

Queensland



**NATURAL RESOURCES AND
OTHER LEGISLATION
AMENDMENT ACT 2003**

Act No. 10 of 2003

Queensland



NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT ACT 2003

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Queensland



**Natural Resources and Other Legislation
Amendment Act 2003**

Act No. 10 of 2003

**An Act to amend particular Acts administered by the Minister for
Natural Resources and Minister for Mines, and for other purposes**

[Assented to 28 March 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Natural Resources and Other Legislation Amendment Act 2003*.

PART 2—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994

2 Act amended in pt 2

This part amends the *Environmental Protection Act 1994*.

3 Insertion of new s 290A

After section 290—

insert—

‘290A Amendments to reflect NNTT conditions

‘The administering authority may amend an environmental authority (mining activities) to ensure compliance with conditions included in a determination made by the NNTT under the Commonwealth Native Title Act, section 38(1)(c) if the administering authority has given written notice of the amendment to the environmental authority holder.’

4 Amendment of s 294 (Application of div 2)

(1) Section 294(a)(ii)—

renumber as section 294(a)(iii).

(2) Section 294(a)—

insert—

‘(ii) to make an amendment under section 290A; or’.

5 Insertion of new s 299A

After section 299—

insert—

‘299A Steps for amendment to reflect NNTT conditions

‘If the administering authority amends an environmental authority under section 290A, it must, within 10 business days after giving notice of the amendment under section 290A—

- (a) amend the environmental authority to give effect to the amendment; and
- (b) record particulars of the amendment in the appropriate register; and
- (c) give the environmental authority holder a copy of the amended environmental authority.’.

6 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

‘ **“Commonwealth Native Title Act”** means the *Native Title Act 1993* (Cwlth).

“**NNTT**” means the National Native Title Tribunal established under the Commonwealth Native Title Act, part 6.’.

PART 3—AMENDMENT OF INTEGRATED PLANNING ACT 1997

7 Act amended in pt 3

This part amends the *Integrated Planning Act 1997*.

8 Amendment of s 3.2.1 (Applying for development approval)

Section 3.2.1—

insert—

‘**(10)** Subsection (3)(a)(ii) does not apply to an application if—

- (a) the application is for work on land over which there is an existing public utility easement in favour of a public sector entity; and
- (b) the applicant is the public sector entity.’

9 Amendment of s 3.5.26 (Request to cancel development approval)

Section 3.5.26(2)—

omit, insert—

‘**(2)** However, the owner must not ask the assessment manager to cancel the development approval in either of the following circumstances unless written consent to the cancellation is given by—

- (a) if there is a written arrangement between the owner and another person under which the other person proposes to buy the land—the other person;
- (b) if the application is for land the subject of a public utility easement—the entity in whose favour the easement is given.’

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

(1) Schedule 8, part 1, item 3A(c)(iii)—

omit, insert—

- ‘(iii) a remnant endangered regional ecosystem shown on a regional ecosystem map; and
- (iv) an area of unlawfully cleared vegetation; or’.

(2) Schedule 8, part 4—

insert—

‘**“area of unlawfully cleared vegetation”** means an area of unlawfully cleared vegetation as defined under the *Vegetation Management Act 1999*.

(3) Schedule 8, part 4, definitions “regional ecosystem” and “remnant map”—

omit.

PART 4—AMENDMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2001

11 Act amended in pt 4

This part amends the *Integrated Planning and Other Legislation Amendment Act 2001*.

12 Amendment of s 27 (Replacement of ch 3 (Integrated development assessment system (IDAS)))

(1) Section 27, replaced section 3.2.1—

insert—

‘(10) Subsection (3)(b) does not apply to an application if—

- (a) the application is for work on land over which there is an existing public utility easement in favour of a public sector entity; and
- (b) the applicant is the public sector entity.’

(2) Section 27, replaced section 3.6.1(5)—

omit, insert—

‘(5) However, the owner must not ask the assessment manager to cancel the development approval in either of the following circumstances unless written consent to the cancellation is given by—

- (a) if there is a written arrangement between the owner and another person under which the other person proposes to buy the land—the other person;
- (b) if the application is for land the subject of a public utility easement—the entity in whose favour the easement is given.’

13 Amendment of s 84 (Replacement of sch 8 (Assessable, self-assessable and exempt development))

Section 84, in replaced schedule 8, part 1, item 4(c)(iii)—

omit, insert—

- ‘(iii) a remnant endangered regional ecosystem shown on a regional ecosystem map; and
- (iv) an area of unlawfully cleared vegetation; or’.

