



Queensland

Vegetation Management (Regrowth Clearing Moratorium) Act 2009

Act No. 6 of 2009



Queensland

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Vegetation Management (Regrowth Clearing Moratorium) Act 2009

Act No. 6 of 2009

**An Act to impose a moratorium on the clearing of particular regrowth
vegetation**

[Assented to 30 April 2009]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Vegetation Management (Regrowth Clearing Moratorium) Act 2009*.

2 Commencement

This Act is taken to have commenced on 8 April 2009.

3 Purpose of Act and its achievement

- (1) The purpose of this Act is to protect—
- (a) regrowth vegetation that is an endangered regional ecosystem in particular areas; and
 - (b) particular riparian regrowth vegetation in the Burdekin, Mackay Whitsunday and Wet Tropics catchments.

Note—

At the date of assent, a map showing the Burdekin, Mackay Whitsunday and Wet Tropics catchments can be inspected on the department's website at <www.derm.qld.gov.au>.

- (2) The purpose is to be achieved mainly by restricting clearing of the endangered regrowth vegetation and riparian regrowth vegetation for a period of at least 3, but no more than 6, months while the State consults with stakeholders about the optimum way to regulate clearing of regrowth vegetation under the Vegetation Management Act.

Part 2 Interpretation

Division 1 Dictionary

4 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

Division 2 Key definitions

5 What is a *moratorium area*

- (1) A *moratorium area* is—
 - (a) an area shown on a moratorium map as a moratorium regrowth vegetation area; or
 - (b) an area of regrowth vegetation within 50m of a watercourse identified on a moratorium map as a moratorium watercourse.
- (2) The exact location of an area mentioned in subsection (1)(b) depends upon the location of the relevant watercourse from time to time.

6 What is a *moratorium map*

- (1) A *moratorium map* is a map—
 - (a) certified by the chief executive as a moratorium map for a particular area; and
 - (b) maintained by the department for the purpose of showing, for the area—
 - (i) moratorium regrowth vegetation areas; and
 - (ii) moratorium watercourses.

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- (2) A *moratorium map* includes any amendment to the map certified by the chief executive as an amendment to the map.
- (3) An amendment of a moratorium map takes effect at the beginning of the day after the amendment is certified.
- (4) If a moratorium map is amended, the day the amendment takes effect is shown on the map.

7 What is the *moratorium period*

The *moratorium period* is the period starting at the beginning of 8 April 2009 and ending—

- (a) generally—at the end of 7 July 2009; or
- (b) if the Minister has by gazette notice nominated a later day that is not more than 3 months after 7 July 2009 as the day the moratorium period ends—at the end of the later day.

8 Types of regrowth vegetation

- (1) *Endangered regrowth vegetation* is regrowth vegetation that is an endangered regional ecosystem located within an area shown on a moratorium map as a moratorium regrowth vegetation area.
- (2) *Riparian regrowth vegetation* is regrowth vegetation located within 50m of a watercourse identified on a moratorium map as a moratorium watercourse.

Division 3 Other definitions

9 Words have meanings given by particular Acts

- (1) Words defined under the Planning Act and used in this Act have the same meanings as they have under that Act.

- (2) Words defined under the Vegetation Management Act and used in this Act have the same meanings as they have under that Act.

Part 3 Relationship with Planning Act

Division 1 Inconsistency with Planning Act

10 Act prevails over Planning Act

If a provision of this Act is inconsistent with the Planning Act, the provision prevails to the extent of the inconsistency.

Division 2 Modified schedule 8 and development applications

11 Modifying effect of Planning Act, sch 8

- (1) In the moratorium period—
- (a) the Planning Act, schedule 8, part 1, table 4, items 1A and 1B ceases to have effect; and
 - (b) the modified version of those items as shown in schedule 1 (*modified schedule 8*) has effect instead.
- (2) Subsection (1)(b) applies subject to section 14(3).

12 Refusing to receive particular development applications

- (1) If, in the moratorium period, a person makes a relevant development application for land in a moratorium area—
- (a) the application is taken, for the Planning Act, not to be a properly made application; and

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(b) the assessment manager must refuse to receive the application.

