive must consult with each affected local government (including neighbouring local governments affected by the registration) before deciding to register the road, route or reserve.

Further, before a State-controlled road can be registered, the chief executive (transport) must be consulted. This is to ensure operational and road safety matters have been considered in determining the suitability of the State-controlled road for stock and pasture harvesting related purposes. Some of the considerations the chief executive (transport) may consider include the speed limit or the number and type of vehicles that use the State-controlled road.

The clause also requires the chief executive to have regard to listed matters before classifying a stock route as a primary or secondary stock route. Those matters include: access from the stock route to a natural water source or a water facility; matters from the State management plan about the suitability of the stock route for travelling stock and whether the stock route is travelled by stock; the access to, and connectivity of, the stock route; and any other matter prescribed by regulation. However, the chief executive will not have regard to these matters for the initial registration of the classification of the stock routes, as the Act establishes that existing classifications under the Stock Route Management Act will transition and be registered on commencement of the Act. Existing classifications of stock routes under the Stock Route Management Act, will be registered as follows: existing primary and secondary stock routes will be registered as primary stock routes and existing minor and unused stock routes will be registered as secondary stock routes.

Classification of stock routes plays an important role in local government decisions about maintenance of, and investment in, the network and associated stock facilities (such as water facilities). Local government is required to supply and maintain stock facilities on a primary stock route.

Changing or removing stock routes or reserves

Clause 9 provides that the chief executive must consult each affected local government (which includes local governments neighbouring the local government area in which the affected part of the network is located) before changing the classification of a stock route, or removing a stock route or reserve from the register. Similarly, for a stock route on a State-controlled road, the chief executive (transport) must also be consulted.

Following consultation and a subsequent decision by the chief executive to amend the register, the chief executive must notify each affected entity of the decision. Notice of the decision includes electronic notification.

This requirement is important to ensure that local governments affected by the decision of the chief executive are aware of any changes to the network (located within or next to their local government area), as the changes may affect management and administration decisions of local governments. Consultation with the chief executive (transport) where a proposed change may affect a State-controlled road is also important to ensure that road safety and the operational integrity of the transport network have been considered, prior to the chief executive making a decision about changing a classification or removing a stock route on a State-controlled road.

Part 2 Special interest areas

Local special interest areas

Clause 10 enables a local government to decide for their area that a special feature of natural heritage or cultural heritage of local significance is a local special interest area. A local government may identify a local special interest area to assist in administering approvals in order to minimise the impact of the use granted under the approval on the special feature of the area.

The clause provides that where a special feature of natural heritage or cultural heritage has been identified as a State special interest area, then that special feature cannot also be identified as a local special interest area. However, a local special interest area and a State special interest area can be identified for the same area, but only on the basis of different special features of natural heritage or cultural heritage. In the event that a registered local special interest area is later registered as a State special interest area, the chief executive under clause 13 would amend the register to remove the listing of the area as a local special interest area.

Examples of special features of natural heritage or cultural heritage that hold local significance include the presence of particular wildlife; a matter identified on a local heritage register; or a grave site associated with historical European settlement. Deciding that an area is a local special interest area provides for impacts from stock or harvesting on the special features to be minimised without undermining the main purpose of the network in providing for travelling stock.

Before deciding that an area on a State-controlled road is a local special interest area, local government must consult with the chief executive (transport). This ensures the network is able to be managed having regard to other uses of the network (such as use by motor vehicles), thereby helping to ensure the safety of road users, as well as the operational integrity of the transport network.

The clause also requires local government, by a notice in the approved form, to notify the chief executive when it has been decided that an area is a local special interest area. Under clause 137, the approved form may be submitted electronically including through an electronic system provided by the chief executive. This requirement ensures that both state and local governments are aware of the current special interest areas on the network. It also ensures that the register accurately reflects the number and location of special interest areas so that the impact of stock and harvesting uses on the special feature can be minimised.

To enable greater protection of the natural heritage and cultural heritage values in special interest areas, the clause allows the local government to register the information about a special interest area in a way that minimises the risk of any adverse effects. The clause provides the example of a local special interest area declared where migratory birds feed and that stating the exact location of the site poses a risk of the birds being adversely affected. To minimise this risk, the local government may notify the location in a generic way.

The chief executive must register the location of the special interest area, and the basis on which the area has been registered as a local special interest area (i.e. the special feature of natural heritage or cultural heritage).

Maintenance conditions for local special interest areas

Clause 11 enables a local government to impose a condition (a maintenance condition) on the use of the local special interest area to maintain the feature of natural heritage or cultural heritage. Identifying local special interest areas cannot, however, prevent access to the network by travelling stock. Temporary exclusion of stock from a, or part of a, local special interest area is permissible to maintain the natural heritage or cultural heritage feature, provided stock are still able to travel on that part of the network.

The clause allows the local government, under chapter 4, to impose the maintenance condition on a new approval or amend the conditions of an approval to include the maintenance condition. Furthermore, if the local government is satisfied that imposing a maintenance condition on an existing approval, other than a travel approval, will not maintain the feature, the approval may be cancelled as a last resort.

Empowering local government to impose such conditions better enables the local government to manage the impacts from stock or harvesting activities on the special features in a local special interest area. It also serves the purposes of the Act in recognising natural heritage and cultural heritage features on the network.

Compensation is not payable for an approval that is amended or cancelled. The non-payment of compensation is considered justified as imposing maintenance conditions

on special interest areas containing natural heritage or cultural heritage special features meets the overall policy intent of the regulatory regime. It also complies with community expectations for appropriate management of the network, including the need to maintain natural heritage and cultural heritage on the network.

Changing or removing local special interest areas

Clause 12 requires a local government to notify the chief executive if the local government decides to change the area or decides an area is no longer a local special interest area. A local government must notify the chief executive using the approved form.

A local government is not required to notify the chief executive if a local special interest area is later identified as a State special interest area. In this circumstance, the chief executive will amend the register and notify the local government of the change.

State special interest areas

Clause 13 provides that the responsible chief executive may decide to identify an area that contains a feature of natural heritage or cultural heritage as a State special interest area if the area is:

- on the Aboriginal Cultural Heritage Database or a register under the *Aboriginal Cultural Heritage Act 2003* (Aboriginal Cultural Heritage Act);
- on a register established under Part 3 of the *Queensland Heritage Act 1993* (Queensland Heritage Act);
- a protected area under the *Nature Conservation Act 1992* (Nature Conservation Act);
- used by endangered wildlife, vulnerable wildlife or near threatened wildlife under the Nature Conservation Act.

The responsible chief executive means either:

- the chief executive of the department which administers the Aboriginal Cultural Heritage Act for an area on the Aboriginal Cultural Heritage Database or a register under that Act;
- the chief executive of the department which administer the Queensland Heritage Act; or
- the chief executive of the department which administers the Nature Conservation Act for areas that are a protected area or used by endangered wildlife, vulnerable wildlife or near threatened wildlife.

This clause recognises natural heritage and cultural heritage features on the network and also promotes management of the network in a way that minimises its impact on those special features. The clause requires the responsible chief executive to notify, using the approved form, the chief executive of the department administering the Act when it has been decided that an area is a State special interest area. Under clause 137, the approved form may be submitted electronically including through an electronic system provided by the chief executive.

If the area to be registered as a State special interest area is already registered as a local special interest area, the chief executive must amend the stock route network register to change the local special interest area to a State special interest area. The chief executive must notify the local government for the area that the area is no longer a local special interest area but has become a State special interest area.

The clause requires the chief executive to register the location of the State special interest area and the basis on which the area has been registered as a State special interest area (i.e. the special feature of natural heritage or cultural heritage).

However, if the responsible chief executive considers registering information about the special interest area may pose a risk of adversely affecting the area, the responsible chief executive may give the information about a special interest area in a way that minimises the risk. The clause provides the example of an Aboriginal cultural heritage area as a State special interest area and that stating the exact location of the area on the register poses a risk of it being adversely affected. To minimise this risk, the chief executive may describe the location in the register in a generic way.

Aboriginal cultural heritage is a state interest, therefore a special feature of Aboriginal cultural heritage must first be either noted on the Aboriginal Cultural Heritage Database or the register under the Aboriginal Cultural Heritage Act in order to be eligible to be identified as a State special interest area.

Importantly, special interest areas do not override or replace existing mechanisms that protect natural and cultural heritage values already provided through other legislation, such as the Aboriginal Cultural Heritage Act, Queensland Heritage Act and the Nature Conservation Act.

Maintenance conditions for State special interest areas

Clause 14 provides that following consultation with the local government in which a State special interest area is located, the responsible chief executive for the State special interest area may require the local government to impose on an approval for the area a condition (a maintenance condition) that the responsible chief executive considers necessary. For a State special interest area that is on a heritage database or heritage register, the responsible chief executive may impose on approvals for the area conditions that are necessary to maintain the feature of cultural heritage of the area. While for another State special interest area, the responsible chief executive can require the local government to impose a maintenance condition on approvals for the area in order to maintain the feature of natural heritage.

If the responsible chief executive and the local government cannot agree on the maintenance condition to be imposed, the chief executive of the department administering the Act will decide the maintenance condition.

Any maintenance conditions imposed cannot prevent access to the network. Temporary exclusion of stock from a, or part of a, special interest area is permissible if required for the maintenance of the natural heritage or cultural heritage feature. These measures are intended to allow the state, through local government administration, to minimise the impact from stock or pasture harvesting activities on

the natural heritage and cultural heritage of the State special interest areas in an effort to create a holistic management approach to the network.

The local government may, under chapter 4, impose the maintenance condition on a new approval, amend the conditions of an approval to include the maintenance condition, or cancel the approval (except a travel approval) as a last resort if satisfied imposing the maintenance condition will not maintain the feature. The conditions imposed by local government under these provisions are not reviewable.

Compensation is not payable for an approval that is amended or cancelled. The non-payment of compensation is considered justified as imposing maintenance conditions on special interest areas containing natural heritage or cultural heritage special features meets the overall policy intent of the regulatory regime. It also complies with community expectations for appropriate management of the network, including the need to maintain natural heritage and cultural heritage on the network.

Changing or removing State special interest areas

Clause 15 requires that where the area of a State special interest area has changed; or an area is no longer a State special interest area then the responsible chief executive must notify, using the approved form, the chief executive. Under clause 137, the approved form may be submitted electronically including through an electronic system provided by the chief executive.

Part 3 Status of stock route network

Temporarily restricting or temporarily preventing access to stock route network

Clause 16 applies if a local government considers it is necessary to temporarily restrict, or temporarily prevent, access in the local government's area to a part of the network.

This power cannot be used to close a road that is part of the network to other road uses (e.g. road traffic)—it only allows local governments to prevent or restrict stock related activities (travelling, grazing) or pasture harvesting activities authorised under the Bill. Importantly, local governments cannot permanently close a part of the network, and any actions to restrict or prevent stock access to the network do not impact on the underlying land tenure of the network (i.e. whether it is a road or a reserve). Existing arrangements to permanently close roads under the Land Act remain unchanged. The decision by local government to temporarily restrict or temporarily prevent access is not a future Act and will not affect native title.

Although ensuring the network remains open is important for travelling stock, there will be situations that require the temporary restriction of access or temporary prevention of access to the network, including special interest areas. Accordingly, the clause specifies situations that may make it necessary for a local government to do so.

Firstly, the clause provides that a local government may consider it is necessary in the interests of public safety such as a fire or flood affecting that part of the network.

Temporary restriction or temporary prevention of access may also be necessary to maintain a special interest area, or to otherwise maintain a feature of natural heritage or cultural heritage in the area. The clause also specifies that the temporary obstruction to road traffic on the part of the network, or a road has been temporarily closed to traffic, may cause a local government to consider it necessary to temporarily restrict, or temporarily prevent, access to the network.

A local government may also consider it necessary to temporarily restrict, or temporarily prevent, access if: all of the estimated pasture (as estimated by the local government) or water in the part of the network has been allocated for use under approvals; there is a temporary decline in the amount or the quality of the pasture or water in the area; or if there is a need to maintain or increase the amount or the quality of the pasture or water in the area.

Finally, a local government may also consider it necessary to temporarily restrict or temporarily prevent access to part of the network because any other situation, of a type prescribed by regulation, exists.

If a listed situation occurs and the local government considers it is necessary to temporarily restrict access to the network, the local government can impose a condition (a restrictive condition) on the use that addresses the situation. Similarly, a local government may temporarily prevent access by closing part of the network if it considers it is necessary as a result of a listed situation. This enables a local government to more effectively manage situations that may arise and affect the network in their local area due to their proximity and local knowledge of the network in their area.

In making its decision, the local government is required to consider any matters prescribed by regulation. For example, prior to a local government making a decision the local government may be required to consult with another local government if a decision may affect the use of the network in the other local government's area.

The clause requires the local government, within 3 days after making its decision, to notify the chief executive by using the approved form. Under clause 137, the approved form may be submitted electronically including through an electronic system provided by the chief executive. The decision of the local government to temporarily restrict or temporarily prevent access to a part of the network takes effect on the day it is made, not the date of notification to the chief executive. This maintains public awareness of the status of the network in a local government's area and also ensures that the stock route network register accurately reflects the current status of the network.

The clause also provides that the decision by a local government to temporarily restrict or temporarily prevent access to a part of the network, unless revoked prior, stops having effect 84 days (12 weeks) after the local government notifies the chief executive of the decision. Alternatively, if an earlier day is stipulated by the local government in the notice to the chief executive, the effect of the decision ceases on that day. When revoking a decision about temporary restriction or temporary prevention of access, the local government may replace the decision with another decision about the access to that part of the network as allowed by the *Acts Interpretation Act 1954* (Acts Interpretation Act). This ensures that parts of the network do not have restrictive

conditions on its access or is closed for an excessive amount of time, and in the process unnecessarily reducing the connectivity of the network.

Temporarily restricting or temporarily preventing access to State-controlled roads

Clause 17 provides that if the chief executive (transport) gives the local government notice that access is temporarily restricted or temporarily prevented to all, or part of, a State-controlled road on the network, the local government must as soon as practicable decide to temporarily restrict or temporarily prevent access as required under the notice. For example, the chief executive (transport) temporarily restricts access to all, or part of, a State-controlled road due to an emergency such as a vehicular accident or chemical spill, or the movement of a vehicle with a wide load, or a community event.