14 Amendment of s 85 (Replacement of sch 10 (Dictionary))

(1) Section 85, in replaced schedule 10, definitions “regional ecosystem” and “remnant map”—

omit.

(2) Section 85, in replaced schedule 10—

insert—

- ‘**“area of unlawfully cleared vegetation”** means an area of unlawfully cleared vegetation as defined under the *Vegetation Management Act 1999*.’.

PART 5—AMENDMENT OF LAND ACT 1994

15 Act amended in pt 5

This part amends the *Land Act 1994*.

16 Insertion of new ch 5, pt 4, div 1 hdg

Chapter 5, part 4, before section 234—

insert—

‘Division 1—Grounds for forfeiture’.

17 Amendment of s 234 (When lease may be forfeited)

Section 234—

insert—

- ‘(e) if the lessee has more than 1 conviction, not including any spent convictions, for tree clearing offences, regardless of whether any of the offences were committed on the land the subject of the lease.’.

18 Insertion of new ch 5, pt 4, div 2 hdg and s 234A

Before section 235—

insert—

‘Division 2—Forfeiture of leases, generally

‘234A Non-application of div 2

‘This division does not apply to the forfeiture of a lease under section 234(e).’.

19 Insertion of new ch 5, pt 4, div 3, and div 4 hdg

After section 240—

insert—

Division 3—Forfeiture of leases for repeated convictions for tree clearing offences

‘Subdivision 1—Preliminary

‘240A Application of div 3

‘This division applies for the forfeiture of a lease under section 234(e).

‘Subdivision 2—Procedure for forfeiting lease

‘240B Show cause notice

‘(1) Before the lease is forfeited, the Minister must give the lessee a notice (a “**show cause notice**”) inviting the lessee to show cause why the lease should not be forfeited.

‘(2) The show cause notice must state the following—

- (a) that the Minister proposes to forfeit the lease;
- (b) the ground for the proposed forfeiture;
- (c) the facts and circumstances that are the basis for the ground;
- (d) that the lessee may make, within a stated period (the “**show cause period**”), written representations to the Minister to show why the lease should not be forfeited.

‘(3) The show cause period must end at least 14 business days after the lessee is given the notice.

‘240C Decision about forfeiture

‘(1) In deciding whether to forfeit the lease, the Minister must consider any written representations made by the lessee in the show cause period.

‘(2) Within 5 business days after deciding whether to forfeit the lease, the Minister must give the lessee written notice of the decision.

‘(3) If the Minister decides to forfeit the lease, the notice must include reasons for the decision.

‘240D Right of appeal

‘(1) The lessee may appeal against the Minister’s decision to forfeit the lease.¹

‘(2) The Minister must not act to forfeit the lease until—

¹ Under section 421 (Notice of right of appeal to be given), a person who has a right to appeal against a decision must be given written notice of the right.

- (a) the expiration of the 42 days mentioned in section 424(1) for applying for a review of the decision to forfeit the lease, if no application is made; or
- (b) if an application is made, until all proceedings under chapter 7, part 3, and any appeals from those proceedings, are ended.

‘240E Publication of notice of forfeiture

‘(1) If the Minister forfeits the lease, notice of the forfeiture must be—

- (a) given, in writing, to the lessee; and
- (b) published in the gazette.

‘(2) The forfeiture takes effect on the day the notice is gazetted.

‘(3) The Minister must ensure notice of the forfeiture is registered in the appropriate register.

‘Division 4—Effect of forfeiture’.

20 Amendment of s 255 (Tree clearing permit needed)

Section 255—

insert—

‘(2) For a proceeding against a person for an offence against subsection (1), the Criminal Code, section 24,² does not apply.’.

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

(1) Section 262(2)(o)—

renumber as section 262(2)(p).

(2) Section 262(2)—

insert—

2 Criminal Code, section 24 (Mistake of fact)

‘(o) whether the applicant has been convicted of a tree clearing offence in the relevant period, regardless of whether the offence was committed before the relevant period;’.

(3) Section 262—

insert—

‘(3) In this section—

“**relevant period**” means the period, starting after the commencement of this definition, of 5 years immediately before the application is made.’.

22 Insertion of new ch 5, pt 6, div 5

After section 274—

insert—

‘Division 5—Enforcing compliance

‘274A Compliance notice

‘(1) This section applies if the chief executive or an authorised person (the “**official**”) reasonably believes a person—

- (a) is committing a tree clearing offence; or
- (b) has committed a tree clearing offence.

