

Vegetation Management and Other Legislation Amendment Bill 2009

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Stephen Robertson MP

Title of the Bill

Vegetation Management and Other Legislation Amendment Bill 2009

Objectives of the Amendments

The policy objectives of the amendments are to ensure that:

- circumstances in the vegetation management laws that refer to vegetation depicted on a vegetation management map are continued under the administrative mapping streamlining reforms;
- development applications for clearing of regulated regrowth vegetation are only prohibited on tenures to which the regrowth vegetation code applies;
- clearing of regulated regrowth vegetation that is a natural and ordinary consequence of a development application properly made before 8 October 2009 may occur without reference to the new regrowth vegetation code;
- the current application of the vegetation management offsets is continued under the provisions of the Vegetation Management and Other Legislation Amendment Bill 2009 (VMOLA 09); and
- the extent of the development to which the chief executive must direct an assessment manager to refuse a concurrence agency application is clear.

Achievement of the Objectives

The policy objectives will be achieved by:

- Amending the definition of category X area to ensure the government can continue to issue simple 'lock-in' property maps of assessable vegetation for areas that are 'white' on all the vegetation management maps. That is, if the area is not shown as high value regrowth vegetation or remnant vegetation on the relevant vegetation management map then the area can be shown as a category X area.
- Inserting into provisions, where the map is intended to be the point of truth, reference to a vegetation management map to provide certainty that it is the area shown on the map rather than the remnant or regrowth status of the vegetation on the ground to which the provision refers.
- Amending the definition of regulated regrowth vegetation to remove a potential loop hole under which mapped high value regrowth vegetation that is mature enough to be mapped as remnant (meets the remnant vegetation definition) could be cleared without application of the regrowth vegetation code.
- Amending the prohibition on applying for a development application for clearing regrowth vegetation to limit the effect of the prohibition to those tenures on which the regrowth vegetation code applies i.e. freehold, indigenous and leases issued under the Land Act 1994 for agricultural or grazing purposes.
- Amending the transitional provision for current development applications to ensure that clearing that is a natural and ordinary consequence of a development approval given for these applications can proceed as if the new regrowth laws had not commenced.
- Inserting a specific definition for development approval in the vegetation management offsets head of power to refer to all applications received under the Planning Act, namely vegetation clearing applications and concurrence agency applications for material change of use and reconfiguring a lot.
- Amending the chief executive's refusal power for concurrence agency applications that are not for a relevant clearing purpose so that the application does not need to be refused for the component of the application that is the clearing of regulated regrowth vegetation.

Alternative Ways of Achieving Policy Objectives

There are no viable alternatives that would achieve the Government's policy objectives.

Consistency with Fundamental Legislative Principles

The amendments are consistent with the fundamental legislative principles.

Notes on Provisions

Clause 1 amends Clause 6 (Insertion of new pt 2, div 2A)

The amendment inserts a new subparagraph (4) into new section 10D (Content of offsets policy) providing a definition of development approval for the section. The new definition stipulates that a development approval is a development approval under the Planning Act for development applications where the chief executive administering the *Vegetation Management Act 1999* (VMA) is either:

- an assessment manager (operational works for clearing native vegetation made assessable under Schedule 8, part 1, table 4, items 1A to 1G); or
- a concurrence agency (material change of use, reconfiguring a lot and operational works that involve clearing native vegetation but for which a local government is the assessment manager).

The amendment maintains the current application of the Policy for Vegetation Management Offsets to provide direction on vegetation management offsets proposed by applicants where the chief executive administering the VMA has a role in the assessment of the vegetation clearing component of the development application.

Clause 2 amends Clause 16 (Replacement of s. 20A (Forest practice codes))

This amendment affects subparagraph (2) of new section 20AC (What is essential habitat map) which defines essential habitat. The amendment inserts before "remnant vegetation" a reference to the remnant vegetation being shown on a regional ecosystem map or remnant map.

