

# Natural Resources and Other Legislation Amendment Bill 2019

## Explanatory Notes

### FOR

## Amendments during consideration in detail to be moved by the Honourable Dr Anthony Lynham MP

### Title of the Bill

The short title of the bill is the Natural Resources and Other Legislation Amendment Bill 2019.

### Objectives of the Amendments

The objectives of the amendments are to:

- Amend the *Land Act 1994* (Land Act) to:
  - allow for the appeal of an arbitration award under the new framework in certain limited circumstances and provide for greater discretion to extend the timeframe for the completion of arbitration proceedings.
  - add consequential amendments arising from the passage of the *Land, Explosives and Other Legislation Amendment Act 2019* and the *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Act 2019*.
  - make a minor drafting correction for the notification of partial road closures.
- Amend the *Mineral Resources Act 1989* (MRA) to:
  - defer the new relinquishment requirements for exploration permits in two specific situations, where:
    - the whole or part of the area of an exploration permit is under an application for an undecided mineral development licence or mining lease, until that application is decided.
    - an exploration permit holder for coal is unable to access the land to undertake exploration activities due to an overlapping petroleum lease.
  - provide practical transitional arrangements for the relinquishment requirements for all existing exploration permits in place upon commencement.
- Amend the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) to:
  - clarify the nature of the conditions that the Minister may decide upon the grant of an authority to prospect under the new power in section 41 (which is implied in section 35 of the P&G Act).

- provide a definition for an ‘exploration project’, which was overlooked during drafting of the Bill.
- Amend the *Vegetation Management Act 1999*, the *Planning Act 2016* and the *Planning Regulation 2017* to:
  - Clarify the long-standing policy intent that for the purposes of Queensland’s vegetation management framework, the definition of infrastructure includes buildings or other structures built or used for any purpose;
  - Validate past decisions, authorisations, exemptions and actions relating to the clearing of vegetation as if the amended meaning of infrastructure applied at the time the decisions were made or things done.

## Achievement of the Objectives

The policy objectives will be achieved through:

- correcting minor drafting errors and making consequential amendments for the provisions amending the Land Act;
- amending the clause that introduces the improved dispute resolution framework to the Land Act by adding circumstances when an arbitration award can be appealed and providing for parties to agree to an extension of the timeframe for issuing an arbitration award;
- amending the relinquishment requirement provisions under the MRA to defer relinquishment in two specific circumstances:
  - for the area of an exploration permit under an undecided application for a mineral development licence of mining lease; and
  - where an exploration permit holder for coal is unable to access land where the permit overlaps a petroleum lease;
- Replacing relevant transitional provisions with practical relinquishment requirements to apply to all existing exploration permits in place upon commencement of the Bill;
- clarifying the clause that provides the head of power to impose conditions when granting an authority to prospect under the P&G Act;
- including a definition of the term ‘exploration project’ in the P&G Act.
- amending the definition of ‘infrastructure’ in the *Vegetation Management Act 1999* to include buildings or other structures built or used for any purpose;
- providing validation provisions in the *Vegetation Management Act 1999* for accepted development vegetation clearing codes and determinations under section 22A as if the amended definition of infrastructure has always been in force;
- providing validation provisions in the *Planning Act 2016* for development applications; development approvals (including conditions); vegetation clearing done under the approvals; and vegetation clearing done as essential management” and “routine management” as if the definition of “infrastructure” had always included buildings or other structures built or used for any purpose; and
- amending the definition of “infrastructure” for the definitions of “essential management” and “routine management” in the *Planning Regulation 2017* buildings or other structures built or used for any purpose.

## Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives. The policy objectives can only be achieved by legislative amendment.

## **Estimated Cost for Government Implementation**

There are no implementation costs associated with the amendments.

## **Consistency with Fundamental Legislative Principles**

The amendments have been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and are consistent with these provisions.

## **Consultation**

The department has consulted with key stakeholders and there is general support for the amendments. The amendments align with submissions provided to the State Development, Natural Resources and Agricultural Industry Development Committee (the Committee) and during the public hearing held on 25 March 2019.

The Office of the Queensland Parliamentary Counsel identified the consequential amendments arising from the passage of the *Land, Explosives and Other Legislation Amendment Act 2019* and the *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Act 2019*.

