



# **Vegetation Management Act 1999**

**Reprinted as in force on 14 October 2005**

**Reprint No. 1G**

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This Act is reprinted as at 14 October 2005. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

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# Vegetation Management Act 1999

[as amended by all amendments that commenced on or before 14 October 2005]

## An Act about the management of vegetation

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Vegetation Management Act 1999*.

#### 3 Purpose of Act

- (1) The purpose of this Act is to regulate the clearing of vegetation in a way that—
  - (a) conserves the following—
    - (i) remnant endangered regional ecosystems;
    - (ii) remnant of concern regional ecosystems;
    - (iii) remnant not of concern regional ecosystems; and
  - (b) conserves vegetation in declared areas;<sup>1</sup> and
  - (c) ensures the clearing does not cause land degradation; and
  - (d) prevents the loss of biodiversity; and
  - (e) maintains ecological processes; and

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<sup>1</sup> For declared areas, see sections 17 and 18.

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- (f) manages the environmental effects of the clearing to achieve the matters mentioned in paragraphs (a) to (e); and
  - (g) reduces greenhouse gas emissions.
- (2) The purpose is achieved mainly by providing for—
- (a) codes for the Planning Act relating to the clearing of vegetation that are applicable codes for the assessment of vegetation clearing applications under IDAS; and
  - (b) the enforcement of vegetation clearing provisions; and
  - (c) declared areas; and
  - (d) a framework for decision making that, in achieving this Act's purpose in relation to subsection (1)(a) to (e), applies the precautionary principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage; and
  - (e) the phasing out of broadscale clearing of remnant vegetation by 31 December 2006.
- (3) In this section—
- environment*** includes—
- (a) ecosystems and their constituent parts including people and communities; and
  - (b) all natural and physical resources; and
  - (c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
  - (d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a) to (c) or affected by those matters.

#### **4 Advancing the Act's purpose**

If, under this Act, a function or power is conferred on an entity, the entity must perform the function or exercise the power in a way that advances the purpose of this Act.

#### **5 Definitions**

The dictionary in the schedule defines particular words used in this Act.

#### **6 Act binds all persons**

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

#### **7 Application of Act**

- (1) This Act applies to all clearing of vegetation other than vegetation on—
  - (a) a forest reserve under the *Nature Conservation Act 1992*; or
  - (b) a protected area under the *Nature Conservation Act 1992*, section 28; or
  - (c) an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or
  - (d) a forest entitlement area under the *Land Act 1994*.
- (2) This Act does not prevent a local law from imposing requirements on the clearing of vegetation in its local government area.
- (3) The requirements mentioned in subsection (2) are unaffected by the *Local Government Act 1993*, section 31.<sup>2</sup>
- (4) The *Local Government Act 1993*, section 31 is subject to subsection (3).

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<sup>2</sup> *Local Government Act 1993*, section 31 (Inconsistency with State law)

- (5) This Act does not prevent a local planning instrument under the Planning Act from imposing requirements on the clearing of vegetation in its local government area.
- (6) The requirements mentioned in subsection (5) are unaffected by the Planning Act, section 3.1.3.
- (7) The Planning Act, section 3.1.3 is subject to subsection (6).

## **Part 2                      Vegetation management**

### **Division 1                Key concepts**

#### **8                      What is vegetation**

*Vegetation* is a native tree or plant other than the following—

- (a) grass or non-woody herbage;
- (b) a plant within a grassland regional ecosystem prescribed under a regulation;
- (c) a mangrove.

#### **9                      What is vegetation management**

- (1) *Vegetation management* is the management of vegetation in a way that achieves the purpose of this Act.
- (2) For subsection (1), the management of vegetation may include, for example, the following—
  - (a) the retention or maintenance of vegetation to—
    - (i) avoid land degradation; or
    - (ii) maintain or increase biodiversity; or
    - (iii) maintain ecological processes;
  - (b) the retention of riparian vegetation;
  - (c) the retention of vegetation clumps or corridors.

## **Division 2                    State policy for vegetation management**

### **10            State policy for vegetation management**

- (1) The Minister must prepare a policy for vegetation management for the State.
- (2) Without limiting subsection (1), the policy must state outcomes for vegetation management and actions proposed to achieve the outcomes.
- (3) The Governor in Council, by gazette notice, may approve the policy.
- (4) The chief executive must keep a copy of the policy available for inspection—
  - (a) at the department's head office and regional offices at all times when the offices are open for the transaction of public business; and
  - (b) on the department's web site on the internet.
- (5) On payment of a fee, a person may buy a copy of the policy.
- (6) The fee for the copy of the policy must not be more than the reasonable cost of publishing the copy.
- (7) The policy is not subordinate legislation.

## **Division 3                    Regional vegetation management codes**

### **11            Minister must approve regional vegetation management codes**

- (1) The Minister must approve codes for vegetation management for regions of the State (*regional vegetation management codes*).
- (2) The codes must not be inconsistent with the State policy for vegetation management mentioned in section 10.

**12 Preparing codes**

- (1) Before approving a regional vegetation management code, the Minister may seek appropriate public input in preparing a draft code.
- (2) Before approving the regional vegetation management code, the Minister must give notice of the draft code.
- (3) The notice must—
  - (a) be published in a newspaper the Minister considers appropriate; and
  - (b) state the places where copies of the draft code—
    - (i) may be inspected; or
    - (ii) may be bought, on payment of the reasonable fee decided by the chief executive; and
  - (c) invite submissions on the draft code; and
  - (d) state a day by which submissions may be made on the contents of the draft code.

**13 Minister must consider all properly made submissions**

Before approving a regional vegetation management code, the Minister must consider all submissions on the code properly made under section 12(3)(c).

**14 Publication of codes**

After the Minister has approved a regional vegetation management code, the chief executive must—

- (a) publish notice of the code in a newspaper the chief executive considers appropriate; and
- (b) keep a copy of the code available for inspection—
  - (i) at the department's head office and regional offices at all times when the offices are open for the transaction of public business; and
  - (ii) on the department's web site on the Internet; and

- (c) on payment by a person of the reasonable fee decided by the chief executive, give a copy of the code to the person.

## **15 Minor or stated amendments of regional vegetation management code**

Despite sections 11 to 14, the Minister may amend a regional vegetation management code without complying with those sections if—

- (a) the amendment is only to correct a minor error in the code, or make another change that is not a change of substance; or
- (b) the code states that an amendment of a stated type may be made to the code by amendment under this section and the amendment is of the stated type.

## **Division 4 Declaration of areas of high nature conservation value and areas vulnerable to land degradation**

### **16 Preparing declaration**

- (1) The Minister may prepare a declaration that a stated area is—
  - (a) an area of high nature conservation value; or
  - (b) an area vulnerable to land degradation.
- (2) Also, a person may request the Minister to prepare a declaration mentioned in subsection (1).
- (3) The proposed declaration must include a proposed code for the clearing of vegetation in the stated area.
- (4) The Minister must consult with the following entities in preparing the declaration—
  - (a) an advisory committee established to advise the Minister about vegetation management;
  - (b) each local government whose area is affected by the declaration.

- (5) The Minister must give each owner of land that is in the stated area a written notice inviting the owner to make a submission about the proposed declaration.
- (6) The Minister must also give notice of the proposed declaration.
- (7) The notice must—
  - (a) be published in a newspaper the Minister considers appropriate; and
  - (b) state the places where copies of the proposed declaration may be inspected; and
  - (c) invite submissions on the proposed declaration; and
  - (d) state a day by which submissions may be made on the proposed declaration.

## **17 Making declaration**

- (1) The Governor in Council, by gazette notice, may declare—
  - (a) an area mentioned in section 16(1)(a) to be an area of high nature conservation value; or
  - (b) an area mentioned in section 16(1)(b) to be an area vulnerable to land degradation.
- (2) The declaration must include a code for the clearing of vegetation in the declared area (a ***declared area code***).
- (3) The chief executive must keep a copy of the declaration available for inspection—
  - (a) at the department's head office and regional offices at all times when the offices are open for the transaction of public business; and
  - (b) on the department's web site on the Internet.
- (4) On payment of a fee, a person may buy a copy of the declaration.
- (5) The fee for the copy of the declaration must not be more than the reasonable cost of publishing the copy.
- (6) The declaration is not subordinate legislation.



**18 Interim declaration**

- (1) The Minister, by gazette notice, may make an interim declaration that a stated area is—
  - (a) an area of high nature conservation value; or
  - (b) an area vulnerable to land degradation.
- (2) The Minister may make the interim declaration only if the Minister considers that urgent action is needed to protect the area.
- (3) The interim declaration must state it is an interim declaration and the date, not more than 3 months after it is made, on which it expires.
- (4) The interim declaration is not subordinate legislation.
- (5) If an area is declared under subsection (1), a person must not clear vegetation in the area while the declaration has effect.  
Maximum penalty—1665 penalty units.

**19 Criteria for declarations**

- (1) The Minister may make an interim declaration of, or prepare a declaration of, an area to be an area of high nature conservation value only if the Minister considers the area is 1 or more of the following—
  - (a) a wildlife refugium;
  - (b) a centre of endemism;
  - (c) an area containing a vegetation clump or corridor that contributes to the maintenance of biodiversity;
  - (e) an area that makes a significant contribution to the conservation of biodiversity;
  - (f) an area that contributes to the conservation value of a wetland, lake or spring stated in the notice.
- (2) The Minister may make an interim declaration of, or prepare a declaration of, an area to be an area vulnerable to land degradation only if the Minister considers the area is subject to 1 or more of the following—
  - (a) soil erosion;

- (b) rising water tables;
  - (c) the expression of salinity, whether inside or outside the area;
  - (d) mass movement by gravity of soil or rock;
  - (e) stream bank instability;
  - (f) a process that results in declining water quality.
- (3) An area declared under subsection (1) or (2) may include an area of regrowth vegetation.

## **Division 5                      Declarations about codes**

### **20            IDAS codes for the clearing of vegetation**

- (1) A regional vegetation management code for a region is—
- (a) a code for IDAS for a vegetation clearing application for land in the region; and
  - (b) an applicable code for the clearing of vegetation in the region.
- (2) A code for a declared area is—
- (a) a code for IDAS for a vegetation clearing application for land in the area; and
  - (b) an applicable code for the clearing of vegetation in the area.
- (3) To the extent that a regional vegetation management code for a region that includes a declared area is inconsistent with the declared area code for the declared area, the declared area code prevails.

### **20A          Forest practice codes**

- (1) If the Minister has approved a code applying to native forest practice, native forest practice must be conducted in the way required by the code.

- (2) A person who conducts a native forest practice must give the chief executive a notice in the approved form stating the location of the native forest practice.
- (3) The approved form must be given—
  - (a) for a native forest practice starting after 31 December 2004—before the practice starts; or
  - (b) in any other case—before 1 January 2005.

## **Division 5A                      Property map of assessable vegetation**

### **20B      When chief executive may make property map of assessable vegetation**

- (1) The chief executive may make a property map of assessable vegetation for an area if—
  - (a) a development approval for the area has been given for—
    - (i) fodder harvesting; or
    - (ii) thinning; or
    - (iii) clearing of encroachment; or
    - (iv) control of non-native plants or declared pests; or
    - (v) control of regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes; or
  - (b) the area becomes a declared area; or
  - (c) the chief executive has been notified that the area is subject to a native forest practice; or
  - (d) the area—
    - (i) contains forest products under the *Forestry Act 1959*; and
    - (ii) has been defined by agreement with the chief executive responsible for administering the

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*Forestry Act 1959*, as an area in which the State has an interest in commercial timber; or

- (e) the area has been unlawfully cleared; or
  - (f) the area is subject to any of the following notices containing conditions about the restoration of vegetation—
    - (i) a compliance notice;
    - (ii) an enforcement notice under the Planning Act; or
  - (g) the area has been cleared of native vegetation and in relation to the clearing a person has been found guilty by a court, whether or not a conviction has been recorded, of an offence under the *Forestry Act 1959*, the *Nature Conservation Act 1992* or the *Environmental Protection Act 1994*.
- (2) In this section—

***unlawfully cleared*** includes clearing of vegetation by a person in contravention of a tree clearing provision under the *Land Act 1994*, as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

## **20C When owner may apply for property map of assessable vegetation**

- (1) An owner of land may apply to the chief executive for the making of a property map of assessable vegetation for the land or part of the land.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) state the information prescribed under a regulation; and
  - (c) be accompanied by the fee prescribed under a regulation.
- (3) If the applicant and the chief executive agree to the making of the map, the chief executive must make the map.