The insertion of a specific reference to the mapping is required as the Vegetation Management and Other Legislation Amendment Bill 2009 changes the definition of *remnant vegetation* to refer to how vegetation exists on the ground rather than its representation on a map. The change in definition, however, requires amendments to the VMA where the law refers to remnant vegetation depicted on the vegetation management map, such as for determining areas of essential habitat.

Clause 3 amends Clause 16 (Replacement of s. 20A (Forest practice codes))

This amendment affects subparagraph (5) of new section 20AC (What is essential habitat map) which defines essential regrowth habitat. The amendment clarifies that essential regrowth habitat only occurs within areas of high value regrowth vegetation shown on a regrowth vegetation map. This amendment mirrors the function of a map in determining areas of essential habitat defined in subparagraph (2) of the section. Further, this amendment simplifies the process for landholders to determine areas of essential regrowth habitat on their property and thereby any clearing restrictions imposed by the regrowth vegetation code.

Clause 4 amends Clause 16 (Replacement of s. 20A (Forest practice codes))

This amendment affects subparagraph (d) of new section 20AH (Deciding to show particular areas as remnant vegetation). The new section 20AH enables the chief executive, as part of the certification process of the regional ecosystem or remnant maps, to show areas of vegetation as remnant vegetation even though that at the time of certification the vegetation does not meet the definition of *remnant vegetation*. This ensures that areas of vegetation, which could be cleared lawfully but have a requirement to be returned to remnant status after the clearing has occurred to continue to be shown as remnant vegetation on the relevant vegetation management map. The subparagraph (d) identifies potential areas of vegetation in which clearing for forestry activities has occurred which the chief executive can decide to continue to show as remnant vegetation. The insertion into the subparagraph clarifies that the potential areas of vegetation must have been shown on a regional ecosystem map or remnant map as remnant vegetation to be eligible for the chief executive to continue to show these areas as remnant vegetation on a new version of the vegetation management map.

Clause 5 amends Clause 17 (Insertion of new sections 20AK-20AO)

This amendment affects subparagraph (1) of new section 20AO (What is a category X area) which provides the definition for a Category X area. The amendment corrects an omission which would have prevented the government from locking in areas of vegetation in ‘white’ areas of the vegetation management maps as category X areas. Inserting a reference to vegetation shown on the regional ecosystem map or remnant map as remnant vegetation reinstates the policy intent for the chief executive administering the VMA to show vegetation as Category X area if the area is not shown as remnant on a vegetation management map. This enables DERM to show category X areas on a property map of assessable to correct a regional ecosystem or remnant maps. Also, DERM is able to ‘lock-in’ any area that is ‘white’ on all the vegetation management maps (that is not high value regrowth vegetation or remnant vegetation shown on the vegetation management maps).

Clause 6 amends Clause 27 (Amendment of section 22A (Particular vegetation clearing applications may be assessed))

Subparagraph (3) of Clause 27 amends subparagraph (2B) of section 22A (Particular vegetation clearing applications may be assessed). New subparagraph 2B is intended to provide for a prohibition on applying for a development application in areas where the regrowth vegetation code applies. The amendment inserts the land tenure on which the regrowth vegetation code applies, that is freehold, indigenous and leases issued under the *Land Act 1994* for agricultural and grazing purposes. This corrects the omission and allows development applications for clearing regrowth vegetation to occur on other tenures where the regrowth vegetation code does not occur, for example road or reserve land tenures.

Clause 7 amends Clause 28 (Insertion of new part 2, division 6, subdivision 2)

The amendment clarifies the circumstances in which the chief executive administering the VMA must direct an assessment manager to refuse a concurrence agency application for material change of use or reconfiguring a lot. Under the current clause 28 the chief executive must direct refusal of a whole development application if any part of that proposed development is not for a relevant purpose under section 22A (particular vegetation clearing applications may be assessed). However, the policy intent was to only refuse the part of the application that was not for a relevant clearing purpose except if the clearing was of regulated regrowth vegetation on freehold, indigenous or leases under the Land Act 1994 for agricultural or grazing purposes. In the case of clearing of regulated regrowth vegetation

the chief executive will be able to direct the assessment manager to condition the development approval to ensure the clearing of regulated regrowth vegetation is carried out under the Regrowth Vegetation Code.

