



Queensland

Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014

Subordinate Legislation 2014 No. 32

made under the

Nature Conservation Act 1992

State Penalties Enforcement Act 1999

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014*.

2 Commencement

This regulation commences on 31 March 2014.

Part 2 Amendment of Nature Conservation (Administration) Regulation 2006

3 Regulation amended

This part amends the *Nature Conservation (Administration) Regulation 2006*.

4 Amendment of s 14 (Licences for protected plants other than in a protected area)

Section 14(a) to (e)—

omit, insert—

- (a) a protected plant growing licence;
- (b) a protected plant harvesting licence.

5 Replacement of s 15 (Permits for protected plants other than in a protected area)

Section 15—

omit, insert—

15 Permit for protected plants other than in a protected area

The chief executive may grant a protected plant clearing permit for protected plants other than in a protected area.

6 Amendment of s 20 (Maximum term for licences for wildlife)

Section 20(1)(k)—

omit, insert—

- (k) for a protected plant growing licence—5 years;
- (l) for a protected plant harvesting licence—5 years.

7 Amendment of s 21 (Maximum term for permits for wildlife)

Section 21(1)(g)—

omit, insert—

- (g) for a protected plant clearing permit—2 years;

8 Amendment of s 24 (Particular applications must include request for record book or approval of electronic record system)

- (1) Section 24(2) and (3)—

renumber as section 24(3) and (4).

- (2) Section 24—

insert—

- (2) However, this section does not apply to an application for a protected plant growing licence or a protected plant harvesting licence.

9 Insertion of new s 27A

After section 27—

insert—

27A Fee payable for major amendments to particular applications

- (1) This section applies if the chief executive agrees, under section 27, to a major amendment of an application for—
- (a) a protected plant growing licence; or
 - (b) a protected plant harvesting licence; or
 - (c) a protected plant clearing permit.
- (2) The applicant must pay the following fee for making the amendment—
- (a) for a protected plant growing licence—a fee equivalent to the concessional fee for a protected plant growing licence under schedule 3, part 2, division 4;
 - (b) for a protected plant harvesting licence—a fee equivalent to the concessional fee for a protected plant harvesting licence under schedule 3, part 2, division 4;
 - (c) for a protected plant clearing permit—a fee equivalent to the concessional fee for a protected plant clearing permit under schedule 3, part 2, division 4A.
- (3) In this section—
- major amendment*** means—

- (a) for an application for a protected plant growing licence or protected plant harvesting licence—
 - (i) an increase in the size of the area to which the application relates; or
 - (ii) an addition of a species, or a change to a species, of protected plant or plant part to be taken under the licence to which the application relates; or
- (b) for an application for a protected plant clearing permit—a change to the size of the area to which the application relates.

10 Amendment of s 120 (Application of pt 6)

- (1) Section 120(c), after ‘authority’—

insert—

for animals

- (2) Section 120—

insert—

- (d) a record (a ***protected plant harvest record***) required to be kept for a whole restricted plant or restricted plant part taken under—
 - (i) a protected plant growing licence; or
 - (ii) a protected plant harvesting licence; or
 - (iii) an exemption under the Wildlife Management Regulation, chapter 4, part 3; and

Note—

See the Wildlife Management Regulation, section 245 for who is required to keep a protected plant harvest record.

- (e) a record (a ***protected plant trade record***) required to be kept for a whole restricted

plant or restricted plant part used for trade under a protected plant harvesting licence or protected plant trade exemption under the Wildlife Management Regulation.

Note—

See the Wildlife Management Regulation, section 261ZJ for who is required to keep a protected plant trade record.

(3) Section 120—

insert—

(2) In this section—

restricted plant see the Wildlife Management Regulation, schedule 5.

11 Amendment of s 121 (How records must be kept)

(1) Section 121(1)(b), after ‘authority’—

insert—

for animals

(2) Section 121(1)(b)(i)—

insert—

Note—

See the Macropod Conservation Plan for how a record for particular wildlife authorities for macropods must be kept.

(3) Section 121(1)—

insert—

(c) for a protected plant harvest record—in a written or electronic record system; or

(d) for a protected plant trade record—in a written or electronic record system.

(4) Section 121(1), note—

omit, insert—

Note for subsection (1)—

See also section 127 about requirements for information included in a record.

(5) Section 121(3)—

renumber as section 121(6).

(6) Section 121—

insert—

(3) For subsection (1)(c) and (d), if a record is kept in an electronic record system (the **primary system**) and the primary system is not working on the day particular information must be included in the record—

(a) the information must be recorded in a written record system or another electronic record system; and

(b) the written record system or other electronic system is taken to be a part of the primary system.

(4) An electronic record system mentioned in subsection (1)(c) or (d) may, but need not, be a system approved by the chief executive.

(5) Also, a protected plant harvest record or a protected plant trade record must be kept in a way that it is available on demand for checking by a conservation officer.

12 Amendment of s 122 (Where records or copies must be kept)

(1) Section 122(1)(d), after ‘wildlife authority’—

insert—

for animals

(2) Section 122(1)—

insert—

- (e) for a protected plant harvest record or a protected plant trade record—
 - (i) if an individual is keeping the record—at the person’s place of residence; or
 - (ii) if a recreational plant society is keeping the record—at the society’s office or other usual place for keeping the society’s records; or
 - (iii) if a corporation is keeping the record under a wildlife authority for protected plants—
 - (A) at the licensed premises for the authority; or
 - (B) if the licensed premises for the authority are not a place open for business—at an office of the corporation that is in the State; or
 - (iv) if a corporation is keeping the record under an exemption under the Wildlife Management Regulation—at an office of the corporation in the State.

(3) Section 122(2), note—

omit.

13 Amendment of s 125 (When record particulars to be included in record)

Section 125, notes—

omit, insert—

Note—

See the Macropod Conservation Plan for when information must be included in a record for particular wildlife authorities for macropods.

14 Amendment of s 132 (When return of operations must be given and the period for which they must be given)

Section 132(3), notes—

omit, insert—

Note—

See the Macropod Conservation Plan for when a return of operations for particular wildlife authorities for macropods must be given and the period for which it must be given.

15 Amendment of s 143 (Reduced fee for particular landholders)

(1) Section 143(1)(c) and (d)—

omit.

(2) Section 143(2), ‘or plants’—

omit.

16 Replacement of s 144 (Reduced fee for commercial wildlife harvesting licence for protected plants)

Section 144—

omit, insert—

144 Reduced fee for particular wildlife authorities for protected plants

(1) This section applies to a wildlife authority for a protected plant if the activity to be carried out under the authority is—

(a) to be carried out for—

(i) an educational purpose; or

(ii) a scientific research purpose; or

(b) an activity directed at conservation; or

(c) clearing to establish necessary property infrastructure; or

- (d) a traditional owner activity.
- (2) The fee payable for the authority is the concessional fee stated, in schedule 3, for the authority.
- (3) In this section—

educational purpose means the purpose of teaching at an educational institution or by an educational organisation.

necessary property infrastructure means any of the following necessary infrastructure—

- (a) a fence;
- (b) a firebreak;
- (c) a road or vehicular track.

scientific research purpose means the purpose of scientific research carried out at a tertiary or other institution administered by the Commonwealth, a State or an entity that is involved in scientific research.

traditional owner activity means an activity by which a protected plant is taken and used by a person of Aboriginal or Torres Strait Islander descent for a traditional cultural practice recognised by the Aboriginal or Torres Strait Islander community generally.

17 Omission of ss 151–153

Sections 151 to 153—

omit.

18 Amendment of s 154 (Application for exemption of fee)

Section 154(1), ‘for a protected area authority.’—

omit, insert—

for—

- (a) a protected area authority; or
- (b) a wildlife authority for protected plants.

19 Amendment of s 155 (Deciding fee exemption application)

Section 155(2)—

insert—

- (c) for an exemption for a wildlife authority for protected plants—the applicant for the wildlife authority is a recreational plant society, a voluntary conservation organisation or a volunteer community organisation.

20 Amendment of s 162 (Period for which particular documents must be kept)

- (1) Section 162(1)(c), after ‘149,’—

insert—

245, 261ZJ,

- (2) Section 162(2)(b)(i) and (ii)—

omit, insert—

- (i) for a document about an animal kept under a relevant authority—at least 2 years after the person ceases to hold any relevant authority for the animal; or
- (ii) for a document about a protected plant taken or otherwise obtained or used under—
 - (A) a wildlife authority—at least 5 years after the person ceases to hold the authority for the plant; or

(B) an exemption under the Wildlife Management Regulation, chapter 4, part 3—at least 5 years after the person ceases to carry out the activity to which the document relates; or

(iii) for another document—at least 2 years after the person ceases to carry out the activity, or possess the wildlife, to which the document relates.

21 Insertion of new pt 12, div 4

After section 175—

insert—

Division 4 Transitional provisions for the Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014

176 Definitions for div 4

In this division—

amended regulation means this regulation as in force at the commencement.

commencement means the commencement of this division.

discontinued authority means any of the following wildlife authorities for protected plants under the unamended regulation—

- (a) a commercial wildlife licence;
- (b) a recreational wildlife licence;
- (c) a wildlife movement permit.

equivalent authority, of a transitioned authority, means—

- (a) for a commercial wildlife harvesting licence or recreational wildlife harvesting licence for protected plants under the unamended regulation—a protected plant harvesting licence; or
- (b) for a herbarium licence for protected plants under the unamended regulation—a protected plant harvesting licence; or
- (c) for a clearing permit or damage mitigation permit under the unamended regulation—a protected plant clearing permit; or
- (d) for an educational purposes permit or scientific purposes permit—a protected plant harvesting licence.

transitioned authority means a licence or permit, other than a discontinued authority, for protected plants under the unamended regulation.

unamended regulation means this regulation as in force from time to time before the commencement.

177 Existing authorities

- (1) A transitioned authority in force immediately before the commencement, or granted under section 181(3)—
 - (a) continues in force for the term provided for under the unamended regulation; and
 - (b) is taken to be its equivalent authority under the amended regulation.
- (2) On the commencement, a discontinued authority ceases to have effect.

Note—

From the commencement, activities that were carried out under a discontinued authority may be carried out under a protected plant trade exemption under the Wildlife Management Regulation.

178 Existing exemptions

- (1) This section applies to a person who holds an exemption to take a protected plant in an area under section 41(1)(a)(ii) of the *Nature Conservation (Protected Plants) Conservation Plan 2000* in force immediately before the repeal of that plan.
- (2) For a period of 2 years after the commencement, and subject to the same conditions that applied under the exemption, the person may continue to take a protected plant the person was permitted to take under the exemption.