‘(2) The official may give the person a notice (“**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 tree clearing offence; or
 - (ii) has committed a tree clearing offence; and
- (b) the tree 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—100 penalty units.

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

‘274B Right of appeal

‘The person may appeal to the court against the official’s decision to give the compliance notice.

‘274C 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 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.’.

23 Amendment of s 397 (Authorised person’s identity card)

Section 397(3), ‘21 days’—

omit, insert—

‘15 business days’.

24 Amendment of s 400 (Power to enter land)

(1) Section 400, heading—

omit, insert—

‘400 Power to enter land, generally’.

(2) Section 400(1), ‘An’—

omit, insert—

‘Subject to subsection (1A), an’.

(3) Section 400—

insert—

‘(1A) This section does not apply for the purposes of monitoring or enforcing compliance with a tree clearing provision.³’.

25 Insertion of new ch 7, pt 1, div 4 and ch 7, pt 1, div 5 hdg

After section 400—

insert—

3 See section 400A (Power to enter places for monitoring and enforcing compliance with tree clearing provisions)

‘Division 4—Monitoring and enforcement powers for tree clearing provisions

‘Subdivision 1—Power to enter places

‘400A Power to enter places for monitoring and enforcing compliance with tree clearing provisions

‘(1) For monitoring or enforcing compliance with a tree clearing provision, an authorised person 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 lease, licence or permit; or
 - (B) a compliance notice; 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 tree clearing offence; or
- (e) the entry is authorised by a warrant.

‘(2) For the purpose of asking an occupier of a place for consent to enter, an authorised person 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 person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

‘(3) Subsection (1)(c) does not apply to a part of a place where a person resides.

‘Subdivision 2—Procedure for entry

‘400B Entry with consent

‘(1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 400A(1)(a).

‘(2) Before asking for the consent, the authorised person 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 person 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 person 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 person must immediately give a copy to the occupier.

‘(6) A court must find the occupier of a place did not consent to an authorised person 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 400A(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.

‘400C Application for warrant

‘(1) An authorised person 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 person 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.

‘400D 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—
 - (i) a tree clearing offence; or
 - (ii) a compliance notice 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 a stated authorised person 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 person’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.

‘400E Special warrants

‘(1) An authorised person may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the authorised person’s remote location.

‘(2) Before applying for the special warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

‘(3) The authorised person 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 person if it is reasonably practicable to fax the copy.

‘(5) If it is not reasonably practicable to fax a copy to the authorised person—

- (a) the magistrate must tell the authorised person—
 - (i) what the terms of the special warrant are; and
 - (ii) the date and time the special warrant is issued; and
- (b) the authorised person 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 person, authorises the entry and the exercise of the other powers stated in the special warrant issued.

‘(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised person 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 person 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 person obtained the special warrant.

‘400F Warrants—procedure before entry

‘(1) This section applies if an authorised person named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.

‘(2) Before entering the place, the authorised person 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 person’s identity card or a copy of another document evidencing the authorised person’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 400E(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the authorised person is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.

‘(3) However, the authorised person need not comply with subsection (2) if the authorised person 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, 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 person is permitted by the warrant to enter the place;
- (c) give the owner or occupier an opportunity to allow the authorised person immediate entry to the place without using force.

‘Subdivision 3—Powers after entering a place

‘400G General powers after entering places

‘(1) This section applies to an authorised person who enters a place.

‘(2) However, if an authorised person enters a place to get an occupier’s consent to enter the place, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.

‘(3) For monitoring or enforcing compliance with a tree clearing provision, the authorised person 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 person reasonably requires for exercising a power under this division; or
- (f) require an occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person’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 person information to help the authorised person ascertain whether a tree clearing provision is being complied with.

‘(4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised person 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 person enters the place under 400A(1)(d) for the purpose of giving an occupier a compliance notice, the authorised person may not exercise powers under subsection (3) and may only—

- (a) give the occupier the compliance notice; and
- (b) take into or onto the place any person the authorised person reasonably requires for giving the notice.

‘400H Failure to help authorised person

‘(1) A person required to give reasonable help under section 400G(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.

‘400I Failure to give information

‘(1) A person of whom a requirement is made under section 400G(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 4—Power to seize evidence

‘400J Seizing evidence

‘(1) This section applies if, under this division, an authorised person enters a place after obtaining the consent of an occupier or a warrant.