Consequences of temporarily restricting or preventing access to part of stock route network

Clause 18 provides that if a local government decides to temporarily restrict access to the network, it may impose a restrictive condition on a new approval or similarly amend the conditions of an approval to include a restrictive condition.

In addition, the clause provides that if the local government decides to temporarily prevent access to part of the network, the local government must not issue an approval to use that part of the network, and must suspend an approval to use that part of the network for the period for which access to the network is prevented. Alternatively, if it is the case that an approval expires prior to the end of the period that access to the part of the network has been temporarily prevented, the approval can be cancelled. This gives the ability to local government to manage access to the network in a manner that best addresses the prevailing situation in their area.

Compensation is not payable for an approval that is amended, suspended or cancelled under this section. The non-payment of compensation is considered justified as access to part of the network can only be restricted or prevented on a temporary basis (up to 84 days), and only for a prescribed reason, such as for public safety in the event of a flood or fire; where the road forming part of the network needs to be closed to all forms of traffic; or because of a temporary decline in the pasture or water on part of the network. Temporarily restricting or preventing access to the network is a necessary management tool both to maintain the network for its main purpose for travelling stock and to regulate access to the network in situations necessary for public and road safety.

Where a local government decides to take an action under this clause to give effect to a decision under clause 17, the local government's decision is not reviewable.

Chapter 3 Managing the stock route network

Part 1 State management plan

State management plan

Clause 19 enables the State's strategic oversight of the network to ensure the integrity and connectivity of the network for the purpose of travelling stock, through a State management plan.

The clause provides details of the State management plan including that the Minister must prepare the plan in a way prescribed by regulation (for example consultation requirements); that the Governor in Council may approve the plan by gazette notice; that the plan is not subordinate legislation; and, that the Minister must publish a copy of the plan on the department's website.

The plan must contain information about the outcomes to be achieved by managing the network. To achieve the outcomes, the plan must include strategies and actions that local governments may use to achieve the outcomes. One example of a strategy or action is a local government entering into a partnership (or alternative arrangement) for the management of the network. However, if the management partnership (or alternative arrangement) involves the management of part of the network on a State-controlled road then the arrangement cannot be for infrastructure, of a commercial nature, and must be subject to road safety rules. Another example is strategies and actions to manage the risk of fire due to excess pasture.

While the plan will state strategies and actions to achieve the outcomes, local governments may use alternative strategies and actions, more suited to the circumstances in their local government area, to achieve the required outcomes under the plan.

The plan must also state the term of the plan and any other information prescribed by regulation.

Part 2 Pasture

Managing pasture generally

Clause 20 provides that local government must manage pasture on the network in their local area consistently with the State management plan.

Local government must, as far as practicable, manage the pasture so there is an adequate supply of pasture for travelling stock and prevent or minimise land degradation. For example, to minimise land degradation the local government may decide to undertake fire management burns rather than approving pasture harvesting under the Act because burning the pasture may have less impact on the land than a harvesting activity.

Management of pasture is critical for the continued use of the network, and achieving the purpose of the Act. Requirements under the *Biosecurity Act 2014* (Biosecurity Act) for the management of pests and weeds are not affected by this clause.

Offering excess pasture for short-term grazing or harvesting

Clause 21 provides for the situation where an area on the network has more pasture than is needed for travelling stock. The local government can invite persons (by public notice) to apply to graze (short-term) or harvest the pasture if:

- the area on the network has a fence on the boundary between the network and adjacent land;
- short-term grazing or harvesting on the area is unlikely to reduce the amount of pasture below that required for travelling stock or adversely affect a special interest area; and
- the owner of the adjacent land has notified the local government that they do not want to apply for a short-term grazing approval (for example, because the owner has sufficient pasture on their property).

However, if the area on the network is a State-controlled road then the local government must also seek the written consent of the chief executive (transport) before publishing the public notice.

A public notice is a notice published by a local government in a newspaper circulating in the local government's area or on the local government's website.

Local government is required to consider the amount of pasture that is available for use and the order in which approvals to use the network are to be issued under clause 4, in deciding the type of approval to invite persons to apply for. Namely, that a grazing approval (short-term) has a higher priority of use than a harvesting approval.

This clause only applies to an area on the network that is not subject to an approval issued under the Act, or an approval, however described, under either the Land Act or a transport Act as defined under schedule 1 of the *Transport Planning and Coordination Act 1994* (Transport Planning and Coordination Act), as short-term grazing or pasture harvesting would interfere with the use and operation of these approvals.

Part 3 Stock facilities

Division 1 Stock facilities generally

Primary stock facilities

Clause 22 provides that the chief executive may, by notice given to a local government, require the local government to provide (i.e. supply) a primary stock facility in the local government's area. A primary stock facility is a stock facility that is on, or provided for, the benefit of persons using a primary stock route or primary reserve. A stock facility

may include a public water facility, a stock holding yard, a bridge or water crossing. A local government must comply with the notice to supply a primary stock facility. The notice is not an approval to build the stock facility.

The local government must also ensure the primary stock facility is maintained in good working order. This obligation on local governments reflects the need to focus management efforts on the primary network which is the part of the network that is most important for maintaining a state-wide connected network.

If the primary stock facility is to be on a State-controlled road, the chief executive must consult with the chief executive (transport) before giving the notice to the local government.

Secondary stock facilities

Clause 23 provides that the chief executive may, by a notice given to a local government, require the local government to maintain a secondary stock facility in the local government's area. A secondary stock facility is a stock facility that is on, or provided for, the benefit of persons using a secondary stock route or secondary reserve. A stock facility may include a public water facility, a stock holding yard, a bridge or water crossing. Local government must comply with the notice. A notice given to a local government to maintain a secondary stock facility is not an approval to build the stock facility.

The clause also provides for the relocation, removal or sale of a secondary stock facility (or part of a secondary stock facility) by a local government subject to the chief executive's written approval. Local governments being able to dispose of secondary stock facilities allows them to rationalise and focus their management and capital works investments to parts of the network with higher use, e.g. a primary stock route.

Maintenance of stock facility by approval holder

Clause 24 provides that, if an approval allows an approval holder to use a stock facility, the local government may impose a condition on the approval requiring the holder to maintain the stock facility in good working order. For example, the holder of a short-term grazing approval may be required to keep a water facility operational for the duration of the approval.

Division 2 Water facilities

Water facility agreements

Clause 25 outlines matters concerning water facility agreements. A water facility is defined under the Act to be an artificial water source for stock, and includes equipment used to supply water to the stock.

Water facilities under the Act can be public or private water facilities. A public water facility is one supplied by the State or a local government on the network or on other

land for the benefit of users of the network. A private water facility means a water facility on private land that is used by persons using the network.

A local government and the chief executive may enter into a water facility agreement with the owner of private land about: the supply of water from a public water facility under the local government's control (e.g. an agreement may be entered into with a landholder located next to the network to allow that landholder to access water from a public water facility); or the supply of water from a private water facility owned by the owner of the private land (such as a bore); or building a public water facility on the private land; or access to a public or private water facility; or maintaining a public or private water facility.

A local government and the chief executive may enter into a water facility agreement with the holder of a grazing approval about: the supply of water from a public water facility under the local government's control; or maintaining a public water facility.

Each agreement must be registered by the chief executive. Subclause (3) prescribes the matters that must be included in the agreement, such as who owns the water facility, requirements to access the facility, responsibility for maintaining the facility and maintenance requirements, and the agreement's term. Subclause (4) provides for when a water facility agreement is terminated (other than an agreement to build a public water facility on the private land which terminates at the end of the term of the agreement).

Under the Acts Interpretation Act, the parties to an agreement entered into under this section have the ability to amend the agreement.

The clause also clarifies that a party to a water facility agreement is not entitled to compensation if the agreement is suspended or terminated in accordance with the agreement or this section. The non-payment of compensation is considered justified for the suspension or termination of a water facility agreement, as the Act clearly states when a water facility agreement is terminated (i.e. the giving of a notice; changes in ownership; or at the end of the term of the agreement as agreed between the parties). Parties are aware of their rights before entering into such an agreement.

A water facility agreement must be registered by the chief executive administering the Act on the stock route network register.

Registering particular agreements on land registers

Clause 26 outlines the procedures to register a water facility agreement, where the agreement relates to building a water facility on private land where the state pays all, or part of, the building costs. The procedure involves the chief executive giving notice of the agreement to the land registrar, as soon as practicable, after an agreement has been entered into. The land registrar must keep records showing the land is the subject of the agreement, and keep the records in such a way that a search under an Act relating to title to the land will show the existence of an agreement.

The clause also provides that the chief executive must give the land registrar a notice about the termination of an agreement. Following receipt of a notice of termination, the

land registrar must amend the records to show the land is no longer the subject of the agreement; and, that while the agreement is in force, the agreement binds the owner of the land.

An agreement made under this clause binds the landowner and their successors in title to the land while the agreement remains in force. This is to protect the State's investment in the water facility.

Chapter 4 Approvals to use the stock route network or related roads or reserves

Part 1 Approvals

Division 1 Applications

Applications for approvals

Clause 27 provides the process for making an application to a local government for an approval to use the network. It outlines the types of approvals that can be applied for—a travel approval, an unfit stock approval, a grazing approval, a harvesting approval—and provides the method for doing so.

A travel approval authorises a person to move stock on a stated route between places including from a drought affected place to another place where there is available water and pasture, to spell the land or to another place owned by the stock owner or person in charge of the stock; or to dispose of stock (e.g. for sale at a saleyard or slaughter at an abattoir); or to move stock to and from a place where the stock are authorised under a grazing approval.

An unfit stock approval authorises the holder of a travel approval to move stock at a slower speed than the speed stated in the travel approval, or graze the stock in a stated area if they are not fit to travel.

A grazing approval authorises a person to graze stock on a stated area. This includes emergency grazing, short-term grazing and long-term grazing.

A harvesting approval authorises a person to harvest pasture from a stated area. The Act defines harvesting pasture, as removing pasture, other than by burning or allowing stock to graze on the pasture, with the intention of removing the pasture for a purpose (e.g. cutting and baling pasture for hay).

Applications must be made to the local government for the area in which the: travelling of the stock is to start; where the unfit stock are located; where stock are to graze; or, for a grazing or harvesting approval mentioned in a pasture availability notice—to the local government nominated in the pasture availability notice. A pasture availability notice is a public notice by a local government inviting applications. An applicant may

also seek approval for the use of related roads or reserves near the part of the network mentioned in the application.

Applications for an unfit stock approval or an emergency grazing approval must be made orally. This is because there is often some urgency surrounding the situations giving rise to the need for these types of approvals.

For a travel approval, the application can either be made orally or in the approved form. All other approval applications (short-term and long-term grazing approvals, harvesting approvals) must be in the approved form. All applications must be accompanied by the application fee (which is made up of the approval fee and the processing fee, where the local government has set one).

The clause establishes that local governments hold responsibility for giving approvals for the use of the network. This reflects one of the main ways of achieving the Act's purposes outlined in clause 3(b)—providing for the sustainable management of the network through empowering local governments to manage the network.

When application must be made

Clause 28 provides for when an application for an approval under the Act must be made. For a travel approval, the application cannot be made earlier than 28 days (4 weeks) before the travel is intended to commence. For a travel approval that is to travel stock that are under an unfit stock approval, the application must not be made later than 14 days before the travel is intended to commence.

Where a pasture availability notice has been published inviting applications for short-term grazing or pasture harvesting, the application must be made within the timeframe stated in a pasture availability notice.

For short-term grazing where no pasture availability notice has been published, the application for a short-term grazing approval must be made no later than 14 days before the grazing is intended to commence.

For a long-term grazing approval, an application must be made no later than 28 days (4 weeks) before the grazing is planned to commence.

Requiring more information for application

Clause 29 provides that a local government may ask for more information needed to decide the application. The local government must request the information within 7 days after the application is made. If the applicant does not provide the information within the specified period, the local government may treat the application as having been withdrawn.

Amending applications

Clause 30 allows for an applicant for an approval to amend their application, by a notice in the approved form given to the local government, within 3 days after making the application. The intent of this clause is to allow an applicant to make minor, rather

than substantial, changes to an application before the local government makes a decision.

Division 2 Deciding applications

Considerations—generally

Clause 31 outlines the general considerations that a local government needs to consider before issuing any type of approval under the Act to use part of the network. A local government may issue an approval to use part of the network only if satisfied that issuing the approval will not prevent or interfere with another higher use of the network under section 4(e). The local government must also be satisfied that: access to the relevant part of the network is not temporarily prevented; issuing the approval is not likely to affect road safety or the operational integrity of the transport network; the condition of the part of the network supports the approved use; and the applicant is a suitable person to hold the approval. The local government must also be reasonably satisfied of any other matter prescribed by regulation.

When deciding whether the applicant is a suitable person, the local government may have regard to the matters listed in subclause (2). This includes whether the applicant, or an associate of the applicant, held a permit to occupy for grazing purposes issued under the Land Act; a travelling or grazing stock approval under a Transport Infrastructure Act or the Transport Operations Act; or a stock agistment or travel permit under the Stock Route Management Act—any of which was suspended or cancelled because of a contravention of a condition of the permit or approval. It also includes whether the applicant or an associate of the applicant has an offence against the Act or the Stock Route Management Act.

This clause reinforces the priority of use principle that the network should be used primarily for travelling stock, and other approvals are of a lesser priority.

Considerations—travel approval

Clause 32 allows for a local government to issue a travel approval if satisfied the stock can travel at a specified minimum speed, or grant a travel approval to a person who previously held an approval for the same stock and the same route within the previous 28 days, if satisfied exceptional circumstances exist.

There are two types of travel approval—slow, for stock that can travel not less than 5 kilometres per day; and standard, for stock that can travel not less than 10 kilometres per day. Requiring stock to travel at a particular speed helps to prevent overgrazing.