**20D When maps may be replaced**

- (1) The chief executive may replace a property map of assessable vegetation for an area (the *previous area*) with a new property map of assessable vegetation.
- (2) The new map may apply to—
  - (a) part or all of the previous area; or
  - (b) part or all of the previous area and another area.
- (3) Subsection (1) applies only—
  - (a) if a matter mentioned in section 20B occurs in relation to an area mentioned in subsection (2); or
  - (b) to reflect a change to an endangered, of concern or not of concern regional ecosystem in an area mentioned in subsection (2);<sup>3</sup> or
  - (c) for a matter other than a matter mentioned in paragraphs (a) and (b) if an owner of the land included in the map agrees to the replacement.

**20E When maps may be revoked**

- (1) The chief executive may revoke a property map of assessable vegetation for an area if—
  - (a) for a map made under section 20B(1)(a)—the area is shown on a regional ecosystem map or remnant map as remnant vegetation and the approval for clearing the area has expired; or
  - (b) for a map made under section 20B(1)(c)—the area is shown on a regional ecosystem map or remnant map as remnant vegetation and the chief executive has been notified that the area is no longer subject to a native forest practice; or
  - (c) for a map made under section 20B(1)(d)—the area is shown on a regional ecosystem map or remnant map as remnant vegetation and the chief executive responsible

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3 A change may only be made by amending the *Vegetation Management Regulation 2000*.

for administering the *Forestry Act 1959* has advised that the State no longer has an interest in commercial timber in the area; or

- (d) for a map made under section 20B(1)(e), (f) or (g)—the area is shown on a regional ecosystem map or remnant map as remnant vegetation.
- (2) Also, the chief executive may revoke a property map of assessable vegetation made under section 20C(3) if the owner of the land agrees to the revocation.

## **20F Copies of maps to be available**

- (1) If a property map of assessable vegetation is made or replaced, a copy must be given, free of charge, to each owner of land that is included in the map.
- (2) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the map to the person.

## **20G Owners to be advised of revocation of maps**

If a property map of assessable vegetation is revoked, the chief executive must give each owner of land that is included in the map written notice of the revocation and the reasons for the revocation.

# **Division 6 Modifying effect of Planning Act**

## **21 Modifying effect on vegetation clearing applications**

- (1) This section applies for a vegetation clearing application.
- (2) If the chief executive is the assessment manager for the application, a property vegetation management plan is a mandatory requirement in addition to the requirements stated in the Planning Act, section 3.2.1(3)(a).
- (3) If the chief executive is a concurrence agency for the application, the applicant must give the chief executive a

property vegetation management plan in addition to the things mentioned in section 3.3.3(1) of that Act.

- (4) For the aspect of the application relating to the clearing of vegetation—
  - (a) section 3.5.13 of that Act does not apply; and
  - (b) the assessment manager's decision must comply with the applicable code.

## **22 Declarations for the Planning Act**

- (1) To remove any doubt, it is declared that for the Planning Act, section 1.3.4, a use of premises does not include clearing vegetation that is assessable development.
- (2) Subsection (3) applies if the chief executive is the assessment manager for a vegetation clearing application and is satisfied there is commercial timber on the land the subject of the application.
- (3) The chief executive may refuse the application.
- (4) Subsection (5) applies if the chief executive is a concurrence agency for a development application under the Planning Act and is satisfied there is commercial timber on the land the subject of the application.
- (5) Consideration of the application by the chief executive, in relation to the existence of the timber, is taken to be within the limits of the chief executive's jurisdiction for the Planning Act, section 3.3.15.

## **22A Particular vegetation clearing applications may be assessed**

- (1) Despite the Planning Act, section 3.2.1,<sup>4</sup> if a vegetation clearing application is not for a relevant purpose under this section—
  - (a) the application is taken, for the Planning Act, not to be a properly made application; and

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4 Planning Act, section 3.2.1 (Applying for development approval)

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- (b) the assessment manager must refuse to receive the application.
- (2) A vegetation clearing application is for a relevant purpose under this section if the applicant satisfies the chief executive that the development applied for is—
- (a) a project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26; or
  - (b) necessary to control non-native plants or declared pests; or
  - (c) to ensure public safety; or
  - (d) for establishing a necessary fence, firebreak, road or other built infrastructure, if there is no suitable alternative site for the fence, firebreak, road or infrastructure; or
  - (e) a natural and ordinary consequence of other assessable development for which a development approval as defined under the Planning Act was given, or a development application as defined under the Planning Act was made, before 16 May 2003; or
  - (f) for fodder harvesting; or
  - (g) for thinning; or
  - (h) for clearing of encroachment; or
  - (i) for an extractive industry; or
  - (j) for clearing regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes.
- (3) In this section—
- extractive industry*** means 1 or more of the following—
- (a) dredging material from the bed of any waters;
  - (b) extracting rock, sand, clay, gravel, loam or other material, from a pit or quarry;
  - (c) screening, washing, grinding, milling, sizing or separating material extracted from a pit or quarry.



**22B Modifying Planning Act effect for delegations and appointment of referees**

- (1) For a vegetation clearing application for which the chief executive is the assessment manager, the Planning Act, sections 4.2.36(1) and 5.8.1A apply as if a reference to the Minister in those sections were a reference to the Minister for this Act.
- (2) For a vegetation clearing application for which the chief executive is the assessment manager, the Planning Act, chapter 4, part 2 applies as if a reference to the chief executive in that part were a reference to the chief executive for this Act.

**22C Modifying Planning Act effect of appeal rights on ongoing applications (assessment manager)**

- (1) This section applies for an ongoing application if the chief executive is the assessment manager for the application.
- (2) An appeal about an application for which this section applies may only be made to a tribunal under the Planning Act, section 4.2.9.
- (3) However, an appeal, other than for a deemed refusal, may not be made unless the applicant has made representations about the matter.<sup>5</sup>
- (4) The representations may also be about a refusal.
- (5) The Planning Act, section 3.5.17, applies for the representations, including representations about a refusal.

**22D Modifying Planning Act effect of appeal rights on ongoing applications (concurrence agency)**

- (1) This section applies for an ongoing application if the chief executive is a concurrence agency for the application.
- (2) Before an appeal may be made in relation to the application, the applicant must make representations under the Planning Act, section 3.5.9 about the matter being appealed.

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<sup>5</sup> See the Planning Act, section 3.5.17 (Changing conditions and other matters during the applicant's appeal period).

## **Division 7                      Broadscale applications and ballots**

### **22E      Application of div 7**

This division applies for a broadscale application.

### **22F      Exception to s 22A(1)**

- (1) Section 22A(1) does not apply to a broadscale application if the application is—
  - (a) only for land in a single region prescribed under section 22G(1)(a); and
  - (b) properly made during the ballot application period.
- (2) The chief executive must, for each region of the State for which a ballot must be conducted, conduct a ballot for all broadscale applications for that region that comply with subsection (1).
- (3) If, during the ballot application period, another broadscale application mentioned in subsection (1) is made for clearing land already included in a ballot, section 22A(1) applies to the other application to the extent the other application includes land already included in a ballot.

### **22G      Regions and ballots**

- (1) A regulation may prescribe—
  - (a) the regions of the State for which a ballot must be conducted; and
  - (b) the way, and the time at which, each ballot must be conducted; and
  - (c) the clearing allocation for each region; and
  - (d) the matters a broadscale application must contain.
- (2) The purpose of conducting the ballot for a region is to decide the priority in which applications included in the ballot will be assessed under subsection (3) for receiving part of the clearing allocation for the region until the allocation is exhausted.

- (3) After the ballot for a region is conducted—
  - (a) the applications for the ballot must be assessed in their priority against the regional vegetation management codes; and
  - (b) subject to the finalisation of any appeals, development approvals may be given only until the clearing allocation for the region is exhausted.
- (4) When the clearing allocation for a region has been exhausted, any applications not assessed from the ballot for the region must be refused and need not be assessed, despite the Planning Act, section 3.5.13.

## **22H Modifying Planning Act effect on changing broadscale application**

Despite the Planning Act, a broadscale application included in the ballot for a region—

- (a) may only be changed under the Planning Act, section 3.2.9(1) until 20 business days after an information request has been made for the application; and
- (b) can not be changed after the ballot application period has ended in a way that increases the size of the area proposed to be cleared.

## **22I Modifying Planning Act time frames**

For a broadscale application included in the ballot for a region, each of the following sections of the Planning Act applies as if—

- (a) in section 3.3.6(4), there were no time limit within which the assessment manager must make the request; and
- (b) in section 3.3.8, if the applicant did not respond within 20 business days, the assessment manager may assess the application as if the applicant had sent a notice under the Planning Act, section 3.3.8(1)(c); and

- (c) in section 3.5.7(1), there were no time limit within which the assessment manager must decide the application; and
- (d) in section 3.5.18(3) and (4), the period were 10 business days; and
- (e) in section 4.2.9(2), the period were 10 business days.

## **22J Modifying Planning Act effect on changing development approval**

Despite the Planning Act, a development approval for the application can not be changed to extend the currency period.

## **22K Modifying Planning Act effect of appeal rights on broadscale applications**

- (1) Subject to section 22L(c), an appeal may only be made to a tribunal under the Planning Act, section 4.2.9.
- (2) However, an appeal, other than for a deemed refusal, may not be made unless the applicant has made representations about the matter.<sup>6</sup>
- (3) The representations may also be about a refusal.
- (4) The Planning Act, section 3.5.17, applies for the representations, including representations about a refusal.

## **22L Appeals**

A person can not appeal under any Act against—

- (a) the ballot process or result; or
- (b) a refusal under section 22G(4); or
- (c) the length of the currency period; or
- (d) the decision of a tribunal.<sup>7</sup>

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<sup>6</sup> See the Planning Act, section 3.5.17 (Changing conditions and other matters during the applicant's appeal period).

<sup>7</sup> See the Planning Act, section 4.1.37 (Appeals from tribunals).

## Division 8                      Miscellaneous

### 22M    **Refusing vegetation clearing application after conviction for vegetation clearing offence**

- (1) The assessment manager may refuse a vegetation clearing application if—
  - (a) the applicant has been convicted of a vegetation clearing offence in the relevant period, regardless of whether the offence was committed before the relevant period; or
  - (b) the owner of the land has been convicted of a vegetation clearing offence in the relevant period, regardless of whether the offence was committed before the relevant period.

- (2) Subsection (1) does not limit the grounds on which the assessment manager may refuse the application under the Planning Act.

- (3) In this section—

***conviction*** includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

***relevant period*** means—

- (a) for an application made before 28 March 2008—the period from 28 March 2003 until the application is made; or
- (b) for an application made on or after 28 March 2008—the period of 5 years immediately before the application is made.

***vegetation clearing offence*** includes a tree clearing offence under the *Land Act 1994*, as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

## **Part 3                      Enforcement, investigations and offences**

### **Division 1                Enforcement and investigations**

#### **Subdivision 1        Authorised officers**

#### **24      Appointment and qualifications of authorised officers**

- (1) The chief executive may appoint a person as an authorised officer.
- (2) The chief executive may appoint a person as an authorised officer only if the chief executive is satisfied the person has the necessary expertise or experience to be an authorised officer.

#### **25      Functions and powers of authorised officers**

- (1) An authorised officer has the functions of—
  - (a) conducting investigations and inspections to monitor and enforce compliance with—
    - (i) this Act; and
    - (ii) a vegetation clearing provision; and
  - (b) issuing compliance notices.
- (2) An authorised officer has the powers given under this or another Act.
- (3) An authorised officer is subject to the directions of the chief executive in exercising the powers.
- (4) The powers of an authorised officer may be limited—
  - (a) under a regulation; or
  - (b) under a condition of appointment; or
  - (c) by notice of the chief executive given to the authorised officer.

**26 Conditions of appointment of authorised officers**

- (1) An authorised officer holds office on the conditions stated in the officer's instrument of appointment.
- (2) An authorised officer—
  - (a) if the appointment provides for a term of appointment—ceases to hold office at the end of the term; and
  - (b) may resign by signed notice of resignation given to the chief executive.

**27 Authorised officer's identity card**

- (1) The chief executive must give each authorised officer an identity card.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised officer; and
  - (b) be signed by the authorised officer; and
  - (c) identify the person as an authorised officer under this Act.
- (3) This section does not prevent the giving of a single identity card to a person for this Act and other Acts.