‘(2) If the authorised person enters the place with an occupier’s consent, the authorised person may seize a thing at the place if—

- (a) the authorised person reasonably believes the thing is evidence of a tree clearing offence or compliance notice 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 person enters the place with a warrant, the authorised person may seize the evidence for which the warrant was issued.

‘(4) The authorised person may seize anything else at the place if the authorised person reasonably believes—

- (a) the thing is evidence of a tree clearing offence or compliance notice 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 person may seize a thing at the place if the authorised person reasonably believes it has just been used in committing a tree clearing offence or compliance notice offence.

‘400K Securing seized things

‘Having seized a thing, an authorised person 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.

‘400L Tampering with seized things

‘(1) If an authorised person 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 person’s approval.

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

‘400M Powers to support seizure

‘(1) To enable a thing to be seized, an authorised person 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.

‘400N Receipts for seized things

‘(1) As soon as practicable after an authorised person seizes a thing, the authorised person 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 person 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.

‘400O Forfeiture by authorised person

‘(1) A thing that has been seized under this subdivision is forfeited to the State if the authorised person 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 person 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 person 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.

‘400P Forfeiture on conviction

‘(1) On conviction of a person for a tree clearing offence or compliance notice 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.

‘400Q 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.

‘400R Return of seized things

‘(1) If a seized thing is not forfeited, the authorised person must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for a tree clearing offence or compliance notice 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 person must immediately return a seized thing to its owner if the authorised person 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.

‘400S Access to seized things

‘(1) Until a seized thing is forfeited or returned, an authorised person 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 5—Power to obtain information

‘400T Power to require name and address

‘(1) This section applies if an authorised person—

- (a) finds a person committing a tree clearing offence; or
- (b) finds a person in circumstances that lead, or has information that leads, the authorised person to reasonably suspect the person has just committed a tree clearing offence.

‘(2) The authorised person may require the person to state the person’s name and residential address.

‘(3) When making the requirement, the authorised person 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 person may require the person to give evidence of the correctness of the stated name or residential address if the authorised person reasonably suspects the stated name or address to be false.

‘400U Failure to give name or address

‘(1) A person of whom a requirement is made under section 400T 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 person who suspected the person had committed a tree clearing offence; and
- (b) the person is not proved to have committed the offence.

'400V Power to require information

'(1) This section applies if an authorised person reasonably believes—

- (a) a tree clearing offence or compliance notice offence has been committed; and
- (b) a person may be able to give information about the offence.

'(2) The authorised person may, by notice given to the person, require the person to give information about the offence to the authorised person 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.

'400W Power to require production of documents

'(1) An authorised person may require a person to make available for inspection by an authorised person, or produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person, a document relating to the clearing of trees.

'(2) The authorised person may keep the document to copy it.

‘(3) If the authorised person copies a document mentioned in subsection (1), or an entry in the document, the authorised person 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 person 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 person may keep the document until the person complies with the requirement.

‘(6) A requirement under subsection (1) is a **“document production requirement”**.

‘400X 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.

‘400Y 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 6—Obtaining criminal history reports

‘400Z Purpose of sdiv 6

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

‘400ZA 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 person reasonably suspects the person may be present at the place when the authorised person enters the place under subdivision 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 person information in the report about the offences identified under subsection (4).

‘400ZB 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 400ZA.

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 person 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 person considers the risk mentioned in section 400Z.

‘Division 5—Other provisions about authorised persons’.

26 Insertion of new ss 403A and 403B

Chapter 7, part 1—

insert—

‘403A False or misleading statements

‘(1) A person must not state anything to an authorised person 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.

‘403B False or misleading documents

‘(1) A person must not give an authorised person 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 person, 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.’.

27 Insertion of new ch 7, pt 3A

After section 431—

insert—

‘PART 3A—PROCEEDINGS GENERALLY

‘Division 1—Preliminary

‘431A Application of pt 3A

‘This part applies to a proceeding under this Act.

‘Division 2—Evidence

‘431C Further evidentiary aids

‘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—
 - (i) an appointment;
 - (ii) a decision;
 - (iii) a compliance notice;
 - (iv) a tree clearing permit;
 - (v) a property vegetation management plan;
 - (vi) a local guideline for broadscale tree clearing;
 - (vii) a broadscale tree clearing policy document;
- (b) a stated document is a stated map maintained under the Vegetation Management Act for a stated area;
- (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
- (d) on a stated day, or during a stated period, a person’s appointment as an authorised person was, or was not, in force;

- (e) on a stated day, a stated person was given a compliance notice under this Act;
- (f) on a stated day, a stated requirement was made of a stated person.

