

Vegetation Management Amendment Bill 2008

Explanatory Notes

General Outline

Policy Objectives

The objectives of the Bill are to amend the *Vegetation Management Act 1999* (the VM Act) to:

- Clarify the definitions of an endangered, of concern and not of concern regional ecosystem in the VM Act.
- Validate retrospectively all past vegetation related decisions affected by the definition of an endangered, of concern and not of concern regional ecosystem in the VM Act.

Reason for the Policy Objectives

The amendments clarify the definitions of endangered, of concern and not of concern regional ecosystems, clarify the methodology used to determine regional ecosystem status as endangered, of concern or not of concern and retrospectively validate that the *Vegetation Management Regulation 2000* solely determines the status of the regional ecosystem despite what the legislation said at the time. The existing definitions are open to interpretations that are not consistent with the intent of the legislation to conserve remnant endangered, of concern and not of concern regional ecosystems and are not consistent with the practice of the department in determining status based on the known remnant extent of regional ecosystems remaining. The amendments ensure that the established methodology and previous decisions are clearly valid.

How the Policy Objectives will be achieved

The policy is to be achieved by amending the VM Act to clarify that the current methodology and procedures used for determining regional

ecosystem status are consistent with the definitions and related provisions in the legislation and retrospectively providing that the regulation solely determines the class of a regional ecosystem.

Alternatives to the Bill

There are no other viable alternatives that would achieve the policy objectives without considerable risk to the policy intent of the Act.

Estimated administrative Cost to the Government for implementation

Current procedures are adequate to implement the amendments to the VM Act and will be implemented within current budget allocations.

Consistency with Fundamental Legislative Principles

The amendments to the VM Act with retrospective operation confirm the methodology used to determine regional ecosystem status and validate affected past decisions to minimise the risks of future legal challenge.

The retrospective application of criminal liability is justified because the accepted view within the Government and the community involved with the VM Act was that these were endangered, of concern, and not of concern regional ecosystems at the time, determined using clearly articulated methods, mapped on certified vegetation mapping, and prescribed in the regulation as endangered, of concern, and not of concern regional ecosystems.

Consultation

Community and industry stakeholders

Community consultation regarding the VM Act changes has not been undertaken due to the sensitivity of the issues.

Government

Consultation has occurred with the Department of the Premier and Cabinet, Queensland Treasury, and the Department of Justice and Attorney-General.

Results of consultation

All agencies support the proposed legislative changes.

Notes on Provisions

Part 1 Preliminary

1 Short title

Clause 1 states that this Act may be cited as the *Vegetation Management Amendment Act 2008*.

2 Act amended in pt 2

Clause 2 provides for the amendment of the *Vegetation Management Act 1999*.

3 Insertion of new pt 2 div 7A

Clause 3 inserts a new Division 7A to provide for declaration in a regulation that a regional ecosystem is an endangered, of concern or not of concern regional ecosystem. Additionally, the division prescribes the criteria that must be met for an ecosystem to be prescribed as an endangered, of concern, or not of concern regional ecosystem. The criteria include calculation of the percent of the pre-clearing extent of each regional ecosystem that is remnant vegetation. The area of a regional ecosystem that is remnant vegetation is principally derived from the area of each regional ecosystem shown as remnant vegetation on regional ecosystem maps but may be informed by other sources of evidence where regional ecosystem mapping is not available or where the other evidence—including expert opinion—provides more precision.

4 Amendment of pt 6 hdg (Transitional Provisions)

Clause 4 amends the heading of pt 6 to denote inclusion in the part of new Division 5 dealing with validating and transitional provisions.

5 Insertion of new pt 6, div 5

Clause 5 inserts a new provision with retrospective effect. It deems that a regional ecosystem prescribed in the regulation as an endangered, of concern, or not of concern regional ecosystem is taken to be, for the period that the regulation had effect, that class of regional ecosystem despite any provision of the Act in force before the commencement of this section. It is possible (*Legislative Standards Act 1992*, s 4(3) (g)) that such deeming

may adversely affect rights and liberties, or impose obligations, retrospectively. However, while alternate interpretations of the current provisions may be argued, the interpretation applied by the department has not been invalidated by any court decision. Further, the interpretation applied by the department is consistent with established scientific methodologies which have been readily available through the Departmental internet site. The provision makes clear that the retrospective effect applies to all purposes, including criminal and civil proceedings. The amendment confirms the interpretation and practice of the department that has been consistently and openly applied since proclamation of the Act in 2000.

6 Amendment of schedule (Dictionary)

Clause 6 amends the Schedule definitions of endangered, of concern, and not of concern regional ecosystems to remove the second limb of the definition relating to the area and percent of the regional ecosystem remaining. It provides that the declaration in the regulation alone defines whether a regional ecosystem is an endangered, of concern, or not of concern regional ecosystem.

7 Regulation amended in pt 5

Clause 7 provides for the amendment of the *Vegetation Management Regulation 2000*.

8 Amendment of s 2 (Regional ecosystems)

Clause 8 amends s2 (1) to (3) to prescribe that each regional ecosystem in schedules 1, 2, and 3 is, respectively, declared to be an endangered, of concern, or not of concern regional ecosystem.