Considerations—unfit stock approval

Clause 33 outlines when a local government may issue an unfit stock approval. The clause gives specific considerations for the granting of an unfit stock approval, and which stock the unfit stock approval may apply to.

Unfit stock are defined as stock not able to travel at the speed required under a travel approval because they are pregnant; have young stock less than 3 weeks of age; are affected by a disease; or are otherwise sick, injured, malnourished or weakened.

To issue an unfit stock approval, the local government must be satisfied that a travel approval is already held for the unfit stock; it is not reasonable for the stock to travel at the speed stated in the travel approval; and the local government have been given an unfit stock notice for the stock. An unfit stock notice is an oral or written notice in the approved form provided under clause 72. It provides details such as the number of unfit stock, reason why the stock are unfit, and whether the stock have been treated by a veterinary surgeon.

If more than half the stock under a travel approval are unfit, the local government may issue the unfit stock approval for all the stock. Otherwise, the approval may just be issued for those stock that are unfit.

An unfit stock approval is designed to allow stock to travel at a slower rate for a short period until they are fit enough to resume travel, and if they do not become fit, the Act provides powers to have the unfit stock removed from the network.

Considerations—grazing approval (emergency)

Clause 34 provides the considerations for a local government to issue an emergency grazing approval. A local government may grant an emergency grazing approval for an area on the network if satisfied that where the stock are already located has been affected by an adverse natural event (such as a cyclone, fire or flood) and can no longer sustain the stock. An emergency grazing approval in these instances allows for the affected stock to be moved to the area of the network under the application. The clause outlines what is meant by adverse natural event, and qualifies that this does not include drought, or an event for which the effect on the land could have been reasonably avoided or significantly mitigated. An example of the later is where a landowner allows land to be overgrazed and a storm results in significant erosion because the land had been overgrazed.

Considerations—grazing approval (short-term)

Clause 35 gives the considerations for a local government to issue a short-term grazing approval for an area of the network. A local government may issue a short-term grazing approval for an area if satisfied:

- the area on which the stock are located is drought-declared and can no longer sustain the stock; or
- an owner of adjacent land (mentioned in section 21(1)(e)) has advised the local government in writing that the owner wants to apply for a grazing approval (short-term); or
- a local government has published a pasture availability notice (which is a public notice) inviting persons to apply for short-term grazing approvals for the area.

Drought-declared land is defined as land that is officially acknowledged by the state or Commonwealth as being affected by drought.

However, the clause further provides that if there is a boundary fence between a proposed approval area and private land owned by a person other than the applicant, a local government must not issue a short-term grazing approval unless the local government is satisfied the applicant has a fencing maintenance agreement with the owner or occupier of the private land.

A fencing maintenance agreement is defined as an agreement about the maintenance of a boundary fence between an approval area and private land.

A local government may approve an application for another short-term grazing approval by the holder of a short-term grazing approval for a period immediately after the approval ends, having regard to the same considerations under the Act that applied to the first application.

This clause intends to ensure that grazing approvals are only granted when there is sufficient pasture to support grazing, and the grazing on the network does not diminish the capacity for the network to provide for travelling stock.

Considerations—grazing approval (long-term)

Clause 36 outlines the considerations a local government must make before issuing an approval for long-term grazing. The clause provides that a local government may issue a long-term grazing approval for an area if satisfied the applicant owns or occupies private land next to the area. A long-term grazing approval may also be issued to an applicant who owns or occupies land next to a person whose land is next to the area on the network (a neighbour), so long as the neighbour has not applied for a long-term grazing approval for the area, and can demonstrate the stock will have access to water.

However, the clause further provides that if there is a boundary fence between a proposed approval area and private land owned by a person other than the applicant, a local government must not issue a long-term grazing approval unless the local government is satisfied the applicant has a fencing maintenance agreement with the owner or occupier of the private land.

A fencing maintenance agreement is defined as an agreement about the maintenance of a boundary fence between an approval area and private land.

A local government may approve an application for another long-term grazing approval by the holder of a long-term grazing approval for a period immediately after the approval ends, having regard to the same considerations under the Act that applied to the first application.

This clause intends to ensure that grazing approvals are only granted when there is sufficient pasture to support grazing, and that grazing on the network does not diminish the capacity for the network to provide for travelling stock.

Considerations—harvesting approval

Clause 37 sets out the considerations for issuing a harvesting approval by a local government.

The Bill defines harvesting pasture, as removing pasture, other than by burning or allowing stock to graze on the pasture, with the intention of removing the pasture for a purpose (e.g. cutting and baling pasture for hay).

If a pasture availability notice has been published inviting applications for a harvesting approval, and the harvesting is not likely to adversely affect forest products or the rights of the holder of an approval under the *Forestry Act 1959* (Forestry Act), the local government may issue a harvesting approval.

A local government may approve an application for another harvesting approval by the holder of a harvesting approval for a period immediately after the harvesting approval ends, having regard to the same considerations under the Act that applied to the first application.

This clause should be read with reference to the order of priority of use principle under the Act (see clause 4(e)). Harvesting approvals should only be granted where an area on the network contains sufficient pasture to warrant harvesting, after all higher uses of that area have been considered. It is the lowest priority use of the network and should only be authorised where there is more pasture than is needed for travelling stock and other higher order uses. The harvesting approval is intended to be a tool for local governments to manage areas of the network when there is excess pasture that may, for example, pose a fire hazard or risk.

Deciding applications

Clause 38 provides the actions a local government must take in deciding an application for an approval to use the network. In the first instance, the local government must decide to issue the approval, with or without conditions, or refuse to issue the approval. If the local government decides to issue the approval, the applicant must be given the approval in the approved form, and the local government must notify the chief executive of the department responsible for administering the Act, that the application has been issued.

If a decision is made to issue an approval on terms that are not the same as the terms applied for (such as the use, route, period, or number of stock applied for), or imposes a condition on the approval, the local government must give a review notice for the decision to the applicant. This is to ensure the applicant receives natural justice.

Further, the clause provides that if a decision is made to refuse to issue the approval, local government must give the applicant a review notice for the decision, and refund the approval fee. Where a local government has also charged an application processing fee, there is no requirement for the local government to refund this fee.

A local government is taken to have refused the application if it fails to decide the application within the required period after the local government receives the application, or information requested under section 29(1).

This clause gives the local government greater ability to administer and maintain areas of the network in their region. Being the decision-maker for the granting of approvals to use the network, the local government can determine who may use the network, and for what purposes, which ensures more effective and efficient management.

Approval routes and approval areas

Clause 39 provides that an approval may be granted for a route or area on the network to which access is not temporarily prevented (i.e., the approval can be granted over a part of the network that is open or temporarily restricted). The route or area may include another local government's area (other than for a long-term grazing approval), provided the other local government has given its approval and any conditions the other local government requires are imposed on the approval. This ability for one local government to issue an approval for part of the network in another local government's area, allows local governments the flexibility to work together to manage approvals for the network and achieve resourcing efficiencies.

The approval route or area can also include a local special interest area where the local government is satisfied the use allowed under the approval will not adversely affect the special interest area; and a State special interest area, subject to any conditions imposed by the responsible chief executive.

A local government, however, requires the written consent of the chief executive (transport) before the local government may issue an approval for part of the network or related roads or reserves that are a State-controlled road. A State-controlled road is defined under the Transport Infrastructure Act. The local government must impose, on the approval, any conditions the chief executive (transport) requires relating to road safety or the operational integrity of the transport network. The requirements in clause 39(3) about State-controlled roads are necessary to maintain and ensure the operational integrity of the state's transport network.

Approval periods

Clause 40 provides the amount of time for which each approval, under the Act, may be issued.

An unfit stock approval and an emergency grazing approval for part of a primary stock route or reserve can be issued for no more than 14 days (2 weeks). The reason an unfit stock approval is only allowed for no more than 14 days is because this approval is designed to allow stock to travel at a slower rate for a short period until they are fit enough to resume travel. If they do not become fit within a short timeframe, it is appropriate to have the stock removed from the network and the Act provides powers for this to occur.

For emergency grazing approvals over other areas or for a harvesting approval, the approval can be issued for no more than 28 days (4 weeks).

Short-term grazing approvals for part of a primary stock route or reserve can be issued for no more than 42 days (6 weeks), otherwise, these approvals can be issued for no more than 84 days (12 weeks).

Long-term grazing approvals can be issued for no more than 1 year over part of a primary stock route or reserve. For a secondary stock route or reserve, a long-term grazing approval can be issued for no more than 5 years.

The shorter approval periods for the primary network as opposed to approvals over other areas, reflects the importance of maintaining sufficient pasture for travelling stock on the primary stock routes and reserves.

Contents of approvals

Clause 41 gives details for what an approval must state when issued to an applicant, including the allowable use, the location, the start and end dates of the approval, and any other conditions required under the Act or by regulation. This includes any conditions required by the chief executive (transport) for State-controlled roads that form part of an approval route or area.

Importantly, it is a condition of all approvals that the approval holder has adequate public liability insurance for the allowed use of the network during the approval period. This ensures liability is on the person using the stock route, and not the local government or any other person.

The clause also states that the approval holder has duty of care for the approval route or area, reinforcing the principle that the network should be sustainably managed for use now and into the future.

The clause also makes it clear that approvals are not transferable, that is, the approval holder cannot transfer their approval to another person.

Unfit stock approvals

Clause 42 provides that if the local government decides to approve an application from a travel approval holder for an unfit stock approval, the local government must amend the travel approval to remove the unfit stock, or cancel the travel approval if all of the stock are unfit. In either case, the local government must refund the proportion of the approval fee that relates to the unfit stock. Where a local government has also charged an application processing fee, there is no requirement for the local government to refund this fee.

If the local government refuses the application, the local government must issue a review notice stating that the applicant must remove the unfit stock from the network within a period of at least 3 days after the notice is given, and if they are not removed they may be seized. The local government must amend the travel approval to remove the unfit stock from the travel approval.

If the stock are still unfit at the end of the period for the unfit stock approval, the person in charge of the stock must remove the stock within 3 days after the end of the approval period to avoid the stock being seized. They can, however, before the unfit stock approval ends, apply for a different approval type.

Part 2 Amending approval on approval holder's application

Applications to amend approvals

Clause 43 enables an approval holder to make an application to the issuing local government to amend an approval. However, applicants may not apply to amend a travel approval, grazing approval or harvesting approval for prescribed reasons.

For a travel approval, the approval holder cannot seek an amendment to delay the start of the travel approval by more than 7 days or extend it by more than 3 days; increase the number of stock by more than 20 head; or extend the approval route by more than 30 kilometres. These restrictions are to prevent issues with the movement of stock under other travel approvals that may be authorised to use a similar part of the network, as well as to ensure the network is being managed sustainably.

The application to amend must be in the approved form and accompanied by the application fee. The application fee includes both the approval fee and, if the local government has set one, an application processing fee.

Deciding applications to amend approvals

Clause 44 provides that after considering an application to amend an approval, a local government must make a decision to either amend the approval in the way requested, amend the approval in another way (including by imposing a condition), or refuse to amend the approval.

However, the local government may amend the approval route to allow stock to travel on a part of the route on which the stock have already travelled under the approval only if the local government is satisfied it is necessary because of an event beyond the approval holder's control. Otherwise, the Act restricts the same stock travelling over the same part of the network they have already travelled over which can lead to overgrazing and is not regarded as travel for the purposes of the Act.

Action if approval amended

Clause 45 provides that, if the local government decides to amend the approval, an amended approval must be given by the local government to the applicant in the approved form, and the local government must notify the chief executive, in the approved form, that the approval has been amended.

Action if approval not amended as requested

Clause 46 provides that the applicant must be given a review notice if the local government decides to amend the approval in a way other than what was applied for, imposes a condition on the approval, or refuses to amend the approval. The review notice for the decision is intended to allow the applicant to receive natural justice.

The local government is taken to have refused to amend the approval if the local government fails to decide the application within 7 days after the local government receives the application.

Part 3 Amending, suspending or cancelling approval by local government

Grounds for amending, suspending or cancelling approval

Clause 47 provides that grounds exist for amending, suspending or cancelling an approval if the local government reasonably believes it is necessary. Subclauses (1)(a) to (1)(g) set out these grounds.

In order to ensure the purposes of the Act are carried out, grounds exist to amend, suspend or cancel an approval to issue a new approval to use the network if the use is higher in the order of priority. Grounds also exist: in the interests of public safety; to maintain the condition of the network; to maintain the natural heritage or cultural heritage of the network; to prevent damage to stock facilities; or to allow road works to be carried out. The intent is to ensure that approvals do not conflict with the management and use of the network as set out in the Act.

Further, subclause (2) specifies the grounds upon which an approval may be suspended or cancelled, as opposed to amended. If an approval holder is no longer a suitable person to hold the approval; has obtained the approval by materially incorrect or misleading information; or has contravened a condition of the approval, grounds exist for a local government to suspend or cancel the approval.

Clause 31 outlines what a local government may consider in deciding whether a person is no longer suitable to hold an approval. It includes whether the applicant, or an associate of the applicant, held a permit to occupy for grazing purposes issued under the Land Act; a travelling or grazing stock approval under the Transport Infrastructure Act or Transport Operations Act; or a stock agistment or travel permit under the Stock Route Management Act—any of which was suspended or cancelled because of a contravention of a condition of the permit or approval. It also includes whether the applicant or an associate of the applicant has an offence against the Act or the Stock Route Management Act.

A local government may also immediately suspend an approval in the circumstances set out in clause 47(3). In instances where there is an immediate risk to: public safety; the condition of the network; or the natural heritage or cultural heritage of the network,

an approval must be immediately suspended. Immediate risks to public safety and the condition of the network could be, for example, bushfires or flood events.

Show cause notice

Clause 48 specifies the process a local government must follow if it reasonably believes grounds exist to amend, suspend or cancel an approval. In these circumstances, a local government must give the approval holder a notice, known as a show cause notice.

The show cause notice must state that the local government reasonably believes grounds exist for their decision to amend, suspend or cancel the approval and the proposed action to be taken. The notice must give facts that support this belief and state that the approval holder may make written representations to the local government, within a stated period of at least 7 days after the notice is given, about why the grounds do not exist to amend, suspend or cancel the approval.