‘431D 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.

‘431E 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 trees in a stated area have 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.

‘(4) In this section—

“**remnant vegetation**” means remnant vegetation within the meaning of the Vegetation Management Act.

‘431F Responsibility for unauthorised tree clearing

‘The clearing of trees on land in contravention of a tree clearing provision is taken to have been done by an occupier of the land in the absence of evidence to the contrary.

‘Division 3—Starting proceedings

‘431I Particulars to be stated for complaint for tree clearing offence

‘(1) This section applies to a complaint for a proceeding for a tree clearing offence.

‘(2) It is enough, for identifying the trees cleared and the place where the trees were cleared, for the particulars for the complaint to state the following—

- (a) the number of hectares of trees that have been cleared unlawfully;
- (b) the location where the trees were cleared;
- (c) whether the trees were in a regional ecosystem and the status of the ecosystem;

Example of status of a regional ecosystem—

Remnant endangered regional ecosystem.

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

‘(3) In this section—

“area of high nature conservation value” means an area of high nature conservation value within the meaning of the Vegetation Management Act.

“area vulnerable to land degradation” means an area vulnerable to land degradation within the meaning of the Vegetation Management Act.

‘Division 4—Other matters about proceedings

‘431J 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.

‘431K Guide for deciding penalty for tree clearing offence

‘(1) The purpose of this section is to provide a guide for the court in deciding the penalty to impose on a person for a tree clearing offence.

‘(2) Without affecting the maximum penalty the court may impose under section 255⁴ 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 trees cleared unlawfully in a remnant endangered regional ecosystem or declared area—30 penalty units;
- (b) for each hectare of trees cleared unlawfully in a remnant of concern regional ecosystem—24 penalty units;
- (c) for each hectare of trees 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 within the meaning of the Vegetation Management Act.

“remnant endangered regional ecosystem” means a remnant endangered regional ecosystem within the meaning of the Vegetation Management Act.

“remnant of concern regional ecosystem” means a remnant of concern regional ecosystem within the meaning of the Vegetation Management Act.

“remnant not of concern regional ecosystem” means a remnant not of concern regional ecosystem within the meaning of the Vegetation Management Act.

‘431L Recovery of costs of investigation

‘(1) If a court convicts a person of an offence against this Act, the court may order the person to pay the department’s reasonable costs of

4 Section 255 (Tree clearing permit needed)

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) This section does not limit the orders for costs the court may make.

‘431M Representation of departmental officer in court

‘(1) Any departmental officer may appear for and represent another departmental officer in the court in a proceeding brought by the other officer under this Act.

‘(2) In this section—

“**departmental officer**” means a public service officer employed in the department.

‘431N 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 trees—

- (a) a development offence under the *Integrated Planning Act 1997*;
- (b) a vegetation clearing offence under the *Vegetation Management Act*;
- (c) an offence against a following provision of the *Environmental Protection Act 1994*—
 - section 437(1)
 - section 437(2)
 - section 438(1)
 - section 438(2).’

28 Amendment of s 446 (Limitation on time for starting offence proceedings)

(1) Section 446, ‘A proceeding’—

omit, insert—

‘Subject to subsection (2), a proceeding’.

(2) Section 446(b), ‘2’—

omit, insert—

‘5’.

(3) Section 446—

insert—

‘(2) If the proceeding is for a tree clearing offence and the court considers it just and equitable in the circumstances, the court may, at any time, extend a time set under this section.

‘(3) Subsection (2) applies to a tree clearing offence committed on or after 1 January 1999, regardless of whether the time for starting the proceeding expired before the commencement of the subsection.

‘(4) A tree 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.’.

(4) Section 446—

relocate and *renumber*, in chapter 7, part 3A, division 3, as section 431H.

29 Amendment of sch 2 (Original decisions)

Schedule 2—

insert—

‘240C	forfeiting a lease
274A(2)	giving a compliance notice’.

30 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

‘**“compliance notice”** see section 274A.

“compliance notice offence” means an offence against section 274A(4).

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

“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.

“document certification requirement” see section 400W.

“document production requirement” see section 400W.

“occupier”, of a place, for chapter 7, part 1, division 4 and section 431F—

- (a) includes a person who reasonably appears to be an occupier, or in charge, of the place; and
- (b) if there is more than 1 occupier of the place—means any of the occupiers.

“reasonably believe” means believe on grounds that are reasonable in the circumstances.

“reasonably suspect” means suspect on grounds that are reasonable in the circumstances.