The proposed changes to the new arbitration process in the Land Act were raised by the Queensland Law Society in their submission to the Committee. The amendments have been developed in consultation with the Queensland Law Society.

In its report, the Committee stated that it *is satisfied with the department's undertaking to review the transitional provisions for relinquishment, and that this matter will be resolved to the satisfaction of all parties*. The department has consulted with affected stakeholders to prepare amendments to the relinquishment provisions.

## NOTES ON PROVISIONS

### **Amendment 1 – Clause 40 Amendment of s 100 (Public notice of closure)**

*Amendment 1* corrects a drafting oversight which changed the application of the definition of ‘appropriate enquiries’. This definition provides the notification requirements for when part of a road is being closed under the *Land Act 1994*.

The intention behind the amendment is for a notice to be given to registered owners and lessees of both land that wholly or partly adjoins the area of road to be closed and their direct neighbours who also abut the road (but not the area to be closed).

### **Amendment 2 – Clause 41 Replacement of ch 6, pt 4, div 3A (Mediation for disputes about terms of particular subleases)**

*Amendment 2* amends clause 41 which inserts a new section 339Q (Arbitrator’s functions) into the *Land Act 1994*.

This amendment will allow the parties to agree to extend the timeframe for making an arbitral decision. The amendment will allow parties to agree to an extension of time beyond either the original 6 months or 9 months if an initial extension of time has been agreed to.

### **Amendment 3 – Clause 41 Replacement of ch 6, pt 4, div 3A (Mediation for disputes about terms of particular subleases)**

*Amendment 3* makes a minor amendment to clause 41, which inserts section 339T into the *Land Act 1994*.

This change clarifies that subsection 339T(3) is subject to subsections (4) and (5) and the new subsection (4A) to be inserted by Amendment 4.

### **Amendment 4 - Clause 41 Replacement of ch 6, pt 4, div 3A (Mediation for disputes about terms of particular subleases)**

*Amendment 4* amends clause 41, which inserts section 339T into the *Land Act 1994*. The circumstances in which an award can be appealed has been restricted to protect the interests of the parties while also giving certainty about the finality of the award.

This amendment inserts new subsection (4A) to provide that the Supreme Court (which has jurisdiction for these matters) can set aside an arbitral decision if it is determined that:

- the decision was induced or affected by the improper behaviour of a party to the dispute; or
- a party to the dispute had impaired capacity during the arbitral proceedings; or
- the decision was subject to a breach of the rules of natural justice.

A party to dispute must apply to the Supreme Court for review of an arbitrator’s decision.

Examples of improper behaviour include fraud, duress or undue influence.

Impaired capacity refers to circumstances where a party is unable to fully participate in arbitral proceedings due to issues such as poor comprehension due to a language barrier or impaired cognition. The provision references the definition of ‘capacity’ in the *Guardianship and Administration Act 2000*, which states:

- capacity**, for a person for a matter, means the person is capable of—
- (a) understanding the nature and effect of decisions about the matter; and

- (b) freely and voluntarily making decisions about the matter; and
- (c) communicating the decisions in some way.

A breach in the rules of natural justice would be evident where a party believes that there may have been a fundamental flaw in the arbitral process or where there is a perception of bias or conflict of interest on the part of the arbitrator.

#### **Amendment 5 – New clause 42A Amendment of section 390C (Definitions for chapter)**

*Amendment 5* adds a new clause to amend section 390C of the *Land Act 1994*, to remove the definitions for ‘occupier’ and ‘of’ which have been relocated to the dictionary. This is a consequential amendment following passage of the *Land, Explosives and Other Legislation Amendment Act 2019*.

#### **Amendment 6 – Clause 48 (Amendment of sch 6 (Dictionary))**

*Amendment 6* inserts definitions of ‘occupier’ and ‘of’ into the *Land Act 1994*’s dictionary following their removal from section 390C (Definitions for chapter). This is a consequential amendment following passage of the *Land, Explosives and Other Legislation Amendment Act 2019*.

