

Natural Resources and Other Legislation Amendment Bill 2010

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Stephen Robertson MP

Title of the Bill

Natural Resources and Other Legislation Amendment Bill 2010

Objectives of the Amendments

The objectives of the amendments are to ensure the desired policy objectives can be achieved in full and as intended, achieve the intent of the proposed staged implementation of the changes, correct certain incorrect cross references and make minor typographical corrections.

Achievement of the Objectives

The objectives are achieved by making minor and technical amendments to the Natural Resources and Other Legislation Amendment Bill 2010 (the Bill) as outlined below.

Estimated Cost for Government Implementation

There will be no additional administrative cost to Government of implementing the proposed amendments.

Consistency with Fundamental Legislative Principles

The amendments do not conflict with Fundamental Legislative Principles.

Consultation

Consistent with the minor and technical nature of the amendments, there has been no community consultation on the amendments. Limited consultation with relevant Government stakeholders has occurred.

Notes on Provisions

Amendment 1 amends Clause 2 (Commencement) to insert a reference to new section 118 of the *Forestry Act 1959* into the first dot point of subclause 2(2), to ensure that the definitions for the transitional provisions being inserted into the *Forestry Act 1959* commence on assent.

Amendment 2 amends Clause 14 (which amends section 61 of the *Fire and Rescue Service Act 1990* (Interpretation and application of division)) to correct a minor typographical error in paragraph (b)(i) of the new definition of “occupier of land” which is to be inserted into section 61.

Amendment 3 amends Clause 16 (which amends section 68 of the *Fire and Rescue Service Act 1990* (Powers of occupier of entry etc.)) to insert an additional cross reference in new subsection 68(4) to clarify that an occupier which is registered as a rural fire brigade cannot meet its obligations under section 68 by “self-notifying”.

Amendment 4 amends Clause 20 (which inserts new sections 18A to 18C into the *Forestry Act 1959*). New section 18A (General powers of plantation officers) is amended to substitute “for” for “within” to avoid an unnecessarily restrictive construction that a plantation officer must be present in a licence area to exercise his or her powers.

Amendment 5 amends Clause 29 (which amends section 35 of the *Forestry Act 1959* (Granting of permit for land within State forest)) to provide that both decisions about granting a permit, and decisions about extending a permit are subject to internal review. As introduced, the new subclause would only apply to decisions about granting a permit.

Amendment 6 amends Clause 30 (which amends section 37 of the *Forestry Act 1959* (Particular authorities over State forest, timber reserve or forest entitlement area)) to correct a cross reference and to split new subsection 37(5) into several paragraphs for ease of reading.

Amendment 7 amends Clause 34 (which amends section 55 of the *Forestry Act 1959* (Licences to get forest products etc.)) to substitute a reference to a “permit” with a reference to a “licence”. “Licence”, rather than “permit”, is the term used in section 55.

Amendment 8 amends Clause 35 (which amends section 56 of the *Forestry Act 1959* (Permits etc.)) to split new subsection 56(4) (as introduced) into two subsections for ease of reading.

Amendment 9 amends Clause 36 (which amends section 57 of the *Forestry Act 1959* (Power of entry under licence or permit)) to delete an unnecessary exclusion of the application of section 57 to a plantation licensee or plantation sublicensee. Section 57 only applies to “permittees and licensees”, and plantation licences and plantation sublicences are not treated as “licences” under general provisions of the *Forestry Act 1959* (see the definition of “licence” inserted by Clause 74 of the Bill).

Amendment 10 amends Clause 37 (which amends section 58 of the *Forestry Act 1959* (Power to cancel, suspend, permit, licence etc.)) to renumber the new subsection which is to be inserted by the Bill so that it appears at the end of section 58.

Amendment 11 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61QI (Plantation licence may be transferred) is amended to require that where the Minister refuses an application by a plantation licensee to transfer the plantation licence the Minister must give written reasons for the refusal to the plantation licensee.

Amendment 12 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61QJ (Related agreements may be transferred) is amended to:

- better match the language of new section 61QJ (which deals with transfer of related agreements) to new section 61QI (which deals with transfer of a plantation licence); and
- require that where a plantation licensee is transferring a plantation licence and the chief executive refuses an application by the plantation licensee to transfer a related agreement, the chief executive must give written reasons for the refusal to the plantation licensee.

Amendment 13 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61QL (Plantation licensee’s rights of access over relevant State land) is amended by inserting additional text to correct a grammatical error.

Amendment 14 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61QR (Plantation sublicense may be transferred) is amended to require that where the Minister refuses an application by a plantation sublicensee to transfer the plantation sublicense the Minister must give written reasons for the refusal to the plantation sublicensee.

Amendment 15 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61QS (Related agreements may be transferred) is amended to:

- better match the language of new section 61QS (which deals with transfer of related agreements) to new section 61QR (which deals with transfer of a plantation sublicense); and
- require that where a plantation sublicensee is transferring a plantation sublicense and the chief executive refuses an application by the plantation sublicensee to transfer a related agreement, the chief executive must give written reasons for the refusal to the plantation sublicensee.