(2) In this section—

relevant development application means a development application that involves modified schedule 8 development.

13 Restriction on changing particular existing applications

(1) An existing moratorium area application can not be changed in any way that increases the area of the proposed clearing of vegetation in the moratorium area.

(2) An existing non-moratorium area application can not be changed in any way that increases the area of the proposed clearing of vegetation if the clearing is in a moratorium area.

(3) In this section—

existing moratorium area application means a development application, made before the start of the moratorium period, for land in a moratorium area that involves relevant development.

existing non-moratorium area application means a development application, made before the start of the moratorium period, for land not in a moratorium area that involves relevant development.

relevant development means—

- (a) assessable development under the Planning Act, schedule 8, part 1, table 4, item 1A or 1B; or
- (b) assessable development for which the chief executive is a concurrence agency.

Division 3 Exemptions

14 Application for exemption

- (1) A person may, in the moratorium period, apply to the chief executive for a decision that modified schedule 8 development is exempt development.

Note—

At the date of assent, guidelines about making an application under this section are available for inspection on the department's website at <www.derm.qld.gov.au>.

- (2) The chief executive may—
- (a) grant the exemption; or
 - (b) grant the exemption on conditions; or
 - (c) refuse the exemption.
- (3) If the chief executive grants the exemption, the development is taken to be exempt development.

15 Criteria for decision

- (1) The chief executive may grant the exemption only if the chief executive is satisfied—
- (a) both—
 - (i) the development is for a relevant purpose under the Vegetation Management Act, section 22A, other than subsection (2)(j) of that section; and
 - (ii) granting the exemption is consistent with the purpose of this Act or the Vegetation Management Act; or
 - (b) the development is—
 - (i) for a project in the interest of the State; and
 - (ii) necessary to be carried out in the moratorium period because of exceptional circumstances.

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- (2) The chief executive may impose a condition on the exemption only if it is consistent with the purpose of this Act or the Vegetation Management Act.

16 Notice of decision

- (1) The chief executive must give the person notice of the decision.
- (2) If the decision was to refuse the exemption or grant the exemption on conditions, the notice must state the following—
 - (a) the reasons for the decision;
 - (b) that the applicant may, within 28 days after the notice is given, appeal against the decision to the Magistrates Court;
 - (c) how to appeal.

17 Term of exemption

- (1) An exemption—
 - (a) takes effect when the applicant is given notice of the decision; and
 - (b) continues in force for 1 year.
- (2) At the end of the moratorium period, the development taken to be exempt development under the exemption continues to be exempt development only if any conditions imposed on the exemption are complied with.

Part 4 Relationship with Vegetation Management Act

Division 1 Property maps of assessable vegetation

18 Making PMAV

- (1) This section applies to a PMAV application made on or after the beginning of 26 March 2009.
- (2) Despite the Vegetation Management Act, section 20C(3), if the chief executive has not agreed to make the map before the date of assent, the chief executive may, in the moratorium period, agree to make the map only if satisfied doing so is consistent with the purpose of this Act or the Vegetation Management Act.

19 Replacing PMAV in moratorium period

- (1) This section applies despite the Vegetation Management Act, section 20D(3)(c).
- (2) The chief executive may, in the moratorium period, replace a PMAV for an area with a new PMAV only if satisfied doing so is consistent with the purpose of this Act or the Vegetation Management Act.

Division 2 Native forest practices

20 Native forest practice in moratorium area

- (1) This section applies to a person who conducts a native forest practice in a moratorium area in the moratorium period.
- (2) Despite the Vegetation Management Act, section 20A—
 - (a) a code approved under subsection (1) of that section is taken not to apply to the native forest practice; and

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Note—

An effect of paragraph (a) is that activities for the native forest practice must be conducted in the way stated in the Vegetation Management Act, schedule, definition *forest practice*, paragraph 1(b)(ii).

- (b) the person is not required, for conducting the forest practice, to give the chief executive a notice in the approved form stating the location of the native forest practice.

