



Queensland

# Vegetation Management Act 1999

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Queensland

# Vegetation Management Act 1999

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# Vegetation Management Act 1999

## An Act about the management of vegetation

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Vegetation Management Act 1999*.

#### 3 Purpose of Act

- (1) The purpose of this Act is to regulate the clearing of vegetation in a way that—
  - (a) conserves remnant vegetation that is—
    - (i) an endangered regional ecosystem; or
    - (ii) an of concern regional ecosystem; or
    - (iii) a least concern regional ecosystem; and
  - (b) conserves vegetation in declared areas; and
  - (c) ensures the clearing does not cause land degradation; and
  - (d) prevents the loss of biodiversity; and
  - (e) maintains ecological processes; and
  - (f) manages the environmental effects of the clearing to achieve the matters mentioned in paragraphs (a) to (e); and
  - (g) reduces greenhouse gas emissions; and
  - (h) allows for sustainable land use.

- (2) The purpose is achieved mainly by providing for—
- (a) the following matters—
    - (i) assessment benchmarks for the Planning Act for the assessment of assessable development that is the clearing of vegetation, other than an assessment carried out by the planning chief executive;
    - (ii) for the Planning Act, the matters a referral agency other than the planning chief executive—
      - (A) must or may assess a development application against; or
      - (B) must or may assess a development application having regard to; and
  - (b) the enforcement of vegetation clearing provisions; and
  - (c) declared areas; and
  - (d) a framework for decision making that, in achieving this Act's purpose in relation to subsection (1)(a) to (e), applies the precautionary principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage; and
  - (e) the regulation of particular regrowth vegetation.
- (3) In this section—
- environment*** includes—
- (a) ecosystems and their constituent parts including people and communities; and
  - (b) all natural and physical resources; and
  - (c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and

- 
- (d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a) to (c) or affected by those matters.

#### **4 Advancing the Act's purpose**

If, under this Act, a function or power is conferred on an entity, the entity must perform the function or exercise the power in a way that advances the purpose of this Act.

#### **5 Definitions**

The dictionary in the schedule defines particular words used in this Act.

#### **6 Act binds all persons**

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

#### **7 Application of Act**

- (1) This Act applies to all clearing of vegetation other than vegetation on—
- (a) a forest reserve under the *Nature Conservation Act 1992*; or
  - (b) any of the following protected areas under the *Nature Conservation Act 1992*—
    - (i) a national park (scientific);
    - (ii) a national park;
    - (iii) a national park (Aboriginal land);
    - (iv) a national park (Torres Strait Islander land);
    - (v) a national park (Cape York Peninsula Aboriginal land);

- (vi) a conservation park;
  - (vii) a resources reserve;
  - (viii) a special wildlife reserve; or
  - (c) an area declared as a State forest or timber reserve under the *Forestry Act 1959*; or
  - (d) a forest entitlement area under the *Land Act 1994*.
- (2) This Act does not prevent a local law from imposing requirements on the clearing of vegetation in its local government area.
- (3) The requirements mentioned in subsection (2) are unaffected by the *Local Government Act 2009*, section 27.
- (4) The *Local Government Act 2009*, section 27 is subject to subsection (3).
- (5) This Act does not prevent a local planning instrument under the Planning Act from imposing requirements on the clearing of vegetation in its local government area.

## Part 2                      **Vegetation management**

### Division 1                **Key concepts**

#### 8                      **What is vegetation**

*Vegetation* is a native tree or plant other than the following—

- (a) grass or non-woody herbage;
- (b) a plant within a grassland regional ecosystem prescribed under a regulation;
- (c) a mangrove.



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## 9 What is vegetation management

- (1) *Vegetation management* is the management of vegetation in a way that achieves the purpose of this Act.
- (2) For subsection (1), the management of vegetation may include, for example, the following—
  - (a) the retention or maintenance of vegetation to—
    - (i) avoid land degradation; or
    - (ii) maintain or increase biodiversity; or
    - (iii) maintain ecological processes;
  - (b) the retention of riparian vegetation;
  - (c) the retention of vegetation clumps or corridors.

## Division 2 State policy for vegetation management

### 10 State policy for vegetation management

- (1) The Minister must prepare a policy for vegetation management for the State.
- (2) Without limiting subsection (1), the policy must state—
  - (a) outcomes for vegetation management and actions proposed to achieve the outcomes; and
  - (b) special considerations for significant community projects.
- (3) The Governor in Council, by gazette notice, may approve the policy.
- (4) The policy is not subordinate legislation.
- (5) In this section—

*significant community projects* means projects the chief executive considers have an aesthetic, conservation, cultural or economic benefit to a local or regional community or the State, including—

- (a) a project that serves an essential need of the community;  
and

*Examples—*

essential infrastructure, school

- (b) a project that significantly improves the community's access to services.

*Examples—*

hospital, State or local government library or museum

## **Division 4            Declaration of particular areas**

### **Subdivision 1        Declarations by Governor in                                  Council or Minister**

#### **16        Preparing declaration**

- (1) The Minister may prepare a declaration that a stated area is—
  - (a) an area of high nature conservation value; or
  - (b) an area vulnerable to land degradation.
- (2) Also, a person may request the Minister to prepare a declaration mentioned in subsection (1).
- (3) The proposed declaration must include—
  - (a) proposed assessment benchmarks for the assessment of development that is the clearing of vegetation in the stated area; and
  - (b) proposed matters that a referral agency must or may assess a development application against, or having regard to.
- (4) The Minister must consult with the following entities in preparing the declaration—
  - (a) an advisory committee established to advise the Minister about vegetation management;

- (b) each local government whose area is affected by the declaration.
- (5) The Minister must give each owner of land that is in the stated area a written notice inviting the owner to make a submission about the proposed declaration.
- (6) The Minister must also give notice of the proposed declaration.
- (7) The notice must—
  - (a) be published in a newspaper the Minister considers appropriate; and
  - (b) state the places where copies of the proposed declaration may be inspected; and
  - (c) invite submissions on the proposed declaration; and
  - (d) state a day by which submissions may be made on the proposed declaration.