179 Particular existing approvals under Wildlife Management Regulation

- (1) An approval to be an authorised cultivator or propagator for protected plants in force immediately before the commencement is taken to be a protected plant growing licence under the amended regulation.
- (2) Subsection (1) has effect only for the term of the approval.
- (3) In this section—

approval means an approval under the Wildlife Management Regulation, chapter 4, part 5 as in force immediately before the commencement.

180 Existing applications for particular authorities

- (1) An application for a transitioned authority made under the unamended regulation that is not decided before the commencement is taken to be an application made under the amended regulation for its equivalent authority.
- (2) An application for a discontinued authority made under the unamended regulation that is not decided before the commencement lapses on the commencement.
- (3) The chief executive must refund the application fee paid for an application that lapses under subsection (2).

181 Existing reviews about transitioned authorities

- (1) This section applies to an application for review made under part 4 to a relevant decision-maker if—
 - (a) the decision being reviewed is the refusal, under the unamended regulation, to grant a transitioned authority; and
 - (b) the application was made but not decided before the commencement.
- (2) The relevant decision-maker must decide the application under the unamended regulation.
- (3) If the relevant decision-maker decides that the transitioned authority the subject of the review must be granted, the chief executive must grant the authority.
- (4) If QCAT returns the matter to the chief executive with directions—
 - (a) the application is taken to be an application for an equivalent authority for the transitioned authority; and

- (b) the chief executive must follow QCAT's directions to the extent possible.
- (5) If the relevant decision-maker confirms the decision being appealed against—
 - (a) an application the subject of the decision continues to be an application for a transitioned authority under the unamended regulation; and
 - (b) any further decision about the application must be made under the unamended regulation.
- (6) In this section—

relevant decision-maker means—

 - (a) for an application for internal review—the chief executive; or
 - (b) for an application for external review—QCAT.

182 Existing reviews about discontinued authorities

- (1) This section applies to an application for review made under part 4 if—
 - (a) the decision being reviewed is about the refusal, under the unamended regulation, to grant a discontinued authority; and
 - (b) the application was made but not decided before the commencement.
- (2) On the commencement, the application lapses.

22 Amendment of sch 3 (Fees)

- (1) Schedule 3, part 2, division 4—

omit, insert—

**Division 4 Licences for protected
plants**

	\$
14 Protected plant growing licence—	
(a) fee	500.00
(b) concessional fee.....	125.00
15 Protected plant harvesting licence—	
(a) fee	1 000.00
(b) concessional fee.....	250.00

**Division 4A Permits for protected
plants**

	\$
16 Protected plant clearing permit—	
(a) fee	2 500.00
(b) concessional fee.....	625.00
(2) Schedule 3, part 5, item 3—	
<i>omit.</i>	

23 Amendment of sch 7 (Dictionary)

- (1) Schedule 7, definitions *harvest period notice*, *official tag*, *protected plant part*, *protected plant parts record particulars*, *Protected Plants Conservation Plan*, *type A restricted plant*, *type B restricted plant* and *whole protected plants record particulars*—
omit.
- (2) Schedule 7—
insert—

harvest period notice means—

- (a) for a protected plant—a harvest period notice under the Wildlife Management Regulation; or
- (b) otherwise—a notice declaring a harvest period under a conservation plan.

part, for a protected plant, includes a stem, phyllode, foliage, bud, flower, spore, seed, fruit, bark, oil, root, rhizome, resin, gum, exudate, gall, genetic material, chemical and any other structural component or constituent, of the plant.

protected plants code of practice means the document called ‘The code of practice for the harvest and use of protected plants’, approved by the chief executive under section 174A of the Act and published on the department’s website.

Note—

A copy of the code is open for public inspection, during office hours on business days, at the department’s head office and each regional office of the department. See section 174A(3) of the Act.

protected plant harvest record see section 120(1)(d).

protected plant trade record see section 120(1)(e).

record, for a relevant authority or an exemption under the Wildlife Management Regulation, means the record required, under the Act, to be kept for the authority or exemption.

- (3) Schedule 7, definition *prescribed day*, paragraphs (c) and (d)—

omit, insert—

- (c) for a particular for a protected plant harvest record—within 24 hours after the event to which the record relates happens;

- (d) for a particular for a protected plant trade record—
 - (i) if a whole protected plant is taken or otherwise obtained under a licence or exemption mentioned in section 120(1)(e)—
 - (A) for the particulars of a whole protected plant obtained other than under a transaction, natural increase or propagation—on the day the plant was obtained; or
 - (B) for the particulars about a whole protected plant obtained or disposed of under a transaction—on the day of the transaction; or
 - (C) for the particulars about a natural increase or artificial propagation—on the day of the increase or propagation; or
 - (D) for the particulars about the death of the plant—on the day of the death; or
 - (ii) if protected plant parts are taken or otherwise obtained under a licence or exemption mentioned in section 120(1)(e)—
 - (A) for the particulars of a plant part obtained other than under a transaction—on the day the plant part was obtained; or
 - (B) for the particulars about a protected plant part obtained or disposed of under a transaction—on the day of the transaction; or

-
- (C) for the particulars about a loss or destruction of the plant part—on the day of the loss or destruction.
- (4) Schedule 7, definition *prescribed period*, paragraph (e)—
omit.
- (5) Schedule 7, definition *relevant record particulars*, paragraph (e)—
omit, insert—
- (e) for a protected plant harvest record or a protected plant trade record—a particular that the protected plants code of practice states must be included in the record.

Part 3 **Amendment of Nature Conservation (Wildlife Management) Regulation 2006**

24 **Regulation amended**

This part amends the *Nature Conservation (Wildlife Management) Regulation 2006*.

25 **Insertion of new s 6A**

After section 6—

insert—

6A Meaning of *trade* for protected plants

- (1) A person keeps or uses a protected plant or protected plant part for *trade* if the person—
- (a) uses or keeps the plant or plant part for a commercial purpose or a related purpose; or

Examples for paragraph (a)—

- a landscape contractor using a protected plant in a landscaping job
 - a nursery owner using a whole protected plant to produce other whole plants for potential sale
 - a plant hobbyist selling at a flea market the progeny of a whole protected plant the hobbyist has propagated at their home
 - a person using seed to propagate a whole protected plant for sale
- (b) otherwise sells, gives away, buys, obtains or exchanges the plant or plant part for gain, benefit or reward.
- (2) A person does not use or keep a protected plant or a protected plant part for trade if the person uses or keeps the plant or plant part for the person's own personal use.

26 Insertion of new s 7A

After section 7—

insert—

7A When whole plant is taken

- (1) For this regulation, a whole plant is taken if—
- (a) for a protected plant other than sandalwood—no part of the plant that may naturally and readily regrow is left behind; or
 - (b) for sandalwood—the trunk or main stem of the plant is taken even if a part of the plant that may naturally and readily regrow is left behind.
- (2) However, if a person divides a plant into 2 or more viable sections, a whole plant is taken if any of the resulting plants are taken, even if a viable section of the original plant is left behind.

- (3) Also, if a person takes a plant that propagates by creeping rhizomes, a whole plant is taken if any of the following parts of the plant are taken—
- (a) a continuous piece of rhizome bearing living fronds;
 - (b) any removed section of joined rhizomes bearing living fronds.

27 Amendment of s 10 (Who may obtain wildlife authority)

(1) Section 10(3)—

omit.

(2) Section 10(4) and (5)—

renumber as section 10(3) and (4).

28 Amendment of s 11 (General restriction on grant of wildlife authorities)

Section 11(1)—

insert—

Note—

See also section 137 of the Act.

29 Amendment of s 16 (Wildlife authority only authorises keeping, using and moving of lawfully obtained wildlife)

Section 16(1), note 2, ‘section 88B’—

omit, insert—

section 90A

30 Omission of ss 28 and 29

Sections 28 and 29—

omit.

31 Amendment of ch 4, hdg (Using or moving protected plants)

Chapter 4, heading, ‘Using’—

omit, insert—

Taking, keeping, using

32 Replacement of s 241 (Purpose of ch 4)

Section 241—

omit, insert—

241 Purpose of ch 4

- (1) The purpose of this chapter is to regulate the taking, keeping, use or movement of protected plants to—
 - (a) promote the continued existence in the wild of biologically viable populations of all taxa of protected plants; and
 - (b) allow the ecologically sustainable use of protected plants taken from the wild; and
 - (c) control processes threatening to protected plants; and
 - (d) minimise the impact of the taking of protected plants on nature, including, for example, by adopting a precautionary approach in the setting of limits for taking and the granting of wildlife authorities for protected plants; and
 - (e) encourage greater reliance on obtaining whole protected plants or protected plant parts from propagation or cultivation while recognising there may be grounds for taking them from the wild; and
 - (f) minimise the potential for illegally taken protected plants to be used for any purpose.

- (2) The purpose is achieved by—
 - (a) regulating the taking, keeping, use and movement of protected plants; and
 - (b) providing exemptions for taking, using or moving whole protected plants or protected plant parts in particular circumstances; and
 - (c) providing for a licensing scheme that allows only particular persons to take, keep, use or move protected plants and only in particular circumstances.
- (3) The licensing scheme mentioned in subsection (2)(c) allows the commercial cultivation and propagation of protected plants to reduce the demand for taking whole protected plants and protected plant parts in the wild.

33 Replacement of ch 4, pts 2 and 3

Chapter 4, parts 2 and 3—

omit, insert—

Part 2 Requirements for and restrictions about taking and using protected plants

Division 1 Preliminary

242 Purpose of pt 2

This part states particular requirements and restrictions that apply in relation to taking and using protected plants.

Note—

For other restrictions that apply to the taking and use of protected plants, see sections 89 and 90 of the Act.

Division 2 General requirements for taking protected plants

243 General requirements for taking protected plants

- (1) A person must not take a protected plant under a protected plant licence or a relevant exemption, other than in a way that—
 - (a) if the taking requires disturbance of the soil the plant is taken from—the disturbance is only to the extent necessary to remove the plant; or
 - (b) if the taking is by harvest of a protected plant part—
 - (i) the taking does not result in the death of the plant from which the part is taken; and
 - (ii) enough of the plant remains to—
 - (A) allow for reproduction of the plant; and
 - (B) provide habitat or food for other wildlife.

Maximum penalty—165 penalty units.

