

Vegetation Management and Other Legislation Amendment Bill 2005

Explanatory Notes for Amendments to be moved during consideration in detail by The Honourable Henry Palaszczuk MP

Title of the Bill

Vegetation Management and Other Legislation Amendment Bill 2005.

Objectives of the Amendments

The proposed amendments are to clauses 4 and 5 of the Bill. The amendments to clause 4, dealing with special facilities zones, are needed to address deficiencies in the provisions identified since the Bill was introduced.

The amendment to clause 5, inserts section 83 in the *Vegetation Management Act 1999*, to address a new issue that has arisen since the Bill was introduced. Section 83 is needed to put beyond doubt the validity of regional vegetation management codes approved under the provisions of section 75 of the *Vegetation Management Act* for assessment of vegetation clearing applications.

Consistency with Fundamental Legislative Principles

The amendments have been drafted with due regard to the fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992*.

It may be argued that the amendment to clause 5, inserting new section 83 in the *Vegetation Management Act* to put beyond doubt the validity of certain regional vegetation management codes, is a potential breach of fundamental legislative principles, specifically, against section 4(3)(g) of the *Legislative Standards Act* which provides that legislation should not adversely affect rights retrospectively.

While section 83 is retrospective, it is not certain the provisions do or would adversely affect rights. Since legislation was passed on 21 May 2004 to provide for the phasing out of broadscale clearing of remnant vegetation by the end of 2006, there have been a number of threats of legal challenge to the legislation from sectors of the community opposed to the Government's commitment to phase out broadscale clearing and its policy on vegetation management.

The amendment is needed at this time due to the possibility of legal action soon being commenced challenging the validity of one of the regional vegetation management codes, on a number of technical bases. The outcome of any such legal action is entirely uncertain. However, the potential consequences of a court finding a regional vegetation management code invalid could be to cast doubt over the validity of assessments and decisions on applications received since 21 May 2004, including putting in doubt the lawfulness of clearing undertaken by landholders under permits issued in respect of applications received since this time. Such an outcome would also severely impede the progress of the ballot assessment process and in turn limit landholders' available time in which to undertake clearing before the cessation of broadscale clearing on 31 December 2006.

In these circumstances, it is considered the provisions can be justified, to put beyond doubt the validity of the regional vegetation management codes, to ensure assessments and decisions made on applications received since 21 May 2004 remain valid and that clearing undertaken pursuant to permits issued in respect of such applications is lawful.

Consultation

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

- Department of the Premier and Cabinet
- Office of the Queensland Parliamentary Counsel
- Depart of Local Government, Planning, Sport and Recreation

Notes on Provisions

Amendment 1 amends clause 4 to address deficiencies identified in the provisions since the Bill was introduced. Two additional circumstances have been identified where development consistent with the special facilities zone or like zone can proceed despite a planning scheme change that removes those designations. Specifically, these additional circumstances are:

- where an acknowledgement notice is issued for development that was self-assessable or could have been established “as of right” under the superseded planning scheme; and
- where building or operational works permits are issued prior to a planning scheme change but which remain current following the change.

Amendment 2 amends clause 5 to insert new section 83 (Validation of regional vegetation management codes) in the Vegetation Management Act.

Subsection (1) provides that each regional vegetation management code that was approved by the Minister between 21 May 2004 and 25 June 2004 is valid and has effect as a regional vegetation management code under the Vegetation Management Act on and from the date of its approval or purported approval under section 75(2).

Subsection (2) provides that a regional vegetation management code is valid and has effect despite any of the matters outlined in paragraphs (a) and (b).

Subsection (3) provides definitions for the terms “relevant code”, “relevant instrument” and “relevant provision” for the section.