

# **Vegetation Management (Regrowth Clearing Moratorium) Bill 2009**

## **Explanatory Notes**

### **General Outline**

### **Policy Objectives**

The objectives of the Bill are to:

- introduce a moratorium on the clearing of:
  - all native vegetation within 50 metres of a watercourse in priority reef catchments of the Wet Tropics, Burdekin and Mackay Whitsunday regions; and
  - endangered regrowth vegetation in rural areas across the state on freehold and agricultural and grazing State leasehold land.

### **Reason for the Policy Objectives**

This delivers on Government commitments to protect endangered regrowth vegetation and landscapes that badly need trees to perform their ecological function and address tree clearing impacting on the Great Barrier Reef.

It is generally accepted that retention of vegetation either side of a watercourse on riparian areas can assist with improving bank stability and reduce pollutants within a water system. A vegetation buffer of 50 metres of native vegetation either side of a watercourse provides for improved bank stability and reduced pollutants, as well as enhanced biodiversity benefits.

Endangered vegetation has been the most affected by past broadscale clearing practices and is most in need of efforts that encourage recovery.

### **How the Policy Objectives will be achieved**

The policy is to be achieved by:

- restricting clearing of regrowth vegetation for a period of at least 3 months with a possible extension for up to another 3 months.
- The State consulting with stakeholders about the optimum way to regulate clearing of regrowth vegetation under the *Vegetation Management Act 1999* (VMA).

### **Alternatives to the Bill**

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

### **Estimated administrative Cost to the Government for implementation**

The financial cost of administering a moratorium on the clearing of regrowth vegetation will be covered within existing resources of the department.

### **Consistency with Fundamental Legislative Principles**

**Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively—*Legislative Standards Act 1992*, section 4(3)(g).**

The Bill proposes retrospective commencement to 8 April 2009, the date on which public announcements were made by the Minister for Natural Resources, Mines and Energy and Minister for Trade that there would be a moratorium on regrowth clearing.

The proposed Bill may adversely impact on the following rights retrospectively:

- the right to clear particular vegetation within the period between 8 April 2009 and the date of assent for the legislation; and
- the right to have certain applications considered or amended.

The retrospective application of the Bill arguably offends section 4(3)(g) of the *Legislative Standards Act* which provides that legislation have sufficient regard to the rights and liberties of individuals and consequently should not adversely affect rights and liberties, or impose obligations, retrospectively.

In this instance there are strong reasons for retrospectivity. The Premier made an election commitment on 15 March 2009 to a three month moratorium on endangered regrowth vegetation while consultation with stakeholders occurred to improve vegetation management laws. The introduction of the moratorium ahead of the legislation was necessary to ensure that high-value regrowth vegetation was not cleared pre-emptively while the announced consultation takes place.

The effects of the retrospective application of the moratorium have been mitigated as much as possible by:

- the Government's announcement on 7 April 2009 of the intention to introduce this Bill. At this time the Department of Environment and Resource Management (DERM) provided details of the vegetation to be affected by the moratorium, the reasons for the moratorium, the impact of the Bill on landholders and where further information could be obtained;
- the keeping of the period of retrospectivity as short as possible;
- the express exclusion of criminal liability. Although the Bill does provide for the compulsory rectification of the vegetation protected by the moratorium but cleared prior to commencement to ensure that the purpose of the moratorium would not be defeated. Rectification will be achieved by the issuing of a compliance notice.

These provisions effectively prevent the imposition of retrospective criminal liability while still providing a mechanism to ensure that the intention and purpose of the moratorium are not defeated by pre-emptive clearing.

Notably, in the period between the formation of the Government on 26 March 2009 and the announcement of the moratorium measures on 7 April 2009, the weekly rate at which DERM received applications for property maps of assessable vegetation (PMAV) increased by approximately eight to ten times the usual number of applications. Most of these applications seek to have areas shown as category X areas which may be cleared without a development permit.

While retrospective legislation which disadvantages individuals is a breach of fundamental legislative principles and generally objectionable it has been accepted that retrospectivity is justified where the interests of the public as a whole outweigh the interests of an individual.