Amendment 16 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61QU (Validity of plantation sublicense or amendment of plantation sublicense against mortgagee) is omitted as the section is unnecessary. If a plantation sublicense is entered into or amended after a mortgage of the plantation licence is registered, the plantation sublicense or amendment can only be registered with the registered mortgagee's consent (new section 61RW(1)(d)), and the plantation sublicense or amendment only takes effect on registration (new section 61SF).

Amendment 17 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61QV (Mortgages require Ministerial approval) is amended to:

- better match the language of new subsection 61QV(2) to new subsection 61QV(1); and
- require that where:
 - the Minister refuses to approve the grant of a mortgage over a plantation licensee's rights under a plantation licence or a plantation sublicensee's rights under a plantation sublicense; or
 - the chief executive refuses to approve the grant of a mortgage over a plantation licensee's or plantation sublicensee's rights under a related agreement,

the relevant decision maker must give written reasons for the refusal to the plantation licensee or plantation sublicensee.

Amendment 18 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61RB (Surrender of plantation licence

or part of a plantation licence) is amended to split the definition of “affected area” in new subsection 61RB(6) into two paragraphs for ease of reading.

Amendment 19 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61RC (Application for division) is amended to clarify that the definition of “affected area” in new section 61RC applies in new sections 61RD to 61RG, rather than in the sense defined in new section 61RB.

Amendment 20 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61RD (Deciding the application) is amended by substituting “any” for “each”, because the use of the term “each” presumes there will necessarily be a plantation sublicensee.

Amendment 21 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61RH (Events that are compensation events) is amended to correct an incorrect cross reference.

Amendment 22 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61RI (Events that are not compensation events) is amended to ensure consistency of language in relation to the surrender of a plantation licence or a plantation sublicense throughout the new provisions in the *Forestry Act 1959* which are to be inserted by the Bill.

Amendment 23 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61RO (Registration of documents) is amended to ensure that the language used to describe the registrable dealings dealt with in new section 61RO is consistent with the primary new provisions of the *Forestry Act 1959* relating to such dealings.

Amendment 24 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61RW (Registered documents to comply with particular requirements) is amended as follows:

(1) The first amendment to new section 61RW(1):

- deals with a registered mortgagee’s consent to dealings affecting a plantation sublicense in a separate paragraph (new subsection 61RW(1)(e)), in order to clarify that consent is required from both the registered mortgagee for the plantation sublicense, and any registered mortgagee for the relevant plantation licence; and
- recasts the requirement for Ministerial approval as a prerequisite to registration in clearer language.

- (2) The second amendment to new section 61RW(3) is consequential upon the amendment referred to above.

Amendment 25 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61SM (Amending or transferring a mortgage) is amended to clarify that a registered mortgage may only be effectively transferred by registering a transfer of the registered mortgage.

Amendment 26 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61SR (Mortgagee exercising power of sale) is amended by restating the opening words of new subsection 61SR(2) to better reflect the context established in new subsection 61SR(1) and to correct a cross reference in new subsection 61SR(3).

Amendment 27 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61SV (Registering an enforcement warrant) is amended to include a new subsection to define an office copy of an enforcement warrant, to ensure the registry recognises a document as an office copy for the purposes of registration.

Amendment 28 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61SW (Effect of registering an enforcement warrant) is amended to clarify that a reference to an enforcement warrant in new section 61SW(b)(ii) is a reference to an enforcement warrant issued by the Supreme Court of Queensland.

Amendment 29 amends Clause 45 (which inserts new parts 6D and 6E into the *Forestry Act 1959*). New section 61TG (Lapsing of caveat) is amended to correct a cross reference.

Amendment 30 amends Clause 57 (which amends section 73 of the *Forestry Act 1959* (Unlawfully using State forests etc.)) to recast a new subsection about internal review in clearer language.

Amendment 31 amends the Bill by inserting a clause heading for Clause 57A.

Amendment 32 amends the Bill by inserting a clause heading for Clause 59A.

Amendment 33 amends Clause 62 (which amends section 84 of the *Forestry Act 1959* (Matters may be completed by different officers)) to correct a cross reference.

Amendment 34 amends Clause 64 (which inserts new section 88A into the *Forestry Act*). New section 88A (Recovery of moneys by plantation

licensee or plantation sublicensee) is amended to clarify the category of monies which may be recovered in legal proceedings brought by a plantation licensee or plantation sublicensee, including by clarifying the interaction between this new section and new section 96B.

Amendment 35 amends the Bill by inserting new Clause 64A in the Bill (Amendment of s 89 (Recovery of moneys due)). Clause 64A amends section 89 of the *Forestry Act 1959* to clarify that the rights of a plantation licensee or a plantation sublicensee to recover loss and damage suffered in connection with a contravention of the *Forestry Act 1959* by action as for a debt:

- are not dependent upon whether proceedings for that contravention are commenced, or whether any person is convicted; and
- are available in respect of the conduct constituting the offence, whether or not the offence is prosecuted.

