

# **VEGETATION (APPLICATION FOR CLEARING) BILL 2003**

## **EXPLANATORY NOTES**

### **General Outline**

#### **Short title**

The Act will be known as the *Vegetation (Application for Clearing) Bill 2003*

#### **Objective of the Bill**

The objective of the Bill is to halt the acceptance of any new applications for vegetation clearing under the Land Act 1994 (Land Act) and the Integrated Planning Act 1997 (IPA) pending consultations with stakeholders and finalisation of a major joint initiative between the State and Commonwealth governments to reduce clearing rates in Queensland.

#### **Reasons for the Bill**

The scientific evidence clearly shows that land clearing poses a grave threat to Australia's environment through its contribution to salinity, declining water quality, species extinctions and degradation of the Great Barrier Reef.

Negotiations are being finalised between the Queensland and Commonwealth Governments on a joint initiative to address current rates of clearing. In the meantime the Queensland and Commonwealth Governments have agreed to place a temporary halt on accepting new applications to clear remnant vegetation to prevent a rush of applications being lodged by landholders who are pre-empting any changes to the current framework.

#### **Ways in which the policy objective is to be achieved**

The objectives will be achieved by

- requiring the assessment manager under IPA to refuse to receive applications for a development approval involving operational work that is clearing of vegetation on freehold land made assessable under schedule 8, part 1 item 3A received after midday 16 May 2003; and
- requiring the chief executive to refuse to issue tree clearing permits for applications under the Land Act that have been received after midday 16 May 2003.

These conditions will be in place from midday 16 May 2003, until a time prescribed by regulation. A number of exemptions are included to allow for applications for clearing in particular circumstances to be considered.

The Bill does not affect existing exemptions from requiring a vegetation clearing permit. This includes the existing exemption for clearing in urban areas on freehold land where the regional ecosystem is not mapped as an endangered regional ecosystem or a declared area of high nature conservation value.

### **Alternative ways of achieving the objective**

There is no alternative to introducing legislation to halt the receipt of applications for vegetation clearing on freehold and State land.

### **Administrative cost to government of implementation**

There are no further costs to government for implementation of this Bill.

### **Compliance with fundamental legislation principles**

The Bill has been drafted with due regard to the fundamental legislative principles as outlined in Section 4 of the *Legislative Standards Act 1992*. However here are two areas that may be considered to not align with the fundamental legislative principles.

The Bill is retrospective to the date of announcement by the Premier concerning the halt on receiving applications for vegetation clearing. This is to prevent a rush of applications that would eventuate following such an announcement, if the legislation was not dated from the time of the announcement.

The Bill does not allow for any appeals to be made against the refusal to receive an application for a development approval for operational work that

is clearing of vegetation on freehold land under IPA or to issue a tree clearing permit under the Land Act, because of the operation of this Act. The Bill is an interim measure while the joint initiative between the Commonwealth and State to reduce clearing rates is finalised. This Bill does not remove appeal rights involving applications made prior to midday 16 May 2003.

### **Consultation**

The following State agencies were consulted during the preparation of the Bill:

- Department of Premier and Cabinet
- Office of Parliamentary Counsel
- Department of Local Government and Planning

### **Analysis of the Bill**

*Clause 1* states that the Bill may be cited as the *Vegetation (Applications for Clearing) Act 2003* (the Bill).

*Clause 2* identifies that the definitions for terms used in the bill may be found in the dictionary in the schedule.

*Clause 3 (1)* states that this section applies to development applications made under Chapter 3 of the *Integrated Planning Act 1997* from midday on 16 May 2003 until a day prescribed under a regulation that involve operational work that is the clearing of vegetation on freehold land made assessable under schedule 8 part 1, item 3A. This includes development applications that have other types of assessable development combined with schedule 8 clearing applications and that are lodged with a local government authority.

*Clause 3(2)* inserts the provision that despite the IPA the application referred to in the above subsection is not a properly made application and that the assessment manager (whether this be the chief executive, a local government, port authority or other assessment manager) must refuse to receive the application.