- (2) Also, a person must, when taking a protected plant by harvest under a protected plant licence or an exemption under this regulation, comply with each of the following—
 - (a) the protected plants code of practice;
 - (b) an applicable harvest period notice;

- (c) a sustainable harvest plan approved by the chief executive.

Maximum penalty—165 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (1) relating to the death of a plant if the defendant establishes that the defendant complied with the protected plants code of practice when taking the plant.

- (4) In this section—

relevant exemption means an exemption under this regulation, other than an exemption under part 3, division 2.

244 Restriction on taking protected plant in monitoring plot

A person must not take a protected plant in a monitoring plot established under a protected plant harvesting licence other than under the licence.

Maximum penalty—80 penalty units.

Division 3 Requirements for taking protected plants by harvest

245 Keeping record

- (1) This section applies if—
- (a) a person (a *holder*) harvests a whole restricted plant or restricted plant part under a protected plant licence; or
- (b) both of the following apply—

- (i) a person (an *exempted person*) harvests a whole restricted plant or restricted plant part under an exemption under this regulation;
 - (ii) the whole plant or plant part is to be used for trade.
- (2) The holder or exempted person must keep a protected plant harvest record of each whole plant or plant part harvested under the licence.

Maximum penalty—120 penalty units.

Notes—

- 1 For the requirements for a protected plant harvest record, see the Administration Regulation, part 6.
 - 2 Additional record-keeping requirements apply under section 261ZI for plants used under a protected plant trade exemption.
- (3) A holder complies with subsection (2) if a relevant person for the holder keeps the record for the holder.

246 Harvest labels for taking whole restricted plants or restricted plant parts in the wild

- (1) This section applies to a person who harvests a whole restricted plant or restricted plant part in the wild under a protected plant licence or an exemption under part 3.
- (2) The person must, at the time of harvest, attach a label that complies with subsection (3) (an *approved harvest label*) to each of the following harvested—
 - (a) whole plant;
 - (b) bundle of plant parts;
 - (c) container of plant parts.

Maximum penalty—120 penalty units.

- (3) The approved harvest label must—
- (a) state the matters set out for the label under the protected plants code of practice; and
 - (b) be legible for the life of the label.
- (4) A person must not state anything in an approved harvest label that the person knows is inaccurate or misleading in a material particular.
- Maximum penalty—80 penalty units.
- (5) A person must not remove an approved harvest label from a plant, bundle or container until—
- (a) the plant, bundle or container has been moved from the place where the plant or plant parts were harvested; and
 - (b) the earlier of the following happens—
 - (i) an approved trade label is attached to the plant, bundle or container;
 - (ii) the plant or plant parts start being used for a purpose other than trade.

Maximum penalty—80 penalty units.

Division 4 Requirements for taking protected plants by clearing

Subdivision 1 Interpretation

247 Meaning of *flora survey trigger map*

- (1) The *flora survey trigger map* is the map called ‘Flora Survey Trigger Map for Clearing Protected Plants in Queensland’ held by the department, as amended from time to time under section 251.

- (2) The *flora survey trigger map* includes any digital electronic spatial information that is used to produce the map.

248 Meaning of *high risk area*

A *high risk area* is an area—

- (a) where plants that are endangered, vulnerable or near threatened wildlife are present or are likely to be present; and
- (b) shown as a high risk area on the flora survey trigger map.

249 Meaning of *clearing impact area*

- (1) A *clearing impact area* means—
- (a) an area to be cleared to the extent it is within a high risk area; and
 - (b) a buffer zone that is—
 - (i) an additional area of 100m in width around the boundary of the area mentioned in paragraph (a); or
 - (ii) an additional area of less than 100m in width around the boundary of the area mentioned in paragraph (a) agreed to by the chief executive under subsection (2).
- (2) The chief executive may agree to a buffer zone for a clearing impact area that is less than 100m in width around the boundary of the area mentioned in subsection (1)(a) if the chief executive is satisfied—
- (a) it is not reasonably practicable for a flora survey to be undertaken of a buffer zone that is an area of 100m in width around the

boundary of the area mentioned in subsection (1)(a); or

Example—

the applicant does not have the permission of a landowner to undertake a flora survey of the area

- (b) a reduction in the width of the buffer zone is consistent with any requirements of the flora survey guidelines.

250 Meaning of *flora survey* and *flora survey report*

- (1) A *flora survey* is a survey undertaken to identify whether plants that are endangered, vulnerable or near threatened wildlife are present within a clearing impact area.
- (2) A report about the results of a flora survey for a clearing impact area is a *flora survey report*.

Subdivision 2 Provisions about flora survey trigger map

251 Reviewing and amending flora survey trigger map

- (1) The chief executive must review and, if necessary, amend the flora survey trigger map at least every 12 months, including, for example, by adding or removing a high risk area.
- (2) However, subsection (1) does not stop the chief executive from reviewing or amending the map at any time.

252 Public availability of flora survey trigger map

- (1) The chief executive must make the current version of the flora survey trigger map publicly available for inspection in the way the chief executive considers appropriate.
- (2) For subsection (1), an example of a way the chief executive may consider appropriate is making the map available for inspection on a website.

Subdivision 3 Flora survey guidelines

253 Chief executive may make flora survey guidelines

- (1) The chief executive may, by gazette notice, approve or make guidelines (the *flora survey guidelines*) about the conduct of a flora survey.
- (2) The flora survey guidelines may, for example, contain requirements or provisions about the following—
 - (a) who may undertake a flora survey;
 - (b) the extent of an area to be surveyed;
 - (c) information to be included in a flora survey report, including, for example, a map or plan showing the clearing impact area.
- (3) The chief executive must publish a copy of the flora survey guidelines as in force from time to time on the department's website.

Subdivision 4 Steps to be taken before taking protected plants by clearing

254 Flora survey trigger map check required for all clearing

- (1) Before starting any clearing, a person must check the flora survey trigger map to find out if any part of the area to be cleared is within a high risk area.
- (2) Subsection (1) does not apply to a person who is taking protected plants under an exemption under part 3, division 5, subdivision 3.

255 Copy of flora survey trigger map

- (1) The chief executive may give a person a copy of the flora survey trigger map that is current at the time it is given for checking the area to be cleared under section 254.
- (2) The copy of the map is valid for 12 months from the day the chief executive gives the person the copy.
- (3) Also, a person may obtain, from a website on which the map is published, a copy of the flora survey trigger map that is current at the time it is obtained for checking the area to be cleared under section 254.
- (4) The copy of the map is valid for 12 months from the day the person obtains the copy from the website.

Note—

However, see section 261Z(3) about when a flora survey trigger map is valid for 5 years in particular circumstances.

256 When flora survey is required

- (1) This section applies if any part of an area to be cleared is within a high risk area.
- (2) Before any clearing is started, a flora survey must be undertaken of the clearing impact area.

257 Flora survey and flora survey report must comply with certain guidelines or methodology

- (1) A flora survey and flora survey report must comply with the flora survey guidelines or an alternative survey methodology agreed to by the chief executive under subsection (2).
- (2) The chief executive may agree to an alternative survey methodology for carrying out a flora survey or preparing a flora survey report if the chief executive is satisfied the methodology is suitable for identifying whether plants that are endangered, vulnerable or near threatened wildlife are present within a clearing impact area.

Example—

An alternative survey methodology could include an alternative methodology for identifying protected plants and assessing the impacts of particular activities.

258 Inaccurate or misleading information in flora survey report

A person must not—

- (a) state anything in a flora survey report that the person knows is inaccurate or misleading in a material particular; or
- (b) omit, from a flora survey report, information known to the person about the presence of a plant that is endangered, vulnerable or near

threatened wildlife and its supporting habitat in an area.

Maximum penalty—165 penalty units.

Subdivision 5 When protected plant clearing permit is required for area other than high risk area

259 When a protected plant clearing permit is required for an area other than a high risk area

- (1) This section applies if, before a person starts clearing in an area other than a high risk area, the person is, or becomes, aware that—
 - (a) there are plants that are endangered, vulnerable or near threatened wildlife within the area to be cleared; and
 - (b) the plants would be taken by the clearing or there would be clearing within 100m of the plants.
- (2) A protected plant clearing permit is required for the clearing of the plants.

Note—

See part 4A.

Part 3 Exemptions for taking or using protected plants

Division 1 Purpose of part

260 Purpose of pt 3

- (1) The purpose of this part is to provide exemptions for offences for taking protected plants under section 89 of the Act or using protected plants under section 90 of the Act and part 2.
- (2) The *Justices Act 1886*, section 76, applies to each exemption in this part.
- (3) This section does not limit another provision of this regulation that creates an exemption to which the *Justices Act 1886*, section 76, applies.

261 References to protected plant

In this part, unless otherwise stated, a reference to a protected plant (including a restricted plant), or type of protected plant (including a type of restricted plant), is a reference to the whole plant and to parts of the plant.

Division 2 Exemptions for taking protected plants generally

261A Taking protected plant to avoid or reduce risk of death or serious injury

A person may take a protected plant that is in the wild if the taking—

- (a) is necessary and reasonable to avoid or reduce an imminent risk of death or serious injury to a person; and
- (b) can not reasonably be avoided or minimised.

261B Taking protected plant to avoid or reduce risk of serious damage to buildings or property

A person may take a protected plant that is in the wild if each of the following applies—

- (a) it is necessary and reasonable to take the plant to avoid or reduce an imminent risk of serious damage to a building or other structure on land, or to personal property;
- (b) if the damage is not prevented or controlled, a person may suffer significant economic loss;
- (c) the taking can not reasonably be avoided or minimised.

261C Taking protected plant under the Fire and Rescue Service Act 1990

A person may take a protected plant that is in the wild if—

- (a) taking the plant is, or is a necessary part of, a measure that is—
 - (i) authorised under the *Fire and Rescue Service Act 1990*, section 53(1) or 68(1)(c); or
 - (ii) required under section 53(2)(j) or 69(1) of that Act; or
- (b) the person takes the plant by lighting a fire that is—

- (i) authorised under a notification under the *Fire and Rescue Service Act 1990*, section 63 or a permit granted under section 65 of that Act; and
- (ii) necessary as a means of hazard reduction.

Division 3 Exemptions for using and moving protected plants generally

261D Using protected plants registered under Plant Breeder's Rights Act 1994 (Cwlth)

- (1) A person may use a protected plant for which a plant breeder's right has been granted under the *Plant Breeder's Rights Act 1994* (Cwlth).
- (2) However, if asked by a conservation officer, the person must produce evidence that the plant breeder's right has been granted for the plant, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—80 penalty units.