## **17 Making declaration**

- (1) The Governor in Council, by gazette notice, may declare—
  - (a) an area mentioned in section 16(1)(a) to be an area of high nature conservation value; or
  - (b) an area mentioned in section 16(1)(b) to be an area vulnerable to land degradation.
- (2) The declaration must not include the matters proposed under section 16(3)(a) and (b).
- (3) The declaration is not subordinate legislation.

## **18 Interim declaration**

- (1) The Minister, by gazette notice, may make an interim declaration that a stated area is—
  - (a) an area of high nature conservation value; or
  - (b) an area vulnerable to land degradation.

- (2) The Minister may make the interim declaration only if the Minister considers that urgent action is needed to protect the area.
- (3) The interim declaration must state it is an interim declaration and the date, not more than 3 months after it is made, on which it expires.
- (4) The interim declaration is not subordinate legislation.
- (5) If an area is declared under subsection (1), a person must not clear vegetation in the area while the declaration has effect.  
Maximum penalty—1,665 penalty units.

## **19 Criteria for declarations**

- (1) The Minister may make an interim declaration of, or prepare a declaration of, an area to be an area of high nature conservation value only if the Minister considers the area is 1 or more of the following—
  - (a) a wildlife refugium;
  - (b) a centre of endemism;
  - (c) an area containing a vegetation clump or corridor that contributes to the maintenance of biodiversity;
  - (d) an area that makes a significant contribution to the conservation of biodiversity;
  - (e) an area that contributes to the conservation value of a wetland, lake or spring stated in the notice.
- (2) The Minister may make an interim declaration of, or prepare a declaration of, an area to be an area vulnerable to land degradation only if the Minister considers the area is subject to 1 or more of the following—
  - (a) soil erosion;
  - (b) rising water tables;
  - (c) the expression of salinity, whether inside or outside the area;

- (d) mass movement by gravity of soil or rock;
  - (e) stream bank instability;
  - (f) a process that results in declining water quality.
- (3) An area declared under subsection (1) or (2) may include an area of regrowth vegetation.

## **Subdivision 2      Declarations by chief executive**

### **19E      Request for declaration**

- (1) The owner of land (the *proponent*) may, by written notice given to the chief executive, ask the chief executive to declare that a stated area of the land is—
- (a) an area of high nature conservation value; or
  - (b) an area vulnerable to land degradation.
- (2) The notice must be accompanied by a management plan for the stated area.
- (3) The management plan must—
- (a) be signed by the proponent; and
  - (b) include enough information to allow the chief executive to map the boundary of the stated area; and
  - (c) state the proponent's management intent, and management outcomes proposed by the proponent, for the conservation of the high nature conservation value of the area or the prevention of land degradation in the area; and
  - (d) state the activities the proponent intends to carry out, or refrain from carrying out, to achieve the management outcomes mentioned in paragraph (c); and
  - (e) state the restrictions, if any, to be imposed on the use of, or access to, the area by other persons to achieve the management outcomes mentioned in paragraph (c).

- (4) Subsection (3) does not limit the matters the management plan may contain.

### **19F Making declaration**

- (1) The chief executive may, by written notice given to the proponent, declare that the stated area is—
- (a) an area of high nature conservation value; or
  - (b) an area vulnerable to land degradation.
- (2) If a person other than the proponent has a registered interest in the stated area the chief executive must not make the declaration without the person's written consent.
- (3) Without limiting subsection (1), the chief executive may decide not to make a declaration for the stated area if the chief executive considers the making of the declaration is not in the interests of the State, having regard to the public interest.
- (4) In this section—
- registered* means registered under the *Land Act 1994* or *Land Title Act 1994*.

### **19G Particular criteria for declaration**

- (1) The chief executive may declare an area to be an area of high nature conservation value only if the chief executive considers—
- (a) implementation of the management plan for the area will help to conserve its high nature conservation value; and
  - (b) the area is 1 or more of the following—
    - (i) a wildlife refugium;
    - (ii) a centre of endemism;
    - (iii) an area containing a vegetation clump or corridor that contributes to the maintenance of biodiversity;

- (iv) an area that makes a significant contribution to the conservation of biodiversity;
  - (v) an area that contributes to the conservation value of a wetland, lake or spring stated in the notice mentioned in section 19F(1) for the declaration;
  - (vi) another area that contributes to the conservation of the environment.
- (2) The chief executive may declare an area to be an area vulnerable to land degradation only if the chief executive considers—
- (a) implementation of the management plan for the area will help to prevent or minimise land degradation in the area; and
  - (b) the area is subject to 1 or more of the following—
    - (i) soil erosion;
    - (ii) rising water tables;
    - (iii) the expression of salinity, whether inside or outside the area;
    - (iv) mass movement by gravity of soil or rock;
    - (v) stream bank instability;
    - (vi) a process that results in declining water quality.
- (3) An area declared under this subdivision may include an area of regrowth vegetation.

## **19I Amendment of management plan**

The chief executive may, with the agreement of the owner of the land the subject of a management plan, amend the plan.