There may be some detrimental affect on individual rights in relation to these applications, however individual rights are outweighed by the public interest in ensuring that endangered regrowth vegetation and riparian regrowth vegetation are protected while consultation is undertaken with stakeholders in relation to improving vegetation management laws as they pertain to regrowth vegetation.

**Does the legislation have sufficient regard to the institution of Parliament, in particular, does the legislation sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly—*Legislative Standards Act 1992*, section 4(4)(b).**

***Clause 6 – What is a moratorium map***

Clause 6 of the Bill will identify areas where particular regrowth vegetation can not be cleared during the moratorium period by reference to a map certified by the chief executive. Any amendments of the map are also certified by the chief executive. It is arguable that this provision may be considered as Henry VIII clauses because it will effectively allow the original application of the Act to be governed by executive action and for the chief executive to amend the operation of the Act.

The process included for the moratorium maps is consistent with the process for certification of a map for purpose of regulating clearing, which has been a consistent part of the VMA since commencement of the Act in 2000. Chief Executive certification allows for timely amendment of mapping to correct errors and has not been seriously challenged in that time.

Alternative approval and amendment processes for moratorium maps such as making the map by subordinate legislation or by notice by the Governor in Council would be too time consuming to meet the needs of developers and landholders affected by any errors in mapping. Both are inconsistent with the existing map approval and amendment processes established in the existing vegetation management laws.

In addition, the details to be included in the map will be based purely on scientific evidence of a technical nature, with no room for any discretion by the chief executive and no scope for amendment by Parliament. Amendments to the map will only be made to correct errors in the data. Vegetation affected by the moratorium will include all native vegetation within 50 metres of mapped watercourses in the priority reef catchments of the Mackay Whitsunday, Wet Tropics and the Burdekin, and mapped endangered regrowth vegetation in rural areas across the State. The

mapping uses the Geoscience Australia 1:250,000 scale mapping information to determine which watercourses are protected. This scale is mapped consistently across all three catchments and provides a uniform basis for application of riparian vegetation protection in these areas.

The endangered regrowth vegetation captured by the moratorium was assessed using rigorous scientific methodologies and satellite imagery used by the Queensland Herbarium and in the development of the SLATS reports. Measurements of foliage cover have been used to identify endangered regrowth as being of a type that is likely to have the qualities of a functioning ecosystem and being able to make a significant contribution to biodiversity and recovery of endangered ecosystems. The standard for foliage cover used for the moratorium map is equivalent to the standards used in the Australia National Forestry Inventory to define a forest, and the National Carbon Accounting System and would likely align with Kyoto carbon accounting principles. Although the mapping will identify some areas that are not native vegetation, like woody weeds, and some areas that are managed vegetation like parks and gardens, clearing in these areas is generally exempt from the affects of the moratorium by the provisions of the Bill.

### ***Clause 7 – What is the moratorium period***

Clause 7 of the Bill allows the Minister, by gazette notice, to extend the 3 month moratorium period stated in the Act for up to a further 3 months. Again, it is arguable that this provision may be considered as a Henry VIII clause because it will effectively allow the original application of the Act to be governed by executive action and for the Minister to amend the operation of the Act.

The moratorium period will only be extended if:

- it becomes apparent that the six week period proposed by the government for the making of submissions is insufficient and further time for consultation is necessary. In this regard it is not possible to pre-empt what issues may arise during consultation; or
- further analysis of the economic or environmental impact of measures that may be implemented at the end of the moratorium period.

It would not be feasible to have subordinate legislation to extend the period made and considered by Parliament by the time for the extension had become apparent. The need to be able to promptly extend the consultation period once the need becomes apparent is essential so as not to unduly

affect the interests of developers and landholders and to ensure that environmental issues are fully considered.

***Clause 34 – Chief executive may stop making decisions about, or giving responses for, particular applications***

Clause 34 allows the chief executive, during the moratorium, to stop the processing of development applications (not approved before the halt) for which the chief executive is the assessment manager or a concurrence agency, or for exemption applications (not granted/refused before the halt) under this Bill.