**28 Failure to return identity card**

A person who ceases to be an authorised officer must return the person's identity card to the chief executive as soon as practicable, but within 15 business days, after ceasing to be an authorised officer, unless the person has a reasonable excuse for not returning it.

Maximum penalty—10 penalty units.

**29 Production or display of identity card**

- (1) An authorised officer may exercise a power under this Act in relation to someone else only if the authorised officer—

- (a) first produces his or her identity card for the person's inspection; or
  - (b) has the identity card displayed so it is clearly visible to the person.
- (2) If it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

## **Subdivision 2      Power to enter places**

### **30      Power to enter places**

- (1) An authorised officer may enter a place if—
- (a) an occupier of the place consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the place is—
    - (i) the subject of—
      - (A) a development approval; or
      - (B) a lease, licence or permit under the *Land Act 1994*; or
      - (C) a compliance notice; or
      - (D) an enforcement notice under the Planning Act relating to the contravention of a vegetation clearing provision; and
    - (ii) entered during daylight hours; or
  - (d) the entry is for the purpose of giving an occupier a compliance notice requiring the occupier to immediately stop committing a vegetation clearing offence; or
  - (e) the entry is authorised by a warrant.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—



- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) Subsection (1)(ba) does not apply to a part of a place where a person resides.

### **Subdivision 3 Procedure for entry**

#### **31 Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 30(1)(a).
- (2) Before asking for the consent, the authorised officer must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this division; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.
- (6) A court must find the occupier of a place did not consent to an authorised officer entering the place under this division if—

- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry under section 30(1)(a); and
- (b) an acknowledgment mentioned in subsection (4) is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

### **32 Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **33 Issue of warrant**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of a vegetation clearing offence; and
  - (b) the evidence is at the place, or, within the next 7 days, may be at the place.
- (2) The warrant must state—
  - (a) that any authorised officer or stated authorised officer may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for the entry; and

- (ii) exercise the authorised officer's powers under this division; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.
- (3) The warrant may, as well as authorising entry of the place, authorise re-entry by stating it on the warrant.
- (4) A provision of this part applying to entry authorised under a warrant is taken also to apply to any re-entry authorised under the warrant.

### **34 Special warrants**

- (1) An authorised officer may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—
- (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the special warrant before the application is sworn.
- (4) After issuing the special warrant, the magistrate must promptly fax a copy (a *facsimile warrant*) to the authorised officer if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the authorised officer—
- (a) the magistrate must tell the authorised officer—

- (i) what the terms of the special warrant are; and
  - (ii) the date and time the special warrant is issued; and
- (b) the authorised officer must complete a form of warrant (a *warrant form*) and write on it—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the special warrant; and
  - (iii) the terms of the special warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.
- (7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the special warrant.
- (9) A court must find the exercise of the power by an authorised officer was not authorised by a special warrant if—
  - (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant mentioned in subsection (1); and
  - (b) the special warrant is not produced in evidence; and
  - (c) it is not proved by the person relying on the lawfulness of the entry that the authorised officer obtained the special warrant.

### **35 Warrants—procedure before entry**

- (1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this division.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the authorised officer's identity card or a copy of another document evidencing the authorised officer's appointment;
  - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 34(6), a copy of the facsimile warrant or warrant form;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) If there is no person present at the place who is an occupier of the place, or it is vacant land, it is sufficient compliance with subsection (2) for the officer, before entering the place, to do or make a reasonable attempt to do the following things—
- (a) contact an owner or occupier of the place;
  - (b) tell the owner or occupier the authorised officer is permitted by the warrant to enter the place;
  - (c) give the owner or occupier an opportunity to allow the authorised officer immediate entry to the place without using force.

## **Subdivision 4 Powers after entering a place**

### **36 General powers after entering places**

- (1) This section applies to an authorised officer who enters a place.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to

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the authorised officer only if the consent is given or the entry is otherwise authorised.

- (3) For monitoring or enforcing compliance with this Act or a vegetation clearing provision, the authorised officer may, subject to subsection (5)—
  - (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
  - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
  - (d) copy a document at the place; or
  - (e) take into or onto the place any person, equipment and materials the authorised officer reasonably requires for the exercise of a power under this division; or
  - (f) require an occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e); or
  - (g) require an occupier of a place, or a person at the place, to give the authorised officer information to help the authorised officer ascertain whether the Act or a vegetation clearing provision is being complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
- (5) If the authorised officer enters the place under section 30(1)(d) for the purpose of giving an occupier a compliance notice, the authorised officer may only—
  - (a) give the occupier the compliance notice; and
  - (b) take into or onto the place any person the authorised officer reasonably requires for giving the notice.

**37 Failure to help authorised officer**

- (1) A person required to give reasonable help under section 36(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If the requirement is to be complied with by an individual giving information, or producing a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement may tend to incriminate the individual.

**38 Failure to give information**

- (1) A person of whom a requirement is made under section 36(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement may tend to incriminate the individual.

**Subdivision 5 Power to seize evidence****39 Seizing evidence**

- (1) This section applies if, under this division, an authorised officer enters a place after obtaining the consent of an occupier or under a warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place if—
  - (a) the authorised officer reasonably believes the thing is evidence of a vegetation clearing offence; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

- (3) If the authorised officer enters the place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer may seize anything else at the place if the authorised officer reasonably believes—
  - (a) the thing is evidence of a vegetation clearing offence; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) Also, the authorised officer may seize a thing at the place if the authorised officer reasonably believes it has just been used in committing a vegetation clearing offence.

#### **40 Securing seized things**

Having seized a thing, an authorised officer may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

*Examples of restricting access to a thing—*

- 1 Sealing a thing and marking it to show access to it is restricted.
- 2 Sealing the entrance to a place where the thing is situated and marking it to show access to it is restricted.

- (c) if the thing is equipment—make it inoperable.

*Example of making equipment inoperable—*

Dismantling equipment or removing a component of equipment without which the equipment is not capable of being used.

#### **41 Tampering with seized things**

- (1) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing,



or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—100 penalty units.

- (2) If an authorised officer makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without an authorised officer's approval.

Maximum penalty—100 penalty units.

## **42 Powers to support seizure**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and  
(b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

- (2) The requirement—

- (a) must be made by notice in the approved form; or  
(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by a notice in the approved form as soon as practicable.

- (3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

## **43 Receipts for seized things**

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.

- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at

the place of seizure in a conspicuous position and in a reasonably secure way.

- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable, or would be unreasonable, to give the receipt, having regard to the thing's nature, condition and value.

#### **44 Forfeiture by authorised officer**

- (1) A thing that has been seized under this subdivision is forfeited to the State if the authorised officer who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

#### **45 Forfeiture on conviction**

- (1) On conviction of a person for a vegetation clearing offence, the court may order the forfeiture to the State of anything owned by the person and seized under this subdivision.

- (2) The court may make any order to enforce the forfeiture it considers appropriate.
- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

#### **46 Dealing with forfeited things**

- (1) On forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

#### **47 Return of seized things**

- (1) If a seized thing is not forfeited, the authorised officer must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for a vegetation clearing offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing is forfeited, the authorised officer must immediately return a thing seized to its owner if the authorised officer stops being satisfied—
  - (a) its continued retention as evidence is necessary; or
  - (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, the offence.

#### **48 Access to seized things**

- (1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable, or would be unreasonable, to allow the inspection or copying.

## **Subdivision 6      Power to obtain information**

### **49      Power to require name and address**

- (1) This section applies if—
  - (a) an authorised officer finds a person committing a vegetation clearing offence; or
  - (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the authorised officer to reasonably suspect the person has just committed a vegetation clearing offence.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address to be false.

### **50      Failure to give name or address**

- (1) A person of whom a requirement is made under section 49 must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
  - (a) the person was required to state the person's name and residential address by an authorised officer who suspected the person had committed a vegetation clearing offence; and
  - (b) the person is not proved to have committed the offence.

**51 Power to require information**

- (1) This section applies if an authorised officer reasonably believes—
  - (a) a vegetation clearing offence has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised officer may, by notice given to the person, require the person to give information about the offence to the authorised officer at a stated reasonable place and at a stated reasonable time.
- (3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.
- (4) It is not a reasonable excuse for a person to fail to give the information because giving the information might tend to incriminate the person.
- (5) However, if the person is an individual, evidence of, or evidence directly or indirectly derived from, the information that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information.
- (6) If a person is convicted of an offence against subsection (3), the court may, as well as imposing a penalty for the offence, order the person to comply with the requirement.

**52 Power to require production of documents**

- (1) An authorised officer may require a person to make available for inspection by an authorised officer, or produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer, a document relating to the clearing of vegetation.
- (2) The authorised officer may keep the document to copy it.
- (3) If the authorised officer copies a document mentioned in subsection (1), or an entry in the document, the authorised officer may require the person responsible for keeping the

document to certify the copy as a true copy of the document or entry.

- (4) The authorised officer must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the authorised officer may keep the document until the person complies with the requirement.
- (6) A requirement under subsection (1) is a *document production requirement*.

### **53 Failure to certify copy of document**

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

### **54 Failure to produce document**

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person not to comply with a document production requirement that complying with the requirement might tend to incriminate the person.
- (3) However, if the person is an individual, evidence of, or evidence directly or indirectly derived from, the document that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the document.
- (4) If a person is convicted of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the requirement.

## **Subdivision 7      Power to require compliance**

### **55      Compliance notice**

- (1) This section applies if the chief executive or an authorised officer (the *official*) reasonably believes a person—
  - (a) is committing a vegetation clearing offence; or
  - (b) has committed a vegetation clearing offence.
- (2) The official may give the person a notice (a *compliance notice*) requiring the person to—
  - (a) stop committing the offence; or
  - (b) stop committing the offence and rectify the matter; or
  - (c) rectify the matter.
- (3) The compliance notice must state—
  - (a) that the official believes the person—
    - (i) is committing a vegetation clearing offence; or
    - (ii) has committed a vegetation clearing offence; and
  - (b) the vegetation clearing offence the official believes is being, or has been, committed; and
  - (c) briefly, how it is believed the offence is being, or has been committed; and
  - (d) if the notice requires the person to rectify a matter—
    - (i) the matter the official believes is reasonably capable of being rectified; and
    - (ii) the reasonable steps the person must take to rectify the matter; and
    - (iii) the stated reasonable period in which the person must take the steps.

- (4) The person must comply with the compliance notice, unless the person has a reasonable excuse.

Maximum penalty—1665 penalty units.

- (5) If the person does an act, or makes an omission, in contravention of the compliance notice, the official may use

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reasonable force and take any other reasonable action to stop the contravention.

- (6) Any reasonable cost or expense incurred by the official in doing anything under subsection (5) may be recovered as a debt owing to the State by the person.
- (7) For this section, if the person has an interest in the land the subject of the compliance notice and all or part of the interest, to the extent it is the subject of the compliance notice, is transferred, in any way, to another person (the *transferee*), on the transfer—
  - (a) a reference in the compliance notice to the person is taken to be a reference to the transferee; and
  - (b) the compliance notice is taken to have been given to the transferee on the transfer of the interest; and
  - (c) any outstanding liability, other than criminal liability, of the person becomes a liability of the transferee.
- (8) If the compliance notice requires a matter to be rectified by a stated day or within a stated period and it is not reasonably practical for the transferee to comply with the notice by the stated day or within the stated period, the transferee may ask the chief executive to extend the time for compliance with the notice.

*Example for subsection (8)—*

A is given a compliance notice on 1 January 2004 requiring A to rectify a matter by 30 June 2004. On 1 July 2004, A transfers the land the subject of the compliance notice to B.

- (9) If the chief executive, by written notice given to the transferee, extends the time for compliance with the compliance notice, the compliance notice is taken to require the matter to be rectified within the extended time for compliance stated in the chief executive's written notice.
- (10) To remove any doubt, it is declared that on the transfer of the interest, the person to whom the compliance notice was given under subsection (2) is not criminally liable for any contravention of the compliance notice that happens on or after the transfer of the interest.



- (11) Subsections (7) to (10) have effect in relation to each successor in title to the transferee's interest in the same way the subsections had effect in relation to the transferee.