## **19J When management plan stops having effect**

A management plan for a declared area has effect until the earlier of the following happens—

- (a) the plan ends under its terms;
- (b) the declaration of the area as a declared area ends under section 19L.

### **19K Recording of declared areas and management plans**

- (1) As soon as practicable after declaring an area to be a declared area, the chief executive must give the registrar of titles written notice of—
  - (a) the declaration; and
  - (b) the management plan for the declared area.
- (2) The notice must include particulars of the land the subject of the declaration.
- (3) The registrar must keep records that—
  - (a) show the land is a declared area; and
  - (b) state the places where particulars of the management plan may be inspected.
- (4) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land will show—
  - (a) the declaration has been made; and
  - (b) the existence of the management plan.
- (5) As soon as practicable after a declaration ends or a management plan for the land the subject of a declaration stops having effect—
  - (a) the chief executive must give the registrar written notice of the fact; and
  - (b) the registrar must remove the particulars of the declaration or management plan from the registrar's records.
- (6) While a management plan has effect for the land and is recorded by the registrar under this section, the plan is binding on—



- 
- (a) each person who is from time to time the owner of the land, whether or not the person signed the plan or agreed to any amendment of the plan; and
  - (b) each person who has an interest in the land.

## 19L Ending declaration

- (1) The chief executive may, by written notice given to the owner of the land the subject of a declaration under this subdivision, end the declaration if the chief executive considers—
  - (a) the declaration is not in the interests of the State, having regard to the public interest; or
  - (b) the management outcomes mentioned in section 19E(3)(c) for the management plan relevant to the declaration have been achieved.
- (2) Also, the chief executive may, by notice given to the owner of land declared as an area of high conservation value, end the declaration if—
  - (a) the area is, on or after the commencement of this subsection, a legally secured offset area; and
  - (b) a prescribed activity is, under an authority under another Act, to be carried out in or on the area; and
  - (c) the holder of the authority has entered into an agreed delivery arrangement in relation to an environmental offset for impacts to the area.
- (3) In this section—

***agreed delivery arrangement*** see the *Environmental Offsets Act 2014*, schedule 2.

***authority***, under another Act, see the *Environmental Offsets Act 2014*, schedule 2.

***environmental offset*** see the *Environmental Offsets Act 2014*, schedule 2.

***legally secured offset area*** see the *Environmental Offsets Act 2014*, schedule 2.

*prescribed activity* see the *Environmental Offsets Act 2014*, schedule 2.

## **Division 4A                    Clearing vegetation for special indigenous purpose**

### **19N    Draft matters for assessing development application for clearing of vegetation for special indigenous purpose**

- (1) The Minister may prepare a document stating draft assessment matters for development that—
  - (a) involves, or relates to, the clearing of vegetation; and
  - (b) the Minister is satisfied is for a special indigenous purpose under the CYPH Act.
- (2) In preparing the document, the Minister—
  - (a) must consult with—
    - (i) the relevant landholders; and
    - (ii) the Cape York Peninsula Regional Advisory Committee; and
  - (b) may, for example, consider any matter stated in the CYPH Act, section 18 or 19 the Minister considers is relevant to the clearing of vegetation for development.
- (3) In preparing assessment matters under the Planning Act, the document may be considered, but otherwise does not affect the preparation or making of assessment matters under that Act.
- (4) In this section—

*assessment matters* means—

  - (a) assessment benchmarks for assessing development under the Planning Act; and
  - (b) the matters a referral agency must or may assess a development application against, or having regard to.

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***Cape York Peninsula Region*** means the Cape York Peninsula Region under the CYPH Act.

***Cape York Peninsula Regional Advisory Committee*** means the Cape York Peninsula Regional Advisory Committee established under the CYPH Act.

***DOGIT land*** means DOGIT land under the *Aboriginal Land Act 1991*.

***relevant landholders*** means—

- (a) the land trusts for Aboriginal land, under the *Aboriginal Land Act 1991*, that is in the Cape York Peninsula Region; and
- (b) the Aurukun Shire Council; and
- (c) the trustees, under the *Land Act 1994*, of DOGIT land in the Cape York Peninsula Region.

## **Division 4B Accepted development**

### **190 Accepted development vegetation clearing code**

- (1) The Minister may make a code (an ***accepted development vegetation clearing code***) for—
  - (a) clearing of vegetation, including for the following—
    - (i) an extractive industry;
    - (ii) relevant infrastructure activities;
    - (iii) environmental activities, including necessary environmental clearing;
    - (iv) sustainable land use, including fodder harvesting;  
or
  - (b) conducting a native forest practice.
- (2) Also, the Minister may make a code (also an ***accepted development vegetation clearing code***) for any other matter about clearing vegetation the Minister considers is necessary or desirable for achieving the purpose of this Act.

- (3) An accepted development vegetation clearing code may provide for all or any of the following—
  - (a) clearing for 1 or more relevant purposes under section 22A;
  - (b) clearing that is subject to another code under this Act;
  - (c) clearing a particular area;
  - (d) clearing a particular type of vegetation;
  - (e) required outcomes and practices, and voluntary best practices, for clearing vegetation;
  - (f) restrictions on clearing commercial timber on State land;
  - (g) the protection of habitat for protected wildlife;
  - (h) the circumstance in which an exchange area must be provided;
  - (i) giving notice to the chief executive of the intended clearing or native forest practice to be conducted under the code.
- (4) An accepted development vegetation clearing code must not be inconsistent with this Act or the State policy.

**19P When accepted development vegetation clearing code takes effect**

An accepted development vegetation clearing code does not take effect until it has been approved under a regulation.