Division 3 Particular development applications for leasehold land

21 Particular development not for a relevant purpose

- (1) This section applies to a vegetation clearing application for development that is the clearing of the following vegetation on relevant leasehold land if the area proposed to be cleared was cleared before 31 December 1989—
 - (a) endangered regrowth vegetation;
 - (b) riparian regrowth vegetation.
- (2) Despite the Vegetation Management Act, section 22A(2)(j), the development applied for is taken not to be for a relevant purpose under that section.
- (3) In this section—

relevant leasehold land means land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes.

Part 5 Offences and enforcement

22 Definition for pt 5

In this part—

prohibited development means development that is the clearing of endangered regrowth vegetation or riparian regrowth vegetation if—

- (a) the development is modified schedule 8 development; and
- (b) there is no exemption for the development; and
- (c) the clearing was carried out in the period—
 - (i) starting at the beginning of 8 April 2009; and
 - (ii) ending immediately before the date of assent.

23 Clearing of particular regrowth vegetation in particular period not an offence

The Planning Act, section 4.3.1(1), to the extent the provision relates to prohibited development, does not apply to a person carrying out prohibited development.

24 Show cause notice must be given

- (1) This section applies if the chief executive or an authorised officer under the Vegetation Management Act (each an *official*) reasonably believes a person has carried out prohibited development.
- (2) The official must, before giving the person a notice (a *compliance notice*) requiring the person to rectify the matter, give the person a show cause notice about the matter.
- (3) The show cause notice must state the following—
 - (a) the proposed action;
 - (b) the grounds for the proposed action;
 - (c) the facts and circumstances forming the basis for the grounds;
 - (d) that the person may make submissions about the show cause notice;
 - (e) how to make a properly made submission;

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- (f) where the submission may be made or sent;
 - (g) a day and time within which the submission must be made.
- (4) The day stated in the notice must be at least 21 days after the notice is given.

25 Ending show cause process without further action

- (1) This section applies if, after considering any properly made submission by a person given a show cause notice, the chief executive no longer believes a ground exists to take the proposed action.
- (2) The chief executive must not take any further action about the show cause notice.
- (3) The chief executive must give the person a notice stating that the proposed action will not be taken.

26 Compliance notice for rectification

- (1) If an official reasonably believes a person has carried out prohibited development, the official may give the person a compliance notice.
- (2) The compliance notice must state—
 - (a) that the official believes the person has carried out prohibited development; and
 - (b) the prohibited development the official believes has been carried out; and
 - (c) briefly, how it is believed the prohibited development has been carried out; and
 - (d) the matter the official believes is reasonably capable of being rectified; and
 - (e) the reasonable steps the person must take to rectify the matter; and

-
- (f) the stated reasonable period in which the person must take the steps.
 - (3) The compliance notice may be given only if, after considering any properly made submission by the person about the show cause notice, the official still believes it is appropriate to give the compliance notice.
 - (4) The Vegetation Management Act, sections 55(4) to (11) and 55A and part 4, division 1 apply as if the compliance notice were a compliance notice given under that Act.

Editor's note—

Vegetation Management Act, sections 55 (Compliance notice) and 55A (Record of compliance notice in land registry) and part 4 (Appeals and legal proceedings), division 1 (Appeals)

Part 6 Appeals and legal proceedings

Division 1 Moratorium maps and PMAVs

27 Non-application of Judicial Review Act 1991

- (1) The *Judicial Review Act 1991* does not apply to the following matters under this Act—
 - (a) conduct engaged in for the purpose of making a relevant decision;
 - (b) other conduct that relates to the making of a relevant decision;
 - (c) the making of a relevant decision or the failure to make a relevant decision;
 - (d) a relevant decision.
- (2) In particular, for subsection (1), the Supreme Court does not have jurisdiction to hear and determine applications made to it

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under the *Judicial Review Act 1991*, part 3 or 5 in relation to matters mentioned in subsection (1).