Approvals may be immediately suspended for a period that starts on the day the show cause notice is given to the approval holder, and either ends when the local government issues a notice under subclause (2)(b), or at the end of the immediate suspension period. The clause sets out that the immediate suspension period means a period of 56 days from the day the show cause notice is given to the approval holder by the local government.

Decision after show cause notice

Clause 49 provides that the local government must consider any representations made by the approval holder about why the grounds to amend, suspend or cancel do not exist, and if the local government no longer believes any grounds exist to amend, suspend or cancel the approval, the local government must give a notice to the approval holder to show that is the case.

Should the local government still believe grounds exist following receipt of representations from the approval holder, the local government may decide to take certain actions. The local government may take the action proposed in the show cause notice; or if the action proposed in the show cause notice was to suspend the approval – amend the approval; or if the action proposed in the show cause notice was to cancel the approval – either amend or suspend the approval for a period.

If the local government decides to take the proposed action, the local government must give a review notice to the approval holder and notify the chief executive that the action was taken. Further, if a decision is made to amend an approval, then the local government must also give the approval holder the amended approval.

If the local government makes a decision to suspend or cancel a travel, unfit stock or grazing approval, the review notice must state that the approval holder is to remove the stock under the approval from the network within a stated period. The clause also sets out that should the stock not be removed in that period, the stock may be seized under the Act.

If the local government decides to cancel an approval, it must refund part of the approval fee that relates to the cancelled period of the approval.

Part 4 Replacing or surrendering approvals

Replacing approvals

Clause 50 provides that a local government may replace an approval if the approval holder gives the local government a notice either under section 68, that corrects a prescribed particular of the approval, or a notice that states the approval has been lost, damaged or destroyed.

A prescribed particular under section 68 is the approval holder's address or phone number, name of the person in charge of stock under an approval or any other information prescribed by regulation.

The local government must notify the chief executive of the replacement approval.

Surrendering approvals

Clause 51 outlines what must happen if an approval holder surrenders an approval. If an approval is surrendered (other than a harvesting approval), the approval holder must remove stock under the approval from the approval route or approval area before returning the approval to the issuing local government. If they so decide, the local government may refund part of the approval fee to the approval holder.

Part 5 Local laws about approvals

Local laws

Clause 52 allows the local government to make a local law about approvals to use related roads or reserves.

The intent of this clause is to provide for the administration by local governments of approvals for the use of related roads and reserves for travelling and grazing stock, and pasture harvesting. Related roads or reserves include roads under local government control; reserves where the local government is the trustee of the reserve; and a State-controlled road with the chief executive's (transport) approval.

For stock travel, grazing or pasture harvesting on related roads and reserves, local governments will have the flexibility to make a local law under the *Local Government Act 2009* or *City of Brisbane Act 2010* (the Local Government Acts) to establish their own approval processes, or adopt those provided under the Bill.

Before making a local law relating to related roads and reserves that are a State-controlled road, a local government must have the written consent of the chief executive (transport). This requirement is necessary to maintain and ensure the road safety and operational integrity of the state's transport network.

The clause clarifies however, that if an application for stock travel, grazing or pasture harvesting is for an area that includes both a part of the network and related roads or reserves, the application and approval processes set out in chapter 4 of the Act must be used. A local law made by a local government for approvals on related roads and reserves cannot be used to decide and grant the application.

The clause further clarifies that for a local law made under this clause, the making of the local law, or anything done under the local law, does not affect the operation of chapter 4 of the Act in relation to the network. Further, the offences provided under the Act relate only to the network. For related roads and reserves, a local government may establish their own offence provisions under a local law.

Chapter 5 Offences and enforcement

Part 1 Offences

Division 1 Stock route network

Subdivision 1 Using stock route network

Stock on network without approval

Clause 53 makes it an offence for a person who owns or is in charge of stock to allow the stock to travel or graze on the network unless they have an approval, a reasonable excuse, or travel the stock consistent with the exemption under subclause (2). The exemption under subclause (2) provides that a person may travel stock on the network, if a person:

- has adequate public liability insurance;
- has given the local government notice (oral or written) of their proposed travel;
- will be on the stock route for a day or less during daylight hours;
- travels the stock for animal husbandry or for property management purposes;
- ensures the stock are supervised; and
- ensures that there are signs warning the public to be aware of the presence of stock.

However, if a person is intending to travel stock, under the exemption provided by subsection (2) of the clause, and the travel is proposed to occur on a part of the network that is a State-controlled road, then the person is still required to seek an approval under Transport Infrastructure Act before travelling the stock. To ensure the road safety and integrity of the State-controlled transport network, these stock travel activities continue to be ancillary works and encroachment activities under the Transport Infrastructure Act.

Strong penalties are needed for using the network without approval, as the use will affect the viability and effective functioning of the network. For example, the use will affect the availability of pasture and water for approved users. Higher maximum

penalties are given under clause 53, for larger numbers of stock, given the potential for greater damage to the network.

Stray stock on stock route network

Clause 54 makes it an offence for a person to allow their stray stock on the network without a reasonable excuse. Stray stock means stock that have strayed onto the network, or stock that have been travelling that have been left behind or abandoned on the network.

Strong penalties are needed for stray stock on the network given the potential for stray stock to cause harm to the network, and its effective functioning. This may include, for example, detrimental impacts to the availability of water, or pasture, for valid users, as well as damage to stock routes infrastructure. Public safety and the operational integrity of the transport network (for all types of traffic) needs to be ensured when managing the network and may be threatened by the unpredictability of stray stock (which are not supervised).

Penalty levels increase for larger numbers of stock, given the potential for greater harm to the network, and higher public safety risks.

Using temporarily closed stock route network

Clause 55 makes it an offence for a person to allow stock on, or harvest pasture from, any part of the network that has been temporarily closed (i.e. access has been temporarily prevented under section 16), where the person does not have a reasonable excuse. Allowing stock on the network includes failing to stop the stock going onto the network or failing to remove the stock from the network.

The maximum penalty reflects that it is a serious offence to use these parts of the network where access has been temporarily prevented, for example due to public safety risks, to maintain a special interest area, or there is insufficient pasture or water.

Obstructing stock route network

Clause 56 makes it an offence for a person to obstruct another person who has an approval to use the network, except in circumstances where the safety of persons or stock needs to be addressed or the person has a reasonable excuse. For example, preventing stock from moving by building a fence or locking a gate is an obstruction.

The maximum penalty reflects that it is a serious offence to obstruct a valid user of the network, as this interferes with the ability of approval holders to effectively use the network as per their approval.

Placing harmful things on stock route network

Clause 57 makes it an offence for a person to place any thing on the network that is likely to harm either: a person who has an approval to use the network, the person's equipment approved to be used under the approval, or the stock on the network. For example, a thing may be an animal carcass left on the network, a rope or wire.

The maximum penalty for this offence reflects the potential for negative impacts on persons or stock, and the effective and safe use of the network.

Harvesting pasture

Clause 58 makes it an offence for a person to harvest pasture from the network unless the person has a harvesting approval or a reasonable excuse to do so. A person under this clause does not include a local government or an agent or employee of a local government acting under the local government's direction.

A high maximum penalty level applies to this offence given that unauthorised harvesting of pasture has the potential to cause serious damage to an area of the network, and the availability of pasture for valid users of the network. Such a situation may have implications for the effective functioning of the network, and animal welfare.

Burning pasture

Clause 59 makes it an offence for a person to burn pasture on the network without written consent of the local government or a reasonable excuse. A person under this clause does not include a local government or an agent or employee of a local government acting under the local government's direction.

A high maximum penalty level applies to this offence given that unapproved burning of pasture has the potential to cause serious damage to an area of the network, and the availability of pasture for valid users of the network. Such a situation may have adverse implications for the effective functioning of the network, and animal welfare.

Fencing

Clause 60 makes it an offence for the owner of private land to not maintain a fence, where it is situated on, or next to, the boundary between their land and the network, in a stock-proof condition, unless the owner has a reasonable excuse. A stock-proof fence means that the fence is of a type and condition that prevents stock moving from one side of the fence to the other. Private land means freehold land or leasehold land that is not on the network or is not owned or controlled by the state or a local government.

The maximum penalty level reflects the implications to the management and function of the network of not maintaining a stock-proof fence. Not meeting this requirement could lead to a depletion of pasture or water available for legitimate users of the network, affecting both the functioning of the network, as well as animal welfare. It could also impact on the resources of the private land if stock using the network enter private land.

The issuing of a penalty is not the only enforcement option for this offence, as an authorised person may also give the person a directions notice (refer to clause 76) requiring them to restore the fence to a stock-proof condition.

Subdivision 2 Stock facilities

Damaging stock facilities

Clause 61 makes it an offence to damage a stock facility, unless the person has a reasonable excuse. For example, damage includes the cutting of a fence around a water tank or removing solar panels from a water facility.

The maximum penalty reflects the seriousness of the offence to damage stock facilities. Stock facilities, such as stock yards and enclosures, and water facilities, are critical to the effective functioning of the network.

Hindering operation of stock facilities

Clause 62 makes it an offence for a person to hinder the usual operation of a stock route facility, unless the person has a reasonable excuse.

It is also an offence for a person who owns or is in charge of stock to allow their stock to remain within 300m of a water facility for longer than is required to water the stock, unless the person has a reasonable excuse.

The clause further provides that it is an offence for a person to camp on the network within 300m of a water facility, unless the person has a reasonable excuse to do so.

The penalties, under clause 62, are to ensure the operation of stock facilities, which are critical to achieving the purpose of managing the network and provide for the continued use of the network. Stock remaining within 300m of a water facility for longer than required, or camping within this vicinity, may hinder access to water for other user of the network or lead to damage of the water facility. Unlike damaging stock facilities, these offences can be relatively easily remedied.

Taking or releasing water from water facilities

Clause 63 makes it an offence for a person, unless they have a reasonable excuse, to take water from a water facility unless the person is authorised under: an approval; a water facility agreement; or a written approval from the local government that allows a person to take the water for road works.

Clause 63 also makes it an offence for a person to release water, or allow water to be released from a water facility. However, it is not an offence if the person is authorised to release water or allowing water to be released for watering stock or personal use while travelling or grazing stock. For example, a person may release water for drinking, cooking or personal hygiene reasons. It is also not an offence if the person is releasing the water, or allowing the water to be released for road works where the local government has given the person a written approval.

The maximum penalty reflects that taking or releasing water from water facilities without approval is a serious offence, which may affect the adequate availability of water for approved uses of the network, and hence the effective functioning of the

network. This issue is particularly important during times of drought when water availability is more limited, and has implications for animal welfare.

Polluting water in water facilities

Clause 64 makes it an offence to pollute water in a water facility unless the person has a reasonable excuse.

The maximum penalty reflects that polluting water in a water facility affects the availability and quality of water for use on the network. It can significantly impact on the effective functioning of the network and the welfare of stock approved to use the network. Approved users of the network rely on clean water being available, particularly during times of drought when water availability may be more limited.

Division 2 Approvals

Approval conditions

Clause 65 makes it an offence for an approval holder, or a person in charge of stock under the approval, to contravene a condition of the approval, unless the person has a reasonable excuse. The clause does not apply to a condition of an approval about supervising grazing stock as this is an offence under section 71.

The prescribed maximum penalty is dependent on the type of condition contravened.

A local government may impose a maintenance condition on an approval to maintain a natural or cultural heritage feature in an area identified as a special interest area. Breaching such a condition is considered a serious offence as these special interest areas have natural or cultural heritage features of local or state significance.

A local government may impose a restrictive condition on an approval, where the local government has decided to temporarily restrict access to a stock route or reserve that is part of the network for reasons such as public safety, or pasture or water availability. Breaching such a condition is also a serious offence, and may affect the viability or effective functioning of the affected area.

Notifying landowner of intended entry under approval

Clause 66 makes it an offence for a person in charge of travelling stock under an approval not to give notice of intended entry. This obligation applies where the approval area or approval route includes:

- a reserve (that is part of the network) over which another person holds a permission under another Act (e.g. a special lease for grazing under the Land Act); or
- a part of the network that has been fenced in with private land (e.g. a parcel of leasehold land includes a stock route and there is not a fence on, or near, the boundary between the stock route and the adjoining leasehold land).

The person in charge of the travelling stock must give the owner at least 48 hours' notice prior to entry, unless the person has a reasonable excuse. The notice must be in writing, but may be given in electronic form.

The maximum penalty level reflects the importance of notifying the owner so the owner is aware of entry, and gives the owner the opportunity to ensure there are no obstructions to a person authorised to use the reserve or part of the network fenced in with private land.

Producing approval for inspection

Clause 67 makes it an offence for a person either in charge of stock or harvesting pasture on the network not to immediately produce, for inspection, the appropriate approval to an authorised person when asked, unless they have a reasonable excuse. The approval may be a copy of the approval.

The maximum penalty, under clause 67, reflects the seriousness of the offence, while ensuring the use of the network may be effectively monitored.

Correcting particulars of approvals

Clause 68 makes it an offence for an approval holder not to advise the issuing local government within 14 days (2 weeks) of:

- a change of address or phone number;
- a change in the name of the person in charge of stock under the approval; or
- of changes to other information prescribed by regulation.

The offence does not apply if the approval holder has a reasonable excuse for not advising the issuing local government within the 2 weeks.

The maximum penalty, under clause 68, reflects the seriousness of the offence, while ensuring the use of the network may be effectively monitored.

Returning amended approval

Clause 69 makes it an offence for an approval holder not to return an approval to a local government where the approval has been amended and the local government has given notice to the approval holder to return the approval, unless they have a reasonable excuse.

The maximum penalty, under clause 69, reflects the seriousness of the offence, while ensuring the use of the network may be effectively monitored.

Travelling stock under approval

Clause 70 applies to a person who is the holder of a travel or unfit stock approval or a person in charge of stock travelling under such an approval.