Amendment 36 amends Clause 65 (which amends section 91 of the *Forestry Act 1959* (Power to waive proceedings)) to better match the exclusion of the plantation licensee, plantation sublicensee and associated persons from the ambit of section 91 of the *Forestry Act 1959* with the words of that section.

Amendment 37 amends Clause 69 (which inserts new sections 96B to 96E into the *Forestry Act 1959*). New section 96B (Delegation by chief executive – State plantation forests) is amended as follows:

- (1) The first amendment corrects a grammatical error in new subsection 96B(1).
- (2) The second amendment corrects an unnecessary reference to new section 61QP in the Note to new subsection 96B(1).
- (3) The third amendment inserts a reference to a plantation sublicensee in new subsection 96B(4)(b)(ii). This subsection should refer to both plantation licensees and plantation sublicensees.
- (4) The fourth amendment expands the example of a situation in which use of a regulatory notice may be needed to protect the plantation licensee's or plantation sublicensee's interests, so that the example is not limited to the likelihood of damage to young trees through careless behaviour, but also refers to general use of the area.

- (5) The fifth amendment ensures consistency with certain other examples used in the new provisions inserted into the *Forestry Act 1959* by the Bill.
- (6) The sixth amendment amends new subsections 96B(5) and 96B(6). New subsections 96B(5) and 96B(6) grant certain rights to the plantation licensee or plantation sublicensee to retain fees and other amounts payable under licences and permits issued or administered by them as the delegate of the chief executive. As introduced, the right is expressed to relate to the retention of fees already collected. The amendments enable the plantation licensee or plantation sublicensee to recover amounts which are due but unpaid.
- (7) The seventh amendment amends the definition of “relevant licence area” which appears in new subsection 96B(8) of the Bill to insert a reference to a plantation sublicensee. This definition should refer to both plantation licensees and plantation sublicensees.

Amendment 38 amends Clause 69 (which inserts new sections 96B to 96E into the *Forestry Act 1959*). New section 96E (Protection from liability) is amended so that it uses the defined term “plantation operator” to refer to all categories of persons who are (if so delegated) able to appoint plantation officers.

Amendment 39 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 118 (Definitions for subdiv 1) is amended as follows:

- (1) The first amendment corrects the numbering of the heading to new section 118.
- (2) The second amendment clarifies the meaning of the word “commencement” when it is used in a section inserted into the *Forestry Act 1959* by Clause 72 of the Bill. Only in new section 121 (which itself commences on assent) will the word “commencement” mean the date of assent. In all other instances it will mean the day on which new section 119 commences, being the day an agreement is first entered into between the Minister and a corporation under the *Forestry Act 1959*, section 61QA.
- (3) The third amendment clarifies that the reference in the defined term “FPQ sales permit” to section 61M of the *Forestry Act 1959* is a reference to repealed section 61M.

Amendment 40 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 119 (Provision for s 17 (Appointment of Officers)) is amended to correct typographical errors and cross referencing errors. The amendment to new subsection 119(2) clarifies that the power to appoint plantation officers is contained in section 17 of the *Forestry Act 1959*.

Amendment 41 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 120 (Provision for s 34AA or 34AB) is amended to clarify that the cross reference is to the repealed section 61M.

Amendment 42 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 122 (Provision for s 34G (Regulating movement of vehicles on feature protection areas)) is amended to clarify that the cross reference is to the repealed section 61M.

Amendment 43 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 123 (Provision for s 34H (Self-registration camping areas)) is amended to clarify that the cross reference is to the repealed section 61M.

Amendment 44 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 124 (Provision for s 35 (Granting of permit for land within State forest)) is amended to clarify that the cross reference is to the repealed section 61M.

Amendment 45 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 125 (Provision for s 55 (Licences to get forest products etc.)) is amended to clarify that the cross reference is to the repealed section 61M.

Amendment 46 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 126 (Provision for s 56 (Permits etc. – general)) is amended to clarify that the cross reference is to the repealed section 61M.

Amendment 47 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 128 (Provision for s 56 (Permits etc.) – application of relevant provisions for FPQ sales permits) is amended to clarify the interaction between new subsections 128(2) and 128(3) and make it clear that a right of review lies to the chief executive in a relation to a decision to cancel or suspend an FPQ sales permit only where neither the

FPQ sales permit nor any related contract contains any express term or condition dealing with termination.

Amendment 48 amends Clause 72 (which inserts new part 10, division 2 into the *Forestry Act 1959*). New section 129 (Provision for s 73 (Unlawfully using State forests etc.) to correct a grammatical error and to clarify that the cross reference is to the repealed section 61M.

Amendment 49 amends Clause 74 (which amends schedule 3 of the *Forestry Act 1959* (Dictionary)) to correct a typographical error and a cross referencing error in the new definitions which are to be inserted in the Dictionary by the Bill.

Amendment 50 amends Clause 83 (which replaces schedule 4 of the *Forestry Regulation 1998* (State forest parks)) to correct incorrect plan references.

Amendment 51 amends Clause 84 (which inserts new schedule 4A into the *Forestry Regulation 1998* (State plantation forests)) to correct incorrect plan references.