261E Landholders may gain benefit

A landholder of private land may gain a benefit for allowing a person to take a protected plant from the landholder's land if the taking is authorised under the Act.

261F Moving restricted plants being used for personal use

A person may move a restricted plant to or from any place within, inside or outside of the State for the person's own personal use.

261G Whole restricted plants propagated by propagator

- (1) This section applies if any of the following (each a *propagator*) propagates a whole restricted plant in the approved way—
 - (a) a holder of a protected plant growing licence or a relevant person for the holder;
 - (b) a holder of a protected plant harvesting licence or a relevant person for the holder;
 - (c) a person acting under another exemption under this part.

- (2) The propagator may use the whole restricted plant for any purpose.

Note—

However, see division 6 for requirements for trading in restricted plants.

- (3) However, for subsection (1), a stock plant taken under a protected plant growing licence is not propagated in the approved way if the plant is divided less than 12 months after it was taken from the wild.
- (4) If asked by a conservation officer, the propagator must, unless the propagator has a reasonable excuse, give the officer details about—
 - (a) the source of the reproductive or propagative material used in the propagation; and
 - (b) the date on which the material was obtained.

Maximum penalty for subsection (4)—165 penalty units.

- (5) In this section—

approved way, for propagating a restricted plant, means the plant is propagated—

- (a) by using only reproductive or propagative material that was obtained lawfully; and
- (b) under controlled conditions.

261H Using restricted plant parts cultivated by cultivator

- (1) This section applies if any of the following (each a ***cultivator***) cultivates plant parts taken from a restricted plant using only reproductive or propagative material that was obtained lawfully, and under controlled conditions—
 - (a) a holder of a protected plant growing licence or a relevant person for the holder;
 - (b) a holder of a protected plant harvesting licence or a relevant person for the holder;
 - (c) a person acting under another exemption under this part.
- (2) The cultivator may use the restricted plant part for any purpose.

Note—

However, see division 6 for requirements for trading in restricted plants.

- (3) If asked by a conservation officer, the cultivator must, unless the cultivator has a reasonable excuse, give the officer details about the source of the reproductive or propagative material used for the cultivation.

Maximum penalty for subsection (3)—165 penalty units.

Division 4 Exemptions for taking and using particular protected plants

Subdivision 1 Preliminary

261I What div 4 is about

This division is about providing exemptions for taking and using particular protected plants for particular purposes or in particular circumstances.

261J Application of exemptions under div 4

An exemption under this division does not authorise a person to take a protected plant if the taking would require the person to hold a protected plant clearing permit under part 4A.

Subdivision 2 Exemptions for taking and using whole protected plants and protected plant parts

261K Taking and using a least concern plant other than a special least concern plant

- (1) A person may take, by harvest, and use a protected plant that is least concern wildlife, other than a special least concern plant, only if the person, when taking the plant, ensures the taking does not impact on a plant that is endangered, vulnerable or near threatened wildlife growing in close proximity.

- (2) A plant taken under this section may be used for any purpose, including, for example, trade.
- (3) Nothing in this section allows a person to take a protected plant by clearing.

261L Taking or using protected plants under collection authority for biodiscovery

A person may take and use a protected plant on State land if the person—

- (a) holds a collection authority under the *Biodiscovery Act 2004*; and
- (b) takes or uses the plant under the collection authority.

261M Chief executive taking and using protected plants

The chief executive may take and use a protected plant for conservation purposes.

261N Exemption for Queensland Herbarium employees

- (1) An employee of the Queensland Herbarium may take and use a protected plant for the purposes for which the Queensland Herbarium was established.
- (2) A person must not use a whole protected plant or protected plant part taken under this section for trade.

Maximum penalty—165 penalty units.

261O Taking particular protected plants for conservation or revegetation program

- (1) A landholder may take the following protected plants from the land for use in a conservation or revegetation program if the landholder's land, or land local to the landholder's land, to be revegetated is in the natural range of the species—
 - (a) the seed or other propagative material of a plant that is vulnerable, near threatened or least concern wildlife or a special least concern plant;
 - (b) a whole plant that is near threatened or least concern wildlife or a special least concern plant.
- (2) For subsection (1), land is local to the landholder's land if it—
 - (a) is adjacent to the landholder's land; or
 - (b) is included in a conservation or revegetation program that includes the landholder's land.
- (3) Seed or other propagative material taken under this section may be propagated at a place other than on the landholder's land.
- (4) A person must not use a plant taken under this section for trade.

Maximum penalty—165 penalty units.
- (5) For subsection (4), the landholder does not use seed or propagative material for trade merely because the landholder engages another person to take, propagate or transplant the plant.

261P Taking or using protected plants for grazing activities

- (1) The landholder of private land may take and use a protected plant on the land if—
 - (a) the plant is consumed by stock grazing on the land; and
 - (b) the grazing is authorised or permitted under another law.
- (2) Also, a person may take and use a protected plant on State land if the plant is taken by stock grazing under a lease, licence, permit or other authority, or an exemption, given under another law.
- (3) A person must not use a protected plant taken under this section for trade.

Maximum penalty—165 penalty units.

261Q Australian Defence Force taking and using particular protected plants

- (1) A member of the Australian Defence Force may take and use a plant that is near threatened or least concern wildlife or a special least concern plant for food during authorised survival exercises if the plant is taken—
 - (a) under a military standing order; or
 - (b) on private land with the permission of the landholder; or
 - (c) under a permit or other approval under the *Forestry Act 1959*.
- (2) A person must not use a plant taken under this section for trade.

Maximum penalty—165 penalty units.

261R Taking or using marine plant

- (1) A person may take or use a marine plant under the *Fisheries Act 1994* if—
 - (a) the plant is lawfully taken or used under that Act; and
 - (b) the plant is a special least concern plant.
- (2) A person must not use a marine plant taken under this section for trade.
Maximum penalty—165 penalty units.
- (3) In this section—
marine plant see the *Fisheries Act 1994*, section 8.

Subdivision 3 Exemptions for taking and using protected plant parts

261S Taking protected plant parts for identification or an educational or scientific purpose

- (1) This section applies if it is necessary for a protected plant to be identified—
 - (a) to enable the chief executive to grant a person a wildlife authority for a protected plant; or
 - (b) for a flora survey; or
 - (c) for a record that may be kept by the Queensland Herbarium; or
 - (d) to carry out an environmental impact assessment study—
 - (i) under an Act; or
 - (ii) as a condition of an approval by a government entity; or

(iii) to ensure the person complies with the general environmental duty under the *Environmental Protection Act 1994*.

- (2) Also, this section applies if the taking of a protected plant part is for an educational or scientific purpose.
- (3) A person may take up to 2 specimens from a protected plant.
- (4) However, the person must not take more of the protected plant than will fit on a standard sheet of herbarium paper unless—
 - (a) the person reasonably believes the plant exhibits special life forms and might not be correctly identified if a smaller part of the plant were taken; and
 - (b) the taking will not cause the plant to die.
- (5) The person must—
 - (a) complete a specimen label for each specimen taken before leaving the place where the specimen is taken; and
 - (b) give each specimen to the Queensland Herbarium within 28 days after taking it.

Maximum penalty—20 penalty units.

- (6) A person must not use a plant part taken under this section for trade.

Maximum penalty—165 penalty units.

- (7) In this section—

specimen means part of a plant, including leaves, flowers or fruit—

- (a) that when taken fits on a single standard sheet of herbarium paper; and
- (b) the taking of which will not cause the plant to die.

specimen label, for a specimen, means a sheet of paper or cardboard kept with the specimen that includes the following information—

- (a) the name of the person who took the specimen;
- (b) the place and date the specimen was taken;
- (c) information required under a condition of an applicable harvest period notice.

standard sheet of herbarium paper means a sheet of paper or card 270mm wide and 450mm long.

261T Taking or using protected plant parts, other than plant parts that are endangered wildlife etc.

- (1) A person may take and use a part from a protected plant other than a plant that is endangered wildlife if—
 - (a) the person is the landholder, or has the written approval of the landholder, of the land from which the plant part is taken; and
 - (b) the person takes no more of the plant part from a species of plant than the quantity of the plant part that is specified for the species in the protected plants code of practice.

Note—

However, see division 6 for requirements for trading in restricted plants.

- (2) A person must not use seed or other propagative material taken from a relevant plant under subsection (1) for trade.

Maximum penalty—165 penalty units.

- (3) Despite subsection (2), a person who is a member of a recreational plant society may use seed or

other propagative material of a relevant plant for trade only if—

- (a) the person sells the plant part, or plants propagated from the plant part, at an annual show or meeting of the society that is open to the public; and
 - (b) the sale price is not more than a reasonable amount to meet the costs of propagating or taking the plant.
- (4) Nothing in this section allows a person to take and use a sandalwood plant other than its leaves and twigs.

Note—

For when a whole plant that is sandalwood is taken, see section 7A.

- (5) In this section—

relevant plant means—

- (a) a plant of the family Cycadaceae; or
- (b) a plant of the family Zamiaceae.

261U Taking or using particular protected plant parts for fodder

- (1) The landholder of private land may take or use parts of a protected plant, other than a plant that is endangered or vulnerable wildlife, on the land if—
- (a) both of the following apply—
 - (i) the plant parts are taken and used for fodder for stock on the land;
 - (ii) keeping stock on the land is authorised under another law; or
 - (b) the taking is in the course of an activity done—

- (i) for fodder harvesting under the *Vegetation Management Act 1999*; or
 - (ii) otherwise—in a way that complies with the protected plants code of practice.
- (2) Also, a person may take and use parts of a protected plant that is near threatened or least concern wildlife or a special least concern plant on State land if—
 - (a) the plant parts are taken or used for fodder for stock on the land under a lease, licence, permit or other authority given, or an exemption, under another law; or
 - (b) the taking is in the course of an activity done for fodder harvesting under the *Vegetation Management Act 1999*.
- (3) A person must not use a protected plant part taken under this section for trade.
Maximum penalty—165 penalty units.
- (4) For subsection (3), a person does not use a plant part for trade merely because the person is keeping stock on the land for a business activity.