It is an offence (unless the person has a reasonable excuse) for the person to not directly supervise, or ensure someone else is directly supervising, the stock travelling

under the approval. The maximum penalty for this offence reflects that it is a serious offence, as unsupervised stock have the potential to cause damage to stock routes infrastructure and deplete pasture and water resources. Unsupervised stock also pose risks to public safety, and may interfere with other users of roads or reserves, such as vehicular traffic.

Furthermore, the clause makes it an offence for the person not to ensure the stock travel at the speed required under the approval, unless they have a reasonable excuse. Reasonable excuses may include, being delayed by fire, flood, adverse weather, or any other circumstance that is not reasonably foreseeable may be a reasonable excuse. For this offence, it is not a defence for the approval holder to prove the stock were unfit.

Stock not being moved at the rate required under the approval, will lead to unexpected pasture depletion, and interfere with scheduling of other stock movements by local governments.

Supervising grazing stock

Clause 71 makes it an offence for a grazing approval holder not to supervise stock when it is a condition of their grazing approval, unless they have a reasonable excuse.

There are two penalty levels for this offence dependent on the number of animals. The penalty levels reflect the higher risk to public safety and operational integrity of the transport network. .

Notice about unfit stock

Clause 72 applies to a holder of a travel approval or the person in charge of stock travelling under a travel approval, who become aware of any stock under the approval that have become unfit to travel at the rate required under the approval. The clause makes it an offence not to advise the local government, through an unfit stock notice, when the person becomes aware of the unfit stock, unless the person has a reasonable excuse. Unfit stock means stock that are not able to travel at the speed stated in the travel approval because the stock are:

- pregnant or have young less than 3 weeks old;
- affected by a disease not regulated under the Biosecurity Act; or
- otherwise sick, injured, malnourished or weakened.

Where the stock are affected by a disease regulated under the Biosecurity Act, the person must follow the requirements of that Act.

An unfit stock notice is a notice, either oral or written in the approved form, which must state:

- the number of unfit stock;
- the reason why they are unfit
- whether the stock have been diagnosed or treated by a veterinary surgeon and, if so, the result of the diagnosis or treatment;
- the proposed action to deal with the unfit stock.

Under clause 137, the approved form may be submitted electronically including through an electronic system provided by the chief executive.

The maximum penalty level reflects the importance of the owner of person in charge of stock who are responsible for the stock's welfare to not use the condition of the stock as an excuse for breaching approval conditions.

Inspecting and measuring harvested pasture

Clause 73 makes it an offence for a person who holds a harvest approval not to keep a harvest record for 2 years after the pasture is harvested without a reasonable excuse. A harvest record is a written record stating each day pasture is harvested under the approval and the amount of pasture harvested.

The clause also makes it an offence for a person, unless they have a reasonable excuse, not to allow an authorised person to inspect and measure the pasture harvested under the approval at the approval area or the person's place of business within 7 days after the pasture is harvested or a longer period agreed between the person and the authorised person.

Further, under this clause, it is an offence for a person, unless they have a reasonable excuse, not to comply with a reasonable direction from the authorised person for inspecting or measuring the pasture.

The maximum penalty, under clause 73, reflects the seriousness of the offence, while ensuring the use of the network may be effectively monitored.

Part 2 Caution or directions notices

Caution notices

Clause 74 provides that an authorised person may issue a caution notice to a person if they reasonably believe:

- a person is committing, or has committed, an offence in or through using the network or regarding an approval under the Act (part 1 (Offences) of chapter 5 (Offences and enforcement)); or
- it is necessary to take immediate action to prevent or minimise land degradation on the network. For example, where the authorised person believes immediate action is necessary to stop an action being taken by a person that is contributing to soil erosion, or a decline in perennial pasture grasses, or the instability of a stream bank on the network.

The clause provides that an authorised person may give a caution notice, in the approved form, stating:

- their belief that the person has committed, or is committing, an offence or immediate action is necessary to prevent or minimise land degradation;
- the facts and circumstances that form the basis of the belief; and

- any action necessary to prevent, or remedy, the offence or land degradation.

The giving of a caution notice, does not prevent the authorised person from issuing another caution notice or a directions notice under clause 75.

Directions notices

Clause 75 provides for an authorised person to issue a directions notice, if they reasonably believe that a person has committed an offence, an offence is being committed, or that immediate action is necessary to prevent or minimise land degradation on the network.

At the time of giving a directions notice, the authorised person may also give the person a review notice about the decision to give the directions notice. The clause provides that even if the person receiving the notice has previously been given a caution notice in relation to the matter, the authorised person may give a directions notice to the person for the same offence or a similar offence.

A directions notice must be given in the approved form and state:

- that the authorised person believes that the person has committed, or is committing, an offence or immediate action is necessary to prevent or minimise land degradation;
- the facts and circumstances that form the basis for that belief;
- what the person receiving the notice must do to prevent, or remedy, the offence or land degradation; and
- where applicable, that the stock may be seized under section 80 if a person does not comply with removing stock from the network, if the direction notice requires their removal.

It is an offence for the person not to comply with the directions notice, and accordingly, a high maximum penalty applies. A direction notice provides a person with an opportunity to prevent, or remedy, the offence, or land degradation, and may be preceded by a caution notice.

What a directions notice may and must not require

Clause 76 provides that a directions notice may, for example, require the person to:

- build or restore a fence along the stock route so it is stock-proof;
- fix damage caused by the offence or land degradation.

Under this clause, the directions notice may also require the person to apply for an approval. However, a directions notice must not require a person to apply for an approval if the person is not eligible for the approval or where a person (or an associate) has been refused an approval and, in the opinion of the authorised person, there has been no change in circumstances that would increase the chance of the person being granted an approval.

The directions notice may also require a person to remove stock from the network and prevent the stock from re-entering the network, except where a notice has already

been given by the local government to suspend or cancel a stock related approval under section 49(5).

Fencing or fixing damage under directions notice

Clause 77 provides for the circumstances where an authorised person gives a directions notice that requires a person to either build or restore a fence to a stock-proof condition or fix damage or land degradation, and an authorised person has a reasonable belief that this has not been done. In these circumstances, the clause provides for an authorised person or a person acting for an authorised person to enter the private land at any reasonable time to take the action under the notice. The owner of the land must be given at least 7 days notice before the authorised person enters the land.

The reasonable costs incurred by the local government in taking this action are payable by the owner of the land or each owner jointly and severally where there are 2 or more owners. The local government must give each owner of the land a notice stating the amount of debt. If the owner of the land does not pay the reasonable costs when due (28 days after local government gives all owners of the land notice of the debt), the unpaid costs are a charge on the land as if the unpaid costs were overdue rates under the Local Government Acts (a relevant empowering Act).

This clause does not limit any other remedy the local government has to recover the debt. For example, where the debt is less than \$25 000, then a local government can recover the debt in a minor civil dispute proceeding under the *Queensland Civil and Administrative Tribunal Act 2009* (Queensland Civil and Administrative Tribunal Act).

Mustering notices

Clause 78 provides that an authorised person may require stock to be mustered where they reasonably believe that this is necessary to prevent or minimise a risk to public safety or to monitor compliance with an approval or an unfit stock notice under section 72. The local government may issue to the owner of the stock or the person in charge of the stock a mustering notice and, if it is in relation to monitoring compliance with an approval or an unfit stock notice, a review notice about the decision to give the notice. It is an offence not to comply with this notice, unless the person has a reasonable excuse. Powers to require the mustering of stock are necessary to prevent or minimise risks to public safety, to monitor and enforce compliance, and to manage animal welfare.

The mustering notice must be in the approved form and state the:

- reason for which the mustering notice have been given by the authorised person;
- location of where the stock must be mustered to; and
- timeframe in which the stock must be mustered (a period that is not less than 24 hours unless a shorter period is required to prevent or minimise the risk to public safety).

Mustering stock under mustering notice

Clause 79 provides for the circumstances where an authorised person reasonably believes that the person has not complied with a mustering notice. Where this occurs, an authorised person or a person acting for an authorised person, may muster the stock. If the stock are on private land, the authorised person or the person acting for the authorised person, may enter the land to muster the stock only with the consent of the owner of the land or by giving an entry notice to the owner at least 24 hours before the entry.

Reasonable costs incurred by the local government in mustering the stock are to be paid by the owner of the stock. The local government must give notice of the amount of debt to the owner of the stock. This debt becomes payable 28 days after the local government give the notice to the owner of the stock. If the debt is not paid within 28 days, interest (at a rate prescribed by regulation) is payable on the debt.

This clause does not limit any other remedy the local government has to recover the debt. For example, where the debt is less than \$25 000, then the local government can recover the debt in a minor civil dispute proceeding under the Queensland Civil and Administrative Tribunal Act.

Part 3 Seizing and disposing of stock

Seizing stock

Clause 80 provides for the seizure of stock on the network by an authorised person when:

- the stock has not been removed by a person as required when a local government either refuses, cancels or suspends an approval under section 42(3) or 49(5) (travel, unfit stock or grazing approval) or issues a directions notice; or
- after making reasonable enquiries, the authorised person cannot identify the owner of stray stock. Stray stock means stock that have strayed onto the network or that have be left behind or abandoned while travelling under a travel approval on the network.

When this occurs the local government must provide the owner of the stock a notice stating that if the stock are not claimed within a stated period after the notice has been given (minimum period of 3 days), the local government may sell or otherwise dispose of the stock. Where the owner of the stock cannot be identified, the local government can advise the owner by way of a public notice.

The authorised person must release the stock to a person who claims the stock before the stock are sold or otherwise disposed of, if the authorised person is satisfied that the person is entitled to the stock and that, if required by the local government, the person pays the reasonable costs of seizing, removing and holding the stock and of publishing a public notice.

Disposing of seized stock

Clause 81 provides for the disposal of seized stock in the circumstances where the stock are not released by the authorised person under clause 80. The authorised person can sell the stock by auction or tender if the authorised person reasonably believes that the market value of the animal is at least the threshold amount, which is \$1 000 or a higher amount prescribed by regulation.

The clause further provides for how the authorised officer must use the money from any sale of the stock.

Compensation for stock sold or otherwise disposed of is not payable in these circumstances. While compensation is not payable for stock sold or otherwise disposed of, any proceeds of sale (if relevant) remaining after seizure expenses are paid, is given to the owner of the stock, where the owner is identified. This provision is only used after the owners of the stock are given an opportunity to claim the stock.

Destroying stray stock

Clause 82 provides for the circumstances where an authorised person may destroy stray stock that are on the network, if the authorised person has a reasonable belief that they cannot urgently arrange for the removal of the stock or it is necessary to destroy the stock because of public safety concerns.

Compensation is not available in these circumstances. The non-payment of compensation for the destroying of stray stock is considered justified as stray stock are only destroyed by an authorised person when it is not practicable to arrange for the owner to urgently remove the stock and the stock pose a risk to the safety of the public. Public safety and the operational integrity of the transport network (for all types of traffic) needs to be ensured when managing the network and may be threatened by the unpredictability of stray stock. The destruction of stock is the last resort option for dealing with stray stock.

Part 4 Investigation and enforcement

Division 1 Application of relevant empowering Act provisions

Authorised persons' powers generally

Clause 83 provides that an authorised person may exercise a power for this Act using the powers under the *City of Brisbane Act 2010* (City of Brisbane Act) and the *Local Government Act 2009* (Local Government Act) to, for instance:

- enter a public place that is open without the need for permission;
- enter a private property with, and in accordance with, the occupier's permission;
- enter private property with, and in accordance with, a warrant;
- make an electronic application for a warrant.

The clause clarifies that these powers under the City of Brisbane Act apply as if a reference to a local government related law is a reference to this Act, or the powers under the Local Government Act apply as if a reference to a Local Government Act is a reference to this Act. The clause also clarifies that where there is inconsistency then the provisions of this Act prevail.

An authorised person under the Act means a person who holds office as an authorised person under either the City of Brisbane Act or the Local Government Act.

Division 2 Entering place for stock facilities

Inspecting and maintaining stock facility

Clause 84 provides for the processes required for an authorised person to enter to inspect or maintain a stock facility on private land that is provided for the benefit of persons using the network. In these circumstances, the authorised person, or a person acting for the authorised person, may enter the land for those purposes if the occupier of the land agrees.

Otherwise, the authorised person may give the occupier notice at least 24 hours before entering the land to inspect and maintain the stock facility. The authorised person must give the notice to the occupier of the land by either:

- giving the notice directly to the occupier; or
- where the authorised person reasonably believes it is impractical to give the notice directly, they may either publish a public notice or place a notice in a conspicuous place on the land.

However, the clause also provides that in urgent circumstances, an authorised person, or a person acting for an authorised person, may enter the land immediately.

Division 3 Stopping or moving vehicles

Application of division

Clause 85 provides that division 3 regarding stopping or moving vehicles applies if an authorised person reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence that an offence has been committed against this Act. A thing does not include stock.

Moving vehicles

Clause 86 provides for an authorised person to direct a person in control of a moving vehicle (e.g. a driver) to stop the vehicle and to move the vehicle to a convenient location within a reasonable distance and keep it there to allow the authorised person to exercise their powers.

When giving the direction, the authorised person must clearly identify himself or herself by, for example, using a sign or a loudhailer. Once the vehicle has stopped, the

authorised person must immediately produce their identity card for inspection by the person in control of the vehicle.

The clause makes it an offence for a person in control of a vehicle not to comply with a direction by an authorised person to stop or move the vehicle and allow them to inspect the vehicle. It is a reasonable excuse for the person in control of the vehicle not to have complied with a direction from an authorised person if the authorised person did not clearly identify themselves or if immediately doing so would have endangered someone else or caused damage or loss to property, as long as the person in control of the vehicle complies with the direction as soon as it was practicable to do so.

Stopped vehicles

Clause 87 provides that if a vehicle is stopped, an authorised person may direct the person in control of the vehicle to not move it, or move it and keep it at a stated reasonable place to allow the authorised person to exercise their powers.

However, the authorised person must immediately produce their identity card for inspection by the person in control of the vehicle, and give the person in control of the vehicle an offence warning when they give the direction.

The clause makes it an offence, without a reasonable excuse, for the person in control of the vehicle to not comply with the authorised person's direction. However, it is not an offence if the person in control of the vehicle is not given an offence warning for the direction by the authorised person.