“show cause period” see section 240B(2)(d).

“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.

“tree clearing offence” means an offence against section 255(1).

“tree clearing provision” means section 255(1) or 274A(4).

“Vegetation Management Act” means the *Vegetation Management Act 1999*.

PART 6—AMENDMENT OF MINERAL RESOURCES ACT 1989

31 Act amended in pt 6

This part amends the *Mineral Resources Act 1989*.

32 Insertion of new s 25AA

After section 25—

insert—

‘25AA Additional conditions of prospecting permit relating to native title

‘(1) Conditions imposed on a prospecting permit by a mining registrar under section 25(2) may include native title protection conditions for the permit.

‘(2) Subsection (1) does not limit section 25(2).

‘(3) In this section—

“native title protection conditions”, for a prospecting permit, means conditions that—

- (a) are about ways of minimising the impact of the permit on native title in relation to the land affected by the permit, including ways of accessing the land and ways anything authorised under the permit may be done; and
- (b) are identified in the permit as native title protection conditions for the permit.’.

33 Insertion of new s 141AA

After section 141—

insert—

‘141AA Additional conditions of exploration permit relating to native title

‘(1) Conditions determined for an exploration permit by the Minister under section 141(1)(j) may include native title protection conditions for the permit.

‘(2) Subsection (1) does not limit section 141(1)(j).

‘(3) In this section—

“native title protection conditions”, for an exploration permit, means conditions that—

- (a) are about ways of minimising the impact of the permit on native title in relation to the land affected by the permit, including ways of accessing the land and ways anything authorised under the permit may be done; and
- (b) are identified in the permit as native title protection conditions for the permit.’.

34 Insertion of new s 194AAA

After section 194—

insert—

‘194AAA Additional conditions of mineral development licence relating to native title

‘(1) Conditions determined for a mineral development licence by the Minister under section 194(1)(j) may include native title protection conditions for the licence.

‘(2) Subsection (1) does not limit section 194(1)(j).

‘(3) In this section—

“native title protection conditions”, for a mineral development licence, means conditions that—

- (a) are about ways of minimising the impact of the licence on native title in relation to the land affected by the licence, including ways of accessing the land and ways anything authorised under the licence may be done; and

- (b) are identified in the licence as native title protection conditions for the licence.’.

35 Amendment of s 426 (Application of pt 13)

Section 426(1)—

insert—

- ‘(ab)the application for the permit was lodged on or before 31 March 2003; and’

36 Amendment of s 462 (Application of div 4)

Section 462(1)—

insert—

- ‘(a) the application for the mining claim was lodged on or before 31 March 2003; and’.

37 Amendment of s 465 (Application of div 5)

Section 465(5)—

insert—

- ‘(a) the application for the renewal of the mining claim was lodged on or before 31 March 2003; and’.

38 Amendment of s 472 (Application of div 6)

Section 472(5)—

- ‘(c) the application for the addition was lodged on or before 31 March 2003; and’.

39 Amendment of s 484 (Application of div 2)

Section 484(1)—

insert—

- ‘(ab)the application for the exploration permit was lodged on or before 31 March 2003; and’.

40 Amendment of s 486 (Requirement to notify)

Section 486(2)(a), ‘7 days’—

omit, insert—

‘14 days’.

41 Amendment of s 487 (Notification of mining registrar)

Section 487(1), ‘2 days’—

omit, insert—

‘7 days’.

42 Amendment of s 522 (Application of div 4)

Section 522(1)—

insert—

‘(ab)the application for the exploration permit was lodged on or before 31 March 2003; and’.

43 Amendment of s 524 (Applying pt 17, div 4 for grant)

Section 524(3), ‘14 days’—

omit, insert—

‘28 days’.

44 Amendment of s 525 (Application of div 5)

(1) Section 525(1)—

insert—

‘(ab)the application for the renewal of the exploration permit was lodged on or before 31 March 2003; and’.

(2) Section 525(5)—

insert—

‘(ab)the application for the renewal of the exploration permit was lodged on or before 31 March 2003; and’.

45 Amendment of s 531 (Application of div 6)

Section 531(2), before paragraph (a)—

insert—

‘(aa) the application for the variation of conditions or addition of land was lodged on or before 31 March 2003; and’.

46 Amendment of s 540 (Application of div 2)

Section 540(1)—

insert—

‘(ab) the application for the mineral development licence was lodged on or before 31 March 2003; and’.