**19Q When code compliant clearing and conduct of native forest practices are accepted development, assessable development or prohibited development for Planning Act**

- (1) This section applies if an accepted development vegetation clearing code applies to the clearing of vegetation or the conduct of a native forest practice (the *activity*).
- (2) For the Planning Act, the activity is—

- 
- (a) accepted development to the extent the activity complies with the code; or
  - (b) assessable development to the extent—
    - (i) the activity does not comply with the code; and
    - (ii) the development the subject of a vegetation clearing application for the activity would be for a relevant purpose under section 22A; or
  - (c) prohibited development under that Act to the extent—
    - (i) the activity does not comply with the code; and
    - (ii) the development the subject of a vegetation clearing application for the activity would not be for a relevant purpose under section 22A.

*Note—*

For an offence relating to carrying out assessable development without a development permit under the Planning Act and an exemption from the offence, see chapter 5, part 2 of that Act.

## **19R Register of accepted development notices given under code**

- (1) The chief executive must keep a register of notices required to be given to the chief executive under an accepted development vegetation clearing code.
- (2) The register must include details of each notice the chief executive considers appropriate.
- (3) The publicly available part of the register must not contain the name of the person giving the notice.
- (4) The chief executive must publish the real property description of the land the subject of the notification in the publicly available part of the register on the department's website.

## **19S When notice given under code ends**

- (1) This section applies if the Minister revokes or replaces an accepted development vegetation clearing code.

- (2) For this Act and the Planning Act—
- (a) a notice for the intended clearing of vegetation or the conduct of a native forest practice (the *activity*) given under the code ceases to have effect when the code is revoked or replaced; and
  - (b) the activity can not continue to be carried out under that code or, if that code is replaced, the replacement code.
- (3) However, if the Minister replaces an accepted development vegetation clearing code, subsection (2) does not apply to the extent the replacement code provides otherwise.

## **Division 5AA      Vegetation management maps**

### **20A      What is the *regulated vegetation management map***

The *regulated vegetation management map* is the map certified by the chief executive as the regulated vegetation management map for a part of the State and showing the vegetation category areas for the part.

*Note—*

The chief executive may decide under section 20AH or 20AI to show an area on the map as a category B or a category C area even though the vegetation is not remnant vegetation or high value regrowth vegetation.

### **20AA    What is the *vegetation management wetlands map***

The *vegetation management wetlands map* is the map certified by the chief executive as the vegetation management wetlands map showing particular wetlands for the State.

### **20AB    What is the *vegetation management watercourse and drainage feature map***

The *vegetation management watercourse and drainage feature map* is the map certified by the chief executive as the vegetation management watercourse and drainage feature map

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showing particular watercourses and drainage features for the State.

*Note—*

The map consists of the following documents—

- the document called ‘Vegetation management watercourse and drainage feature map (1:25 000)’
- the document called ‘Vegetation management watercourse and drainage feature map (1:100 000 and 1:250 000)’.

## **20AC What is the *essential habitat map***

- (1) The *essential habitat map* is a map certified by the chief executive as the essential habitat map for the State and showing, for the State, areas the chief executive reasonably believes are areas of essential habitat for protected wildlife.
- (2) *Essential habitat*, for protected wildlife, is a category A area, a category B area or category C area shown on the regulated vegetation management map—
  - (a) that has at least 3 essential habitat factors for the protected wildlife that must include any essential habitat factors that are stated as mandatory for the protected wildlife in the essential habitat database; or
  - (b) in which the protected wildlife, at any stage of its life cycle, is located.
- (3) *Essential habitat database* is a database, listing essential habitat factors for protected wildlife, certified by the chief executive as an essential habitat database.
- (4) An *essential habitat factor*, for protected wildlife, is a component of the wildlife’s habitat, including, for example, a landform, pollinator, regional ecosystem, soil and water, that is necessary or desirable for the wildlife at any stage of its lifecycle.

## **20AH Deciding to show particular areas as category B areas**

In certifying the regulated vegetation management map, the chief executive may decide to show an area on the map as a category B area if—

- (a) a development approval for the area has been given for—
  - (i) fodder harvesting; or
  - (ii) managing thickened vegetation; or
  - (iii) clearing of encroachment; or
  - (iv) control of non-native plants or declared pests; or
  - (v) necessary environmental clearing; or
- (b) the area is a declared area, offset area or exchange area; or
- (c) the area has been subject to clearing of vegetation under an accepted development vegetation clearing code on a category B area for 1 or more of the following—
  - (i) conducting a native forest practice;
  - (ii) fodder harvesting;
  - (iii) clearing of encroachment;
  - (iv) controlling non-native plants or declared pests;
  - (v) necessary environmental clearing; or
- (d) the area contains forest products under the *Forestry Act 1959* and—
  - (i) has been defined by agreement with the FA chief executive as an area in which the State has an interest in commercial timber; or
  - (ii) is an area in which the State has carried out harvesting of commercial timber; or
  - (iii) has been cleared under section 70A; or
- (e) the chief executive has made a PMAV for the area under section 20B(1)(e), (g) or (h); or



- 
- (f) the area has been unlawfully cleared; or
  - (g) the area has been cleared of native vegetation and in relation to the clearing a person has been found guilty by a court, whether or not a conviction has been recorded, of a clearing offence; or
  - (h) the area is a regional ecosystem that—
    - (i) has a predominant canopy not dominated by woody vegetation; and
    - (ii) has not been cultivated for 15 years; and
    - (iii) contains native species normally found in the regional ecosystem; and
    - (iv) is not dominated by non-native perennial species; or
  - (i) the area has been subject to clearing of vegetation under an area management plan on a category B area for 1 or more of the following—
    - (i) fodder harvesting;
    - (ii) managing thickened vegetation;
    - (iii) clearing of encroachment;
    - (iv) controlling non-native plants or declared pests;
    - (v) necessary environmental clearing; or
  - (j) the area has been subject to a native forest practice on a category B area.