### **55A Record of compliance notice in land registry**

- (1) This section applies if the compliance notice requires the person to rectify a matter.
- (2) As soon as practicable after the compliance notice is given, the chief executive must give the registrar of titles written notice of the giving of the compliance notice.
- (3) The registrar must keep records showing the compliance notice has been given.
- (4) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land the subject of the compliance notice will show the notice has been given.
- (5) As soon as practicable after the compliance notice has been complied with, withdrawn or in any other way terminated, the chief executive must give written notice of the fact to the registrar.
- (6) As soon as practicable after receiving a notice under subsection (5), the registrar must remove the particulars of the compliance notice from the registrar's records.

## **Division 2 Other enforcement provisions**

### **Subdivision 1 Obtaining criminal history reports**

#### **55B Purpose of sdiv 1**

The purpose of this subdivision is to help an authorised officer to decide whether the authorised officer's unaccompanied entry of a place under division 1 would create an unacceptable level of risk to the authorised officer's safety.

**55C Chief executive's power to obtain criminal history report**

- (1) The chief executive may ask the commissioner of the police service for a written report about the criminal history of a person if the authorised officer reasonably suspects the person may be present at the place when the authorised officer enters the place under division 1.
- (2) The commissioner must give the report to the chief executive.
- (3) However, the report is required to contain only criminal history that is in the commissioner's possession or to which the commissioner has access.
- (4) The chief executive must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence against a person.
- (5) The chief executive may give the authorised officer information in the report about the offences identified under subsection (4).

**55D Criminal history is confidential document**

- (1) A person must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 55C.  
Maximum penalty—100 penalty units.
- (2) However, the person does not contravene subsection (1) if—
  - (a) the disclosure is for the purpose of the other person performing a function under or in relation to this Act; or
  - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive or an authorised officer to whom the report or written information in the report is provided must destroy the report or information as soon as practicable after the authorised officer considers the risk mentioned in section 55B.

## Subdivision 2      **Notice of damage and compensation**

### 56      **Notice of damage**

- (1) This section applies if—
  - (a) an authorised officer damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction or authority of an authorised officer damages property.
- (2) The authorised officer must immediately give notice of particulars of the damage to the person who appears to the authorised officer to be the owner of the property.
- (3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's, or other person's, control, the authorised officer may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the authorised officer reasonably believes is trivial.
- (6) In this section—

*owner*, of property, includes the person in possession or control of it.

### 57      **Compensation**

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under division 1, subdivision 2, 4 or 5.<sup>8</sup>

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8 Division 1, subdivision 2 (Power to enter places), 4 (Powers after entering a place) or 5 (Power to seize evidence)

- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for a vegetation clearing offence brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

## **Division 3            Offences**

### **58        False or misleading statements**

- (1) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.  
Maximum penalty—50 penalty units.
- (2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, false or misleading.

### **59        False or misleading documents**

- (1) A person must not give an authorised officer a document containing information that the person knows is false or misleading in a material particular.  
Maximum penalty—50 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and

- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (3) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, false or misleading.

### **59A Impersonation of authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—50 penalty units.

### **60 Obstructing an authorised officer**

- (1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—
  - (a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and
  - (b) the authorised officer considers the person's conduct an obstruction.
- (3) In this section—

***obstruct*** includes assault, hinder and threaten, and attempt to obstruct.

### **60A Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) In this section—

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

## **60B Guide for deciding penalty for vegetation clearing offence**

- (1) The purpose of this section is to provide a guide for a court in deciding the penalty to impose on a person for a vegetation clearing offence.
- (2) Without affecting the maximum penalty the court may impose under the Planning Act for the offence, the court may take the following levels of penalty to be appropriate in the absence of circumstances of mitigation—
  - (a) for each hectare of vegetation cleared unlawfully in a remnant endangered regional ecosystem or declared area—30 penalty units;
  - (b) for each hectare of vegetation cleared unlawfully in a remnant of concern regional ecosystem—24 penalty units;
  - (c) for each hectare of vegetation cleared unlawfully in a remnant not of concern regional ecosystem—18 penalty units.

(3) This section does not limit the matters to which the court may have regard in deciding the penalty.

(4) In this section—

*declared area* means an area of high nature conservation value or an area vulnerable to land degradation.

## 61 Ability to prosecute under other Acts

Nothing in this Act prevents a person from being prosecuted for any of the following offences in relation to the clearing of vegetation—

- (a) a development offence under the Planning Act;
- (b) an offence against a following provision of the *Environmental Protection Act 1994*—
  - section 437(1)
  - section 437(2)
  - section 438(1)
  - section 438(2).<sup>9</sup>

## Part 4 Appeals and legal proceedings

### Division 1 Appeals

#### 62 Who may appeal

(1) A person who has been given a compliance notice may appeal to the Magistrates Court nearest the place where the person

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<sup>9</sup> Under the *Environmental Protection Act 1994*, the maximum penalties are—

- for section 437(1)—4165 penalty units or 5 years imprisonment
- for section 437(2)—1665 penalty units
- for section 438(1)—1665 penalty units or 2 years imprisonment
- for section 438(2)—835 penalty units.

resides or carries on business against the decision to give the notice.

- (2) The appeal must be made within 20 business days after the day the compliance notice is issued.

### **63 Stay of operation of decision**

- (1) The court may grant a stay of the operation of the decision to secure the effectiveness of the appeal.
- (2) The stay—
  - (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of the stay must not extend past the time when the court decides the appeal.
- (4) The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

## **Division 2 Evidence**

### **64 Application of div 2**

This division applies to a proceeding under this Act.

### **65 Appointments and authority**

It is not necessary to prove—

- (a) the chief executive's appointment; or
- (b) an authorised officer's appointment; or
- (c) the authority of the chief executive or an authorised officer to do anything under this Act.



**66 Signatures**

A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

**66A Instruments, equipment and installations**

- (1) An instrument, equipment or installation prescribed under a regulation that is used in accordance with any conditions prescribed under a regulation is taken, in the absence of evidence to the contrary—
  - (a) to be accurate and precise; and
  - (b) to have been used by an appropriately qualified person.
- (2) A party to the proceeding intending to challenge a matter mentioned in subsection (1)(a) or (b), must give at least 28 day's notice of the party's intention to adduce relevant evidence.

**66B Certificate or report about remotely sensed image**

- (1) A signature on a certificate or report purporting to be the signature of an appropriately qualified person who gave the certificate or report is evidence of the signature it purports to be.
- (2) A statement of any of the following matters in the certificate or report is evidence of the matters stated in the absence of evidence to the contrary—
  - (a) the person's qualifications;
  - (b) a stated document is a remotely sensed image, or a copy of a remotely sensed image, of a stated area;
  - (c) the date on which a stated remotely sensed image was produced;
  - (d) the person's stated conclusions drawn from a stated remotely sensed image;
  - (e) the location of a stated area;
  - (f) whether vegetation in a stated area has been cleared;

- (g) whether a stated area is or is likely to be an area of remnant vegetation.
- (3) A party to the proceeding intending to challenge the statement must give at least 28 day's notice of the party's intention to adduce relevant evidence.

## **67 Evidentiary aids**

- (1) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
  - (a) a stated document is one of the following things made, given, or issued under this Act or the Planning Act—
    - (i) an appointment;
    - (ii) a decision;
    - (iii) a compliance notice;
    - (iv) a development approval;
    - (v) a property vegetation management plan;
    - (vi) an applicable code;
    - (vii) a regional ecosystem map;
    - (viii) a remnant map;
    - (ix) a property map of assessable vegetation;
  - (b) a stated document is a copy of a thing mentioned in paragraph (a);
  - (c) on a stated day, or during a stated period, a person's appointment as an authorised officer was, or was not, in force;
  - (d) on a stated day, a stated person was given a compliance notice under this Act;
  - (e) on a stated day, a stated requirement was made of a stated person.
- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of the matter stated.

**67A Responsibility for unauthorised clearing of vegetation**

- (1) The clearing of vegetation on land in contravention of a vegetation clearing provision is taken to have been done by an occupier of the land in the absence of evidence to the contrary.
- (2) In this section—  
*occupier*, of land, includes—
  - (a) for freehold land—the registered owner; or
  - (b) for a lease, license or permit under the *Land Act 1994*—the lessee, licensee or permittee; or
  - (c) for indigenous land—the holder of title to the land; or
  - (d) for any tenure under any other Act—the holder of the tenure.

**Division 2A Defences****67B Defence in proceeding for vegetation clearing offence**

For a proceeding against a person for a vegetation clearing offence, the Criminal Code, section 24,<sup>10</sup> does not apply.

**Division 3 Proceedings****68 Summary proceedings for offences**

- (1) A proceeding for an offence against this Act, or for a vegetation clearing offence, must be taken in a summary way under the *Justices Act 1886*.
- (2) Subject to subsection (4), a proceeding for an offence against this Act must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 5 years after the offence is committed.

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<sup>10</sup> Criminal Code, section 24 (Mistake of fact)

- (3) Despite the Planning Act, and subject to subsection (4), a proceeding for a vegetation clearing offence must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 5 years after the offence is committed.
- (4) If a Magistrates Court considers it just and equitable in the circumstances, the court may, at any time, extend a time set under this section.
- (5) Subsection (4)—
  - (a) applies to an offence regardless of whether it was committed before or after the commencement of the subsection; and
  - (b) does not apply to an offence if the time for starting a proceeding for the offence had expired before the commencement of the subsection.
- (6) A vegetation clearing offence does not come to the complainant's knowledge merely because the complainant receives a remotely sensed image that may provide evidence of the offence.

**68A Particulars to be stated for complaint for vegetation clearing offence**

- (1) This section applies to a complaint for a proceeding for a vegetation clearing offence.
- (2) It is enough, for identifying the vegetation cleared and the place where the vegetation was cleared, for the particulars for the complaint to state the following—
  - (a) the number of hectares of vegetation that have been cleared unlawfully;
  - (b) the location where the vegetation was cleared;
  - (c) whether the vegetation was in a regional ecosystem and the status of the ecosystem;

*Example of status of a regional ecosystem—*

remnant endangered regional ecosystem

- (d) whether the vegetation was in—
  - (i) an area of high nature conservation value; or
  - (ii) an area vulnerable to land degradation.

### **68B Representation of departmental officer in court**

- (1) Any departmental officer may appear for and represent another departmental officer in a Magistrates Court in a proceeding brought by the other officer under this Act or for a vegetation clearing offence.
- (2) In this section—  
*departmental officer* means a public service officer employed in the department.

### **68C Recovery of costs of investigation**

- (1) If a court convicts a person of an offence against this Act or a vegetation clearing offence, the court may order the person to pay the department's reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence.  
*Examples of reasonable costs—*
  - 1 obtaining and analysing remotely sensed images
  - 2 costs of travelling for departmental officers and experts
- (2) Subsection (1) does not limit the orders for costs the court may make.

## **Part 5 Miscellaneous**

### **68D Approved forms**

The chief executive may approve forms for use under this Act.

**69 Advisory committees**

- (1) The Minister may establish advisory committees to advise the Minister about vegetation management.
- (2) The Minister may decide—
  - (a) the functions or terms of reference of a committee; and
  - (b) the membership of a committee; and
  - (c) how a committee is to operate.
- (3) A committee member is entitled to be paid the fees and allowances decided by the Governor in Council.

**70 Regional vegetation management committees**

- (1) The Minister may establish regional vegetation management committees to advise the Minister about vegetation management.
- (2) The Minister may decide—
  - (a) the functions or terms of reference of a committee; and
  - (b) the membership of a committee; and
  - (c) how a committee is to operate.
- (3) A committee member is entitled to be paid the fees and allowances decided by the Governor in Council.

**70A Application of development approvals and exemptions for Forestry Act**

- (1) If a development approval is given in relation to a forest product on forestry land, the approval is taken to be, for the *Forestry Act 1959*, section 53, a permit, lease, licence, agreement or contract required under that section.
- (2) If a development approval is given in relation to a forest product on forestry land, the approval is taken to be, for the *Forestry Act 1959*, section 54, the authority of another Act.
- (3) If the clearing of remnant vegetation on forestry land does not involve the removal of a species prescribed under a regulation and the clearing falls within 1 or more of the exemptions listed in the Planning Act schedule 8, part 1, table 4, items 1A

to 1G, the clearing is taken to be authorised under the *Forestry Act 1959*, section 53 or 54.