(3) In this section—

relevant application means a PMAV application made on or after the beginning of 26 March 2009 and before the date of assent.

relevant decision means—

- (a) a decision to agree to make a PMAV the subject of a relevant application; or
- (b) the certifying by the chief executive of a moratorium map or an amendment of a moratorium map; or
- (c) a decision, or cessation of decision-making, made or permitted under section 34.

28 No appeals about moratorium map, PMAV and particular applications

(1) A person can not appeal under any Act or other law—

- (a) in relation to the chief executive certifying a moratorium map or an amendment of a moratorium map; or
- (b) about a delay in the chief executive agreeing to make a PMAV the subject of a relevant application; or
- (c) about a decision, or cessation of decision-making, made or permitted under section 34.

(2) In this section—

appeal includes to seek injunctive or any other relief in a proceeding.

relevant application means a PMAV application made on or after the beginning of 26 March 2009 and before the date of assent.

Division 2 Exemptions

29 Who may appeal

A person who has been refused an exemption or granted an exemption on conditions may appeal against the decision to the Magistrates Court.

30 Starting appeal

- (1) An appeal is started by—
 - (a) filing notice of appeal with the Magistrates Court; and
 - (b) serving a copy of the notice on the chief executive; and
 - (c) complying with rules of court applicable to the appeal.
- (2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.
- (3) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

31 Hearing procedures

- (1) In deciding an appeal, the Magistrates Court—
 - (a) has the same powers as the chief executive in making the decision appealed against; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing, unaffected by the decision.

32 Court's powers on appeal

In deciding an appeal, the Magistrates Court may—

- (a) confirm the decision appealed against; or

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- (b) set aside the decision and return the matter to the chief executive with directions the court considers appropriate.

33 Appeal to District Court

An appeal lies to a District Court from a decision of the Magistrates Court, but only on a question of law.

Part 7 Miscellaneous provisions

34 Chief executive may stop making decisions about, or giving responses to, particular applications

- (1) The chief executive may, in the moratorium period, take all or any of the steps mentioned in subsection (2) if satisfied it is necessary or desirable for achieving the purpose of this Act or the Vegetation Management Act to take the steps.
- (2) For subsection (1), steps are—
 - (a) despite part 3, division 3, stop deciding applications for exemptions; or
 - (b) for a stated period, stop deciding relevant vegetation clearing applications; or
 - (c) for a stated period, stop giving the assessment manager its referral agency's responses to relevant development applications.
- (3) For subsection (2)(b) and (c), the period the chief executive has to decide relevant vegetation clearing applications or assess relevant development applications does not end until the end of the stated period.
- (4) In this section—

relevant development applications means development applications made before or in the moratorium period for which—

- (a) the chief executive is a concurrence agency; and
- (b) the jurisdiction under the Planning Act, section 3.1.8 for the concurrence agency is the purpose of the Vegetation Management Act.

relevant vegetation clearing applications means vegetation clearing applications, made before or in the moratorium period, for which the chief executive is the assessment manager.

35 Copies of moratorium map to be available for inspection and purchase

- (1) The chief executive must—
 - (a) keep the digital electronic form of a moratorium map available for inspection, free of charge, by members of the public at particular regional offices; and
 - (b) publish the digital electronic form of the moratorium map on the department's website on the internet.

Editor's note—

The department's website address at the commencement of this Act was <www.derm.qld.gov.au>. The regional offices where the digital electronic form of a moratorium map can be inspected are stated on the department's website.

- (2) On payment of a fee, a person may buy a copy of a moratorium map.
- (3) The fee for the copy of a moratorium map must not be more than the reasonable cost of publishing the copy.
- (4) The following must be held in digital electronic form by the department—
 - (a) the exact location of the boundary of the moratorium vegetation regrowth area;

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- (b) the approximate location of each of the moratorium watercourses.

Note—

The department uses a geographic information system for capturing, managing, analysing and displaying the data for a moratorium map for a particular property.

- (5) The information held in digital electronic form must be able to be reduced or enlarged to show the details of the boundaries of the moratorium vegetation regrowth area.