261V Taking protected plant parts for sick, injured or orphaned wildlife

- (1) A person may take parts from a protected plant that is near threatened or least concern wildlife or a special least concern plant if—
 - (a) the plant parts are taken for the care of a sick, injured or orphaned protected animal; and
 - (b) the person—
 - (i) holds a rehabilitation permit for the animal; or

- (ii) is a veterinary practitioner, veterinary specialist or veterinary surgeon within the meaning of the *Veterinary Surgeons Act 1936* or a person acting under the direction of a veterinary practitioner, veterinary specialist or veterinary surgeon.
- (2) A person mentioned in subsection (1)(b)(i) who takes a plant part under this section must carry a copy of the person's rehabilitation permit when taking the plant part.
Maximum penalty—20 penalty units.
- (3) A person must not use a protected plant part taken under this section for trade.
Maximum penalty—165 penalty units.

261W Taking or using protected plant parts by way of operational salvage

- (1) A person may take protected plant parts by way of operational salvage.
- (2) A person may use plant parts taken under this section for any purpose.

Note—

However, see division 6 for requirements for trading in restricted plants.

- (3) Nothing in this section allows a person to take and use a sandalwood plant by way of operational salvage other than its leaves, twigs, seeds or propagative material.

Note—

For when a whole plant that is sandalwood is taken, see section 7A.

Division 5 Exemptions for taking protected plants when clearing

Subdivision 1 Preliminary

261X What div 5 is about

This division is about providing exemptions for the taking of protected plants when clearing protected plants in particular circumstances.

261Y Application of exemptions under div 5

- (1) An exemption under this division for taking a protected plant does not authorise a person to use the plant unless—
 - (a) the plant is least concern wildlife, other than a special least concern plant; or
 - (b) the plant is a special least concern plant and is—
 - (i) transplanted somewhere else within the vicinity of the land from which it is taken; or
 - (ii) used or given away for a conservation purpose; or
 - (c) for a protected plant part—the part is taken by way of operational salvage.
- (2) A plant that may be used under subsection (1)(b) must not be used for trade.

Maximum penalty—165 penalty units.

Subdivision 2 Exemption for taking protected plants in an area other than a high risk area

261Z Taking protected plants in an area other than a high risk area

- (1) A person may take a protected plant by clearing if—
 - (a) either—
 - (i) for a person who is a proponent (a *proponent*) for a project for which an environmental impact statement is required under a relevant Act—the proponent has received or obtained a copy of the flora survey trigger map for the area to be cleared on or after the relevant TOR date; or
 - (ii) for any other person—the person has received or obtained a copy of the flora survey trigger map for the area to be cleared; and

Note—

See section 254.

- (b) the area to be cleared is not within a high risk area; and
- (c) either—
 - (i) the person is not aware of the presence of any plants that are endangered, vulnerable or near threatened wildlife in the area to be cleared; or
 - (ii) if the person is aware of the presence of plants that are endangered, vulnerable or near threatened wildlife in the area to be cleared—there is no clearing of

the plants or within 100m of the plants;
and

- (d) either—
- (i) for a proponent—the clearing happens within 5 years (the *relevant period*) from the relevant TOR date; or
 - (ii) for any other person—the clearing happens within 12 months (also the *relevant period*) after the date the person receives or obtains a copy of the flora survey trigger map.

- (2) If a person takes a protected plant by clearing during the relevant period, the person must keep the copy of the trigger map mentioned in subsection (1)(a) for 5 years from the day the clearing started.

Maximum penalty—120 penalty units.

Note—

See part 4A about protected plant clearing permits.

- (3) Despite section 255(2) or (4), a copy of a flora survey trigger map received or obtained by a proponent for the purposes of this section is valid for 5 years from the relevant TOR date.

- (4) In this section—

environmental impact statement, for a project to which a relevant Act applies, means an environmental impact statement within the meaning of the relevant Act under which the statement is required.

relevant Act means any of the following—

- (a) the *Environmental Protection Act 1994*;
- (b) the *State Development and Public Works Organisation Act 1971*;

- (c) the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

relevant TOR date, for an environmental impact statement, means the day the final terms of reference for the environmental impact statement are published (if relevant) or otherwise issued to the proponent.

Subdivision 3 Exemption for taking protected plants in any areas

261ZA Taking protected plant after flora survey report given to chief executive

- (1) A person may take a protected plant in any area by clearing if the person has given a flora survey report for the clearing impact area to the chief executive and the report identifies that—
- (a) plants that are endangered, vulnerable or near threatened wildlife were not present in the clearing impact area; or
 - (b) plants that are endangered, vulnerable or near threatened wildlife are present in the clearing impact area but the plants will not be cleared and there will be no clearing within 100m of the plants.
- (2) The person must give a flora survey report to the chief executive—
- (a) at least 1 week before the person starts clearing; and
 - (b) no later than 12 months after the flora survey undertaken for the report was completed.

Maximum penalty—165 penalty units.

- (3) For complying with subsection (2), a person may give the flora survey report to the chief executive electronically using an online system on the department's website or by some other way.
- (4) Clearing of a protected plant under this section must be conducted within 2 years after the flora survey report is given to the chief executive.

261ZB Taking protected plant from area from which plants already lawfully taken

A person may take a protected plant in any area by clearing if the taking—

- (a) is within an area from which plants have already been taken under—
 - (i) a protected plant clearing permit, granted under part 4A; or
 - (ii) an exemption under section 261ZA(1) and within the period mentioned in section 261ZA(4); or
 - (iii) an authority mentioned in section 261ZF; and
- (b) is only to the extent authorised as lawful taking under the permit, exemption or authority; and
- (c) happens within 10 years from—
 - (i) for the permit mentioned in paragraph (a)(i)—the granting of the permit; or
 - (ii) for the exemption mentioned in paragraph (a)(ii)—the day the person gives the flora survey report to the chief executive; or
 - (iii) for the authority mentioned in paragraph (a)(iii)—the granting of the authority.

261ZC Taking protected plant for particular maintenance activities

- (1) A person may take a protected plant in any area by clearing if the taking is for any of the following maintenance activities for an existing land use of the area—
 - (a) routine maintenance of existing infrastructure;
 - (b) maintenance in the course of a plantation management activity on land that was previously lawfully cleared;
 - (c) maintenance in the course of a cropping activity on land that was previously lawfully cleared.
- (2) In this section—

cropping activity means an activity undertaken in connection with the management of a cropping area, including site preparation, weed control, harvesting and harvest debris clearing.

land use, of an area, means a use of the land in the area that is a lawful use of the land under another law.

plantation management activity means an activity undertaken in connection with the management of a tree plantation, including site preparation, weed control, harvesting and harvest debris clearing.

routine maintenance, of existing infrastructure, means maintenance—

- (a) done for an electricity entity under the *Electricity Act 1994* that is necessary to maintain infrastructure established under that Act for the generation, transmission or distribution of electricity; or

- (b) necessary to maintain transport infrastructure within the meaning of the *Transport Infrastructure Act 1994*; or
- (c) necessary to maintain other infrastructure including any core airport infrastructure, buildings, fences, helipads, oil and gas pipelines, roads, stockyards, vehicular tracks, water pipelines, watering facilities and constructed drains other than contour banks.

Examples of routine maintenance—

slashing, mowing, pruning or trimming of plants

261ZD Taking protected plant for firebreak or fire management line

A person may take a protected plant in any area by clearing if the taking is for—

- (a) establishing or maintaining a necessary firebreak to protect infrastructure (other than a fence, road or vehicular track), if the maximum width of the firebreak is the greater of the following—
 - (i) 1.5 times the height of the tallest vegetation adjacent to the infrastructure;
 - (ii) 20m; or
- (b) establishing a necessary fire management line if the maximum width of the line is 10m.

261ZE Taking protected plant under a self-assessable vegetation clearing code etc.

- (1) A person may take a protected plant in any area by clearing if the taking complies with the

requirements of a self-assessable vegetation clearing code that apply to the area, for—

- (a) thinning; or
 - (b) managing weeds; or
 - (c) managing encroachment.
- (2) In this section—

self-assessable vegetation clearing code see the *Vegetation Management Act 1999*, section 19O(1) and (2).

261ZF Taking protected plant if authorised under another Act or law

A person may take a protected plant in any area by clearing if—

- (a) the taking has been assessed and authorised under another law in a way that complies with the protected plants assessment guideline; and
- (b) the taking is only to the extent authorised under the other law; and
- (c) at least 7 days before the taking starts, the person gives the chief executive—
 - (i) written notice of the taking; and
 - (ii) a copy of the authorisation for the taking under the other law.

261ZG Taking protected plant for conservation purposes

A person may take a protected plant in any area by clearing if the taking—

- (a) is for a conservation purpose only and to the extent necessary to achieve the purpose; and

- (b) causes disturbance to protected plants only to the extent necessary to remove the plants.

Division 6 Exemption for using restricted plants for trade

261ZH What div 6 is about

This division is about providing an exemption for using restricted plants for trade (a *protected plant trade exemption*).

261ZI Using restricted plants for trade

A person may use a restricted plant for trade only if the person complies with—

- (a) the record-keeping requirements under section 261ZJ; and
- (b) the labelling requirements under sections 261ZK and 261ZL; and
- (c) the tagging requirements under section 261ZM.

Note—

See also the identification and information requirements under sections 337 and 338.

261ZJ Keeping record about trade of restricted plants

- (1) This section applies to the following persons—
 - (a) a person who uses a restricted plant for trade;
 - (b) a person who harvests a restricted plant, under an exemption under this part or a protected plant licence, for trade;

- (c) a person who moves a restricted plant for trade.
- (2) The person must keep a protected plant trade record.

Maximum penalty—120 penalty units.

Note—

For the requirements for a protected plant trade record, see the Administration Regulation, part 6.

261ZK Labelling of restricted plants for trade

- (1) This section applies to a person who—
 - (a) uses a restricted plant for trade; or
 - (b) moves a restricted plant for a trade-related purpose, including moving the plant from another State or outside of the State; or
 - (c) propagates a whole restricted plant that is to be used for trade or moved for a trade-related purpose; or
 - (d) cultivates a restricted plant part that is to be used for trade or moved for a trade-related purpose.
- (2) The person must not use the plant for trade or move the plant unless a label that complies with subsection (3) (an *approved trade label*) is attached to each of the following that are used for trade or moved—
 - (a) whole plant, other than the trunk, a log or timber of a sandalwood plant;
 - (b) bundle of plant parts;
 - (c) container of plant parts.

Maximum penalty—120 penalty units.

- (3) The approved trade label must—

- (a) state the matters set out for the label under the protected plants code of practice; and
 - (b) be legible for the life of the label.
- (4) A person must not state anything in an approved trade label that the person knows is inaccurate or misleading in a material particular.
- Maximum penalty—80 penalty units.