For the development applications, the chief executive may make this halt, during the moratorium, for period of time that nominated by the chief executive, effectively extending the timeframe for their assessment of the development application. For exemption applications the decision making is simply halted.

The decision under this clause may apply to all applications of the specified type or to a specified class of application only.

It is arguable that this provision may be considered a Henry VIII clause because it will effectively allow the original application of the Act, the VMA and IPA to be governed by executive action.

This is justified because it would not be feasible to have subordinate legislation to make a halt and then have this considered by Parliament by the time it became apparent that the halt is necessary. The need to be able to promptly halt the processing of certain applications is essential so as not to unduly affect the achievement of the purposes of this Bill or the *Vegetation Management Act 1999*.

**Does the legislation make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review— *Legislative Standards Act 1992*, section 4(3)(a)(second limb).**

***Clause 27 – Non-application of Judicial Review Act 1991***

Clause 27 prevents a person exercising a right of review under the *Judicial Review Act 1991* in relation to:

- (a) certain applications for PMAV;
- (b) certification or amendment of a moratorium map by the chief executive; or

- (c) Stopping to decide or give a response on certain development or exemption applications under clause 34.

The removal of normal rights of review is justified in relation to PMAV applications by the sharp increase in the numbers that were made after 26 March 2009 and by the potential for these, if decided following review, to result in clearing of vegetation intended to be protected under the moratorium. The removal of normal rights of review for decisions related to the moratorium map is justified for the limited period of the moratorium because challenge to its validity may degrade the effectiveness of the moratorium. To mitigate the effect of the removal of this right, amendment of the map only has effect the day after the amendment is certified allowing for the amended map to be made publicly available. The removal of normal rights of review for decisions related to a halt on deciding or giving a referral agency's response is justified by the potential for applications, if decided following review, to result in clearing of vegetation intended to be protected under the moratorium.

***Clause 28 – No appeals about moratorium map, PMAV and particular applications***

Clause 28 of the Bill provides that a person can not appeal under any Act or other law about:

- (a) a delay in agreeing to make a property map of assessable vegetation the subject of an application made on or after 26 March 2009 and before the date of assent of the Bill;
- (b) certification or amendment of a moratorium map by the chief executive; or
- (c) Stopping to decide or give a response on certain development or exemption applications under clause 34.

The removal of normal rights of appeal (including injunction or other relief processes) is justified in relation to PMAV applications by the sharp increase in the numbers that were made after 26 March 2009 and by the potential for these, if decided following appeal, to result in clearing of vegetation intended to be protected under the moratorium. The removal of normal rights of appeal for decisions related to the moratorium map is justified for the limited period of the moratorium because challenge to its validity may degrade the effectiveness of the moratorium. To mitigate the effect of the removal of this right, amendment of the map only has effect the day after the amendment is certified allowing for the amended map to

be made publicly available. The removal of normal rights of appeal for decisions related to a halt on deciding or giving a referral agency's response is justified by the potential for applications, if decided following appeal, to result in clearing of vegetation intended to be protected under the moratorium.

**Does the legislation provide for the compulsory acquisition of property only with fair compensation—*Legislative Standards Act 1992*, section 4(3)(i).**

***Clause 37 – No compensation payable***

Clause 37 of the Bill provides that a person is not entitled to claim compensation under statute law or common law because of the operation of this Act affecting a person's rights. Advice to government confirms that this provision merely reflects the common law that affected landowners have no cause of action and is included in the Bill merely out of an abundance of caution.

This exclusion is justified because the moratorium is only being implemented as a means of exploring longer term options. During the moratorium period DERM will investigate the costs of any future regulation including potential costs to enterprises made unviable.

## **Consultation**

### **Community and industry stakeholders**

The community or industry stakeholders were not consulted on this Bill. The Premier made an election commitment on 15 March 2009 to a three month moratorium while consultation with stakeholders occurred to improve vegetation management laws. The moratorium ensures that particular regrowth vegetation was not cleared pre-emptively while the announced consultation takes place. Key stakeholder groups have been invited to submit comments on the ongoing regulation of regrowth vegetation to DERM prior to 15 May 2009.