Division 4 Requiring documents or information

Requiring documents to be produced

Clause 88 provides for when an authorised person requires a document to be produced. The documents are either those issued to a person or those required to be kept by a person under the Act (for example, a travel approval or a record of harvesting activities undertaken under a harvesting approval). An authorised person may require a person to produce a document at a time and place nominated by the authorised person so the authorised person can inspect the document. If a document is stored electronically, then to produce the document means to produce a clear written reproduction of the document.

The authorised person may keep the document to copy it and may require the person to certify the copy of the document or part of the document as a true copy. The authorised person must return the document to the person as soon as practicable after copying the document, but if the authorised person requires the person to certify the copy, then the authorised person can keep the document until the copy has been certified by the person.

The clause makes it an offence not to produce a document at a reasonable time and place nominated by the authorised person or not to certify that a copy of the document

or part of the document is a true copy. It is not a reasonable excuse for a person not to comply with a request because doing so would tend to incriminate them or expose them to a penalty.

Under the clause, the authorised person must inform the person in a reasonable way that they must comply with the requirement, even though compliance might incriminate them or expose them to a penalty, and that there is limited immunity against the use of the document as evidence in a proceeding for an offence. If the authorised person fails to inform the person, the person cannot be convicted for the offence of failing to produce a document or failing to certify that the copy of the document (or part of the document) is a true copy of the document.

However, under the clause, if a person is convicted of the offence of failing to produce a document or failing to certify that the copy of the document (or part of the document) is a true copy of the document, then the Magistrates court may order the person to comply with the requirement as well as imposing a penalty for the offence.

Requiring information

Clause 89 provides for the circumstance where an authorised person reasonably believes that an offence against the Act has been committed and that a person may be able to give information about the offence. The clause provides that in such circumstances, the authorised person may, by notice given to the person, require the person to give information about the offence by a stated reasonable time. Information includes information in a document. If the information is stored electronically, then to give the information means to produce a clear written reproduction of the information.

The clause makes it an offence for the person not to give the information that has been requested to the authorised person, unless the person have a reasonable excuse. A reasonable excuse for the person includes that giving the information might incriminate the individual or expose them to a penalty.

Division 5 Seizing and forfeiting things

Subdivision 1 Seizing things

Seizing evidence at a place that may be entered without consent or warrant

Clause 90 provides for the situation where an authorised person may enter a place under the Act without requiring prior consent of the occupier or a warrant. In this case, the authorised person may seize a thing if they reasonably believe that it is evidence of an offence against the Act.

Seizing evidence at a place entered with consent

Clause 91 applies if an authorised person may enter a place with the consent of an occupier of the place.

The clause establishes that after entering the place, the authorised person may only seize a thing if they reasonably believe that it is evidence of an offence against the Act, and that seizing the thing is consistent with the purpose of entry as explained to the occupier when consent was obtained.

Seizing evidence at a place entered with warrant

Clause 92 provides for the situation where an authorised person may enter a place only with the consent of the occupier or under a warrant, and does so under a warrant. The authorised person may seize the evidence for which the warrant was issued. Additionally, anything else at the place may be seized if the authorised person reasonably believes the thing is evidence of an offence against this Act and its seizure will prevent it being destroyed, hidden or lost. Also, anything at the place that the authorised person reasonably believes has just been used in committing an offence against this Act can also be seized.

Seizing property subject to security

Clause 93 provides that an authorised person can seize a thing even if it is subject to a claim (for example, a lien or security) by another person. The other person's claim is unaffected by the seizure except against the authorised person or a person acting for the authorised person. A thing does not include stock.

Securing seized thing

Clause 94 provides for the situation where the authorised person secures a seized thing by either moving it from where it was seized or restricting access to where it is. A thing does not include stock.

To restrict access, the authorised person may seal the thing or the entrance to the place where it was seized, and mark the thing or place to show that access is restricted. Making seized equipment inoperable is another option. The authorised person can also require the person who they reasonably believe is in control of the place or thing, to do one of these things to restrict access. The clause makes it an offence for the person failing to comply with this request, unless they have a reasonable excuse.

Also, the clause makes it an offence for someone to tamper with a seized thing or with anything used to restrict access to the thing unless they have the approval of the authorised person or they have a reasonable excuse. The clause also makes it an offence to enter a place to which an authorised person has restricted access or to tamper with anything used to restrict access to the place unless the person has approval of an authorised person or a reasonable excuse.

Receipt and review notice for seized thing

Clause 95 provides that an authorised person is required to provide, as soon as practicable after the seizure of the thing, a receipt that includes its description and condition and a review notice about the decision to seize the thing. The exception to this is where the authorised person reasonably believes that there is no owner or that

the thing has been abandoned or that it would be unreasonable to require a receipt because of the condition, nature and value of the thing. A thing does not include stock.

If the owner or person from whom the thing has been seized is not present, the authorised person is required to leave the receipt and review notice in a reasonably secure way and conspicuous position where the seizure has taken place. The receipt and the review notice may be given in the same document and may concern more than one seized thing.

Giving the receipt and the review notice can be delayed if the authorised person reasonably believes that giving the receipt and the review notice might frustrate or otherwise hinder their investigation. The delay can only be for as long as the authorised person has the reasonable suspicion and remains in the vicinity of the place where the thing was seized to keep the thing under observation.

Access to seized thing

Clause 96 provides for access to a seized thing until the thing is forfeited or returned. The authorised person who seized the thing, must allow an owner of it to inspect it, free of charge from time to time when reasonable, and if it is a document—to copy it. However, an authorised person does not have to allow inspection of a thing or copying of a document if it is impractical, or unreasonable, to do so.

Returning seized thing

Clause 97 provides for the return of a thing seized by an authorised person where the thing is not forfeited, or subject to a disposal order under section 122.

The authorised person must return the thing to its owner once he or she stops being satisfied that there are reasonable grounds for keeping it. However, if the thing is not returned within 84 days after it was seized, the owner can apply to the chief executive officer for its return. Within 28 days of receiving the application, the chief executive officer must either give a review notice to the owner, if he or she is satisfied that there are reasonable grounds for keeping the thing and decides to keep it, or return the thing to the owner. A thing does not include stock.

Reasonable grounds for keeping the thing include that it is, or likely to be, examined. Another reason is that the thing is needed or likely to be needed for a proceeding for an offence against the Act that is likely to be started or that has been started but not completed, or for an appeal from a decision in a proceeding for an offence against the Act. Another reason is if it is not lawful for the owner to possess the thing. These may not be all the reasonable grounds for keeping the thing.

Nothing in this clause affects a lien or other security over the seized thing.

Subdivision 2 Forfeiting seized things

Forfeiture by chief executive officer decision

Clause 98 provides that the chief executive officer may decide that a seized thing is forfeited to the local government if an authorised person either cannot find the owner (after making reasonable inquiries), cannot return the thing to the owner (after making reasonable efforts), or reasonably believes that it is necessary to keep the thing to stop it being used to commit the offence for which it was seized. A thing does not include stock.

The authorised person is not required to make inquiries to find an owner if it would be unreasonable to do so, or make efforts to return the thing to the owner if it would be unreasonable to do so to. In deciding whether to make these inquiries, and what inquiries or efforts are reasonable, the authorised person must consider the thing's condition, nature and value.

If the chief executive officer decides to forfeit a thing, he or she must as soon as practicable give a review notice about the decision to the person who owned the thing prior to it being forfeited (that is, the former owner). If the decision was made because it was unreasonable to find the owner or to make efforts to return the thing, the review notice may be given by leaving it in the place where the thing was seized, in a conspicuous position and in a reasonably secure way. However, the chief executive does not have to give a review notice if the thing was seized in a public place or where the notice is unlikely to be read by the former owner.

If a review notice must be given by the chief executive, then the notice must state that the former owner may apply to the Magistrates Court for a stay of the decision to forfeit the thing if they appeal against the decision, as provided for under clause 106.

Dealing with things forfeited or transferred to local government

Clause 99 provides for when a thing becomes the property of the local government. A thing does not include stock.

A thing becomes the property of the local government when:

- the chief executive officer decides, after the authorised officer has made reasonable inquiries and efforts, that he or she cannot identify the owner or the location of the owner or reasonably believes that it is necessary to keep the thing to prevent it being used to commit the offence for which it was originally seized; or
- the owner of the thing and the local government agree in writing to the transfer of the things ownership to the local government.

Upon the thing becoming the property of the local government, the chief executive officer may deal with the thing as they consider appropriate, for example, destroy it or give it away. However, the chief executive officer of the local government cannot deal with the thing in a way that would prejudice the outcome of an appeal about the forfeiture.

Under subclause (4), the chief executive officer may return a portion of the proceeds of sale, minus the costs of the sale, to the former owner, if the chief executive decides to sell the thing. The decisions and actions by the chief executive under this clause, are subject to a disposal order made by the Magistrates Court for the thing, where a person has been convicted of an offence against this Act (provided for under section 122).

Division 6 Damage or loss

Avoiding inconvenience and damage

Clause 100 requires that an authorised person, in exercising their power, must reasonably cause as little inconvenience and damage as possible. This clause does not establish a statutory right of compensation, other than for what compensation may be applied for under section 102.

Notice of damage

Clause 101 provides for when an authorised person damages something when exercising or purporting to exercise a power, or a person acting under the direction or authority of an authorised person, damages something. The clause does not apply where the authorised person reasonably believes that the damage is trivial or there is no-one apparently in possession of the thing or that it has been abandoned. A thing does not include stock.

If something is damaged, an authorised person must to notify the person who appears to be an owner, or person in control, of the thing. If it is not practical to do this, the authorised person must leave a notice at the place where the damage has occurred in a conspicuous position and in a reasonably secure manner. This action may be delayed if the authorised person reasonably suspects that doing this may frustrate or hinder an investigation that he or she is conducting, but the delay can only be as long as the authorised person has the reasonable suspicion and he or she remains in the vicinity of the place.

If the authorised person believes that the damage was caused by a defect in the thing or other circumstances beyond the control of the authorised person, or a person acting under their direction, the authorised person must state this in the notice. The notice must state the particulars of the damage and that the person who suffered the damage may claim compensation under section 102.

Compensation

Clause 102 provides for a person to claim compensation from the local government. A person may claim compensation if they incur a loss as a result of the exercise or purported exercise of a power by, or for, an authorised person including as a result of complying with a requirement made of the person under this Act.

However, a person cannot claim compensation for loss incurred under:

- section 11 and 14 due to the amendment or cancellation of an approval in relation to a State or local special interest area;
- section 18 due to the amendment, suspension or cancellation of an approval in relation to a change in status of the network to temporarily restricted or temporarily prevented;
- section 25 due to a water facility agreement being suspended or terminated in line with the terms of the agreement;
- section 81 the sale or disposal of stock seized because a person did not remove the stock as required under the Act or the stock are stray stock;
- section 82 the destruction of stray stock.

Compensation may be claimed and ordered by a proceeding in a court with the appropriate jurisdiction for the recovery of the compensation claimed or in a proceeding for an alleged offence against the Act, where the investigation gave rise to the claim for compensation.

A court may order the payment of compensation only if satisfied that it is just to order compensation in the circumstances. In doing so, the court must consider any relevant offence committed by the claimant and whether the loss resulted from a lawful seizure or lawful forfeiture. A regulation may prescribe other matters that may, or must, be taken into account by the court when considering compensation. The exercise of the duty, under section 100, to avoid inconvenience and minimise damage does not provide for a statutory right of compensation other than provided in this clause.

Division 7 Obstructing or impersonating authorised officers

Obstructing authorised person

Clause 103 makes it an offence to obstruct an authorised person exercising a power, or someone helping an authorised person exercise a power, unless they have a reasonable excuse. If obstructed, and the authorised person decides to proceed with exercising that power, the authorised person is required to warn the person that it is an offence to cause an obstruction unless he or she has a reasonable excuse, and that the authorised person considers the person's conduct an obstruction.

Impersonating authorised person

Clause 104 makes it an offence to impersonate an authorised person.

Chapter 6 Reviewing decisions

Part 1 Internal reviews

Applying for internal review

Clause 105 provides that a person who is entitled to be given a review notice for a decision (original decision) made by or for a local government may apply to the local government for an internal review of the decision. The person must apply using the approved form within the required period after the applicant is entitled to be given the review notice. A longer period in which to apply may be allowed by the local government. If a person has not been given a review notice, they may ask the local government for the notice.

However, a person may not apply to the local government for an internal review of certain prescribed decisions. For example, where the chief executive officer of the local government has made the travel approval decision or unfit stock approval decision (as this is the most senior person in the local government). While a person may not apply for internal review in these circumstances, the person may apply to the chief executive of the department administering the Act for external review of the original decision.

Other prescribed decisions for which a person may not apply for internal review include:

- a decision to refuse to issue an approval to use part of the network where access has been temporarily prevented;
- a decision to impose a maintenance condition for a State special interest area;
- a decision to amend, suspend or cancel an approval to give effect to a decision to temporarily restrict or temporarily prevent access to the network because of a notice from the chief executive (transport) relating to a part of the network that is a State-controlled road under section 17(2).

These decisions are not internally reviewable because either:

- preventing access to part of the network is necessary, in particular situations such as in the interests of public safety because of a fire or flood, or road works. To allow internal review may compromise the achievement of the management regime for the network as established by the Act.
- a decision by the state (through the relevant chief executive) to require a local government to impose a condition on an approval to maintain the natural or cultural heritage of a State special interest area is a regulatory tool to ensure the state's interests are protected.
- the local government does not have any discretion whether to temporarily restrict or prevent network access in these circumstances. The ability for the chief executive (transport) to require a local government to temporarily restrict or prevent access to the network is to ensure the operational integrity of the state's transport network.

Stay of certain original decisions

Clause 106 generally provides that an application for an internal review of an original decision does not stay the original decision. However, the applicant may apply for a stay of certain types of original decisions prescribed in subclause (2).

The external reviewer of the application to stay the original decision may stay the original decision to ensure the outcome of any review is not ineffective. The external reviewer may set conditions and a time limit for the stay, which it may also amend or revoke.