- (4) If the clearing of vegetation, that is not remnant vegetation, on forestry land falls within 1 or more of the exemptions listed in the Planning Act schedule 8, part 1, table 4, items 1A to 1G, the clearing is taken to be authorised under the *Forestry Act 1959*, section 53 or 54.
- (5) To remove doubt, it is declared that subsections (3) and (4) only authorise the use of a forest product cleared if the clearing is—
  - (a) on land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes; and
  - (b) to source construction timber to repair existing infrastructure on the land, if—
    - (i) the infrastructure is in need of immediate repair; and
    - (ii) the clearing does not cause land degradation; and
    - (iii) restoration of a similar type, and to the extent of the removed trees, is ensured.
- (6) In this section—

*forestry land* means land to which the *Forestry Act 1959*, section 53 or 54 applies.

## **70B Record of development approvals and property maps of assessable vegetation in land registry**

- (1) This section applies if—
  - (a) a development approval is issued; or
  - (b) a property map of assessable vegetation is made.
- (2) As soon as practicable after the approval is issued or the map is made, the chief executive must give the registrar of titles written notice of the approval or the map.
- (3) The registrar must keep records showing the approval has been issued or the map has been made.
- (4) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title

to the land the subject of the approval or map will show the approval has been issued or the map has been made.

- (5) If the approval is cancelled under the Planning Act, section 3.5.26, or the map is replaced or revoked, the chief executive must give written notice of the fact to the registrar.
- (6) As soon as practicable after receiving the notice, the registrar must adjust or remove the particulars of the approval or map from the registrar's records.

## **71 Protecting officials from civil liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) the Minister; or
  - (b) the chief executive; or
  - (c) an authorised officer; or
  - (d) a person acting under the direction of an authorised officer.

## **72 Regulation-making power**

The Governor in Council may make regulations under this Act.



## **Part 6                      Transitional provisions**

### **Division 1                      Transitional provisions for Act No. 90 of 1999**

#### **73                      Existing development approvals and applications for development approvals under the Planning Act**

- (1) Subsection (2) applies to a development approval under the Planning Act involving the clearing of vegetation in force immediately before the commencement of this section.
- (2) The approval has effect as if this Act had not been enacted.
- (3) Subsection (4) applies to a development application under the Planning Act involving the clearing of vegetation made to the assessment manager that—
  - (a) has not been decided before the commencement of this section; or
  - (b) has been decided, but is the subject of an appeal under the Planning Act and the appeal has not been decided before the commencement of this section.
- (4) The application may be decided as if this Act had not been enacted and, if a development approval is given for the application, the approval has effect as if this Act had not been enacted.

#### **74                      Existing development control plans and special facilities zones**

- (1) Nothing in this Act affects the clearing of vegetation—
  - (a) under a development control plan mentioned in the Planning Act, section 6.1.45A;<sup>11</sup> or
  - (b) in an area designated, immediately before the commencement of this section, as a special facilities zone, or like zone, under a planning scheme under the Planning Act.

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11 Planning Act, section 6.1.45A (Development control plans under repealed Act)

- (2) Subsection (1)(b) applies to an area only if—
- (a) the area continues to be designated as a special facilities zone, or like zone, under the scheme; or
  - (b) the current planning scheme for the area no longer designates the area as a special facilities zone, or like zone, but there is, for the area and in relation to the zone—
    - (i) a development permit that—
      - (A) was given before the designation ceased; and
      - (B) has not lapsed; and
      - (C) is for building work or operational work under the Planning Act; or
    - (ii) an acknowledgment notice mentioned in the Planning Act, section 3.2.5(1); or
    - (iii) a development permit granted for a development application (superseded planning scheme) under the Planning Act.
- (3) However, subsection (1)(b) also applies to an area if—
- (a) the current planning scheme for the area no longer designates the area as a special facilities zone, or like zone, but the development rights conferred by the earlier designation have been preserved under the scheme; and
  - (b) the clearing of vegetation is in relation to the development rights.

## **Division 2                      Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2004**

### **75            What may be approved as codes**

- (1) Subsection (2) applies if before the commencement of this section—

- (a) the Minister prepared a regional vegetation management plan under section 12, as in force before the commencement; and
  - (b) the Minister consulted on the plan under section 13, as in force before the commencement; and
  - (c) part of the plan was identified as a code for the clearing of vegetation; and
  - (d) the plan had not been made under section 15, as in force before the commencement.
- (2) The Minister may approve the part of the plan identified as a code for the clearing of vegetation as a regional vegetation management code.
  - (3) Before approving the part under subsection (2), the Minister may amend the part in any way the Minister could have amended the part under section 15, as in force immediately before the commencement.
  - (4) The Minister may approve a regional vegetation management code for Cape York Peninsular based on the local guideline for Cape York Peninsular previously approved by the Minister under the *Land Act 1994*, section 272.

## **76 Existing applications (pre VACA) and development approvals**

- (1) Despite the Planning Act—
  - (a) before an existing application (pre VACA)<sup>12</sup> is decided, the application can not be changed in any way that increases the size of the area proposed to be cleared; and
  - (b) from the day the application is decided until the day the development approval for the application has effect,<sup>13</sup> the application can not be changed in any way that—
    - (i) increases the size of the area proposed to be cleared; or

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12 References to VACA relate to the *Vegetation (Application for Clearing) Act 2003*, repealed by Act No. 1 of 2004.

13 See the Planning Act, section 3.5.19 (When approval takes effect).

*Vegetation Management Act 1999*

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- (ii) changes the location of the area proposed to be cleared; and
- (c) from the day the development approval has effect, the approval can not be changed in any way that—
  - (i) increases the size of the area approved to be cleared; or
  - (ii) changes the location of the area approved to be cleared; or
  - (iii) extends the currency period for the approval.
- (2) Subsection (1)(b)(ii) does not apply to an application decided before the commencement of this section if an appeal against the decision was started before the commencement.
- (3) Subsection (1)(c) applies to a development approval even if the approval had effect before the commencement of this section.
- (4) Despite the Planning Act, section 3.5.21,<sup>14</sup> the currency period for a development approval for an existing application (pre VACA) must end no later than 31 December 2006.
- (5) In this section—

***existing application (pre VACA)*** means a development application, as defined under the Planning Act, involving the clearing of vegetation and made before midday 16 May 2003.

***location***, of an area proposed to be cleared in an existing application (pre VACA), means—

- (a) the boundary delineating the area in the property vegetation management plan for the application; or
- (b) if the application was amended before it was decided—the boundary of the area described in the amendment.

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<sup>14</sup> Planning Act, section 3.5.21 (When approval lapses)

**77 Existing applications (pre VACA) and permits under the Land Act 1994**

- (1) An existing application (pre VACA) must be dealt with under the *Land Act 1994*, as in force on 20 May 2004.
- (2) Despite subsection (1)—
  - (a) before an existing application (pre VACA) is decided, the application can not be changed in any way that increases the size of the area proposed to be cleared; and
  - (b) from the day the application is decided until the end of the appeal period, the application can not be changed in any way that—
    - (i) increases the size of the area proposed to be cleared; or
    - (ii) changes the location of the area proposed to be cleared; and
  - (c) from the end of the appeal period, the permit can not be changed in any way that—
    - (i) increases the size of the area approved to be cleared; or
    - (ii) changes the location of the area approved to be cleared; or
    - (iii) extends the term of the permit.
- (3) Subsection (2)(b)(ii) does not apply to an application decided before the commencement of this section if an appeal against the decision was started before the commencement.
- (4) Subsection (2)(c) applies to a tree clearing permit even if the appeal period, in relation to the permit, ended before the commencement of this section.
- (5) Despite the *Land Act 1994*, section 264, the term of a tree clearing permit for an existing application (pre VACA) must end no later than 31 December 2006.
- (6) In this section—

***end of the appeal period*** means—

  - (a) for an application for an internal review of a decision under the *Land Act 1994*, section 263—the day the

Minister makes a review decision under the *Land Act 1994*, section 426; and

- (b) for an appeal against a review decision—the day the court decides the appeal under the *Land Act 1994*, section 429; and
- (c) otherwise—42 days after notice of the decision is given to the applicant.

**existing application (pre VACA)** means an application for a tree clearing permit, made before midday 16 May 2003 under the *Land Act 1994*, chapter 5, part 6, as in force at that time.

**location**, of an area proposed to be cleared in an existing application (pre VACA), means—

- (a) the boundary delineating the area in—
  - (i) the property vegetation management plan for the application; or
  - (ii) the map requested by the chief executive under the *Land Act 1994*, section 260(2)(b) for the application; or
- (b) if the application was amended before it was decided—the boundary of the area described in the amendment.

## **78 Existing applications (post VACA) under the Land Act 1994**

- (1) An existing application (post VACA) must be dealt with under the *Land Act 1994*, as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.
- (2) Despite subsection (1), the chief executive must refuse to issue the tree clearing permit, without considering the issues stated in the *Land Act 1994*, section 262, unless the applicant satisfies the chief executive—
  - (a) the proposed tree clearing is necessary for 1 or more of the following—

- 
- (i) a project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26;<sup>15</sup>
  - (ii) a project that is of major significance because of its regional, State or national benefit;
  - (iii) supplying fodder for stock in a drought declared area;
  - (iv) weed control;
  - (v) ensuring public safety;
  - (vi) establishing a necessary fence, road or other built infrastructure if there is no suitable alternative site for the fence, road or infrastructure; or
- (b) the area proposed to be cleared is an area of regrowth vegetation.
- (3) In this section—

***existing application (post VACA)*** means an application for a tree clearing permit made at or after midday 16 May 2003 under the *Land Act 1994*, chapter 5, part 6, as in force at that time.

***tree*** has the same meaning as in the *Forestry Act 1959*.

## 79 When the Land Act 1994 continues to apply

- (1) The *Land Act 1994*, as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3, continues to apply for tree clearing permits issued under the *Land Act 1994* or as a result of an application dealt with under section 77 or 78.
- (2) The *Land Act 1994*, as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3, continues to apply for monitoring, enforcing compliance with or the prosecution of an offence against a tree clearing provision

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<sup>15</sup> *State Development and Public Works Organisation Act 1971*, section 26 (Declaration of significant project)

under the *Land Act 1994*, as in force immediately before the commencement.

### **80 Modifying effect of Planning Act for owner's consent**

- (1) This section applies to a vegetation clearing application, but only until the commencement of the *Integrated Planning and Other Legislation Amendment Act 2003*, section 49.
- (2) For applying the Planning Act, section 3.2.1(3)(a)(ii), the owner of the land, the subject of the application, is taken to be the owner of the land under this Act.

## **Division 3 Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2005**

### **81 Effect on existing riverine protection permits**

- (1) This section applies to the clearing of vegetation carried out—
  - (a) after the commencement of this section; and
  - (b) under the authority of a permit—
    - (i) issued under the *Water Act 2000*, section 269; and
    - (ii) in force immediately before the commencement of this section; and
  - (c) in a watercourse or lake; and
  - (d) on land other than freehold land.
- (2) The clearing is taken to be lawfully carried out under this Act and the Planning Act even if there is, for the clearing, no development permit given for operational work under the Planning Act, schedule 8, part 1, table 4, items 1A to 1G.

### **82 Validation of particular clearing**

- (1) This section applies to the clearing of vegetation carried out—
  - (a) after 20 May 2004 but before the commencement of this section; and



- (b) to the extent necessary for an activity approved under another Act; and
  - (c) in a watercourse or lake; and
  - (d) on land other than freehold land.
- (2) The clearing is taken to have been lawfully carried out under this Act and the Planning Act even if there was, for the clearing, no development permit given for operational work under the Planning Act, schedule 8, part 1, table 4, items 1A to 1G.
- (3) In this section—
- activity* does not include an activity relating to a development approval under the Planning Act given for a material change of use of premises or the reconfiguration of a lot.

### **83 Validation of regional vegetation management codes**

- (1) Each relevant code—
- (a) is valid, and has effect, as a regional vegetation management code under this Act; and
  - (b) is taken, on and from its approval or purported approval under section 75(2), always to have been valid, and always to have had effect, as a regional vegetation management code under this Act.
- (2) Without limiting subsection (1), the subsection applies—
- (a) despite the following provisions (including any requirements included in the following provisions)—
    - (i) part 2, division 3 as in force before 21 May 2004;
    - (ii) part 2, division 3 as in force on or after 21 May 2004;
    - (iii) section 75; and
  - (b) even if a relevant instrument for the relevant code was certified, or was prepared and certified, or otherwise came into existence, after the relevant code was approved, or purportedly approved, under section 75(2).