### **Government**

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

- Department of the Premier and Cabinet
- Department of Justice and the Attorney General



- Queensland Treasury
- Department of Infrastructure and Planning.

## **Results of consultation**

The State agencies supported its introduction.

# **Notes on Provisions**

## **Part 1 Preliminary**

Clause 1 states that the Bill may be cited as the Vegetation Management (Regrowth Clearing Moratorium) Act 2009.

Clause 2 of the Bill states that the Act commences on 8 April 2009.

Clause 3 states the purpose of the Act is to protect endangered regrowth vegetation and riparian regrowth vegetation in the Burdekin, Mackay Whitsunday and Wet Tropics catchments (the priority reef catchments). This will be achieved mainly by restricting the clearing of regrowth vegetation for a period of at least 3 months while the State consults with stakeholders about the optimum way to regulate clearing of regrowth vegetation under the VMA. A map showing the Burdekin, Mackay Whitsunday and Wet Tropics catchments will be available on DERM's website before the date of assent.

## **Part 2 Interpretation**

Clause 4 identifies that particular words are defined in the dictionary in schedule 2.

Clause 5 defines a moratorium area to be the area: 1) shown on a moratorium map as a moratorium regrowth vegetation area, or 2) of

regrowth vegetation within 50m either side of a watercourse represented as a moratorium watercourse.

Clause 6 defines a moratorium map. A moratorium map must be certified by the chief executive and maintained by the department. The map shows moratorium regrowth vegetation areas and moratorium watercourses. A moratorium map includes any amendment to the map certified by the chief executive. However, an amendment certified by the chief executive will only take effect at the beginning of the day after it was certified and the day the amendment takes effect must be indicated on the map. Consistent with clause 35, the moratorium map is digital in nature and may be displayed in conjunction with other relevant mapping such as regional ecosystem mapping and PMAV mapping.

Clause 7 specifies the moratorium period starts at the beginning of 8 April 2009 and ends at the end of 7 July 2009. However, the Minister administering this Act may by gazette notice nominate a later date that is not more than 3 months after 7 July as the day the moratorium ends.

Clause 8 defines the terms endangered regrowth vegetation and riparian regrowth vegetation. Endangered regrowth vegetation is regrowth vegetation that is an endangered regional ecosystem located within an area shown on a moratorium map as a moratorium regrowth vegetation area. Riparian regrowth vegetation is regrowth vegetation located within 50m either side of a watercourse represented on a moratorium map as a moratorium watercourse. The moratorium watercourses were mapped using the Geoscience Australia 1:250,000 scale mapping information for the Burdekin, Mackay Whitsunday and Wet Tropics catchments. This scale is mapped consistently across all three catchments and provides a uniform basis for application of riparian vegetation protection in these areas. The Geoscience Australia mapping information, however, only indicates the approximate location of the watercourse, not the actual on ground location of the watercourse.

Clause 9 specifies that all other terms (not already defined in this part) within the Bill have the same meaning as they have under either the *Integrated Planning Act 1997* (IPA) or the VMA (which ever is relevant).

## **Part 3                      Relationship with Planning Act**

Clause 10 means that the provisions of this Act will prevail over the Planning Act to the extent there is an inconsistency between the Acts.

Clause 11 modifies the effect of the IPA, schedule 8, part 1, table 4, items 1A and 1B during the moratorium period. Most of the exemptions remain the same except for item 1A parts (f), (g), (h) and (j) and in item 1B parts (e) and (g). The modifications are specified in Schedule 1 which is then referred to as modified schedule 8 for the rest of the Bill. The application of modified schedule 8 may be altered by clause 14(3). Clause 14(3) enables the chief executive to grant an exemption for the regrowth vegetation made assessable under the modified schedule 8.

Clause 12 directs that during the moratorium period a development application for assessable development in a moratorium area under the modified schedule 8 is not a properly made application and the assessment manager must refuse to receive the application. Part 3, division 3 (exemptions) provides an alternate process under which clearing of moratorium regrowth may be considered.