36 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, certified and maintained, given, or issued under this Act—
 - (i) a decision;
 - (ii) a compliance notice;
 - (iii) a moratorium map, as in force for a stated day, or during a stated period;
- (b) a stated document is a copy of, or an extract from or part of a document kept or made under this Act;
- (c) on a stated day, or during a stated period, an exemption—
 - (i) was, or was not in force; or
 - (ii) was, or was not, subject to a stated condition.

37 No compensation payable

To remove any doubt, it is declared that no amount, whether by way of compensation, reimbursement or otherwise, is payable by the State to any person for or in connection with

the operation of this Act or its effect on a person's interest in any moratorium area.

Part 8 Savings and transitional provisions

38 Development approvals under the Planning Act

- (1) This section applies if, immediately before the start of the moratorium period, a development approval under the Planning Act is in effect for land in an area that, under section 5, becomes a moratorium area.
- (2) The approval continues in effect as if the area had not become a moratorium area.

39 Existing development applications

- (1) This section applies if, immediately before the start of the moratorium period—
 - (a) a development application had been made for land in an area that, under section 5, becomes a moratorium area; and
 - (b) the application was a properly made application and had not lapsed under the Planning Act; and
 - (c) the application had not been decided.
- (2) The assessment manager must not, in the moratorium period, approve the application to the extent the development applied for is clearing endangered regrowth vegetation or riparian regrowth vegetation.

Note—

Part 3, division 3 deals with applications for exemptions for modified schedule 8 development.

Schedule 1 **Modified schedule 8**

section 11

Note—

The paragraphs that have been modified are in bold type.

Table 4: Operational works

For clearing native vegetation on freehold land and indigenous land	
1A	<p>Operational work that is the clearing of native vegetation on freehold land and indigenous land, unless the clearing is—</p> <ul style="list-style-type: none"> (a) the clearing of vegetation to which VMA does not apply; or (b) for a forest practice, other than on indigenous land on which the State owns the trees; or (c) to the extent necessary for building on a lot, other than indigenous land, a single residence, and any reasonably associated building or structure, if the building of the residence— <ul style="list-style-type: none"> (i) is building work for which a development permit for a building development application has been issued; or (ii) is building work mentioned in part 2, table 1, item 1; or (iii) is development to which chapter 5, part 6 applies; or (ca) to the extent necessary for building residences on indigenous land, and any reasonably associated building or structure, for Aboriginal or Torres Strait Islander inhabitants of the land or persons providing educational, health, police or other community services for the inhabitants if the building of the residences— <ul style="list-style-type: none"> (i) is building work for which a development permit for a building development application has been issued; or (ii) is building work mentioned in part 2, table 1, item 1; or (iii) is development to which chapter 5, part 6 applies; or (d) necessary for essential management; or (e) in an area shown on a property map of assessable vegetation as a category X area; or

Table 4: Operational works

	<p>(f) in an area for which there is no property map of assessable vegetation and the vegetation is not any of the following—</p> <ul style="list-style-type: none"> (i) remnant vegetation; (ii) endangered regrowth vegetation; (iii) riparian regrowth vegetation; or <p>(g) for urban purposes in an urban area that is—</p> <ul style="list-style-type: none"> (i) shown on a property map of assessable vegetation as a category 2 area or a category 3 area; or (ii) if there is no property map of assessable vegetation for the area—a remnant of concern regional ecosystem, a remnant not of concern regional ecosystem or the vegetation is endangered regrowth vegetation or riparian regrowth vegetation; or <p>(ga) for urban purposes in an urban area in a wild river high preservation area and the vegetation is—</p> <ul style="list-style-type: none"> (i) a remnant of concern regional ecosystem; or (ii) a remnant not of concern regional ecosystem; or (iii) not remnant vegetation; or <p>(h) necessary for routine management in an area of the land—</p> <ul style="list-style-type: none"> (i) shown on a property map of assessable vegetation as a category 3 area; or (ii) for which there is no property map of assessable vegetation and the vegetation is a remnant not of concern regional ecosystem, endangered regrowth vegetation or riparian regrowth vegetation; or <p>(i) on indigenous land, gathering, digging or removing forest products for—</p> <ul style="list-style-type: none"> (i) the purpose of improving the land or for use under the <i>Local Government (Aboriginal Lands) Act 1978</i>, section 28; or (ii) use under the <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984</i>, section 62; or <p>(j) for a specified activity, other than schedule 10, definition <i>specified activity</i>, paragraph (a); or</p> <p>(ja) for schedule 10, definition <i>specified activity</i>, paragraph (a) to the extent it involves clearing vegetation other than endangered regrowth vegetation or riparian regrowth vegetation; or</p> <p>(k) in an urban development area; or</p>
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Table 4: Operational works