## **20AI Deciding to show particular areas as category C areas**

In certifying the regulated vegetation management map, the chief executive may decide to show an area on the map as a category C area if—

- (a) the area has been subject to clearing of vegetation under an accepted development vegetation clearing code on a category C area for 1 or more of the following—
  - (i) conducting a native forest practice;

- (ii) fodder harvesting;
- (iii) clearing of encroachment;
- (iv) controlling non-native plants or declared pests;
- (v) necessary environmental clearing; or
- (b) the area is an exchange area; or
- (c) the area contains forest products under the *Forestry Act 1959* that are regulated regrowth vegetation and—
  - (i) has been defined by agreement with the FA chief executive as an area in which the State has an interest in commercial timber; or
  - (ii) is an area in which the State has carried out harvesting of commercial timber; or
  - (iii) has been cleared under section 70A; or
- (d) the chief executive has made a PMAV for the area under section 20B(1)(e), (g) or (h); or
- (e) the area has been unlawfully cleared; or
- (f) the area has been cleared of native vegetation and in relation to the clearing a person has been found guilty by a court, whether or not a conviction has been recorded, of a clearing offence; or
- (g) the area has been subject to clearing of vegetation under an area management plan on a category C area for 1 or more of the following—
  - (i) fodder harvesting;
  - (ii) managing thickened vegetation;
  - (iii) clearing of encroachment;
  - (iv) controlling non-native plants or declared pests;
  - (v) necessary environmental clearing.

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**20AJ Application to make PMAV before amending regulated vegetation management map**

If an owner of land in an area wants the chief executive to amend the regulated vegetation management map, the owner must apply to the chief executive under section 20C to make a PMAV for the area.

*Note—*

See section 20H for the effect of an inconsistency between a PMAV and the regulated vegetation management map.

**20AK What is a *property map of assessable vegetation* (or *PMAV*)**

- (1) A *property map of assessable vegetation* (or *PMAV*) is a map certified by the chief executive as a PMAV for an area and showing the vegetation category area for the area.
- (2) The map may also show for the area the location of the boundaries of, and the regional ecosystem number for, each regional ecosystem in the area.

**20AKA What is a *vegetation category area***

A *vegetation category area* is a category A area, category B area, category C area, category R area or category X area.

*Note—*

The effect of sections 20AL to 20AO, 20BA and 20CA is that there is no overlap of the boundaries of the vegetation category areas.

**20AL What is a *category A area***

A *category A area* is an area, other than a category B area, category C area, category R area or category X area, shown on the regulated vegetation management map as a category A area that—

- (a) is any of the following—
  - (i) a declared area;

- (ii) an offset area;
- (iii) an exchange area; or
- (b) has been unlawfully cleared; or
- (c) is, or has been, subject to—
  - (i) a restoration notice; or
  - (ii) an enforcement notice under the Planning Act containing conditions about restoration of vegetation; or
- (d) has been cleared of native vegetation and in relation to the clearing a person has been found guilty by a court, whether or not a conviction has been recorded, of a clearing offence; or
- (e) the chief executive decides under section 20BA is a category A area; or
- (f) is a category A area by agreement under section 20C(3) if, immediately before the agreement is entered into, the area was a category X area on a PMAV containing remnant vegetation or high value regrowth.

### **20AM What is a *category B area***

A *category B area* is an area, other than a category A area, category C area, category R area or category X area, shown on the regulated vegetation management map as a category B area that—

- (a) contains remnant vegetation; or
- (b) the chief executive decides to show on the regulated vegetation management map as a category B area; or

*Note—*

The chief executive may decide under section 20AH to show an area on the regulated vegetation management map as a category B area even though the vegetation is not remnant vegetation.

- (c) if section 20AN does not apply to the area—

- (i) is a Land Act tenure to be converted under the *Land Act 1994* to another form of tenure; and
- (ii) contains—
  - (A) an endangered regional ecosystem; or
  - (B) an of concern regional ecosystem; or
  - (C) a least concern regional ecosystem.

### **20AN What is a *category C area***

A *category C area* is an area, other than a category A area, category B area, category R area or category X area, shown on the regulated vegetation management map as a category C area that—

- (a) contains high value regrowth vegetation; or
- (b) the chief executive decides to show on the regulated vegetation management map as a category C area.

*Note—*

The chief executive may decide under section 20AI to show an area on the regulated vegetation management map as a category C area even though the vegetation is not high value regrowth vegetation.

### **20ANA What is a *category R area***

A *category R area* is an area, other than a category A area, category B area, category C area or category X area, shown on the regulated vegetation management map as a category R area that is a regrowth watercourse and drainage feature area.

### **20AO What is a *category X area***

- (1) A *category X area* is an area, other than a category A area, category B area, category C area or category R area (in which the clearing of vegetation has happened), shown on the regulated vegetation management map as a category X area.

- (2) However, an area is not a *category X area* if the chief executive decides under section 20CA the area is not a category X area.