Clause 13 specifies that development applications made before the start of the moratorium period (beginning of 8 April 2009) can not be changed to include a moratorium area, part of a moratorium area or more of a moratorium area. Only development applications for operational works (schedule 8, part 1, item 1A and 1B) and material change of use, reconfiguration of a lot or operational works for which the chief executive is a concurrence agency are affected by this clause.

Clause 14 provides that during the moratorium period a person may apply to the chief executive for an exemption for assessable development in moratorium areas. The exemption will enable a person to clear endangered regrowth vegetation and riparian regrowth vegetation without a development approval. The chief executive may grant the exemption with or without conditions or refuse it. The intent of this provision is to prevent broadscale clearing of regrowth vegetation protected under the moratorium (endangered regrowth vegetation and riparian regrowth vegetation). The department will publish on its website guidelines about how a person may make an application to the chief executive for an exemption.

Clause 15 states that the chief executive may only grant the exemption if they are satisfied that the clearing is:

- (a) for a relevant purpose under section 22A of the VMA (other than for subsection 2(j): clearing regrowth on leases issued under the *Land Act 1994* for agricultural and grazing purposes); and
- (b) the proposed development must also be consistent with the purpose of this Bill or the VMA.

The chief executive may also grant an exemption if they are satisfied that the development is for a project in the interest of the State which is required to proceed during the moratorium period because of exceptional circumstances. An example of an action that is in the interest of the state and requires a timely response would be clearing to respond to a natural disaster such as a cyclone. Clearing for a purpose that is consistent only with VMA 22A 2 (j) is inconsistent with the purpose of this Bill as it is 'broad-scale' clearing.

Clause 15(2) provides that the chief executive may impose a condition on the exemption only if the condition is consistent with the purpose of this Bill or the VMA.

Clause 16 provides that once the chief executive makes their decision a notice must be provided to the person. If the decision is to either refuse the exemption or grant the exemption with conditions then notice must include information about the reasons for the decision; that the applicant has 28 days to appeal the decision in the Magistrates Court and how to appeal.

Clause 17 specifies that the exemption takes effect when the applicant is given notice of the decision and will be in force for 1 year. However, the person who holds the exemption must comply with the conditions on the notice for the exemption to continue to apply.

## **Part 4                      Relationship with Vegetation Management Act**

Clause 18 states that the chief executive must not agree to the making of PMAVs until the moratorium period has ended unless the making of the PMAV is consistent with the purpose of this Bill or the Vegetation Management Act. This only applies to the applications for a PMAV that were made on or after the beginning of 26 March 2009 and that had not been decided before the date of assent of this Bill.

Clause 19 states that during the moratorium period (beginning 8 April 2009) the chief executive must not replace a property map of assessable vegetation if it is inconsistent with the purpose of the Bill or the Vegetation Management Act; despite s.20D(3)(c) of the VMA.

Clause 20 enables a person to conduct a native forest practice in a moratorium area during the moratorium period. The person will not be required to notify the chief executive about the location of the native forest practice. In addition, clause 20 provides that the native forest practice code for freehold land does not apply and that the forest practice must comply with the VMA schedule definition for forest practice, paragraph 1(b)(ii) that is all forest practice activities in a moratorium area are conducted in a way that:

- (a) ensures restoration of a similar type, and to the extent, of the removed trees;
- (b) ensures trees are only felled for the purpose of being sawn into timber or processed into another value added product (other than woodchips for an export market); and
- (c) does not cause land degradation.

Clause 21 affects when clearing of regrowth vegetation on an agricultural and grazing lease under the *Land Act 1994* is a relevant purpose under section 22A(2)(j) of the VMA. This clause only affects vegetation clearing applications that are for clearing regrowth vegetation not cleared before 31 December 1989 and where the vegetation proposed to be cleared is endangered regrowth vegetation or riparian regrowth vegetation. In these cases the vegetation clearing application is not a relevant purpose and therefore the application is not properly made and must be refused to be received by the assessment manager. Clearing for a purpose that is consistent only with VMA 22A(2)(j) is inconsistent with the purpose of this Bill as it is 'broadscale' clearing.