#### **Amendment 7 – Clause 48 (Amendment of sch 6 (Dictionary))**

*Amendment 7* ensures that the definition of ‘occupier’ introduced into the *Land Act 1994* through the *Land, Explosives and Other Legislation Amendment Act 2019* applies to both chapter 6A (Investigation and enforcement) and chapter 7, part 3C (Access to State land) of the Act.

#### **Amendment 8 – New clause 258A Insertion of new s139A**

*Amendment 8* inserts new clause 258A that inserts new section 139A into the *Mineral Resources Act 1989*.

#### **139A Periodic reduction deferred if higher tenure application undecided**

New section 139A provides for the deferral of periodic reduction of the permit area if a higher tenure application is undecided. If relinquishment is due, the area under application may contribute to the relinquishment obligation once the decision on the application has been made. This gives the effect of postponing or deferring relinquishment.

Subsection (1) states that section 139A applies if the holder has made an application for a higher form of tenure and has made a submission to the chief executive under section 139(5) identifying the sub-blocks of land to which a reduction will apply. The submission is a statutory obligation even though the relinquishment requirements will be deferred. The part of the land within an exploration permit that is also covered by an application for a mineral development licence or mining lease will not be required to be relinquished until a decision has been made on that application.

Subsection (2) provides for the timing of the reduction of the area that is covered by an application for a higher tenure. Firstly if the higher tenure is granted, relinquishment occurs on the day the tenure is granted, secondly if the application is withdrawn or refused relinquishment is due within 20 business days of the withdrawal or refusal. If relinquishment is due, that area under application can contribute to the relinquishment obligation once the application has been decided. This gives the effect of postponing or deferring relinquishment.

Under subsection (3), if the higher tenure application is withdrawn or refused the holder of the permit may nominate other sub-blocks to relinquish and amend the submission to the chief executive.

Subsection (4) ensures the chief executive must consider the amended submission rather than the previous submission.

**Amendment 9 – Clause 273 Insertion of new ch 15, pt 15, div 2**

*Amendment 9* amends clause 273 (new section 853 of the *Mineral Resources Act 1989*) to ensure the policy objective to streamline the transitional provisions for relinquishment requirements is maintained. At the commencement of the Bill any application to vary the relinquishment requirements of an exploration permit will be deemed withdrawn.

All applications to vary other conditions of an exploration permit will continue.

**Amendment 10 – Clause 273 Insertion of new ch 15, pt 15, div 2**

*Amendment 10* amends clause 273 (new section 855 of the *Mineral Resources Act 1989*) to ensure the policy objective to streamline the transitional provisions for relinquishment requirements is maintained. No application to vary the relinquishment requirements as a condition of an exploration permit will be accepted for existing exploration permits after commencement.

All applications to vary other conditions of an exploration permit will continue to be accepted and assessed.

**Amendment 11 – Clause 273 Insertion of new ch 15, pt 15, div 2**

*Amendment 11* amends clause 273 to replace the new sections 857-860 of the *Mineral Resources Act 1989*, with a single transitional provision. The relinquishment requirements for existing exploration permits will cease immediately on commencement of the Bill, including any variations to the relinquishment requirements previously approved by the Minister under section 141(1)(j) of the Act.

Under subsection (2) there will only be one relinquishment point, which is five years after the first renewal is made after commencement of the Bill. At this point a relinquishment of 50 per cent of the area will be required.

Subsection (3), however, provides an exemption from relinquishment requirements for an exploration permit that is overlapping with a petroleum lease and the permit holder is unable to enter the land to undertake exploration activities. These exploration permits are identified by section 232(2) of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Subsection (4) clarifies that the new transitional provision applies despite any previous approved variation to the relinquishment requirements under section 141(1)(j) of the Act.

Subsections (5) and (6) provide that new sections 139 and 139A apply to permits current at the commencement of the Bill, with the exceptions provided for in section 857.

**Amendment 12 – Clause 276 Amendment of s 35 (Call for tenders)**

*Amendment 12* makes a consequential amendment as a result of clarifying the head of power to impose conditions under section 41 of the *Petroleum and Gas (Production and Safety) Act 2004*.