Clauses 3(1) and 3(2) together have the affect of preventing any development application that includes an operational works component for vegetation clearing made assessable under Schedule 8 of IPA from being accepted as properly made. Despite the assessment management not being

able to accept the entire application that may include other types of assessable development, an applicant is not prevented from applying for the other types of assessable development during the halt, as these can be applied for in a separate application to local government without including the vegetation clearing component. However, if the other types of development necessitate assessable vegetation clearing, the development cannot go ahead until the approval for the vegetation clearing has been obtained. The applicant cannot obtain this approval until the application for vegetation clearing has been accepted and assessed.

If the operational works component of a development application only related to clearing vegetation that is assessable under a local government planning scheme, the application could continue to be accepted as properly made by the local government.

*Clause 3(3)* identifies that where the chief executive is the assessment manager, section 3(2) does not apply if the applicant satisfies the chief executive that the proposed vegetation clearing is necessary for:

- A project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26;
- A project that is of major significance because of its regional, state or national benefits. An example of such a project is a transmission line, or a significant tourism project that has major regional benefits;
- Weed control;
- Ensuring public safety; or
- Establishing a necessary fence, road or other built infrastructure, if no suitable alternative site exists. An example of this would be accepting an application for assessable vegetation clearing associated with the construction of a new hospital.

The assessment manager may also consider the application properly made if the vegetation clearing is a natural and ordinary consequence of other assessable development for which a development application has been lodged or approved under IPA prior to midday 16 May 2003. For example, if a development application for a piggery was made with Local Government on 15 May 2003 and assessable vegetation clearing would also be required to give effect to any subsequent approval of the piggery, the necessary vegetation clearing may still be applied for and assessed so as not to delay or impede the approved development.

*Clause 4(1)* inserts the provision that, despite IPA, an existing application or a development approval involving vegetation clearing that is assessable under schedule 8, cannot be changed in any way that increases the area of the proposed clearing. This has effect from midday 16 May 2003 until a day prescribed under a regulation. This section also specifies that the currency period for the vegetation clearing component of a development approval cannot be extended during this period. This prevents an applicant who lodged an application prior to midday 16 May 2003 increasing the area of vegetation applied to be cleared by amending their application before the application is decided. It does not however prevent a minor amendment to the application under section 3.5.24 of IPA or withdrawal of the application. While the assessment manager has always had the discretion to refuse to alter the approval, this clause makes it quite clear that an existing approval for vegetation clearing cannot be extended during the relevant period.

*Clause 4(2)* defines currency period, development approval and existing application for section 4.

*Clause 5(1)* states that this section applies to applications for a tree clearing permit made under the Land Act, chapter 5 part 6 from midday, 16 May 2003 until a day prescribed under a regulation.

*Clause 5(2)* inserts the provision that despite the Land Act, the chief executive must refuse to issue the tree clearing permit without considering the issues stated in section 262 of the Land Act, unless the chief executive is satisfied that the proposed clearing is necessary for:

- A project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26;
- A project that is of major significance because of its regional, state or national benefits. An example of such a project is a transmission line, or a significant tourism project that has major regional benefits;
- Supplying fodder for stock in a drought declared area;
- Weed control;
- Ensuring public safety; or
- Establishing a necessary fence, road or other built infrastructure, if there is no suitable alternative site. An example of this would be a boundary fence.

The chief executive may also consider an application against section 262 of the Land Act and potentially approve the application where the proposed clearing is for the clearing of trees within regrowth vegetation as defined by the Vegetation Management Act 1999. That is, clearing trees that are not remnant vegetation.

*Clause 6 (1)* states that from midday 16 May 2003 until a day prescribed by regulation, an existing application or a tree clearing permit cannot be altered to increase the area of the proposed tree clearing, or extend the term of the permit. This was previously allowed only at the discretion of the chief executive.

*Clause 6(2)* defines an existing application to mean an application made before midday 16 May 2003.

*Clause 7* provides that a decision to refuse to receive an application for a development approval; issue a tree clearing permit; or change an application, approval or a permit due to the operation of this Act cannot be appealed under any Act.

The schedule includes the dictionary meanings of terms used in the Bill.