(3) In this section—

***relevant code*** means a document that the Minister, on or after 21 May 2004 but before 26 June 2004, approved under section 75(2), or purportedly approved under section 75(2), as a regional vegetation management code.

***relevant instrument***, for a relevant code, means a map, plan or other document certified, prepared and certified, or otherwise coming into existence, for the purposes of a relevant provision of the relevant code.

***relevant provision***, of a relevant code, means a provision of the relevant code that incorporates by reference, whether in general or specific terms, or otherwise provides for or refers to, a map, plan or other document.

## Schedule                      Dictionary

### section 5

***applicable code*** means an applicable code as defined under the Planning Act.

***approved form*** means a form approved by the chief executive under section 68D.

***area of high nature conservation value*** means an area declared to be an area of high nature conservation value under the following—

- (a) a regional vegetation management plan;
- (b) a declaration made by the Governor in Council under section 17;
- (c) an interim declaration made by the Minister under section 18.

***area vulnerable to land degradation*** means an area declared to be an area vulnerable to land degradation under the following—

- (a) a regional vegetation management plan;
- (b) a declaration made by the Governor in Council under section 17;
- (c) an interim declaration made by the Minister under section 18.

***assessment manager*** means an assessment manager as defined under the Planning Act.

***ballot application period*** means the period notified by the Minister in the gazette as the ballot application period.

***bed and banks***—

- 1 *Bed and banks*, of a watercourse or lake, means land over which the water of the watercourse or lake normally flows or that is normally covered by the water, whether permanently or intermittently.

## Schedule (continued)

- 2 *Bed and banks*, does not include land adjoining or adjacent to the bed or banks that is from time to time covered by floodwater.

***biodiversity*** means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, and includes—

- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

***bioregion*** means a bioregion shown on map number V0001 held by the department.

***broadscale application*** means a vegetation clearing application that—

- (a) does not include any other development; and
- (b) is not for a relevant purpose under section 22A.

***category 1 area*** means an area that—

- (a) is an endangered regional ecosystem; or
- (b) was an endangered regional ecosystem when the chief executive was notified of a native forest practice in the area or when an approval was given for an ongoing application for the area; or
- (c) contains vegetation that, at the time of the notification or approval, was a not of concern regional ecosystem or an of concern regional ecosystem, but would, at the time a property map of assessable vegetation for the area is replaced, be considered an endangered regional ecosystem; or
- (d) is a declared area; or
- (e) has been unlawfully cleared.

***category 2 area*** means an area that—

- (a) is an of concern regional ecosystem; or
- (b) was an of concern regional ecosystem when the chief executive was notified of a native forest practice in the

## Schedule (continued)

area or when an approval was given for an ongoing application for the area; or

- (c) contains vegetation that, at the time of the notification or approval, was a not of concern regional ecosystem or an endangered regional ecosystem, but would, at the time a property map of assessable vegetation for the area is replaced, be considered an of concern regional ecosystem.

**category 3 area** means an area that—

- (a) is a not of concern regional ecosystem; or
- (b) was a not of concern regional ecosystem when the chief executive was notified of a native forest practice in the area or when an approval was given for an ongoing application for the area; or
- (c) contains vegetation that, at the time of the notification or approval, was an of concern regional ecosystem or an endangered regional ecosystem, but would, at the time a property map of assessable vegetation for the area is replaced, be considered a not of concern regional ecosystem.

**category 4 area** means an area that—

- (a) is a lease issued under the *Land Act 1994* for agriculture or grazing purposes; and
- (b) was cleared of vegetation before 31 December 1989; and
- (c) does not contain remnant vegetation at the time the property map of assessable vegetation for the area is made or replaced.

**category X area** means an area—

- (a) in which clearing has occurred; and
- (b) that is not a category 1 area, category 2 area, category 3 area or category 4 area on a property map of assessable vegetation made under section 20B; and

## Schedule (continued)

- (c) that at the time of the making, under section 20B or 20C, or the replacement, under section 20D, of the property map of assessable vegetation applying to the area—
- (i) does not contain remnant vegetation; or
  - (ii) is not cleared due to burning, flooding or natural causes and the vegetation in the area forms a predominant canopy that—
    - (A) has cover that averages less than 50% of the undisturbed predominant canopy; or
    - (B) has height that averages less than 70% of the vegetation's undisturbed height; or
    - (C) is not composed of species characteristic of the vegetation's undisturbed predominant canopy.

***centre of endemism*** means an area containing concentrations of species that are largely restricted to the area.

***clear***, for vegetation—

- (a) means remove, cut down, ringbark, push over, poison or destroy in any way including by burning, flooding or draining; but
- (b) does not include destroying standing vegetation by stock, or lopping a tree.

***clearing allocation***, for a region, means the total area of the region for which broadscale applications may be approved.

***commercial timber*** includes timber of a species prescribed under a regulation for section 70A(3).

***compliance notice*** see section 55.

***concurrency agency*** means a concurrency agency as defined under the Planning Act.

***criminal history***, of a person, means the convictions, including spent convictions, recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this Act.

## Schedule (continued)

***currency period*** means the currency period as worked out under the Planning Act, section 3.5.21.<sup>16</sup>

***declared area*** means an area declared under section 17 or 18.

***declared area code*** see section 17(2).

***declared pest*** means a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002*.

***deemed refusal*** means a deemed refusal as defined under the Planning Act.

***development*** means development as defined under the Planning Act.

***development approval*** means a development approval under the Planning Act for a vegetation clearing application.

***document certification requirement*** see section 52(5) and (6).

***encroachment*** means a woody species that has invaded an area of a grassland regional ecosystem to an extent the area is no longer consistent with the description of the regional ecosystem.

***endangered regional ecosystem*** means a regional ecosystem that is prescribed under a regulation and has either—

- (a) less than 10% of its pre-clearing extent remaining; or
- (b) 10% to 30% of its pre-clearing extent remaining and the remnant vegetation remaining is less than 10000ha.

***equipment*** includes machinery.

***forest practice***—

- 1 *Forest practice* means planting trees, or managing, felling and removing standing trees, on freehold land, for an ongoing forestry business in a—
  - (a) plantation; or
  - (b) native forest, if, in the native forest—

<sup>16</sup> Planning Act, section 3.5.21 (When approval lapses)

## Schedule (continued)

- (i) all the activities are conducted in a way that is consistent with a code applying to a native forest practice; or
  - (ii) if there is no code, the all activities are conducted in a way that—
    - (A) ensures restoration of a similar type, and to the extent, of the removed trees; and
    - (B) ensures trees are only felled for the purpose of being sawn into timber or processed into another value added product (other than woodchips for an export market); and
    - (C) does not cause land degradation.
- 2 The term includes carrying out limited associated work, including, for example, drainage, road construction and maintenance, and other necessary engineering works.
- 3 The term does not include clearing vegetation for the initial establishment of a plantation.

***freehold land*** includes land in a freeholding lease under the *Land Act 1994*.

***grassland regional ecosystem*** means a regional ecosystem prescribed under a regulation as a grassland regional ecosystem.

***IDAS*** means the system detailed in the Planning Act, chapter 3, for integrating State and local government assessment and approval processes for development.

***indigenous land*** means, for regulating the clearing of vegetation, land held under a following Act by, or on behalf of or for the benefit of, Aboriginal or Torres Strait Islander inhabitants or purposes—

- (a) the *Local Government (Aboriginal Lands) Act 1978*;
- (b) the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;
- (c) the *Aboriginal Land Act 1991*;



## Schedule (continued)

- (d) the *Torres Strait Islander Land Act 1991*;
- (e) the *Land Act 1994*.

**information request** means an information request as defined under the Planning Act.

**lake** see the *Water Act 2000*.

**land degradation** includes the following—

- (a) soil erosion;
- (b) rising water tables;
- (c) the expression of salinity;
- (d) mass movement by gravity of soil or rock;
- (e) stream bank instability;
- (f) a process that results in declining water quality.

**lopping**, a tree, means cutting or pruning its branches, but does not include—

- (a) removing its trunk; and
- (b) cutting or pruning its branches so severely that it is likely to die.

**native forest practice** means a forest practice other than in a plantation.

**not of concern regional ecosystem** means a regional ecosystem that is prescribed under a regulation and has more than 30% of its pre-clearing extent remaining and the remnant vegetation remaining is more than 10000ha.

**occupier**, of land, means—

- (a) the person in actual occupation of the land or, if there is no person in actual occupation, the person entitled to possession of the land; and
- (b) if there is more than 1 occupier of the land—any of the occupiers.

**of concern regional ecosystem** means a regional ecosystem that is prescribed under a regulation and has either—

## Schedule (continued)

- (a) 10% to 30% of its pre-clearing extent remaining; or
- (b) more than 30% of its pre-clearing extent remaining and the remnant vegetation remaining is less than 10000ha.

***ongoing application*** means a vegetation clearing application that is for a relevant purpose under section 22A.

***owner***, of land, includes—

- (a) for freehold land—the registered owner; or
- (b) for a lease, license or permit under the *Land Act 1994*—the lessee, licensee or permittee; or
- (c) for indigenous land—the holder of title to the land; or
- (d) for any tenure under any other Act—the holder of the tenure.

***Planning Act*** means the *Integrated Planning Act 1997*.

***pre-clearing extent***, for a regional ecosystem, means the extent of the regional ecosystem before it was cleared.

***property map of assessable vegetation*** means a map—

- (a) certified by the chief executive as the property map of assessable vegetation for a particular area; and
- (b) maintained by the department for the purpose of showing, for the area—
  - (i) category 1 areas; and
  - (ii) category 2 areas; and
  - (iii) category 3 areas; and
  - (iv) category 4 areas; and
  - (v) category X areas; and
- (c) showing areas subject to a remnant map or regional ecosystem map for the area.

***property vegetation management plan*** means a plan of the area to which a vegetation clearing application relates showing the matters prescribed under a regulation.

## Schedule (continued)

**public place** means a place the public is entitled to use, open to the public or used by the public, whether or not on payment of an amount.

**reasonably believes** means believes on grounds that are reasonable in the circumstances.

**reasonably suspects** means suspects on grounds that are reasonable in the circumstances.

**regional ecosystem** means a vegetation community in a bioregion that is consistently associated with a particular combination of geology, landform and soil.

**regional ecosystem map**—

- 1 A *regional ecosystem map* means a map—
  - (a) certified by the chief executive as the regional ecosystem map for a particular area; and
  - (b) maintained by the department for the purpose of showing, for the area—
    - (i) remnant endangered regional ecosystems; and
    - (ii) remnant of concern regional ecosystems; and
    - (iii) remnant not of concern regional ecosystems; and
    - (iv) numbers that reference regional ecosystems.
- 2 A *regional ecosystem map* includes any amendment to the map included in a schedule to the map and certified by the chief executive as an amendment to the map at the day the amendment is certified.

**regional vegetation management code** see section 11.

**regrowth vegetation** means vegetation that is not remnant vegetation.

**regulate** includes prohibit.

## Schedule (continued)

***remnant endangered regional ecosystem—***

- 1 A *remnant endangered regional ecosystem*, for an area of Queensland within a regional ecosystem map, means the part of an endangered regional ecosystem mapped as a remnant endangered regional ecosystem on the map.
- 2 A *remnant endangered regional ecosystem*, for an area of Queensland for which there is no regional ecosystem map, means the part of an endangered regional ecosystem having vegetation, forming the predominant canopy—
  - (a) covering more than 50% of the undisturbed predominant canopy; and
  - (b) averaging more than 70% of the vegetation's undisturbed height; and
  - (c) composed of species characteristic of the vegetation's undisturbed predominant canopy.

***remnant map—***

- 1 A *remnant map* means a map—
  - (a) certified by the chief executive as a remnant map for a particular area; and
  - (b) maintained by the department for the purpose of showing, for the area, areas of remnant vegetation.
- 2 A *remnant map* includes any amendment to the map included in a schedule to the map and certified by the chief executive as an amendment to the map at the day the amendment is certified.

***remnant not of concern regional ecosystem—***

- 1 A *remnant not of concern regional ecosystem*, for an area of Queensland within a regional ecosystem map, means the part of a not of concern regional ecosystem mapped as a remnant not of concern regional ecosystem on the map.
- 2 A *remnant not of concern regional ecosystem*, for an area of Queensland for which there is no regional

### Schedule (continued)

ecosystem map, means the part of a not of concern regional ecosystem having vegetation, forming the predominant canopy—

- (a) covering more than 50% of the undisturbed predominant canopy; and
- (b) averaging more than 70% of the vegetation's undisturbed height; and
- (c) composed of species characteristic of the vegetation's undisturbed predominant canopy.