A stay is generally for no longer than the time it takes for the local government to make a decision on the internal review, or the time allowed for the applicant to apply for an external review of the original decision. The external reviewer means:

- the chief executive of the department administering the Act for a travel approval decision or unfit stock approval decision.
- the Queensland Civil and Administrative Tribunal for a directions notice decision; or
- the Magistrates Court for a seizure decision.

Internal review

Clause 107 provides for an internal review decision to be made by the local government within the required period of receiving of the application. The required period for an original decision relating to:

- an unfit stock approval or a grazing approval (emergency) is 3 days;
- a travel approval or grazing approval (short-term) is 7 days; or
- any other decision is 28 days.

The clause provides that where the original decision related to a grazing approval (short-term) or harvesting approval in response to a pasture availability notice then the internal reviewer may confirm the original decision or require the person that made the original decision to set the decision aside and make a new decision within a stated time. For all other original decisions that are able to be internally reviewed, the internal reviewer may confirm, amend or substitute another decision for the original decision.

The application for internal review may only be dealt with by a person for the local government who did not make the original decision, and is in a more senior office than the person who made the original decision. This, however, does not apply to an original decision made by the chief executive officer for the local government.

The clause also provides that where the internal review decision confirms the original decision, then the original decision is the internal review decision. However, if the internal review decision amends the original decision, then the amended original decision is the internal review decision.

Notice of internal review decision

Clause 108 provides for notice of the internal review decision to be given to the applicant by the chief executive officer for the local government in the approved form. The clause provides that the notice must be given within 1 day if the internal decision relates to a travel approval, an unfit stock approval, a grazing approval (emergency) or a grazing approval (short-term), or within 7 days for any other original decision, for example, grazing approval (long-term) or harvesting approval.

If the internal review decision is not the decision sought by the applicant, the notice must state certain prescribed particulars, including details about further avenues of review or appeal.

If the local government does not give notice of the internal review decision within the required period of receipt of the application for review, the original decision is taken to be confirmed. A person may still apply for an external review of certain internal review decisions.

Part 2 External review of certain decisions

Division 1 Travel approval decisions or unfit stock approval decisions

Applying for external review for travel approval decision or unfit stock approval decision

Clause 109 provides that a person may apply to the chief executive of the department administering the Act for an external review of either:

- the internal review of a travel approval decision or unfit stock approval decision; or
- an original decision about a travel approval decision or unfit stock approval decision made by the chief executive officer of a local government.

However, the clause provides that a person may not apply for external review of an original decision (for a travel approval decision or unfit stock approval decision) where the original decision is to:

- refuse to issue an approval to use part of the network where access has been temporarily prevented;
- impose a maintenance condition for a State special interest area;
- amend, suspend or cancel an approval to give effect to a decision to temporarily restrict or temporarily prevent access to the network because of a notice from the chief executive (transport) relating to a part of the network that is a State-controlled road under section 17(2).

A travel approval decision means a decision of a local government to: refuse to grant or amend a travel approval; impose a condition on a travel approval (other than for a condition about duty of care, public liability insurance, a maintenance condition, restrictive condition, or conditions imposed by another local government or the chief

executive (transport) about a condition relating to road safety or the operational integrity of the transport network); amend a travel approval in a way not requested by the approval holder; or suspend or cancel a travel approval.

A unfit stock approval decision means a decision of a local government to: refuse to grant or amend an unfit stock approval; impose a condition on an unfit stock approval (other than for a condition about duty of care, public liability insurance, a maintenance condition, restrictive condition, or conditions imposed by another local government or the chief executive (transport) about a condition relating to road safety or the operational integrity of the transport network); amend an unfit stock approval in a way not requested by the approval holder; or suspend or cancel an unfit stock approval.

These decisions are not externally reviewable because:

- preventing access to part of the network is necessary, in particular situations such as in the interests of public safety because of a fire or flood, or road works. To allow internal review may compromise the achievement of the management regime for the network as established by the Act.
- a decision by the State (through the relevant chief executive) to require a local government to impose a condition on an approval to maintain the natural or cultural heritage of a State special interest area is a regulatory tool to ensure the State's interests are protected.
- the local government does not have any discretion whether to temporarily restrict or prevent network access in these circumstances. The ability for the chief executive (transport) to require a local government to temporarily restrict or prevent access to the network is to ensure the operational integrity of the State's transport network.

The application must be in the approved form, and made within the required period after the applicant is entitled to be given a notice of the decision (or a longer period allowed by the chief executive). The required period will be stated either in the internal review decision notice or the review notice for the original decision and is: for an unfit stock approval decision—1 day, or a travel approval decision—3 days.

Stay of decision for travel approval decision or unfit stock approval decision

Clause 110 provides that an application for review of either an internal review decision or a decision that is made by the chief executive officer of the local government (about a travel approval decision or unfit stock approval decision) does not stay the internal review decision. However, the applicant may apply to the chief executive of the department administering the Act for a stay of the decision to ensure the outcome of any external review is not ineffective. The chief executive may set conditions and a time limit for the stay, which it may also amend or revoke. A stay cannot be longer than the time it takes for the chief executive to make a decision on the external review.

External review of travel approval decision or unfit stock approval decision

Clause 111 provides for an external review decision to be made by the chief executive within the required period of receiving an application for review of either an internal review decision or a decision made by the chief executive officer of a local government)for a travel approval decision or an unfit stock approval decision. The

chief executive must confirm, amend or substitute another decision. The required period for a decision relating to an unfit stock approval is 3 days, or for a decision relating to a travel approval—7 days.

Notice of external review decision for travel approval decision or unfit stock approval decision

Clause 112 provides for notice of the external review decision to be given to the applicant by the chief executive of the department that administers the Act within 1 day of the decision being made.

Division 2 Directions notice decisions

Applying for external review for directions notice decision

Clause 113 provides that an applicant for an internal review decision for a directions notice decision may apply to the Queensland Civil and Administrative Tribunal (QCAT), in the way provided in the Queensland Civil and Administrative Tribunal Act, for a review of the internal review decision under that Act. A directions notice decision is a decision to give a directions notice.

An applicant may also apply to QCAT for a stay of the decision.

The clause also provides that a person may ask local government for an internal review decision about a directions notice decision, if the local government has not given the person the notice.

Division 3 Seizure decisions

Appealing internal review decision for seizure decision

Clause 114 provides that a person who is entitled to be given a notice of the internal review decision for a seizure decision may appeal to a Magistrates Court against the decision within 28 days after the applicant is entitled to be given a notice of the internal review decision, or a longer period allowed by the Magistrates Court. A seizure decision is a decision to seize a thing, however, thing does not include stock.

The notice of appeal must fully state the grounds of the appeal. A copy of the notice of appeal must be provided to the local government that made the internal review decision.

Stay of internal review decision for seizure decision

Clause 115 provides that a person must apply to the Magistrates Court for a stay of the internal review decision for a seizure decision, as commencing an appeal does not automatically stay the internal review decision.

The Magistrates Court may stay the internal review decision to ensure the outcome of the appeal is effective. The Magistrates Court may set conditions and a time limit for the stay, which it may also amend or revoke. A stay cannot be longer than the time it takes for the court to decide the appeal.

Appeals

Clause 116 provides that the Magistrates Court has the same powers as the local government when deciding an appeal against an internal review decision. The Magistrates Court is not bound the rules of evidence, but must comply with natural justice. The appeal is to be by way of rehearing.

The court must confirm, substitute, or set aside the internal review decision. If set aside, the court will direct the local government to make a new decision within a stated time. The new decision is not subject to review or appeal.

Division 4 Finality of decisions

Limitation of review

Clause 117 provides that a decision made under chapter 6, part 2 of the Act is non-appealable, unless the Supreme Court decides the decision is affected by jurisdictional error, in which case part 5 of the *Judicial Review Act 1991* applies to the decision.

Chapter 7 Miscellaneous

Part 1 Evidence

Evidential immunity

Clause 118 provides that if an individual produces a document to an authorised person under section 88 of the Act, any incriminating evidence against the individual, or evidence that exposes the individual to a penalty, derived directly or indirectly from the document is not admissible in a proceeding against the individual. However, this does not apply to a proceeding about the false or misleading nature of anything in the document or in which it is relevant evidence.

Evidentiary aids

Clause 119 specifies appointments that are not required to be proven in a proceeding under the Act. Subclause (2) identifies the appointments not required to be proven in proceedings being the appointment of the chief executive responsible for administering the Act; the chief executive officer of a local government, or an authorised person.

The clause also specifies that signatures of exempted appointees identified in subclause (2) are evidence of the appointee's signature in a proceeding.

It also specifies that a certificate stating certain matters and purporting to be signed by the chief executive, or the chief executive officer of a local government, is evidence of the matter.

Part 2 Legal proceedings

Proceedings for offences

Clause 120 provides that an offence against the Act is a summary offence, and specifies when a proceeding must start. A proceeding for an offence must start within 1 year after the commission of the offence; or 1 year after the complainant becomes aware of the offence, but within 2 years after the offence was committed.

It also specifies what evidence determines when the matter came to a complainant's knowledge.

Responsibility for representative

Clause 121 provides that in proceedings for an offence against the Act where a person's state of mind about particular conduct is relevant, it is enough to show that the person's representative (e.g. an employee or agent of an individual) acted within the scope of their authority and the representative had the state of mind. The person is taken to have engaged in the representative's conduct, if the conduct could have been prevented by taking reasonable steps.

This clause has particular relevance for a person in charge of stock, for example a drover who is employed by an owner of stock to move the stock on the network.

Disposal orders

Clause 122 makes provision for disposal orders. The clause provides that if a court convicts a person of an offence against the Act, the court may make an order to dispose of certain things owned by the person (a disposal order). Things owned by the person include anything that was the subject of, or used to commit the offence, or anything that is likely to be used in committing another offence against the Act.

The Act specifically provides that stock are not included in the definition of a 'thing'. Therefore, this clause cannot be used to dispose of stock that may have been used in committing an offence against the Act. The Act provides specific provisions for seizing and disposing of stock under clauses 80, 81 and 82.

Under clause 122, the court may make a disposal order whether or not the thing has been seized under the Act and whether or not the seized thing has been returned to its owner. When deciding whether to make a disposal order, the court may require notice to be given to anyone the court considers appropriate (such as a person who may have property in the thing), and must hear any submissions from persons claiming to have property in the thing. The court may make any order that is appropriate to enforce the disposal order.

Recovery of costs of investigation

Clause 123 provides that where a person is convicted of an offence against the Act, a local government may apply for a court order for the person convicted of an offence to pay the reasonable costs incurred by the local government during the investigation of the offence.

The court may order the convicted person to pay an amount equal to the costs incurred by the local government.

This clause does not limit the court's powers under any other law to make orders about the payment of costs.

Part 3 Amounts payable to local government

Local government fees

Clause 124 provides local governments with the power to set certain fees. This power enables local governments to set cost recovery fees for processing applications as well as set certain approval fees for the right to use the network, or related roads and reserves under the stated approvals. A local government can set fees using a local law or by resolution.

This power is important in supporting local governments, particularly in their role as the day-to-day managers of the network, and will allow them to recover their administration and management costs. It also supports one of the underlying principles for administering the Act outlined in clause 4(d), that is, network users should pay a reasonable amount to help maintain the network and the amount should reflect the benefit users derive from using the network.

Clause 124 outlines the type of approval fees a local government may set for the right to use the network, or related roads and reserves. For the network, a local government may set an approval fee for pasture harvesting and an approval fee for grazing on the network at or above a minimum fee set by the State under a regulation.

The state will regulate the fee for a travel approval to use the network in recognition of stock travel on the network being a state interest.

For an approval fee to use related roads or reserves, a local government may set fees for stock travel, grazing or harvesting.

Local governments will have the power to waive fees (for example, due to hardship) under the Statutory Instruments Act.

Penalties and fines payable to local governments

Clause 125 provides that a fine imposed by a court in a proceeding for an offence brought by a local government, or a fine issued by local government due to an infringement notice for an offence under the *State Penalties Enforcement Act 1999*, must be paid to the local government.

Use of funds for stock route network

Clause 126 provides that the local government must use monies received by way of penalties or fines, application fees for an approval to use of the network, or water facility agreements for the administration, maintenance or improvement of the network, and stock facilities, in the local government's area.

All fees from applications and approvals associated with approved activities on the network; amounts payable under water facility agreements; and penalties or fines will be paid direct to the relevant local government. Local governments will retain all these funds. Where the funds have been derived from the network, clause 126 requires the local government to use the funds for the administration, maintenance or improvement of the network and stock facilities in the local government's area. This requirement supports one of the underlying principles for administering the Act outlined in clause 4(c), that is, the network should be sustainably managed to ensure it remains available for use.

Part 3 Other provisions

False or misleading information

Clause 127 makes it an offence for a person to give a local government or an official information that the person knows is false or misleading in a material particular.

This clause does not apply if the person tells the local government or official, to the best of their ability, how the document (containing the information) is false or misleading, and the person gives the correct information if they have it, or can reasonably obtain it.

Advisory panels

Clause 128 provides for the chief executive to establish advisory panels to advise about matters relating to managing and using the network. The chief executive may decide the functions, terms of reference, membership and operational matters of the panel.

Delegation by local government chief executive officer

Clause 129 enables the chief executive officer of a local government to delegate their functions under the Act, unless directed by the local government not to further delegate the function. This delegation power allows for the efficient administration of the Act.

Delegation by Minister

Clause 130 provides the Minister with the power to delegate their functions under the Act to an appropriately qualified public service officer. This delegation power allows for the efficient administration of the Act.

Delegation by chief executive

Clause 131 provides the chief executive may delegate their functions under the Act, other than the establishment of advisory panels, to the chief executive officer of a local government or an appropriately qualified officer of the department or another person, and makes provision for the sub delegation of delegated powers to appropriately qualified persons. This delegation power allows for the efficient administration of the Act.

Minister may ask for information from local government

Clause 132 provides that the Minister may ask local government, by notice, to give details of how an amount received under the Act was spent on the network, or provide a written report of functions performed or pending, or power exercised or pending under the Act. Local Government must comply with this notice.