261ZL Additional labelling of restricted plants for movement outside of State

- (1) This section applies to a person who trades or moves a restricted plant outside of the State for a trade-related purpose.
- (2) The person must, before trading or moving the plant, ensure each container of plants is marked or labelled as follows—
 - (a) if only some of the plants were taken under a licence or exemption—
 - (i) ‘Some of this product has been taken under a *Nature Conservation Act 1992* (Queensland) licence or exemption.’; and
 - (ii) ‘The remaining plant parts have been obtained from propagation or cultivation or lawfully taken in the wild in another State.’;
 - (b) otherwise—‘This product has been taken under a *Nature Conservation Act 1992* (Queensland) licence or exemption.’.

Maximum penalty—120 penalty units.

261ZM Particular plants for trade to be tagged

- (1) This section applies to a person who—

- (a) takes a whole restricted plant in the wild, other than the trunk, a log or timber of a sandalwood plant; and
 - (b) uses or intends to use the plant for trade.
- (2) If the person has an official tag for the plant when the plant is taken, the person must attach the tag to the plant before it is moved from the place where it was taken.

Maximum penalty—120 penalty units.

- (3) Subsections (4) to (6) apply if the person does not have an official tag for the plant when the plant is taken.
- (4) As soon as practicable after the plant is taken, the person must apply to the chief executive to be supplied with an official tag for the plant.
- (5) The person may move the plant from the place where it was taken to another place in the State but must not otherwise use the plant.
- (6) When the person receives an official tag for the plant the person must attach the tag to the plant.
- (7) A person must not use the plant for trade unless an official tag supplied by chief executive for the plant is attached to the plant.

Maximum penalty—165 penalty units.

- (8) A person must not remove an official tag from a plant unless the person starts using the plant for the person's own personal use.

Maximum penalty for subsection (8)—80 penalty units.

34 Replacement of ch 4, pt 4, hdg (Licences, permits and other authorities for taking or using protected plants)

Chapter 4, part 4, heading—

omit, insert—

Part 4 Licences for protected plants

35 Replacement of ch 4, pt 4, divs 1–3

Chapter 4, part 4, divisions 1 to 3—

omit, insert—

Division 1 Purpose

262 Purpose of pt 4

- (1) The purpose of this part is to ensure the grant of a protected plant licence does not adversely affect the conservation of protected plants.
- (2) This purpose is achieved by—
 - (a) allowing the chief executive to grant a protected plant licence only in limited circumstances; and
 - (b) limiting the activities that a person is authorised to do under a protected plant licence; and
 - (c) regulating the activities of persons acting under a protected plant licence.

263 References to protected plant

In this part, unless otherwise stated, a reference to a protected plant (including a restricted plant), or type of protected plant (including a type of restricted plant), is a reference to the whole plant and to parts of the plant.

Division 2 Protected plant growing licence

Subdivision 1 Purpose of licence

264 Purpose of protected plant growing licence

The purpose of a protected plant growing licence is to allow a person to take a whole restricted plant or restricted plant part for—

- (a) cultivating the restricted plant in controlled conditions; or
- (b) propagating the restricted plant part in controlled conditions.

Subdivision 2 Restrictions on grant

Note—

See also section 137 of the Act.

265 General restrictions on grant of protected plant growing licence

Subject to this subdivision, the chief executive may grant a protected plant growing licence for the taking of a restricted plant only if the chief executive is satisfied of all of the following—

- (a) if the licence relates to the taking of whole plants to be used as stock plants—
 - (i) there is a need to—
 - (A) introduce the plant into cultivation for commercial purposes; or

- (B) replenish or supplement the genetic variation of the plant already in cultivation; and
- (ii) the applicant has the necessary knowledge, facilities and resources to propagate the plants and use the progeny of the plants;
- (b) the taking is ecologically sustainable and will not adversely affect the plant's survival in the wild;
- (c) the taking complies with the protected plants assessment guidelines.

266 Restriction on grant of licence for salvage

The chief executive must not grant a protected plant growing licence for the taking of whole protected plants only by way of salvage.

267 Restriction on grant of licence to take seed or propagative material from particular protected plants

- (1) This section applies in relation to the following (each a *relevant plant*)—
 - (a) a protected plant that is endangered wildlife;
 - (b) a protected plant of the family Cycadaceae;
 - (c) a protected plant of the family Zamiaceae.
- (2) The chief executive must not grant a protected plant growing licence to take seed or other propagative material from a relevant plant unless the chief executive is satisfied the holder of the licence, or a relevant person for the holder, is able to identify the plant.

268 Chief executive may require preparation of sustainable harvest plan

- (1) The chief executive may require the applicant for a protected plant growing licence to prepare a sustainable harvest plan to demonstrate that the proposed level of harvest—
 - (a) is ecologically sustainable; or
 - (b) provides a benefit for the conservation of the species of protected plant proposed to be taken under the licence.

Examples for paragraph (b)—

increasing the extent or abundance of the wild population or improving knowledge of species biology

- (2) If the chief executive requires the preparation of a sustainable harvest plan, the chief executive must not grant a protected plant growing licence until the chief executive has approved the plan.
- (3) The chief executive may approve a sustainable harvest plan only if the chief executive is satisfied the plan—
 - (a) demonstrates the matters mentioned in subsection (1)(a) or (b); and
 - (b) states the information required under the protected plant assessment guidelines.

Subdivision 3 Activities authorised by licence

269 Activities authorised by protected plant growing licence

The holder of a protected plant growing licence, or a relevant person for the holder, may take a restricted plant stated in the licence for—

- (a) cultivating the restricted plant in controlled conditions; or
- (b) propagating restricted plant parts in controlled conditions.

Note—

However, see part 3, division 6 for requirements for using restricted plants for trade.

Subdivision 4 Carrying out activities under licence

270 Taking and using restricted plants under licence

- (1) A holder of a protected plant growing licence, or a relevant person for the holder, may take whole restricted plants under the licence to be used as stock plants only if the taking complies with the protected plants code of practice.

Maximum penalty—165 penalty units.

- (2) A holder of a protected plant growing licence, or a relevant person for the holder, must not—
 - (a) sell a plant taken under the licence; or
 - (b) give away a plant taken under the licence if the plant is to be used for trade.

Examples—

- giving away a plant taken under the licence to a person who intends to sell the plant
- giving away the plant to a property developer who intends to use the plant for landscaping purposes in a property development
- giving away a plant to a person who has purchased, or otherwise intends to carry on, a licence holder's business of growing plants

Maximum penalty—165 penalty units.

- (3) Nothing in this section restricts the use of the progeny, or parts of the progeny, of restricted plants taken under a protected plant growing licence.

271 Taking of protected plant during harvest period

- (1) This section applies if—
 - (a) a holder of a protected plant growing licence, or a relevant person for the holder, may take a particular protected plant under the licence; and
 - (b) a harvest period is declared for the plant.
- (2) The holder, or a relevant person for the holder, may only take the plant during the harvest period for the plant.
- (3) The holder, or a relevant person for the holder, must comply with the conditions stated in the harvest period notice.

Maximum penalty—120 penalty units.

- (4) However, this section does not apply if a plant is taken by way of salvage.

272 Compliance with sustainable harvest plan

The holder of a protected plant growing licence, or a relevant person for the holder, must comply with a sustainable harvest plan approved by the chief executive for the licence.

Maximum penalty—165 penalty units.

Division 3 Protected plant harvesting licence

Subdivision 1 Purpose of licence

273 Purpose of protected plant harvesting licence

The purpose of a protected plant harvesting licence is to allow a person to take a restricted plant in particular circumstances and use the plant to the extent authorised under the licence.

Subdivision 2 Grant of licence

Note—

See also section 137 of the Act.

274 Restrictions on grant of licence

- (1) Subject to this subdivision, the chief executive may grant a protected plant harvesting licence for the taking of a restricted plant only if the chief executive is satisfied of all of the following—
 - (a) the applicant is the landholder, or has the written approval of the landholder, of the land on which the plant is located;
 - (b) the taking is ecologically sustainable and will not adversely affect the plant's survival in the wild;
 - (c) the taking complies with the relevant provisions of the protected plants assessment guidelines.
- (2) However, subsection (1) does not apply if the chief executive is satisfied the licence is only for the taking of whole restricted plants by way of salvage.

- (3) Also, the chief executive may grant a protected plant harvesting licence for a restricted plant that has not been adequately identified only for the purpose of research, education or conservation.

275 Particular restrictions on grant of licence for particular species or if threat exists

The chief executive must not grant a protected plant harvesting licence—

- (a) to more than 1 person for the same species of protected plant for the same place for the same period; or
- (b) if the proposed harvesting poses a threat of serious or irreversible environmental damage related to the taking of the plant.

276 Research and monitoring condition

- (1) This section applies if the chief executive grants a protected plant harvesting licence for taking protected plant parts.
- (2) The chief executive may impose a condition (a *research and monitoring condition*) on the licence requiring the holder of the licence to—
 - (a) research and monitor the effects of taking plant parts under the licence; and
 - (b) adopt an environmental management system and give a copy of the system to the chief executive when it is adopted and each time it is significantly changed; and
 - (c) establish 1 or more monitoring plots to sample all species of plants taken under the licence; and
 - (d) carry out a yearly survey of the plants in the plots.

- (3) The holder of the licence must comply with the research and monitoring condition.

Maximum penalty—120 penalty units.

- (4) The holder of the licence must give the chief executive—

- (a) within 1 month after each monitoring plot is established—a map or sketch showing the location of the plot; and
- (b) within 1 month after each yearly survey—a statement containing the required information.

Maximum penalty—120 penalty units.

- (5) In this section—

environmental management system is an operational plan complying with the Australian/New Zealand Environmental Management Systems Standard 1996.

required information means—

- (a) details of the growth of the plants of each species in the plot measured as average height for—
- (i) each stem of each plant from which plant parts were taken; and
- (ii) each plant designated when the plot was established as a plant from which plant parts are not to be taken; and
- (b) details of the total amount, measured by volume or weight, of material taken from plants of each species in the plot since the last survey.

277 Applicant must prepare sustainable harvest plan

- (1) An applicant for a protected plant harvesting licence must prepare a sustainable harvest plan to demonstrate that the proposed level of harvest—
 - (a) is ecologically sustainable; or
 - (b) provides a benefit for the conservation of the species of protected plant proposed to be taken under the licence.