## **20B When chief executive may make PMAV**

- (1) The chief executive may make a PMAV for an area if—
- (a) the area becomes a declared area; or
  - (b) the area becomes an offset area; or
  - (c) the area becomes an exchange area; or
  - (d) the area has been unlawfully cleared; or
  - (e) the area is subject to—
    - (i) a restoration notice; or
    - (ii) an enforcement notice under the Planning Act containing conditions about restoration of vegetation; or
  - (f) the area has been cleared of native vegetation and in relation to the clearing a person has been found guilty by a court, whether or not a conviction has been recorded, of a clearing offence; or
  - (g) the chief executive reasonably believes—
    - (i) a person has committed a vegetation clearing offence in relation to the area, whether before or after the commencement of this section, or a vegetation clearing offence is being committed in relation to the area; or
    - (ii) the area was cleared of vegetation in contravention of a tree clearing provision under the *Land Act 1994* as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3; or
    - (iii) prohibited development under the repealed Moratorium Act, part 5 was carried out in relation to the area; or

- (h) the area is a Land Act tenure that is to be converted under the *Land Act 1994* to another form of tenure; or
  - (i) the chief executive reasonably believes there is an error in the part of the regulated vegetation management map for the area.
- (2) The chief executive must give each owner of land to be included in the PMAV an information notice about the decision to make the PMAV.
  - (3) Nothing prevents the chief executive making a PMAV for 2 or more of the circumstances mentioned in subsection (1)(a) to (i) over the same or different areas.

#### **20BA Chief executive may make decision about category A area**

The chief executive may make an area a category A area on a PMAV if the chief executive reasonably believes—

- (a) a vegetation clearing offence is being, or has been, committed in relation to the area; or
- (b) the area was cleared of vegetation in contravention of a tree clearing provision under the *Land Act 1994* as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3; or
- (c) prohibited development under the repealed Moratorium Act, part 5 was carried out in relation to the area.

#### **20C When owner may apply for PMAV**

- (1) An owner of land may apply to the chief executive for the making of a PMAV for the land or part of the land.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) state the information prescribed under a regulation; and

- (c) be accompanied by the fee prescribed under a regulation.
- (3) If the owner of the land and the chief executive agree to the making of the PMAV, the chief executive must make the PMAV.
- (4) The chief executive may waive the prescribed fee for the making of a PMAV if it is in the interests of the State and the owner.
- (5) If the chief executive refuses to make a PMAV for the area, the chief executive must give the owner an information notice about the decision.

## **20CA Process before making PMAV**

- (1) This section applies if—
  - (a) an owner of land applies under section 20C for the making of a PMAV for the land or part of the land; and
  - (b) the owner proposes that the land or part of the land (the *relevant area*) be a category X area on the PMAV.
- (2) The chief executive can not make the relevant area a category X area on the PMAV if any of the circumstances mentioned in section 20AH or 20AI for the area have happened unless the area has later been cleared and—
  - (a) the clearing was carried out under a moratorium exemption; or
  - (b) the clearing was carried out under a development approval other than a development approval for—
    - (i) fodder harvesting; or
    - (ii) managing thickened vegetation; or
    - (iii) clearing of encroachment; or
    - (iv) controlling non-native plants or declared pests; or
    - (v) necessary environmental clearing; or



- (c) the clearing was carried out under an accepted development vegetation clearing code other than for—
    - (i) conducting a native forest practice; or
    - (ii) fodder harvesting; or
    - (iii) clearing of encroachment; or
    - (iv) controlling non-native plants or declared pests; or
    - (v) necessary environmental clearing; or
  - (d) the clearing was carried out under an area management plan other than for—
    - (i) fodder harvesting; or
    - (ii) managing thickened vegetation; or
    - (iii) clearing of encroachment; or
    - (iv) controlling non-native plants or declared pests; or
    - (v) necessary environmental clearing; or
  - (e) the clearing was not carried out under an accepted development vegetation clearing code or an area management plan and, when the clearing was carried out, the clearing did not require a development permit under the Planning Act.
- (3) Also, the chief executive can not make the relevant area a category X area on the PMAV if—
- (a) the vegetation in the relevant area is not remnant vegetation or high value regrowth vegetation because of clearing that happened because of burning, flooding or natural causes; or
  - (b) the chief executive is satisfied the clearing of vegetation for the relevant area after 29 November 2013 was not lawfully carried out.
- (3A) However, subsection (3) does not prevent the chief executive making the relevant area a category X area on the PMAV if clearing in the area was carried out under subsection (2)(a),

- (b), (c), (d) or (e) after the clearing mentioned in subsection (3)(a) or (b).
- (4) If the chief executive considers the relevant area can not be made a category X area because of subsection (2) or (3), the chief executive must, before making the PMAV, give the owner of the land a notice inviting the owner to show why the relevant area should be a category X area.
- (5) The notice must state the following—
- (a) the grounds for the proposed decision that the relevant area is not a category X area;
  - (b) the facts and circumstances forming the basis for the grounds;
  - (c) the proposed boundaries of the vegetation category areas for the PMAV;
  - (d) that the owner may make submissions about the proposed decision;
  - (e) how to make a properly made submission;
  - (f) where the submission may be made or sent;
  - (g) a period within which the submission must be made.
- (6) The stated period must be at least 15 business days after the notice is given.
- (7) If, after considering any properly made submission by the owner, the chief executive still considers the relevant area is not a category X area, the chief executive may make the relevant area other than a category X area on the PMAV.
- (8) The chief executive must give the owner an information notice about the decision to make the relevant area other than a category X area.
- (9) In this section—
- lawfully carried out***, for the clearing of vegetation, means the clearing was, at the time of the clearing, authorised or permitted under this Act or under any of the following—
- (a) the Planning Act;

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- (b) the repealed *Integrated Planning Act 1997*;
  - (c) the repealed *Sustainable Planning Act 2009*;
  - (d) the *State Development and Public Works Organisation Act 1971*;
  - (e) the *Cape York Peninsula Heritage Act 2007*.