## **Part 5                      Offences and Enforcement**

Clause 22 defines prohibited development for Part 5. Prohibited development means development that is the clearing of endangered regrowth vegetation or riparian regrowth vegetation if:

- (a) it became assessable development under the modified schedule 8;
- (b) the chief executive did not grant an exemption under clause 14; and
- (c) the clearing was carried out between the beginning of 8 April 2009 and immediately before the date of assent of this Bill.

Clause 23 states that prohibited development is not an offence under section 4.3.1(1) (a person must not carry out assessable development unless there is an effective development permit for the development) of the IPA. This provision prevents the imposition of criminal liability during the period that the Bill has retrospective effect.

Clause 24 requires the chief executive or an authorised officer under the VMA to reasonably believe that the person has carried out prohibited development before they can give a person a show cause notice. The show cause notice must be given before a compliance notice to rectify the prohibited development that may have been carried out.

Clause 24(3) specifies the matters that must be included in the show cause notice including the proposed action (that is the issuing of a compliance notice to rectify the prohibited development that may have been carried out) and the grounds, facts and circumstances for the grounds. The show cause notice must also specify that the person may make a submission about the show cause notice, how, where and by when that submission may be made or sent. The person must have at least 21 days after the show cause notice is issued by the chief executive or authorised officer.

Clause 25 allows the chief executive to not serve a compliance notice if, after considering a properly made submission from the person served the show cause notice, they believe that the person has not carried out prohibited development (i.e. no longer have grounds to issue the compliance notice). This clause also requires the chief executive to give the person a notice stating that no compliance notice will be issued. A properly made submission is also defined in the dictionary.

Clause 26 enables the chief executive or an authorised officer under the VMA to give a person a notice requiring them to rectify the prohibited development clearing activities. The compliance notice may only be given, if after considering a properly made submission by the person given a show cause notice, the chief executive or an authorised officer still believes it is appropriate to give the compliance notice. Clause 26 specifies the matters that must be included in the compliance notice including the reasonable steps the person must take to rectify the matter. The provisions of section

55(4) to (11) (Compliance notice), section 55A (Record of compliance notice in land registry) and part 4 (Appeals and legal proceedings), division 1 (Appeals) of the VMA will then apply to the application (including a contravention of the compliance notice), implementation and appeal process for the compliance notice.

## **Part 6                      Appeals and Legal Proceedings**

Clause 27 provides that the *Judicial Review Act 1991* does not apply to defined matters under the Act, nor does the Supreme Court have the ability to hear or determine applications made to it under the *Judicial Review Act 1991*, part 3 or 5 in relation to matters identified in subsection 1. Clause 27 identifies that a relevant decision is either:

- (a) a decision to agree to the making of a property map of assessable vegetation applied for under section 20C of the VMA on or after the beginning of 26 March 2009 and before the date of assent; or
- (b) the certifying by the chief executive of a moratorium map or an amendment of a moratorium map.
- (c) about a decision, or cessation of a decision-making, made or permitted under section 34.

Clause 28 states that a person cannot appeal (this includes injunctions or any other relief process) under any Act or other law in regards to:

- (a) the chief executive certifying a moratorium map or an amendment of a moratorium map, or
- (b) a delay in agreeing to make a property map of assessable vegetation applied for under section 20C of the VMA on or after the beginning of 26 March 2009 and before the date of assent.
- (c) about a decision, or cessation of a decision-making, made or permitted under section 34.

Clause 29 provides that a person who has been refused an exemption or granted an exemption on conditions may appeal against the decision to the Magistrates Court.

Clause 30 requires that an appeal must be started by

- (a) filing notice of appeal with the clerk of the Magistrates Court; and
- (b) serving a copy of the notice on the chief executive; and
- (c) complying with rules of court applicable to the appeal.

Clause 30 also sets out that an appeal requires a notice of appeal to be filed within 28 days after the appellant receives notice of the decision appealed against. The notice of appeal must state fully the grounds for appealing and the facts relied upon. However, the facts relied upon on the date the notice is filed may be supplemented with additional evidence during the hearing.