47 Amendment of s 542 (Requirement to notify)

Section 542(2)(a), ‘7 days’—

omit, insert—

‘14 days’.

48 Amendment of s 543 (Notification of mining registrar)

Section 543(1), ‘2 days’—

omit, insert—

‘7 days’.

49 Amendment of s 579 (Application of div 4)

Section 579(1)—

insert—

‘(ab) the application for the mineral development licence was lodged on or before 31 March 2003; and’.

50 Amendment of s 581 (Applying pt 17, div 4 for grant)

Section 581(3), ‘14 days’—

omit, insert—

‘28 days’.

51 Amendment of s 582 (Application of div 5)

(1) Section 582(1)—

insert—

‘(ab)the application for the renewal of the mineral development licence was lodged on or before 31 March 2003; and’.

(2) Section 582(5)—

insert—

‘(ab)the application for the renewal of the mineral development licence was lodged on or before 31 March 2003; and’.

52 Amendment of s 588 (Application of div 6)

Section 588(2), before paragraph (a)—

insert—

‘(aa)the application for the variation of conditions or addition of stated minerals or land was lodged on or before 31 March 2003; and’.

53 Amendment of s 650 (Application of div 4)

Section 650(1)—

insert—

‘(a) the application for the mining lease was lodged on or before 31 March 2003; and’.

54 Amendment of s 689 (Application of div 5)

Section 689(5)—

insert—

‘(a) the application for the renewal of the mining lease was lodged on or before 31 March 2003; and’.

55 Amendment of s 697 (Application of div 6)

Section 697(5)—

insert—

‘(ab) the application for the approval was lodged on or before 31 March 2003; and’.

56 Insertion of new pt 19, div 5

Part 19—

insert—

***‘Division 5—Transitional provisions for Natural Resources and Other
Legislation Amendment Act 2003***

‘737 No notification commencement day advised before 31 March 2003

‘(1) This section applies to an application if—

- (a) it is an application to which division 2 applies; and
- (b) the mining registrar or the chief executive is required under section 727⁵ to give the applicant under the application a notice advising the applicant of the notification commencement day for the application; and
- (c) the notice is not given on or before 31 March 2003.

‘(2) The mining registrar or chief executive must not give the notice.

‘(3) For the purpose only of deciding whether a division of part 14, 15, 16 or 17 applies in relation to the application, the application is taken to have been lodged after 31 March 2003.

5 Section 727 (Giving advice of notification commencement day)

‘738 Effect of extension of time for giving notice or information

‘(1) This section applies to a person if—

- (a) at any time before the commencement of this section, the person was required to give a notice or information within a stated time; and
- (b) immediately before the commencement, the person had not given the notice or information, whether or not the stated time had expired.

‘(2) The time within which the person must give the notice or information may be worked out using the stated time as amended by the amending Act.

‘(3) In this division—

“**amending Act**” means the *Natural Resources and Other Legislation Amendment Act 2003*.

“**relevant provision**” means section 486(2)(a), 487(1), 524(3), 542(2)(a), 543(1) or 581(3).

“**stated time**” means the number of days stated in a relevant provision.’.

PART 7—AMENDMENT OF VEGETATION MANAGEMENT ACT 1999

57 Act amended in pt 7

This part amends the *Vegetation Management Act 1999*.

58 Insertion of new s 22A

Part 2—

insert—

‘22A Refusing development application after conviction for vegetation clearing offence

‘(1) If a development application involves the clearing of vegetation on freehold land, the assessment manager for the application may refuse the 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.

“**owner**”, of land in a freeholding lease, means the holder of the lease.

“**relevant period**” means the period, starting after the commencement of this definition, of 5 years immediately before the application is made.’.

59 Amendment of s 25 (Functions and powers of authorised officers)

Section 25(1)—

omit, insert—

‘(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.’.

60 Amendment of s 30 (Power to enter places)

(1) Section 30(1)(a), ‘its occupier’—

omit, insert—

‘an occupier of the place’.

(2) Section 30(1)—

insert—

‘(ba) the place is—

(i) the subject of—

(A) a development approval involving the clearing of vegetation; or

(B) a compliance notice; or

(C) an enforcement notice under the Planning Act relating to the contravention of a vegetation clearing provision; and

(ii) entered during daylight hours; or

(bb) 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’.

(3) Section 30—

insert—

‘(3) Subsection (1)(ba) does not apply to a part of a place where a person resides.’.

61 Amendment of s 35 (Warrants—procedure before entry)

Section 35—

insert—

‘(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.’.