***properly made submission*** means a submission that—

- (a) is written; and
- (b) is signed by each person (a ***signatory***) who made the submission; and
- (c) states the name and address of each signatory; and
- (d) states the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (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.

## **20D When PMAV may be replaced**

- (1) The chief executive may replace a PMAV for an area (the ***previous area***) with 1 or more PMAVs (each a ***new PMAV***).
- (2) A new PMAV may apply to—
  - (a) part or all of the previous area; or
  - (b) part or all of the previous area and another area.
- (3) Subsection (1) applies only—
  - (a) if a matter mentioned in section 20B occurs in relation to an area mentioned in subsection (2); or
  - (b) to reflect a change to an endangered, of concern or a least concern regional ecosystem in an area mentioned in subsection (2); or

*Editor's note—*

A change may only be made by amending the *Vegetation Management Regulation 2012*.

- (c) to change a category A area mentioned in section 20AL(f) to a category B area, category C area or category X area, if each of the affected owners agrees to the replacement; or
  - (d) for a matter other than a matter mentioned in paragraph (a), (b) or (c), if each of the affected owners agrees to the replacement.
- (3A) Despite subsection (3), the chief executive may replace a PMAV for an area if—
- (a) for a PMAV made under section 20B(1)(a) for a declared area under division 4, subdivision 2—the declaration for the area ends; or
  - (b) for a PMAV made under section 20B(1)(b)—the offset in relation to the offset area ends; or
  - (c) for a PMAV made under section 20B(1)(c)—the exchange area is no longer an exchange area required under an accepted development vegetation clearing code; or
  - (d) for a PMAV made under section 20B(1)(d), (e), (f) or (g)—
    - (i) the area contains remnant vegetation; or
    - (ii) the person the subject of a restoration notice, an enforcement notice under the Planning Act or a court order has complied with the conditions of the restoration notice or enforcement notice or order; or
  - (e) for a PMAV made under section 20B(1)(h)—the Land Act tenure over the area is not converted to another form of tenure; or
  - (f) for a PMAV made under section 20B(1)(i)—the regulated vegetation management map is amended to correct the error.

- (4) A reference to a PMAV made under section 20B or 20C is taken to include its replacement under this section.
- (5) In this section—
- affected owner* means an owner of land proposed to be included in a new PMAV if any of the following apply—
- (a) the owner applied under section 20C for the making of the new PMAV;
  - (b) there was not a PMAV for the land or part of the land;
  - (c) the land, or part of the land, will be affected by a change to the boundary of a vegetation category area in the new PMAV.

## **20F Copies of PMAV given to owners**

- (1) If a PMAV is made or replaced, a copy must be given, free of charge, to each affected owner of land that is included in the PMAV.
- (2) However, if there are 2 or more affected owners who reside at the same address, a copy of the PMAV may be sent to the owners jointly.
- (3) In this section—
- affected owner*, of land included in a PMAV, means an owner of the land if all, or a part of, the land will be affected by a change to the boundary of a vegetation category area in the PMAV.

## **20H PMAV boundaries prevail**

- (1) This section applies if there is an inconsistency between a boundary of a vegetation category area shown on a PMAV and the boundary of the area shown on the regulated vegetation management map.
- (2) The boundary shown on the PMAV prevails to the extent of the inconsistency.

## **20HA Certifying vegetation management map**

The chief executive may certify a vegetation management map by certifying—

- (a) a hard copy of the map; or
- (b) a digital electronic form of the map.

## **20HB Amending vegetation management map**

If the chief executive certifies or amends a PMAV the chief executive must amend the regulated vegetation management map in a way that reflects the certification or amendment.

## **20HC When vegetation management map takes effect**

A vegetation management map or a map replacing a vegetation management map does not take effect until the map is certified by the chief executive.

# **Division 5B Area management plans**

## **Subdivision 1 Preliminary**

### **21 Definitions for division**

In this division—

*area management plan* means an area management plan made by the chief executive under subdivision 2.

*plan area*, for an area management plan, means the area to which the plan relates.

*restricted (fodder harvesting) land* see section 21A.

### **21A What is *restricted (fodder harvesting) land***

- (1) *Restricted (fodder harvesting) land* is—

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- (a) a State-controlled road under the *Transport Infrastructure Act 1994*; or
  - (b) a road controlled by a local government under the *Local Government Act 2009*; or
  - (c) trust land under the *Land Act 1994*.
- (2) However, *restricted (fodder harvesting) land* does not include indigenous land.

## **Subdivision 2 Plans made by chief executive**

### **21B Chief executive may make area management plans**

- (1) The chief executive may make an area management plan for an area that provides for any matter about clearing vegetation the chief executive considers necessary or desirable for achieving the purpose of this Act.
- (2) An area management plan must—
  - (a) include enough information to allow the chief executive to map the boundary of—
    - (i) the plan area; and
    - (ii) if the conditions for clearing vegetation relate to different zones within the plan area—each of the zones; and
  - (b) state—
    - (i) the management intent and management outcomes for vegetation management in the plan area; and
    - (ii) the conditions for clearing, or restricting clearing of, vegetation in the area to achieve the management intent and management outcomes; and
  - (c) provide for, or allow, clearing of vegetation for 1 or more of the following—
    - (i) controlling non-native plants or declared pests;

- (ii) ensuring public safety;
  - (iii) relevant infrastructure activities;
  - (iv) clearing of encroachment;
  - (v) managing thickened vegetation;
  - (vi) fodder harvesting, other than on a part of the area that is restricted (fodder harvesting) land;
  - (vii) necessary environmental clearing; and
- (d) not be inconsistent with the State policy.
- (3) An area management plan is not subordinate legislation.