Clause 31 states that an appeal occurs by way of rehearing and is unaffected by the original decision. The Magistrates Court, in deciding the appeal has:

- (a) the same powers as the chief executive in making the decision that is being appealed (i.e. the Magistrates Court can look at the matter as if they were the chief executive and request and consider the same information as the chief executive under Part 3, Division 3;
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice.

Clause 32 provides that the Magistrates Court may, in deciding the appeal, either confirm the decision appealed against or set aside the decision and return the matter to the chief executive with directions the court considers appropriate.

Clause 33 clarifies that an appeal lies to a District Court from a decision of the Magistrates Court, but only on a question of law.

## **Part 7                      Miscellaneous Provisions**

Clause 34 inserts a power for the chief executive to stop making decisions or giving referral agency's responses during the moratorium period. The chief executive may take any or all of these steps if they believe that it is necessary or desirable so that the purposes of this Bill or the Vegetation Management Act are met. This provision affects:

- (a) exemption applications under this Bill;



- (b) relevant vegetation clearing applications which are development applications defined under the Planning Act that:
  - (i) is assessable development under schedule 8, part 1, table 4, items 1A to 1G
  - (ii) is made before or during the moratorium period; and
  - (iii) for which the chief executive is the assessment manager;
- (c) relevant development applications which are development applications defined under the Planning Act that:
  - (i) were made before or during the moratorium period;
  - (ii) the chief executive is a concurrence agency;
  - (iii) the jurisdiction under the Planning Act (s.3.1.8) for the concurrence agency is the purpose of the Vegetation Management Act.

For the relevant vegetation clearing applications and relevant development applications the chief executive may state the period in which they will stop deciding or stop giving referral agency's responses. Where the chief executive nominates this period, then the timeframe under the IPA in which they have to make their decision or referral agency's response does not end until the end of the stated period.

Clause 35 requires that the digital electronic form of the moratorium map be available for inspection, free of charge, by members of the public at particular regional offices; and that the DERM published the digital electronic form the moratorium map on the department's website. Clause 35 also states that a person may purchase a copy of the moratorium map for a fee (which must not be more than the reasonable cost of publishing the copy).

Clause 35(4) and (5) clarify that the boundary of the moratorium regrowth vegetation area is the exact location of that boundary, but that the location of the moratorium watercourse is only approximate. Further that this information is held in digital electronic form by the department which can be reduced and enlarged to show the details of the boundaries for the moratorium regrowth vegetation area.

Clause 36 provides that a certificate signed by the chief executive that the following matters are evidence:

- (a) a decision, compliance notice or moratorium map issued under this Bill;
- (b) copy or extract from or part of a document kept or made under this Bill;
- (c) an exemption was or was not in force and did or did not have conditions.

Clause 37 clarifies that a person can not claim compensation under any Act or law (including common law) due to this Bill.

## **Part 8                      Savings and Transitional Provisions**

Clause 38 confirms that any development approvals issued under section 5 of the IPA, that were given before the start of the moratorium and have not lapsed, and now include moratorium areas, will not be affected by the provisions of the Bill.

Clause 39 affects development applications properly made and not decided before the start of the moratorium, that due to this Bill include assessable regrowth vegetation. This clause specifies that these types of development applications may, during the moratorium period, be approved but only to the extent that the development is not clearing of endangered regrowth vegetation and riparian regrowth vegetation. Therefore, these types of development approvals may seek an exemption under Part 3 (Relationship with Planning Act), division 3 (exemptions).

However, the chief executive will not be able to grant an exemption for the clearing of endangered regrowth vegetation and riparian regrowth vegetation on agricultural and grazing leasehold land. Under the vegetation management laws in place prior to the start of the moratorium the clearing of endangered regrowth vegetation would not have been approved. While some of the riparian regrowth vegetation may have been approved under the vegetation management laws in place prior to the start of the moratorium approving the clearing would not be consistent with the purpose of this Bill.

## **Schedule 1      Modified Schedule 8**

Schedule 8, part 1, table 4, reflects amendments to operational works for clearing native vegetation on freehold land and indigenous land for items (f), (g), (h) and (j) and clearing native vegetation on leasehold land used for agriculture or grazing for items 1B (e) and (g)

Schedule 8, part 1, table 4, 1A (f) provides an exemption in an area for which there is no PMAV and the vegetation is not—

- (i) remnant vegetation;
- (ii) endangered regrowth vegetation; or
- (iii) riparian regrowth vegetation.