62 Amendment of s 36 (General powers after entering places)

(1) Section 36(3), ‘may’—

omit, insert—

‘may, subject to subsection (5)’.

(2) Section 36(3)(f) and (g), ‘the occupier’—

omit, insert—

‘an occupier’.

(3) Section 36—

insert—

‘(5) If the authorised officer enters the place under 30(1)(bb) 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.’.

63 Amendment of s 39 (Seizing evidence)

Section 39(1)—

omit, insert—

‘(1) This section applies if, under this division, an authorised officer enters a place after obtaining the consent of an occupier or a warrant.’.

64 Amendment of s 51 (Power to require information)

Section 51(4)—

omit, insert—

‘(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.’.

65 Amendment of s 54 (Failure to produce document)

Section 54(2)—

omit, insert—

‘(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.’.

66 Amendment of 55 (Compliance notice)

(1) Section 55(5)—

omit, insert—

‘(5) If the person does an act, or makes an omission, in contravention of the compliance notice, the official may use reasonable force and take any other reasonable action to stop the contravention.’.

(2) Section 55(7)—

omit, insert—

‘(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.’.

67 Insertion of new s 55A

Part 3, division 1, subdivision 7—

insert—

‘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.’.

68 Insertion of new pt 3, div 2, sdiv 1 and pt 3, div 2, sdiv 2 hdg

Before section 56—

insert—

‘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’.

69 Insertion of new ss 60A and 60B

After section 60—

insert—

‘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.’.

70 Insertion of new ss 66A and 66B

After section 66—

insert—

‘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.'

71 Insertion of new s 67A

Part 4, division 2—

insert—

'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 other than a freeholding lease—the owner of the land; or
- (b) for a freeholding lease—the holder of the lease.'

72 Insertion of new pt 4, div 2A

Part 4—

insert—

'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 24,⁶ does not apply.'

73 Amendment of s 68 (Summary proceedings for offences)

(1) Section 68(2), ‘A’—

omit, insert—

‘Subject to subsection (4), a’.

(2) Section 68(3), after ‘1997,’—

insert—

‘and subject to subsection (4),’.

(3) Section 68—

insert—

‘(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.’.

74 Insertion of new ss 68A–68C

Part 4, division 3—

insert—

‘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.’

75 Amendment of schedule (Dictionary)

(1) Schedule—

insert—

‘**“area of unlawfully cleared vegetation”** means an area that has been cleared in contravention of a vegetation clearing provision.

“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.

“freeholding lease” means a freeholding lease as defined under the *Land Act 1994*.

“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.

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

“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.’.

(2) Schedule, definition “freehold land”, from ‘as’ to ‘1994’—
omit.

(3) Schedule, definition “regional ecosystem map”, item 1(b)—
insert—

‘(vii) areas of unlawfully cleared vegetation.’.

(4) Schedule, definition “remnant map”, item 1(b)—
insert—

‘(iv) areas of unlawfully cleared vegetation.’.

PART 8—MINOR AMENDMENTS

76 Acts amended in schedule

The schedule amends the Acts mentioned in it.

SCHEDULE

MINOR AMENDMENTS

section 76

LAND ACT 1994

1 Section 256(4)—

omit.

2 Section 445—

relocate and *renumber*, in chapter 7, part 3A, division 3, as section 431G.

3 Section 447(1)—

omit.

4 Section 447(2) to (5)—

renumber as section 447(1) to (4).

5 Section 447—

relocate and *renumber*, in chapter 7, part 3A, division 2, as section 431B.

SCHEDULE (continued)

MINERAL RESOURCES ACT 1989

1 Section 423(3) and (4), ‘section 5’—

omit, insert—

‘the schedule’.

2 Schedule, definition “land” (first definition)—

omit.

3 Schedule, definition “land” (second definition), ‘, other than for the native title provisions,’—

omit.

VEGETATION MANAGEMENT ACT 1999

1 The following provisions, ‘Integrated Planning Act 1997’—

- sections 3(2)(a), 7, 21, 22, 61(a), 67(1)(a), 68(3), 73(3)(b) and 74
- part 2, division 6, heading
- schedule, definitions “applicable code”, “assessment manager”, “concurrence agency”, “development”, “development application”, “development approval”, “IDAS”, “vegetation clearing provision”

omit, insert—

‘Planning Act’.

2 Section 52(6), ‘called’—

omit.

SCHEDULE (continued)

3 Section 67(1), ‘evidence of it’—

omit, insert—

‘evidence of the matter’.