Examples for paragraph (b)—

increasing the extent or abundance of the wild population or improving knowledge of species biology

- (2) The chief executive must not grant a protected plant harvesting licence until the chief executive has approved the plan.
- (3) The chief executive may approve a sustainable harvest plan only if the chief executive is satisfied the plan—
 - (a) demonstrates the matters mentioned in subsection (1)(a) or (b); and
 - (b) states the information required under the protected plant assessment guidelines.

Subdivision 3 Activities authorised by licence

278 Activities authorised by protected plant harvesting licence

The holder of a protected plant harvesting licence, or a relevant person for the holder, may—

- (a) take a restricted plant stated in the licence and use the plant to the extent authorised under the licence; and

- (b) take any restricted plant by way of contingent salvage.

Note—

However, see part 3, division 6 for using restricted plants for trade.

Subdivision 4 Carrying out activities under licence

279 Taking of protected plant during harvest period

- (1) This section applies if—
- (a) the holder of a protected plant harvesting licence, or a relevant person for the holder, may take a particular protected plant under the licence; and
 - (b) a harvest period is declared for the plant.
- (2) The holder, or a relevant person for the holder, may only take the plant under the licence during the harvest period.
- (3) The holder, or the relevant person for the holder, must comply with the conditions stated in the harvest period notice.

Maximum penalty—120 penalty units.

- (4) However, this section does not apply if a plant is taken by way of salvage.

280 Compliance with sustainable harvest plan

The holder of a protected plant harvesting licence, or a relevant person for the holder, must comply with a sustainable harvest plan approved by the chief executive for the licence.

Maximum penalty—165 penalty units.

Part 4A Protected plant clearing permits

Division 1 Purposes of part

281 Purpose of pt 4A

- (1) The purpose of this part is to regulate the taking by clearing of protected plants, in particular plants that are endangered, vulnerable or near threatened wildlife.
- (2) The purpose is achieved by—
 - (a) ensuring areas where protected plants that are endangered, vulnerable or near threatened wildlife and their supporting habitat are present, or are likely to be present, are identified and assessed for risk before clearing; and
 - (b) if clearing can not avoid protected plants that are endangered, vulnerable or near threatened wildlife—regulating the impact on these plants through a protected plant clearing permit; and
 - (c) ensuring any impacts on protected plants that are endangered, vulnerable or near threatened wildlife are managed; and
 - (d) limiting the circumstances in which the chief executive can grant a protected plant clearing permit; and
 - (e) stating the activities a person is authorised to do under a protected plant clearing permit; and
 - (f) regulating the activities of a person acting under a protected plant clearing permit.

- (3) In this section—
avoid, for a protected plant in an area being cleared, means the plant is not cleared and there is no clearing within 100m of the plant.

Division 2 Purpose of permit

282 Purpose of permit

- (1) The purpose of a protected plant clearing permit is to allow a person to take any protected plant within an area, by clearing the plant in circumstances where—
- (a) the clearing is for the use of the land on which the plant is located; and
 - (b) the impacts of the clearing on protected plants that are endangered, vulnerable or near threatened wildlife—
 - (i) have been identified; and
 - (ii) can be managed in a way that does not affect the survival of the plants in the wild; and
 - (c) impact management measures are to be implemented.
- (2) A protected plant clearing permit generally does not allow a person to use a restricted plant.

Note—

See also section 289(2).

Division 3 When permit is required

283 When protected plant clearing permit is required

- (1) A protected plant clearing permit is required for the taking of all protected plants present in a clearing impact area.
- (2) A protected plant clearing permit is also required for the taking of all protected plants known to be present in an area to be cleared that is not within a high risk area.

Note—

See also section 259.

Division 4 Restrictions on grant

284 General restrictions on grant of protected plant clearing permit

- (1) The chief executive may grant a protected plant clearing permit for the taking of a protected plant, by clearing the plant, only if the chief executive is satisfied of the following—
 - (a) the applicant is the landholder, or has the written approval of the landholder, of the land on which the plant is located;
 - (b) the applicant has given the chief executive—
 - (i) for clearing within a clearing impact area—a flora survey report that complies with section 257; or
 - (ii) for clearing in any other area—a document identifying all protected plants that are endangered, vulnerable

or near threatened wildlife the person knows exist in the area to be cleared;

- (c) the applicant has identified all protected plants that are endangered, vulnerable or near threatened wildlife that the applicant knows will be impacted in the relevant area;
- (d) if the clearing can not avoid a protected plant that is endangered, vulnerable or near threatened wildlife in the relevant area—the applicant has demonstrated—
 - (i) any impacts the clearing is expected to have on the plant; and
 - (ii) all reasonable attempts have been taken, in accordance with the protected plants assessment guidelines, to manage any impacts on the plant; and
 - (iii) the clearing will not adversely affect the plant's survival in the wild.

Note—

See also section 137 of the Act.

- (2) The chief executive must not approve an application for a protected plant clearing permit if the flora survey or flora survey report for the application do not comply with section 257.

- (3) In this section—

avoid, for a plant in an area being cleared, means the plant is not cleared and there is no clearing within 100m of the plant.

relevant area means—

- (a) for clearing within a clearing impact area—the clearing impact area; or
- (b) for clearing in any other area—the area to be cleared.

285 Particular circumstances when chief executive may grant protected plant clearing permit

- (1) The chief executive may grant a protected plant clearing permit without being satisfied of the matters mentioned in section 284(1)(d)(iii) if the chief executive is satisfied—
 - (a) there is an overriding public interest for the permit to be granted for an activity related to a public utility easement for the supply of electricity; and
 - (b) refusal of the permit would impede the provision of an essential community service; and
 - (c) the applicant has otherwise made all reasonable attempts to satisfy the chief executive of the matters mentioned in section 284(1).
- (2) If the chief executive grants a protected plant clearing permit under subsection (1), the chief executive may—
 - (a) grant the permit with or without conditions; and
 - (b) notify the applicant of the obligation to pay the conservation value.

Note—

See section 95 of the Act.

286 Chief executive may grant protected plant clearing permit in relation to particular areas

The chief executive may grant a clearing permit for taking protected plants in an area identified under a regulation or conservation plan as, or including, a critical habitat or an area of major interest only if—

- (a) the regulation or plan does not prohibit the granting of the permit; and
- (b) the chief executive is satisfied the taking of the plants will not have a significant impact on a viable population of protected wildlife or a community of native wildlife in the area.

287 Chief executive may impose conditions on protected plant clearing permit

The chief executive may grant a protected plant clearing permit with or without conditions.

288 Chief executive may require offset

- (1) If the chief executive considers it necessary or desirable for ensuring the viability of 1 or more taxa of protected plant species in the wild, the chief executive may impose a condition on a protected plant clearing permit requiring the applicant for the permit to provide an offset for a clearing activity.
- (2) In this section—
offset includes works or activities undertaken to counterbalance the impacts of a clearing activity on a plant that is endangered, vulnerable or near threatened wildlife.

Division 5 Activities authorised under permit

289 Activities authorised by protected plant clearing permit

- (1) The holder of a protected plant clearing permit, or a relevant person for the holder, may—

- (a) take a protected plant by clearing to the extent authorised under the permit; and
 - (b) otherwise clear all plants in an area to which the permit relates.
- (2) However, a person may use a restricted plant taken under a protected plant clearing permit only if—
- (a) either—
 - (i) for a restricted plant part—the part is taken by way of operational salvage; or
 - (ii) for a whole restricted plant—the plant is taken by way of contingent salvage by the holder of a protected plant harvesting licence, or a relevant person for the holder; or
 - (b) the use is authorised under the permit.

36 Renumbering of ch 4, pt 4, div 4 (Authorities for taking or using protected plants)

Chapter 4, part 4, division 4—
renumber as chapter 4, part 4B.

37 Renumbering of ch 4, pt 4, div 4, sdiv 1 (Aboriginal tradition authorities)

Chapter 4, part 4, division 4, subdivision 1—
renumber as chapter 4, part 4B, division 1.

38 Renumbering of ch 4, pt 4, div 4, sdiv 2 (Island custom authorities)

Chapter 4, part 4, division 4, subdivision 2—
renumber as chapter 4, part 4B, division 2.

39 Replacement of ch 4, pt 5 (Provisions about authorised cultivators and propagators)

Chapter 4, part 5—

omit, insert—

Part 5 Miscellaneous provisions

299 Declaration of harvest period

- (1) The chief executive may, by notice (a *harvest period notice*), declare a harvest period for a protected plant.
- (2) The harvest period notice may impose conditions on the taking of a protected plant during the harvest period, including, for example—
 - (a) the maximum number of plants that may be taken; and
 - (b) the way in which a whole protected plant or protected plant part may be taken; and
 - (c) localities from which a plant must not be taken; and
 - (d) how a plant that is taken may be used.

300 Special least concern plants

Each plant mentioned in schedule 3A is prescribed as a special least concern plant for the Act, section 88D(1).

40 Amendment of s 335 (Tags not to be used by unauthorised person)

Section 335(3), definition *authorised person*, paragraph (d)—

omit, insert—

(d) for a tag for protected plants—

- (i) the holder of a protected plant licence;
or
- (ii) a person who has taken a whole protected plant under an exemption under chapter 4, part 3.

41 Amendment of s 337 (Record of identification of person selling or giving away protected, international or prohibited wildlife)

(1) Section 337(a)—

insert—

- (iii) if the protected wildlife is a whole protected plant or protected plant part obtained by the seller under an exemption under chapter 4, part 3—ask the seller to identify the exemption; and

(2) Section 337(b)—

insert—

- (iv) if the protected wildlife is a whole protected plant or protected plant part obtained by the seller under an exemption under chapter 4, part 3—the exemption identified by the seller; and

(3) Section 337—

insert—

- (2) However, subsection (1) does not apply to a person who buys or accepts a protected plant that

is least concern wildlife, other than a special least concern plant.

42 Amendment of s 338 (Record of identification of person buying or accepting protected, international or prohibited wildlife)

(1) Section 338(b)—

insert—

(iv) if the buyer—

(A) is a corporation—the name of the corporation; or

(B) is a business or a person operating under a business or trading name—the name of the business or the trading name; and

(2) Section 338—

insert—

(2) However, subsection (1) does not apply to the following—

(a) a person who sells or gives away a protected plant that is least concern wildlife, other than a special least concern plant;

(b) a person who sells or gives away a protected plant in the course of a retail activity to a buyer for the buyer's personal use.

43 Amendment of s 345 (Procedure if wildlife stolen)

(1) Section 345(4)—

renumber as section 345(6).