The ability for the Minister to request this type of information from a local government assists the state in undertaking its strategic oversight role for the network and ensures the state continues to have a sustainably managed network available for use.

Directing local government to perform functions

Clause 133 provides the Minister with the power to direct, by notice, a local government to perform the function/s the Minister reasonably believes the local government is not performing as required to under the Act.

Before issuing a direction to a local government, the Minister must consult with the local government. Only after consulting with the local government, may the Minister direct the local government to perform the function concerned.

The notice directing the local government must state the function/s not being performed, the action the local government must take to perform the function, and a reasonable period within which the action must be taken.

If a local government does not comply with the notice, the Minister has the power to step in and take the action required under the notice. Where this occurs, the reasonable costs incurred by the Minister can be recovered from the local government as a debt.

The ability of the Minister to direct a local government to perform their functions under the Act assists with ensuring the Act is effectively administered. It also supports the State in its strategic oversight role for the network, and ensures that the state continues to have a sustainably managed network available for use, particularly for its main use for travelling stock.

Protection from liability

Clause 134 provides the Minister with protection from civil liability for an act done, or omission made, honestly and without negligence under the Act. The liability attaches instead to the state.

A local government official is also provided with protection from civil liability under the clause for an act done, or omission made, honestly and without negligence under the Act. The liability attaches instead to the responsible local government for the official.

Local government's functions for State-controlled roads

Clause 135 clarifies that the functions and powers necessary or convenient for a local government to perform its functions under the Act, in relation to State-controlled roads, are not limited by section 66 of the *City of Brisbane Act 2010* (City of Brisbane Act), section 60 of the *Local Government Act 2009* (Local Government Act), or section 28 of the Transport Infrastructure Act.

Section 60 of the Local Government Act provides that a local government has control of all roads in its local government area and outlines what this control includes. A similar provision is included in section 66 of the City of Brisbane Act for the Brisbane City Council.

Section 28 of the Transport Infrastructure Act provides that the chief executive (transport) may exercise, for a State-controlled road in a local government's area, all the powers a local government may exercise for a local government road in the area. Clause 135 ensures that local governments can still exercise their functions on roads.

Relationship with other Acts

Clause 136 provides that the Act does not affect the operation of certain Acts set out in the clause. These Acts include the Aboriginal Cultural Heritage Act, the *Animal Care and Protection Act 2001*, the Biosecurity Act, the *Fire and Emergency Services Act 1990*, the Forestry Act, the Nature Conservation Act, the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Queensland Heritage Act, the *Recreation Areas Management Act 2006*, the *Torres Strait Islander Cultural Heritage Act 2003*, the *Vegetation Management Act 1999*, or the *Water Act 2000*.

Approved forms

Clause 137 provides for the chief executive to approve forms for use under the Act.

The clause also gives consent, required under the *Electronic Transactions (Queensland) Act 2001* (the Electronic Transactions Act), so that an approved form may be given to the chief executive by an electronic communication in certain circumstances. For example, a local government may submit an approved form using an electronic system provided by the chief executive.

Where a local government decides to also permit the giving of written information electronically, the local government will need to give consent, for example through a statement on a website, to meet the requirements of the Electronic Transactions Act.

Regulation-making power

Clause 138 provides the Governor in Council with the power to make regulations under the Act. Fees payable under the Act, and penalties of no more than 20 penalty units for contraventions of provisions of a regulation, may be prescribed in a regulation.

Chapter 8 Repeal and transitional provisions

Part 1 Repeal

Repeal

Clause 139 repeals the Stock Route Management Act 2002, No.12.

Part 2 Transitional provisions

Stock routes and reserves

Clause 140 transitions existing stock routes and reserves into the new Act.

On commencement of the Act, a primary or secondary stock route under the repealed Act immediately before commencement, will be taken to be a primary stock route under the Act.

A minor or unused stock route under the repealed Act immediately before commencement, will be taken to be a secondary stock route on the Act's commencement.

An existing reserve under the Land Act that may be used for travelling or grazing stock will take on the classification of the part of the stock route the reserve adjoins. For example, if the reserve adjoins a primary stock route, the reserve will be a primary reserve.

The clause also ensures that existing stock routes and reserves do not need to be registered under the Act. They will be taken as having been automatically registered under clause 8 on commencement of the Act. This significantly reduces the administration requirements on commencement of the Act and ensures clarity for local governments and network users about the classification of stock routes and reserves under the Act.

If the chief executive decides to register a road, route or reserve after the commencement of the Act, then the chief executive must follow the requirements under clause 8, which include consulting with each affected local government

(including neighbouring local governments affected by the registration) before deciding to register the road, route or reserve.

State management strategy and local management plans

Clause 141 provides for the continuation of the existing State management strategy and existing local management plans made by local governments until the first State management plan is prepared, or 2 years after this clause commences (whichever occurs first).

This will allow time for the Minister, under clause 19, to consult in preparing a plan for managing the network (the State management plan).

Water facility agreements

Clause 142 provides that an existing water facility agreement under the repealed Act is taken to be a water facility agreement under the new Act.

This clause ensures that there is no need to remake these agreements.

Agistment or travel permits

Clause 143 provides for the continuation of an existing agistment or travel permit issued under the repealed Act until its stated end date, unless it is suspended, cancelled or surrendered sooner.

Permit applications

Clause 144 provides that for an application for a permit, or an application to renew a permit, lodged under the repealed Act, but not decided before commencement of the new Act, the application is to be dealt with under the repealed Act. If the local government decides to approve the application, the local government must issue the relevant approval under the new Act.

This clause minimises the need for a person to have to apply under the Act.

Chapter 9 Amendment of this Act and other legislation

Part 1 Amendment of this Act

Act amended

Clause 145 provides that Chapter 9, Part 1 amends the Stock Route Network Management Act 2016.

Amendment of long title

Clause 146 amends the long title of the Stock Route Network Management Act 2016 on commencement.

Part 2 Amendment of City of Brisbane Act 2010

Act amended

Clause 147 provides that Chapter 9, Part 2 amends the City of Brisbane Act.

Amendment of s 99 (Cost-recovery fees)

Clause 148 amends section 99(2)(e) of the City of Brisbane Act to allow a local government to fix a cost-recovery fee that is a processing fee related to the performance of its responsibilities under the *Stock Route Network Management Act 2016*. The fee may be fixed under a local law or resolution. Under the Statutory Instruments Act, local government have the ability to waive the processing fee.

Part 3 Amendment of Land Act 1994

Act amended

Clause 149 provides that Chapter 9, Part 3 amends the Land Act.

Amendment of s 57 (Trustee Leases)

Clause 150 amends section 57 of the Land Act to provide that a trustee cannot lease an area of a reserve for the purpose of stock travel and grazing or pasture harvesting where the reserve is part of the network or related roads or reserves. This amendment allows for the management of the network under the new Act.

Amendment of s 60 (Trustee permits)

Clause 151 amends section 60 of the Land Act to provide that a trustee cannot issue a trustee permit on an area of a reserve which forms part of the network or related roads or reserves. This amendment allows for the management of the network under the new Stock Route Network Management Act.

Amendment of s 159 (General provisions for deciding application)

Clause 152 provides for the amendment of section 159(1) of the Land Act to require that decisions made about new lease applications include consideration of whether part of the land applied for is needed for the network.

Amendment of s 167 (Provisions for deciding application)

Clause 153 provides for the amendment of section 167(1) of the Land Act to require that decisions made about conversion applications (applications to convert perpetual lease to freehold land, a term lease to freehold land, or a term lease to a perpetual lease) include consideration of whether part of the land applied for is needed for the network.

Amendment of s 177 (Chief executive may issue permit)

Clause 154 provides for the amendment of section 177 of the Land Act to clarify that the chief executive may not issue a permit to occupy for grazing purposes on any part of the network or related roads or reserves. This amendment allows for stock grazing activities to be managed under the Stock route Network Management Act.

Insertion of new ch 9, pt 10

Clause 155 provides for the insertion of new Chapter 9, Part 10 into the Land Act. The insertion relates to permits to occupy applications, existing permits to occupy and trustee lease or trustee permit.

Part 10 Transitional provisions for Stock Route Network Management Act 2016

New section 521ZS Permit to occupy applications

New section 521ZS provides that the chief executive does not need to deal with undecided applications for a permit to occupy for grazing purposes on land that is part of the network or related roads and reserves, within the meaning of the Stock Route Network Management Act. Undecided application means an application made under section 177(1) of the Land Act before the commencement of new section 521ZS, but not decided. The new section also provides that the undecided applications are applications for a grazing approval (long-term) and made to local government under that Act.

New section 521ZT Permits to occupy

New section 521ZT provides for the continuation of a permit to occupy for grazing purposes where the permit to occupy is on land that is part of the network or related roads and reserves, within the meaning of the Stock Route Network Management Act. A permit to occupy affected by the new section will continue, unless cancelled or surrendered, until the end of the term in the permit or, if there is no term—2 years after the commencement of the new section.

New section 521ZU Trustee lease or trustee permit

New section 521ZU provides for the continuation of an existing trustee lease or existing trustee permit for grazing purposes on land that is part of the network or related roads and reserves, within the meaning of the Stock Route Network Management Act. A trustee lease or trustee permit affected by the new section will

continue, unless cancelled or surrendered, until the end of the term in the lease or permit, or if there is no term—2 years after the commencement of the new section.

Part 4 Amendment of Local Government Act 2009

Act amended

Clause 156 provides for the amendment of the *Local Government Act 2009* (Local Government Act).

Amendment of s 69 (Closing roads)

Clause 157 amends section 69 of the Local Government Act to provide that a local government must not close a road (permanently or temporarily) where the road is a stock route unless the chief executive of the department administering the Stock Route Network Management Act has given the local government written consent to do so.

Amendment of s 97 (Cost-recovery fees)

Clause 158 amends section 97 of the Local Government Act to allow a local government to fix a cost-recovery fee that is a processing fee and is in relation to the performance of its responsibilities under the Stock Route Network Management Act. The fee may be fixed under a local law or resolution. Under the Statutory Instruments Act, local government have the ability to waive the processing fee.

Part 5 Amendment of Transport Infrastructure Act 1994

Act amended

Clause 159 provides for the amendment of the Transport Infrastructure Act.

Amendment of s 50 (Ancillary works and encroachments)

Clause 160 provides that the chief executive cannot approve the use of any part of a State-controlled road for grazing purposes if the part of the State-controlled road is a stock route or related road or reserve within the meaning of the Stock Route Network Management Act. This amendment allows for the management of stock grazing activities under the Stock Route Network Management Act.

Approval for moving stock on foot on a State-controlled road, where the activity is exempt from requiring an approval under the Stock Route Network Management Act, is still required. This is to ensure the road safety of users of State-controlled roads and the operational integrity of the transport network.

Insertion of new ch 21, pt 6

Clause 161 provides for the insertion of new Chapter 21, Part 6 into the Transport Infrastructure Act. The provisions being inserted relate to applications for a road grazing approval and existing road grazing approvals. A road grazing approval means an approval for the grazing of stock on a State-controlled road under section 50 (Ancillary works and encroachments) of the Transport Infrastructure Act.

Part 6 Transitional provisions for Stock Route Network Management Act 2016

New section 586 Road grazing approval applications

New section 586 provides that an application for approval for the grazing of stock on a State-controlled road, or an application for renewal of the approval, that was not decided before the commencement of this section, is taken to be an application under the Stock Route Network Management Act. This is to provide for the management of stock grazing activities on roads under the Stock Route Network Management Act.

New section 587 Road grazing approvals

New section 587 provides for the continuation of an existing road grazing approval until its stated end date, or if there is no end date—2 years after this section commences, unless it is sooner suspended, cancelled or surrendered.

Amendment of sch 6 (Dictionary)

Clause 162 amends the definition of ‘ancillary works and encroachments’ in schedule 6 (Dictionary) of the Transport Infrastructure Act.

Subclause (1) amends the definition of ‘ancillary works and encroachments’ to provide that clearing, trimming or slashing for harvesting pasture is not an activity that falls within the definition of ancillary works and encroachments under the Transport Infrastructure Act.

Subclause (2) amends the definition of ‘ancillary works and encroachments’ to provide that moving stock on the hoof, other than under an approval under the Stock Route Network Management Act, is an activity that falls within the definition of ancillary works and encroachments under the *Transport Infrastructure Act*.

Subclause (3) provides for the renumbering of the ancillary work and encroachment definition.

Part 6 Amendment of Transport Infrastructure (State-controlled Roads) Regulation 2006

Regulation amended

Clause 163 provides for the amendment of the Transport Infrastructure (State-controlled Roads) Regulation 2006 (Transport Infrastructure Regulation).

Amendment of s 6 (Prohibition on animals on non-motorway State-controlled road)

Clause 164 provides for the amendment of section 6 of the Transport Infrastructure Regulation to allow for the movement and grazing of stock on a State-controlled road (that is not a limited access road) where the activity has been authorised under an approval granted under the Stock Route Network Management Act.

Part 7 Amendment of Transport Operations (Road Use Management) Act 1995

Act amended

Clause 165 amends the Transport Operations Act.

Amendment of s 66 (Local laws etc.)

Clause 166 amends section 66 of the Transport Operations Act to provide that a local government may make local laws with respect to the regulation of travelling or grazing stock and the harvesting of pasture on a regulated State-controlled road. A regulated State-controlled road means a State-controlled road that is a related road or reserve under the Stock Route Network Management Act.

The clause also amends section 66(5) ensuring that local law must have the written agreement of the chief executive of the department that administers the Transport Operations Act for the State-controlled roads to which the local law would apply.

Part 8 Other amendments

Acts amended

Clause 167 states that Schedule 2 lists the Acts subject to minor and consequential amendments.

Schedule 1 Dictionary

This schedule comprises the dictionary, and defines particular words used in the Act.

Schedule 2 Acts amended

This schedule provides for minor and consequential amendments of the *Aboriginal Land Act 1991*, *Biosecurity Act*, *Forestry Act*, *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, *Water Act 2000*, and the *Water Supply (Safety and Reliability) Act 2008*.

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