**Amendment 13 – Clause 277 Amendment of s 41 (Deciding whether to grant authority to prospect)**

*Amendment 13* clarifies the ministerial power under the *Petroleum and Gas (Production and Safety) Act 2004* to impose conditions on a new authority to prospect. The amendment clarifies that the power to impose conditions under section 41 does not affect the ability to impose conditions under section 42 of the Act.

### **Amendment 14 – Clause 313 Amendment of sch 2 (Dictionary)**

*Amendment 14* inserts a definition for ‘exploration project’ into the *Petroleum and Gas (Production and Safety) Act 2004*.

### **Amendment 15 – after clause 357**

*Amendment 15* inserts two new Parts to Chapter 7 of the Bill to amend the *Planning Act 2016* and the *Planning Regulation 2017*.

#### **Part 1A Amendment of Planning Act 2016**

New clause 357A states that Part 1A amends the *Planning Act 2016*.

New clause 375B introduces a new Chapter 8, Part 6 into the Planning Act.

#### **Part 6 Validation and transitional provisions for particular matters**

##### **348 Validation of particular development approvals**

New section 348 of the *Planning Act 2016* validates particular development approvals granted or amended between 15 September 2000 and commencement of these provisions that involve the clearing of native vegetation. The validation applies to the grant or amendment of the approval, including the conditions attached to the approval, and to anything done under the development approval, as if a reference to “infrastructure” in the relevant provision has always included a reference to a building built or used for any purpose, or for another structure built or used for any purpose.

The relevant provisions of legislation are listed in subsection (5) as the definitions of “essential management” and “routine management” that occurred in the *Integrated Planning Act 1997* Schedule 8 or Schedule 10 as relevant; the Sustainable Planning Regulation Schedule 26; and the Planning Regulation 2017 Schedule 24. This has the effect of validating development approvals that were assessed having regard to the “essential management” or “routine management” exemptions, if these exemptions had applied to buildings and structures the way they applied to infrastructure.

##### **349 Particular existing applications**

New section 349 of the *Planning Act 2016* applies to a development application made on or after 15 September 2000 that has not been decided by commencement of these provisions. It provides that the application must be decided as if a reference to “infrastructure” in a relevant provision of legislation has always included a reference to a building built or used for any purpose, or for another structure built or used for any purpose.

The relevant provisions of legislation are listed in subsection (3) as the definitions of “essential management” and “routine management” that occurred in the *Integrated Planning Act 1997* Schedule 8 or Schedule 10 as relevant; the Sustainable Planning Regulation Schedule 26; and the Planning Regulation 2017 Schedule 24.

##### **350 Validation of particular operational work**

New section 350 of the *Planning Act 2016* validates certain clearing of native vegetation done between 15 September 2000 and commencement of these provisions. This clearing is, and always has been as lawful as it would have been because a reference to “infrastructure” in a relevant provision of legislation will be taken to have included a reference to a building built or used for any purpose, or for another structure built or used for any purpose.

The relevant provisions of legislation are listed in subsection (3) as the definitions of “essential management” and “routine management” that occurred in the *Integrated Planning Act 1997* Schedule 8 or Schedule 10 as relevant; the Sustainable Planning Regulation Schedule 26; and the Planning Regulation 2017 Schedule 24. This has the effect of validating clearing that would have been exempt from requiring a development approval under the “essential

management” or “routine management” exemptions, as if these exemptions had applied to buildings and structures the way they applied to infrastructure.

### **Part 1B      Amendment of Planning Regulation 2017**

New clause 357C states that this Part amends the Planning Regulation 2017.

New clause 357D amends the Planning Regulation Schedule 24 (Dictionary), by inserting a new definition of “infrastructure” for the definitions of “essential management” and “routine management”.

Infrastructure, for these purposes, is defined to include a building built or used for any purpose, or another structure built or used for any purpose. This has the effect of ensuring that the “essential management” and “routine management” exemptions apply to clearing in relation to buildings and other structures in the same way, and subject to the same limitations, as they apply to infrastructure.

### **Amendment 16      After clause 359**

*Amendment 16* inserts a new Part 2A into Chapter 7 of the Bill to amend the *Vegetation Management Act 1999*.

### **Part 2A      Amendment of Vegetation Management Act 1999**

New clause 359A states that Part 2A amends the *Vegetation Management Act 1999*.