(2) Section 345—

insert—

- (4) A reference in this section to wildlife is, for protected plants, a reference only to a whole protected plant that is—
 - (a) a restricted plant; and
 - (b) taken from the wild; and
 - (c) required to be tagged under this regulation.
- (5) This section does not apply to wildlife that is a protected plant if the plant is kept for personal use.

44 Insertion of new s 348A

After section 348—

insert—

348A Approved tags for protected plants taken by way of salvage

- (1) This section applies—
 - (a) to a person who harvests a whole protected plant by way of salvage; and
 - (b) the plant is to be used for trade.
- (2) The person must apply to the chief executive to be supplied with an official tag for each plant.
- (3) The application must be in the approved form.
- (4) A person must not state anything in an application that the person knows is inaccurate or misleading in a material particular.

Maximum penalty for subsection (4)—100 penalty units.

45 Amendment of s 352 (No conservation value payable for protected wildlife taken under particular authorities)

Section 352(g)—

omit.

46 Omission of ch 8, pt 4 (Amendments of Protected Plants Conservation Plan)

Chapter 8, part 4—

omit.

47 Insertion of new ch 9

After section 384—

insert—

Chapter 9 Transitional provision

385 Taking protected plant if authorised in particular circumstances

- (1) This section applies if a person was authorised to take a protected plant by clearing in the course of an activity under—
 - (a) an authority, that was in force immediately before the commencement of this section, made, granted or given under another Act by the Governor in Council; or
 - (b) a mining lease or a petroleum lease that was in force immediately before the commencement of this section.
- (2) The person may continue to take the plant in the way the taking was authorised under the authority mentioned in subsection (1)(a) or the mining lease or petroleum lease.

(3) A person who takes a protected plant under this section has an exemption for offences for taking protected plants under section 89 of the Act or using protected plants under section 90 of the Act.

(4) In this section—

mining lease means a mining lease granted under the *Mineral Resources Act 1989*.

petroleum lease means a petroleum lease granted under the *Petroleum Act 1923*.

48 Insertion of new sch 3A

After schedule 3—

insert—

Schedule 3A Special least concern plants

section 300

Plants of the following families—

Adiantaceae, other than *Adiantum formosum*

Alismataceae

Amaryllidaceae

Blechnaceae, other than *Blechnum cartilagineum*
and *Doodia aspera*

Burmanniaceae

Byblidaceae

Campanulaceae, other than *Isotoma anethifolia*;

Cymodoceaceae

Dicksoniaceae, other than *Calochlaena dubia*

Doryanthaceae

Dracaenaceae, other than *Cordyline petiolaris*
and *Cordyline rubra*

Droseraceae

Dryopteridaceae

Gesneriaceae

Goodeniaceae (*Brunonia* only)

Grammitidaceae

Hydrocharitaceae

Hymenophyllaceae

Juncaginaceae

Lentibulariaceae

Lycopodiaceae, other than *Lycopodiella cernua*

Menyanthaceae

Najadaceae

Nelumbonaceae

Nepenthaceae

Nymphaeaceae

Orchidaceae

Podostemaceae

Potamogetonaceae

Schizaeaceae

Stylidiaceae, other than *Stylidium graminifolium*

Tmesipteridaceae

Vittariaceae

Zosteraceae

Plants of the following genera—

Blandfordia (Christmas bells)

Brachychiton
Hydnophytum
Livistona
Microsorium
Myrmecodia
Platycerium
Xanthorrhoea

Plants of the following species—

Santalum lanceolatum (sandalwood)

49 Amendment of sch 5 (Dictionary)

- (1) Schedule 5, definitions *approved way*, *authorised cultivator*, *authorised propagator*, *controlled conditions* and *propagator's tag*—
omit.
- (2) Schedule 5—
insert—

approved trade label see section 261ZK(2).

clearing impact area see section 249.

conservation purpose, for a protected plant—

- 1 A protected plant is used for a ***conservation purpose*** when it is used for an activity, other than an activity for a commercial purpose or landscaping, that supports the conservation of the plant or its natural habitat.

Example—

a protected plant used in rehabilitation or revegetation activities

- 2 A protected plant is also used for a ***conservation purpose*** if the plant is given away to—

- (a) a voluntary conservation organisation;
or
- (b) a volunteer community organisation.

contingent salvage, of a whole restricted plant, means the harvesting of the plant by the holder of a protected plant harvesting licence, or a relevant person for the holder, if—

- (a) the land from which the plant is harvested is lawfully cleared—
 - (i) under a protected plant clearing permit;
or
 - (ii) in the course of an activity under a mining lease or petroleum lease to which section 385 applies; or
 - (iii) for a government infrastructure project;
or
 - (iv) to harvest a timber plantation; or
 - (v) under a development approval under the *Sustainable Planning Act 2009*; and
- (b) the plant—
 - (i) would otherwise be destroyed by the clearing; or
 - (ii) is not the subject of a condition of a clearing permit allowing the use of plants for an impact management measure; and
- (c) the use of the plant is not the primary reason for the clearing.

controlled conditions means—

- (a) for cultivating a protected plant, conditions under which the plant's reproduction and growth are actively manipulated which are

achieved by, for example, irrigation, weed and disease control, tillage and fertilising; or

- (b) for propagating a protected plant, conditions under which the plant's reproduction and growth are actively manipulated which are achieved by nursery operations, including, for example, potting, bedding, watering and protection from the weather.

flora survey see section 250(1).

flora survey guidelines see section 253(1).

flora survey report see section 250(2).

flora survey trigger map see section 247.

harvest, for a whole protected plant or protected plant part—

- (a) means taking the plant or plant part in the wild to be used; but
- (b) does not include taking, by clearing, the plant or plant part in the wild for the use of the land from which the plant or plant part is taken.

high risk area see section 248.

impact management measure means a work or activity undertaken to ensure the survival of a protected plant that is endangered, vulnerable or near threatened wildlife.

Examples of impact management measures—

transplanting or propagating an endangered, vulnerable or near threatened plant species

official tag, for a protected plant, means—

- (a) a tag supplied by the chief executive, under chapter 8, part 2, for attaching to the plant; or

- (b) for a tag used for attaching to the plant under a law of another State—a tag that complies with the requirements, for the tag, of any applicable law of the other State.

operational salvage, of a protected plant part, means the harvesting of the plant part if—

- (a) the land from which the plant part is harvested is cleared or disturbed by repetitive, routine weed control activities, including, for example, slashing, ploughing or poisoning; and
- (b) the activities are carried out to allow the land to be used for—
 - (i) forest management; or
 - (ii) road safety; or
 - (iii) maintaining electricity, water, gas, telecommunication or another service facility; and
- (c) the plant part—
 - (i) is taken in carrying out the activities; and
 - (ii) would otherwise be destroyed by carrying out the activities; and
- (d) the type of plant from which the part is taken will normally regenerate even if a significant proportion of the parts of the plant that are above ground are taken or die; and
- (e) the use of the plant part is not the primary reason for carrying out the activities.

personal use, of a protected plant—

- (a) means a use of the plant for a purpose other than for trade; and

- (b) includes the taking of a protected plant part for use in a local government's botanic garden or park.

private land means—

- (a) freehold land; or
(b) land the subject of a lease under any Act containing an entitlement to a deed of grant in fee simple.

protected plant licence means a protected plant growing licence or protected plant harvesting licence.

protected plant trade exemption see section 261ZH.

protected plants assessment guidelines means the assessment guidelines for considering applications for wildlife authorities for protected plants approved or made by the chief executive under section 174B of the Act.

Note—

A copy of the guidelines as in force from time to time is available for inspection on the department's website. See section 174B(3) of the Act.

restricted plant means a protected plant that is any of the following—

- (a) endangered wildlife;
(b) vulnerable wildlife;
(c) near threatened wildlife;
(d) a special least concern plant.

Note—

- 1 See the Wildlife Regulation, schedule 2, part 2 about plants that are endangered wildlife.
- 2 See the Wildlife Regulation, schedule 3, part 2 about plants that are vulnerable wildlife.

- 3 See the Wildlife Regulation, schedule 5, part 2 about plants that are near threatened wildlife.

salvage means contingent salvage or operational salvage.

sandalwood means a plant of the species *Santalum lanceolatum*.

State land means—

- (a) unallocated State land under the *Land Act 1994*; or
- (b) a reserve for community purposes under the *Land Act 1994*; or
- (c) a State forest or timber reserve under the *Forestry Act 1959*; or
- (d) a forest reserve; or
- (e) land subject to a lease or licence under the *Land Act 1994*; or
- (f) a State-controlled road or local government road under the *Transport Infrastructure Act 1994*.

supporting habitat, for a protected plant, means the components, including other plants, of the habitat of a protected plant necessary for the plant's survival at any stage of its life cycle located within 100m of the protected plant.

sustainable harvest plan, for a protected plant licence, means a plan about the harvesting of protected plants that may be taken under the licence and the ecological sustainability or benefits of the proposed harvest.

trade, for restricted plants, see section 6A.

(4) Schedule 2, entry for *Nature Conservation (Wildlife Management) Regulation 2006*, entries for sections 244 to 304(2)—

omit, insert—

s 243(1)	5
s 243(2)	5
s 244	3
s 245(2)	4
s 246(2)	4
s 246(5)	4
s 261D(2)	3
s 261G(4)	5
s 261H(3)	5
s 261N(2)	5
s 261O(4)	5
s 261P(3)	5
s 261Q(2)	5
s 261R(2)	5
s 261S(5)	1
s 261S(6)	5
s 261T(2)	5
s 261U(3)	5
s 261V(2)	1
s 261V(3)	5
s 261Y(2)	5
s 261Z(2)	4
s 261ZA(2)	5
s 261ZJ(2)	4
s 261ZK(2)	5
s 261ZL(2)	5
s 261ZM(2)	4
s 261ZM(7)	5

s 261ZM(8)	3
s 270(1)	5
s 270(2)	5
s 271(3)	4
s 272.....	5
s 276(3)	4
s 276(4)	4
s 279(3)	4
s 280.....	5

Part 5 Repeal

52 Repeal

The following subordinate legislation is repealed—

- Nature Conservation (Protected Plants) Conservation Plan 2000, SL No. 353
- Nature Conservation (Protected Plants Harvest Period) Notice 2013, SL No. 33.

ENDNOTES

- 1 Made by the Governor in Council on 27 March 2014.
- 2 Notified on the Queensland legislation website on 28 March 2014.
- 3 The administering agency is the Department of Environment and Heritage Protection.