#### ***remnant of concern regional ecosystem—***

- 1 *A remnant of concern regional ecosystem*, for an area of Queensland within a regional ecosystem map, means the part of an of concern regional ecosystem mapped as a remnant of concern regional ecosystem on the map.
- 2 *A remnant of concern regional ecosystem*, for an area of Queensland for which there is no regional ecosystem map, means the part of an of concern regional ecosystem having vegetation, forming the predominant canopy—
  - (a) covering more than 50% of the undisturbed predominant canopy; and
  - (b) averaging more than 70% of the vegetation's undisturbed height; and
  - (c) composed of species characteristic of the vegetation's undisturbed predominant canopy.

#### ***remnant vegetation—***

- 1 *Remnant vegetation*, for an area of Queensland within a regional ecosystem map, means the vegetation mapped as being within remnant endangered regional ecosystems, remnant of concern regional ecosystems and remnant not of concern regional ecosystems shown on the map.
- 2 *Remnant vegetation*, for an area of Queensland within a remnant map, means the vegetation mapped as remnant vegetation on the map.

## Schedule (continued)

- 3 *Remnant vegetation*, for an area of Queensland for which there is no regional ecosystem map or remnant map, means the vegetation, part of which forms the predominant canopy of the vegetation—
- (a) covering more than 50% of the undisturbed predominant canopy; and
  - (b) averaging more than 70% of the vegetation's undisturbed height; and
  - (c) composed of species characteristic of the vegetation's undisturbed predominant canopy.

*spent conviction* means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

*State policy* means the policy approved under section 10(3).

*thinning*—

- 1 *Thinning* means the selective clearing of vegetation at a locality to restore a regional ecosystem to the floristic composition and range of densities typical of the regional ecosystem surrounding that locality.
- 2 The term does not include clearing using a chain or cable linked between 2 tractors, bulldozers or other traction vehicles.

*undisturbed height*, for vegetation, means the height to which the vegetation normally grows.

*undisturbed predominant canopy*, for vegetation, means the predominant canopy the vegetation normally has.

*unlawfully cleared* means cleared of vegetation by a person in contravention of a vegetation clearing provision if the person—

- (a) has not contested an infringement notice given for the contravention; or

## Schedule (continued)

- (b) has been convicted of the contravention, whether or not the conviction is recorded.

*vegetation* see section 8.

*vegetation clearing application* means a development application as defined under the Planning Act that involves assessable development mentioned in that Act, schedule 8, part 1, table 4, items 1A to 1G.

*vegetation clearing offence* means an offence against a vegetation clearing provision.

*vegetation clearing provision* means the Planning Act, section 4.3.1(1), 4.3.3(1), 4.3.4(1), 4.3.5 or 4.3.15(1)<sup>17</sup> to the extent the provision relates to the clearing of vegetation.

*vegetation management* see section 9.

*watercourse*—

- 1 *Watercourse* means a river, creek or stream in which water flows permanently or intermittently—
  - (a) in a natural channel, whether artificially improved or not; or
  - (b) in an artificial channel that has changed the course of the watercourse.
- 2 *Watercourse* includes the bed and banks and any other element of a river, creek or stream confining or containing water.

*wildlife refugium* means an area that is a sanctuary to which a species or group of species has retreated, or been confined, in response to threatening processes, including a climatic change.

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<sup>17</sup> Planning Act, section 4.3.1 (Carrying out assessable development without permit), 4.3.3 (Compliance with development approval), 4.3.4 (Compliance with identified codes about use of premises), 4.3.5 (Offences about the use of premises) or 4.3.15 (Offences relating to enforcement notice)

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 October 2005. Future amendments of the Vegetation Management Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered



## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	2000 Act No. 35	15 September 2000	6 October 2000
1A	2000 Act No. 35	15 September 2000	14 August 2001
1B	2002 Act No. 25	20 June 2002	20 June 2002

Reprint No.	Amendments included	Effective	Notes
1C	2003 Act No. 10	28 March 2003	
1D	2004 Act No. 1	21 May 2004	
1E	2003 Act No. 64	4 October 2004	
1F	2004 Act No. 33	27 October 2004	
1G	2005 Act No. 41	14 October 2005	

## 5 List of legislation

### **Vegetation Management Act 1999 No. 90**

date of assent 21 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 15 September 2000 (2000 SL No. 242)

amending legislation—

### **Water Act 2000 No. 34 ss 1–2, 1144 sch 2 (this Act is amended, see amending legislation below)**

date of assent 13 September 2000

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and om 2001 No. 75 s 115(13) (provisions were to commence 13 September 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 158 s 2)))

amending legislation—

### **Water Amendment Act 2001 No. 75 ss 1, 2(3), 115(13) (amends 2000 No. 34 above)**

date of assent 13 November 2001

commenced on date of assent

### **Vegetation Management Amendment Act 2000 No. 35**

date of assent 13 September 2000

commenced on date of assent

**Natural Resources and Mines Legislation Amendment Act 2002 No. 25 pts 1, 6**

date of assent 20 June 2002  
commenced on date of assent

**Natural Resources and Other Legislation Amendment Act 2003 No. 10 pts 1, 7, s 76 sch**

date of assent 28 March 2003  
commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(4), pt 11**

date of assent 16 October 2003  
ss 1–2 commenced on date of assent  
remaining provisions commenced 4 October 2004 (2004 SL No. 199)

**Vegetation Management and Other Legislation Amendment Act 2004 No. 1 pts 1–2, s 44(1)–(2) schs 1–2**

date of assent 29 April 2004  
ss 1–2 commenced on date of assent  
remaining provisions commenced 21 May 2004 (2004 SL No. 62)

**Natural Resources Legislation Amendment Act 2004 No. 33 pts 1, 6**

date of assent 27 October 2004  
commenced on date of assent

**Vegetation Management and Other Legislation Amendment Act 2005 No. 41 pts 1–2**

date of assent 14 October 2005  
commenced on date of assent

**Wild Rivers Act 2005 No. 42 ss 1–2, 52 sch 1**

date of assent 14 October 2005  
ss 1–2 commenced on date of assent  
remaining provisions not yet proclaimed into force (see s 2)

## 6 List of annotations

**Title** amd 2004 No. 1 s 4

**Commencement**

s 2 om 2004 No. 1 s 5

**Purpose of Act**

s 3 amd 2000 No. 35 s 3; 2003 No. 10 s 76 sch  
sub 2004 No. 1 s 6

**Advancing the Act's purpose**

prov hdg amd 2004 No. 1 s 44(1) sch 1

s 4 amd 2004 No. 1 s 44(1) sch 1

**Application of Act**

s 7 amd 2000 No. 35 s 4; 2003 No. 10 s 76 sch; 2004 No. 1 s 7

**PART 2—VEGETATION MANAGEMENT****What is vegetation**

s 8 sub 2004 No. 1 s 8

**What is vegetation management**

s 9 amd 2004 No. 1 s 44(1) sch 1

**State policy for vegetation management**

s 10 amd 2004 No. 1 s 9

**Division 3—Regional vegetation management codes**

div hdg sub 2004 No. 1 s 10

**Minister must approve regional vegetation management codes**

s 11 sub 2004 No. 1 s 10

**Preparing codes**

s 12 sub 2004 No. 1 s 10

**Minister must consider all properly made submissions**

s 13 amd 2000 No. 35 s 5  
sub 2004 No. 1 s 10

**Publication of codes**

s 14 sub 2004 No. 1 s 10

**Minor or stated amendments of regional vegetation management code**

s 15 sub 2004 No. 1 s 10

**Division 4—Declaration of areas of high nature conservation value and areas vulnerable to land degradation****Preparing declaration**

s 16 amd 2000 No. 35 s 6  
sub 2004 No. 1 s 11

**Making declaration**

s 17 amd 2000 No. 35 s 7; 2004 No. 1 ss 12, 44(1) sch 1

**Interim declaration**

s 18 amd 2000 No. 35 s 8

**Criteria for declarations**

s 19 amd 2000 No. 35 s 9; 2004 No. 1 s 13

**Division 5—Declarations about codes**

div hdg sub 2004 No. 1 s 14

**IDAS codes for the clearing of vegetation**

prov hdg sub 2000 No. 35 s 10(1)  
s 20 amd 2000 No. 35 s 10(2)–(3); 2002 No. 25 s 42  
sub 2004 No. 1 s 14

**Forest practice codes**

s 20A ins 2004 No. 1 s 14

**Division 5A—Property map of assessable vegetation**

div 5A (ss 20B–20G) ins 2004 No. 1 s 14

**Division 6—Modifying effect of Planning Act****div hdg** amd 2003 No. 10 s 76 sch**Modifying effect on vegetation clearing applications****prov hdg** amd 2004 No. 1 s 44(1) sch 1**s 21** amd 2003 No. 10 s 76 sch; 2004 No. 1 s 44(1) sch 1; 2003 No. 64 s 149**Declarations for the Planning Act****prov hdg** amd 2003 No. 10 s 76 sch

sub 2005 No. 41 s 3(1)

**s 22** amd 2003 No. 10 s 76 sch; 2005 No. 41 s 3(2)**Particular vegetation clearing applications may be assessed****s 22A** ins 2003 No. 10 s 58

sub 2004 No. 1 s 15

**Modifying Planning Act effect for delegations and appointment of referees****s 22B** ins 2004 No. 1 s 15**Modifying Planning Act effect of appeal rights on ongoing applications (assessment manager)****s 22C** ins 2004 No. 1 s 15**Modifying Planning Act effect of appeal rights on ongoing applications (concurrency agency)****s 22D** ins 2004 No. 1 s 15**Division 7—Broadscale applications and ballots****div hdg** ins 2004 No. 1 s 15**Application of div 7****s 22E** ins 2004 No. 1 s 15**Exception to s 22A(1)****s 22F** ins 2004 No. 1 s 15**Regions and ballots****s 22G** ins 2004 No. 1 s 15**Modifying Planning Act effect on changing broadscale application****s 22H** ins 2004 No. 1 s 15

amd 2004 No. 33 s 44

**Modifying Planning Act time frames****s 22I** ins 2004 No. 1 s 15**Modifying Planning Act effect on changing development approval****s 22J** ins 2004 No. 1 s 15**Modifying Planning Act effect of appeal rights on broadscale applications****s 22K** ins 2004 No. 1 s 15**Appeals****s 22L** ins 2004 No. 1 s 15**Division 8—Miscellaneous****div 8 (s 22M)** ins 2004 No. 1 s 15

**Transitional modifying effect**

s 23            amd 2000 No. 35 s 11  
                   exp 4 March 2001 (see s 23(3))

**PART 3—ENFORCEMENT, INVESTIGATIONS AND OFFENCES****Functions and powers of authorised officers**

s 25            amd 2003 No. 10 s 59

**Power to enter places**

s 30            amd 2003 No. 10 s 60; 2004 No. 1 ss 16, 44(1) sch 1

**Issue of warrant**

s 33            amd 2004 No. 1 s 17

**Warrants—procedure before entry**

s 35            amd 2000 No. 35 s 12; 2003 No. 10 s 61; 2004 No. 1 s 18

**General powers after entering places**

s 36            amd 2003 No. 10 s 62; 2004 No. 1 s 44(1) sch 1

**Seizing evidence**

s 39            amd 2003 No. 10 s 63; 2004 No. 1 s 44(1) sch 1

**Power to require information**

s 51            amd 2003 No. 10 s 64

**Power to require production of documents**

s 52            amd 2003 No. 10 s 76 sch

**Failure to produce document**

s 54            amd 2003 No. 10 s 65

**Compliance notice**

s 55            amd 2003 No. 10 s 66; 2004 No. 1 s 19

**Record of compliance notice in land registry**

s 55A          ins 2003 No. 10 s 67

**Division 2—Other enforcement provisions****Subdivision 1—Obtaining criminal history reports**

sdiv 1 (ss 55B–55D) ins 2003 No. 10 s 68

**Subdivision 2—Notice of damage and compensation**

sdiv hdg      ins 2003 No. 10 s 68

**Division 3—Offences****Impersonation of authorised officer**

s 59A          ins 2004 No. 1 s 20

**Executive officers must ensure corporation complies with Act**

s 60A          ins 2003 No. 10 s 69

**Guide for deciding penalty for vegetation clearing offence**

s 60B          ins 2003 No. 10 s 69

**Ability to prosecute under other Acts**

s 61            amd 1994 No. 62 s 616(2) (amd 2000 No. 64 s 52); 2003 No. 10 s 76 sch