New clause 359B amends section 70A(6) of the *Vegetation Management Act 1999*, to insert a new definition of infrastructure to include a building built or used for any purpose, or for another structure built or used for any purpose. The new definition ensures that the authorised taking of forest products to source construction timber for repairing infrastructure includes sourcing construction timber for repairing buildings and other structures, subject to the same limitations as apply to sourcing it to repair infrastructure.

New clause 359C amends the heading for Part 6 of the *Vegetation Management Act 1999* to add validation provisions.

New clause 359D inserts a new Part 6 Division 14 to the *Vegetation Management Act 1999*.

### **Division 14      Validation provisions for particular matters.**

#### **145 Definitions for part**

New section 145 of the *Vegetation Management Act 1999* establishes a definition of “amended extractive industry definition” for Part 6 that refers to the definition of extractive industry as amended by this Bill.

#### **146 Validation of particular decisions under s 22A**

New section 146 validates particular decisions made under section 22A of the *Vegetation Management Act 1999*, between 21 May 2004 and commencement of these provisions.

The decisions are validated as if a reference to built infrastructure in section 22A, or the schedule to the Act, included a reference to a building built or used for any purpose, or for another structure built or used for any purpose. Decisions are also validated as if a reference to extractive industry was a reference to the definition of extractive industry as amended by this Bill.

The section also validates anything done as a result of the validated decision, for example, making and accepting a development application for development that is or involves clearing for a relevant purpose. Things done as a result of the decision are validated as if a reference to built infrastructure in section 22A or the schedule to the Act included a reference to a building built or used for any purpose, or for another structure built or used for any purpose.

Decisions are also validated as if a reference to extractive industry was a reference to the definition of extractive industry as amended by this Bill.

#### **147 Validation of use of particular forest products**

New section 147 validates the use of forest products between 21 May 2004 and commencement of these provisions. The use of forest products under section 70A is validated as if, at the time the forest products were used, section 70A provided for sourcing construction timber for repairing buildings and other structures, subject to the same limitations as apply to sourcing timber to repair infrastructure.

#### **148 Validation of accepted development vegetation clearing code and particular activities**

New section 148 validates certain accepted development vegetation clearing codes and activities under the codes. For any accepted development vegetation clearing code made before commencement, the making of the code is validated as if, at the time it was made, the definition of relevant infrastructure activities included a reference to a building built or used for any purpose, or a structure built or used for any purpose. It is also validated as if a reference to extractive industry was a reference to the definition of extractive industry as amended by this Bill. This has the effect of ensuring that accepted development vegetation clearing codes that refer or referred to clearing in relation to infrastructure also refer or referred to clearing in relation to buildings and other structures built or used for any purpose.

Subsection 3 provides that the activity to which the code applies or applied is validated in the same circumstances that the codes are validated. This has the effect that if clearing in relation to a building or structure was done in accordance with a code that provided for clearing in relation to infrastructure, this clearing is and is taken to have always been lawful.

New clause 359E amends the schedule (Dictionary) to the *Vegetation Management Act 1999*, to insert a definition of built infrastructure. Built infrastructure includes a building built or used for any purpose, or a structure built or used for any purpose. The dictionary is also amended to amend the definition of extractive industry. Part (b) of the definition is amended to indicate that extractive industry includes carrying out work that is the natural and ordinary consequence of carrying out the work mentioned in paragraph (a). It gives examples of constructing roads, buildings and other structures.

#### **Amendment 17 – Schedule 1 (Legislation Amended)**

*Amendment 17* is a consequential amendment to the *Nature Conservation Act 1992*, reflecting the transfer of the administrative power to give consent to the transfer or surrender of a lease under the Land Act, from the Minister to the Chief Executive.

#### **Amendment 18 – Long title**

*Amendment 18* amends the long title of the Bill to reflect that the *Nature Conservation Act 1992* will also be amended.

#### **Amendment 19 – Long title**

*Amendment 19* amends the long title of the Bill to reflect that the *Planning Act 2016* and the *Planning Regulation 2017* will also be amended.

#### **Amendment 20 – Long title**

*Amendment 20* amends the long title of the Bill to reflect that the *Vegetation Management Act 1999* will also be amended.