	<p>(l) on airport land and the operational work—</p> <p>(i) is consistent with the land use plan approved under the <i>Airport Assets (Restructuring and Disposal) Act 2008</i>, chapter 3, part 1 for the land; and</p> <p>(ii) is carried out on land that is not stated, under the land use plan, to remain undeveloped land.</p>
<p>For clearing native vegetation on leasehold land used for agriculture or grazing</p>	
<p>1B</p>	<p>Operational work that is the clearing of native vegetation on land subject to a lease issued under the <i>Land Act 1994</i> for agriculture or grazing purposes, unless the clearing is—</p> <p>(a) the clearing of vegetation to which VMA does not apply; or</p> <p>(b) to the extent necessary, for building on a lot a single residence, and any reasonably associated building or structure, if the building of the residence—</p> <p>(i) is building work for which a development permit for a building development application has been issued; or</p> <p>(ii) is building work mentioned in part 2, table 1, item 1; or</p> <p>(iii) is development to which chapter 5, part 6 applies; or</p> <p>(c) necessary for essential management; or</p> <p>(d) in an area shown on a property map of assessable vegetation as a category X area; or</p> <p>(e) in an area for which there is no property map of assessable vegetation, the area has been cleared after 31 December 1989 and the vegetation is not any of the following—</p> <p>(i) remnant vegetation; or</p> <p>(ii) endangered regrowth vegetation; or</p> <p>(iii) riparian regrowth vegetation; or</p> <p>(f) necessary for routine management in an area of the land—</p> <p>(i) shown on a property map of assessable vegetation as a category 3 area or category 4 area; or</p> <p>(ii) for which there is no property map of assessable vegetation, and the vegetation is a remnant not of concern regional ecosystem or the vegetation is not remnant vegetation; or</p>

Table 4: Operational works

	<p>(g) for a specified activity, other than schedule 10, definition <i>specified activity</i>, paragraph (a); or</p> <p>(h) for schedule 10, definition <i>specified activity</i>, paragraph (a) to the extent it involves clearing vegetation other than endangered regrowth vegetation or riparian regrowth vegetation.</p>
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Schedule 2 Dictionary

section 4

compliance notice see section 24(2).

endangered regrowth vegetation see section 8(1).

exemption means an exemption granted by the chief executive under section 14 for modified schedule 8 development.

modified schedule 8 see section 11(1)(b).

modified schedule 8 development means development that—

- (a) immediately before the moratorium period, was exempt development under the Planning Act; but
- (b) in the moratorium period, is assessable development under modified schedule 8 and is not the subject of an exemption.

moratorium area see section 5.

moratorium map see section 6.

moratorium period see section 7.

official see section 24(1).

Planning Act means the *Integrated Planning Act 1997*.

PMAV means property map of assessable vegetation.

PMAV application means an application to make a PMAV under the Vegetation Management Act, section 20C.

prohibited development, for part 5, see section 22.

properly made submission means a submission that—

- (a) is written; and
- (b) is signed by each person (a ***signatory***) who made the submission; and
- (c) states the name and address of each signatory; and

- (d) states the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (e) is made to the person stated in the notice inviting the submission; and
- (f) is received on or before the last day under the relevant show cause notice for the making of the submission.

riparian regrowth vegetation see section 8(2).

show cause notice means a notice that complies with section 24(3).

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