Schedule 8, part 1, table 4, 1A (g) is an exemption for urban purposes in an urban area that is—

- (i) shown on a PMAV as a category 2 area or a category 3 area; or
- (ii) if there is no property map of assessable vegetation for the area—a remnant of concern regional ecosystem, a remnant not of concern regional ecosystem or the vegetation is endangered regrowth vegetation or riparian regrowth vegetation.

Schedule 8, part 1, table 4, 1A (h) is an exemption where the native vegetation clearing is necessary for routine management in an area of the land—

- (i) shown on a property map of assessable vegetation as a category 3 area; or
- (ii) for which there is no property map of assessable vegetation and the vegetation is a remnant not of concern regional ecosystem, endangered regrowth vegetation or riparian regrowth vegetation.

Schedule 8, part 1, table 4, 1A (j) is an exemption for a specified activity, except for schedule 10 (Dictionary), definition *specified activity*, paragraph (a) (i.e. clearing under a development approval for a material change of use or the reconfiguration of a lot, if the approval is given for a development application made after the commencement of this definition, and for which the chief executive administering the VMA is a concurrence agency).

Schedule 8, part 1, table 4, 1A (ja) is an exemption for clearing under a development approval for a material change of use or the reconfiguration of

a lot, if the approval is given for a development application made after the commencement of this definition, and for which the chief executive administering the VMA is a concurrence agency (schedule 10 (Dictionary), definition *specified activity*, paragraph (a)) to the extent it is not for the clearing of endangered regrowth vegetation or riparian regrowth vegetation.

This means that developers, that are granted a development approval during the moratorium period for material change of use or reconfiguration of a lot, where the chief executive was a concurrence agency, may require a further approval to clear endangered regrowth vegetation or riparian regrowth vegetation. Further approval will not be required if another exemption under modified schedule 8 applies, such as clearing for an urban purpose in an urban area, or, an exemption from the chief executive under part 3, division 3 of this Bill has been granted.

Schedule 8, part 1, table 4, 1B (e) in an area for which there is no property map of assessable vegetation, the area has been cleared after 31 December 1989 and the vegetation is not any of the following—

- (i) remnant vegetation; or
- (ii) endangered regrowth vegetation; or
- (iii) riparian regrowth vegetation; or

Schedule 8, part 1, table 4, 1B (g) is an exemption for a specified activity, except for schedule 10 (Dictionary), definition *specified activity*, paragraph (a) (i.e. clearing under a development approval for a material change of use or the reconfiguration of a lot, if the approval is given for a development application made after the commencement of this definition, and for which the chief executive administering the VMA is a concurrence agency).

Schedule 8, part 1, table 4, 1B (h) is an exemption for clearing under a development approval for a material change of use or the reconfiguration of a lot, if the approval is given for a development application made after the commencement of this definition, and for which the chief executive administering the VMA is a concurrence agency (schedule 10 (Dictionary), definition *specified activity*, paragraph (a)) to the extent it is not for the clearing of endangered regrowth vegetation or riparian regrowth vegetation. The effect of this exemption is the same as Schedule 8, part 1 table 4, 1A (ja).

## **Schedule 2      Dictionary**

Schedule 2 defines particular words used in the Act.

Exemption is defined as an exemption granted by the chief executive under section 13 for modified schedule 8 development.

Modified schedule 8 development means development that immediately before the moratorium period, was exempt development under the IPA; but in the moratorium period, is assessable development under modified schedule 8.

Properly made submission is a submission that:

- (a) is written
- (b) is signed by each person (a signatory) who made the submission;
- (c) states the name and address of each signatory;
- (d) states the grounds of the submission and the facts and circumstances relied on in support of the grounds;
- (e) is made to the person stated in the notice inviting the submission; and
- (f) is received on or before the last day for the making of the submission.

PMAV means a property map of assessable vegetation.

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