**PART 4—APPEALS AND LEGAL PROCEEDINGS****Division 1—Appeals****Who may appeal**

s 62            amd 2004 No. 1 s 21

**Division 2—Evidence****Instruments, equipment and installations**

s 66A          ins 2003 No. 10 s 70

**Certificate or report about remotely sensed image**

s 66B          ins 2003 No. 10 s 70

**Evidentiary aids**

s 67            amd 2000 No. 35 s 13; 2003 No. 10 s 76 sch; 2004 No. 1 s 22

**Responsibility for unauthorised clearing of vegetation**s 67A          ins 2003 No. 10 s 71  
                  amd 2004 No. 1 s 23**Division 2A—Defences**

div 2A (s 67B) ins 2003 No. 10 s 72

**Summary proceedings for offences**

s 68            amd 2003 No. 10 ss 73, 76 sch

**Particulars to be stated for complaint for vegetation clearing offence**

s 68A          ins 2003 No. 10 s 74

**Representation of departmental officer in court**

s 68B          ins 2003 No. 10 s 74

**Recovery of costs of investigation**

s 68C          ins 2003 No. 10 s 74

**PART 5—MISCELLANEOUS****Approved forms**

s 68D          ins 2004 No. 1 s 24

**Application of development approvals and exemptions for Forestry Act**s 70A          ins 2004 No. 1 s 25  
                  amd 2004 No. 1 s 44(2) sch 2**Record of development approvals and property maps of assessable vegetation in land registry**

s 70B          ins 2004 No. 1 s 25

**PART 6—TRANSITIONAL PROVISIONS****Division 1—Transitional provisions for Act No. 90 of 1999**

div hdg        ins 2004 No. 1 s 26

**Existing development approvals and applications for development approvals under the Planning Act**

prov hdg      amd 2004 No. 1 s 44(1) sch 1

s 73            amd 2003 No. 10 s 76 sch; 2004 No. 1 s 44(1) sch 1

**Existing development control plans and special facilities zones**

**s 74** amd 2003 No. 10 s 76 sch; 2005 No. 41 s 4

**Division 2—Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2004**

**div hdg** ins 2004 No. 1 s 27

**What may be approved as codes**

**s 75** prev s 75 exp 16 September 2000 (see s 85A)  
om R1 (see RA s 37)  
pres s 75 ins 2004 No. 1 s 27

**Existing applications (pre VACA) and development approvals**

**s 76** prev s 76 exp 16 September 2000 (see s 85A)  
om R1 (see RA s 37)  
pres s 76 ins 2004 No. 1 s 27  
sub 2004 No. 33 s 45

**Existing applications (pre VACA) and permits under the Land Act 1994**

**s 77** prev s 77 exp 16 September 2000 (see s 85A)  
om R1 (see RA s 37)  
pres s 77 ins 2004 No. 1 s 27  
sub 2004 No. 33 s 45

**Existing applications (post VACA) under the Land Act 1994**

**s 78** prev s 78 exp 16 September 2000 (see s 85A)  
om R1 (see RA s 37)  
pres s 78 ins 2004 No. 1 s 27  
amd 2004 No. 33 s 46

**When the Land Act 1994 continues to apply**

**s 79** prev s 79 exp 16 September 2000 (see s 85A)  
om R1 (see RA s 37)  
pres s 79 ins 2004 No. 1 s 27

**Modifying effect of Planning Act for owner's consent**

**s 80** prev s 80 exp 16 September 2000 (see s 85A)  
om R1 (see RA s 37)  
pres s 80 ins 2004 No. 1 s 27

**Division 3—Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2005**

**div hdg** ins 2005 No. 41 s 5

**Effect on existing riverine protection permits**

**s 81** prev s 81 exp 16 September 2000 (see s 85A)  
pres s 81 ins 2005 No. 41 s 5

**Validation of particular clearing**

**s 82** prev s 82 exp 16 September 2000 (see s 85A)  
pres s 82 ins 2005 No. 41 s 5

**Validation of regional vegetation management codes**

- s 83** amd 2000 No. 35 s 14  
 prev s 83 exp 16 September 2000 (see s 85A)  
 pres s 83 ins 2005 No. 41 s 5

**Amendment of sch 8 (Assessable, self-assessable and exempt development)**

- s 84** amd 2000 No. 35 s 15  
 exp 16 September 2000 (see s 85A)

**Amendment of sch 10 (Dictionary)**

- s 85** amd 2000 No. 35 s 16  
 exp 16 September 2000 (see s 85A)

**PART 7—AMENDMENT OF INTEGRATED PLANNING ACT 1997**

- pt hdg** exp 16 September 2000 (see s 85A)

**Expiry of pt 7**

- s 85A** ins 2000 No. 35 s 17  
 exp 16 September 2000 (see s 85A)

**PART 8—AMENDMENT OF LAND ACT 1994**

- pt hdg** exp 16 September 2000 (see s 97)

**Act amended in pt 8**

- s 86** exp 16 September 2000 (see s 97)

**Amendment of s 214 (Land protection)**

- s 87** exp 16 September 2000 (see s 97)

**Amendment of s 252 (Object of part)**

- s 88** exp 16 September 2000 (see s 97)

**Amendment of s 253 (Definitions)**

- s 89** exp 16 September 2000 (see s 97)

**Amendment of s 255 (Tree clearing permits needed)**

- s 90** exp 16 September 2000 (see s 97)

**Amendment of s 257 (When tree clearing permit is not needed)**

- s 91** exp 16 September 2000 (see s 97)

**Amendment of s 260 (How application for tree clearing permit made)**

- s 92** amd 2000 No. 35 s 18  
 exp 16 September 2000 (see s 97)

**Amendment of s 261 (Tree management plan)**

- s 93** sub 2000 No. 35 s 19  
 exp 16 September 2000 (see s 97)

**Amendment of s 262 (Issues chief executive must consider)**

- s 94** amd 2000 No. 35 s 20  
 exp 16 September 2000 (see s 97)

**Amendment of s 264 (Terms of tree clearing permit)**

- s 94A** ins 2000 No. 35 s 21  
 exp 16 September 2000 (see s 97)



**Amendment of s 265 (Conditions of tree clearing permit)**

s 94B ins 2000 No. 35 s 20  
exp 16 September 2000 (see s 97)

**Amendment of s 267 (Tree clearing permit may continue on transfer)**

s 94C ins 2000 No. 35 s 20  
exp 16 September 2000 (see s 97)

**Amendment of s 322 (Requirements for transfers)**

s 94D ins 2000 No. 35 s 20  
exp 16 September 2000 (see s 97)

**Amendment of s 346 (Sale of mortgaged lease)**

s 94E ins 2000 No. 35 s 20  
exp 16 September 2000 (see s 97)

**Amendment of s 270 (Conditions of clearing)**

s 95 exp 16 September 2000 (see s 97)

**Amendment of sch 6 (Dictionary)**

s 96 amd 2000 No. 35 s 22  
exp 16 September 2000 (see s 97)

**Expiry of pt 8**

s 97 ins 2000 No. 35 s 23  
exp 16 September 2000 (see s 97)

**PART 9—AMENDMENT OF LOCAL GOVERNMENT ACT 1993**

pt 9 (ss 98–100) ins 2000 No. 35 s 24  
exp 16 September 2000 (see s 100)

**SCHEDULE—DICTIONARY**

def “**applicable code**” amd 2003 No. 10 s 76 sch  
def “**approved form**” ins 2004 No. 1 s 28(2)  
def “**area of unlawfully cleared vegetation**” ins 2003 No. 10 s 75(1)  
om 2004 No. 1 s 28(1)  
def “**assessment manager**” amd 2003 No. 10 s 76 sch  
def “**ballot application period**” ins 2004 No. 1 s 28(2)  
def “**bed and banks**” ins 2005 No. 41 s 6  
def “**broadscale application**” ins 2004 No. 1 s 28(2)  
def “**category 1 area**” ins 2004 No. 1 s 28(2)  
def “**category 2 area**” ins 2004 No. 1 s 28(2)  
def “**category 3 area**” ins 2004 No. 1 s 28(2)  
def “**category 4 area**” ins 2004 No. 1 s 28(2)  
def “**category x area**” ins 2004 No. 1 s 28(2)  
def “**clear**” sub 2004 No. 1 s 28(1)–(2)  
def “**clearing allocation**” ins 2004 No. 1 s 28(2)  
def “**commercial timber**” ins 2005 No. 41 s 6  
def “**compliance notice**” ins 2000 No. 35 s 25(2)  
def “**concurrence agency**” amd 2003 No. 10 s 76 sch  
def “**criminal history**” ins 2003 No. 10 s 75(1)  
def “**currency period**” ins 2004 No. 1 s 28(2)  
def “**declared area**” ins 2004 No. 1 s 28(2)

- def “**declared area code**” ins 2004 No. 1 s 28(2)
- def “**declared pest**” ins 2004 No. 1 s 28(2)
- def “**deemed refusal**” ins 2004 No. 1 s 28(2)
- def “**destroy**” om 2004 No. 1 s 28(1)
- def “**development**” amd 2003 No. 10 s 76 sch
- def “**development application**” amd 2003 No. 10 s 76 sch  
om 2004 No. 1 s 28(1)
- def “**development approval**” amd 2003 No. 10 s 76 sch  
sub 2004 No. 1 s 28(1)–(2)
- def “**document certification requirement**” ins 2000 No. 35 s 25(2)
- def “**encroachment**” ins 2004 No. 1 s 28(2)
- def “**forest practice**” sub 2004 No. 1 s 28(1)–(2)
- def “**freeholding lease**” ins 2003 No. 10 s 75(1)  
om 2004 No. 1 s 28(1)
- def “**freehold land**” amd 2003 No. 10 s 75(2)  
sub 2004 No. 1 s 28(1)–(2)
- def “**grassland regional ecosystem**” ins 2004 No. 1 s 28(2)
- def “**IDAS**” amd 2003 No. 10 s 76 sch
- def “**indigenous land**” ins 2004 No. 1 s 28(2)
- def “**information request**” ins 2004 No. 1 s 28(2)
- def “**lake**” ins 2005 No. 41 s 6
- def “**native forest practice**” ins 2004 No. 1 s 28(2)
- def “**not of concern regional ecosystem**” ins 2000 No. 35 s 35 s 25(2)
- def “**occupier**” ins 2003 No. 10 s 75(1)
- def “**ongoing application**” ins 2004 No. 1 s 28(2)
- def “**owner**” ins 2004 No. 1 s 28(2)
- def “**Planning Act**” ins 2003 No. 10 s 75(1)
- def “**property map of assessable vegetation**” ins 2004 No. 1 s 28(2)
- def “**property vegetation management plan**” amd 2004 No. 1 s 44(1) sch 1
- def “**regional ecosystem map**” sub 2000 No. 35 s 25(1)–(2)  
amd 2003 No. 10 s 75(3); 2004 No. 1 s 28(3)
- def “**regional vegetation management code**” ins 2004 No. 1 s 28(2)
- def “**regional vegetation management plan**” om 2004 No. 1 s 28(1)
- def “**remnant endangered regional ecosystem**” amd 2000 No. 35 s 25(3)
- def “**remnant map**” sub 2000 No. 35 s 25(1)–(2)  
amd 2003 No. 10 s 75(4); 2004 No. 1 s 28(4)
- def “**remnant not of concern regional ecosystem**” ins 2000 No. 35 s 25(2)
- def “**remnant of concern regional ecosystem**” amd 2000 No. 35 s 25(3)
- def “**remnant vegetation**” sub 2000 No. 35 s 25(1)–(2)
- def “**spent conviction**” ins 2003 No. 10 s 75(1)
- def “**thinning**” ins 2004 No. 1 s 28(2)
- def “**unlawfully cleared**” ins 2004 No. 1 s 28(2)
- def “**vegetation clearing application**” ins 2004 No. 1 s 28(2)  
sub 2004 No. 1 s 44(2) sch 2
- def “**vegetation clearing provision**” amd 2003 No. 10 s 76 sch  
sub 2004 No. 1 s 28(1)–(2)
- def “**watercourse**” ins 2005 No. 41 s 6