Clause 8 amends Clause 29 (Insertion of new part 2, division 6A)

New Division 6A (Vegetation Management Offsets) provides direction on the application of vegetation management offsets. Clause 8 affects the definition of relevant regional vegetation management code under new section 22DH (Application of subdivision 2(Imposing Offsets)). Currently the definition only refers to vegetation clearing applications and omits a reference to concurrence agency applications for material change of use and reconfiguring a lot. The amendment changes the definition to only refer to applications thereby reinstating the current policy framework in the head of power for vegetation management offsets.

Clause 9 amends Clause 29 (Insertion of new part 2, division 6A)

This clause amends subparagraph (1) of new section 22DI (Compliance with offsets policy) to change the reference of “development application” to “application” to clarify that the application can either be a vegetation clearing application, material change of use concurrence agency application or reconfiguring a lot concurrence agency application thereby maintaining the current application of the Policy for Vegetation Management Offsets.

Clause 10 inserts a new Clause 43A (Amendment of section 70A (Application of development approvals and exemptions for Forestry Act)) after Clause 43 (Insertion of new part 4, division 4)

This amendment inserts a new clause to amend section 70A subparagraphs (3) and (4). The section provides an exemption for specific clearing undertaken under the *Forestry Act 1959*, which is partly determined by an area of vegetation firstly being shown as remnant vegetation on a regional ecosystem map or remnant map.

As outlined in Clause 4, the administrative streamlining reforms in VMOLA 09 amends the definition of *remnant vegetation* to refer to how vegetation exists on the ground rather than its representation on a map. Along with this change in definition, provisions in the unamended VMA which refer to remnant vegetation depicted on a map are being amended in VMOLA 09 to insert a specific phrase referring to the map. Clause 10 will reinstate the policy intent of section 70A by inserting a reference to the relevant vegetation management map.

Clause 11 amends Clause 48 (Insertion of new part 6, division 7)

Clause 11 affects subparagraph (3) of new section 98 (Existing development approvals and development applications) a transitional provision for VMOLA 09 for existing development applications. This amendment makes the provision consistent with the policy intent which is to provide that clearing that is a natural and ordinary consequence of a development approval given for a development application properly made before 8 October can proceed as if the new regrowth laws had not commenced. This means that under these development approvals the regrowth vegetation (which is a natural and ordinary consequence of the development) can be cleared without reference to the regrowth vegetation code.

Clause 12 amends Clause 49 (Amendment of schedule (Dictionary))

This amendment will omit the definition for *development approval* from the Dictionary of the VMA. A new definition of development approval is being inserted by Amendment 13.

Clause 13 amends Clause 49 (Amendment of schedule (Dictionary))

This amendment inserts a new definition for *development approval* to clarify the types of development applications which new part 2, division 6A (Vegetation management offsets) affects. The new definition stipulates that a development approval for part 2, division 6A is a development approval under the Planning Act for development applications where the chief executive administering the *Vegetation Management Act 1999* (VMA) is either:

- an assessment manager (operational works for clearing native vegetation made assessable under Schedule 8, part 1, table 4, items 1A to 1G); or
- a concurrence agency (material change of use, reconfiguring a lot and operational works that involve clearing native vegetation but for which a local government is the assessment manager).

This means that the provisions in the division apply to all development applications for clearing of native vegetation that the chief executive has a role in the assessment, consistent with the current policy framework for vegetation management offsets.

Clause 14 amends Clause 49 (Amendment of schedule (Dictionary))

This amendment affects the definition of regulated regrowth vegetation in the schedule (Dictionary). The amendment removes a potential loop hole under which mapped high value regrowth vegetation that is mature enough to be mapped as remnant (meets the remnant vegetation definition) could be cleared without application of the regrowth vegetation code. The removal of the word “regrowth” remedies this, and ensures the code applies to all native vegetation that is mapped as high value regrowth vegetation on a regrowth vegetation map.

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