### **21C Plan period for area management plan**

An area management plan must state the period, of no longer than 10 years, for which it will be in force, and remains in force until the end of the period.

### **21D Mandatory conditions for area management plan**

- (1) An area management plan is subject to the conditions under subsections (2) and (3).
- (2) If the plan provides for, or allows, clearing of vegetation for relevant infrastructure activities, the condition is that the clearing can not reasonably be avoided or minimised.
- (3) If the plan area includes restricted (fodder harvesting) land, the condition is that vegetation on the land can not be cleared for fodder harvesting.

## **Subdivision 3 Keeping plans**

### **21E Register of area management plans**

- (1) The chief executive must—



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- (a) give each area management plan a unique identifying number; and
  - (b) keep a register of area management plans.
- (2) The register must include details of each notice the chief executive considers appropriate.

## **Division 6                      Relationship with Planning Act**

### **22A    When development is for a relevant purpose**

- (1) This section provides for when development the subject of a vegetation clearing application is for a relevant purpose.
- (2) Development is for a relevant purpose under this section if the chief executive is satisfied the development is—
  - (a) a project declared to be a coordinated project under the *State Development and Public Works Organisation Act 1971*, section 26; or
  - (b) necessary to control non-native plants or declared pests; or
  - (c) to ensure public safety; or
  - (d) for relevant infrastructure activities and clearing for the development can not reasonably be avoided or minimised; or
  - (e) a natural and ordinary consequence of other assessable development for which a development approval was given under the repealed *Integrated Planning Act 1997*, or a development application was made under that Act, before 16 May 2003; or
  - (f) for fodder harvesting; or
  - (g) for managing thickened vegetation; or
  - (h) for clearing of encroachment; or
  - (i) for an extractive industry; or
  - (j) for necessary environmental clearing.

- (2AA) Also, development the subject of a vegetation clearing application is for a relevant purpose under this section if, under the CYPH Act, the Minister is satisfied the development is for a special indigenous purpose.
- (2B) However, development is not for a relevant purpose under this section if the development is—
- (a) clearing in a category C area if the land on which the development is carried out is freehold land, indigenous land or the subject of a lease issued under the *Land Act 1994* for agriculture or grazing purposes or an occupation licence under that Act; or
  - (b) clearing in a category R area if the land on which the development is carried out is freehold land, indigenous land or the subject of a lease issued under the *Land Act 1994* for agriculture or grazing purposes; or
  - (c) mentioned in subsection (2)(e), (f) or (i) or (2AA) and the land the subject of the application is an area declared to be a declared area under division 4, subdivision 2.

## **22B Requirements for vegetation clearing application for managing thickened vegetation**

- (1) This section applies if a vegetation clearing application is for managing thickened vegetation.
- (2) The application must demonstrate how the proposed clearing will restore the regional ecosystem subject to the clearing to the floristic composition and densities typical of the regional ecosystem in the bioregion and include the following—
  - (a) the location and extent of the proposed clearing;
  - (b) the selective clearing methods proposed to be used;
  - (c) evidence that the clearing will be limited to the prescribed regional ecosystems and restrictions;
  - (d) evidence that the regional ecosystem has thickened in comparison to the same regional ecosystem in the bioregion.

- (3) In this section—

*prescribed regional ecosystems and restrictions* means regional ecosystems and restrictions prescribed by regulation under the Planning Act, section 55(2) to be a regional ecosystem or restriction for managing thickened vegetation.

## **Division 7A            Classes of regional ecosystems**

### **22LA Endangered regional ecosystems**

- (1) A regulation may declare a stated regional ecosystem to be an endangered regional ecosystem.
- (2) The Minister must not recommend to the Governor in Council the making of a regulation under subsection (1) unless the Minister is satisfied—
- (a) the area of remnant vegetation for the regional ecosystem is less than 10% of the pre-clearing extent of the regional ecosystem; or
  - (b) the area of remnant vegetation for the regional ecosystem is—
    - (i) 10% to 30% of the pre-clearing extent of the regional ecosystem; and
    - (ii) less than 10,000ha.
- (3) However, failure to comply with subsection (2) in relation to a regulation does not affect the regulation's validity.

### **22LB Of concern regional ecosystems**

- (1) A regulation may declare a stated regional ecosystem to be an of concern regional ecosystem.
- (2) The Minister must not recommend to the Governor in Council the making of a regulation under subsection (1) unless the Minister is satisfied—

[s 22LC]

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- (a) the area of remnant vegetation for the regional ecosystem is 10% to 30% of the pre-clearing extent of the regional ecosystem; or
  - (b) the area of remnant vegetation for the regional ecosystem is—
    - (i) more than 30% of the pre-clearing extent of the regional ecosystem; and
    - (ii) less than 10,000ha.
- (3) However, failure to comply with subsection (2) in relation to a regulation does not affect the regulation's validity.

## **22LC Least concern regional ecosystems**

- (1) A regulation may declare a stated regional ecosystem to be a least concern regional ecosystem.
- (2) The Minister must not recommend to the Governor in Council the making of a regulation under subsection (1) unless the Minister is satisfied the area of remnant vegetation for the regional ecosystem is—
  - (a) more than 30% of the pre-clearing extent of the regional ecosystem; and
  - (b) more than 10,000ha.
- (3) However, failure to comply with subsection (2) in relation to a regulation does not affect the regulation's validity.

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## **Part 3**                      **Enforcement, investigations and offences**

### **Division 1**                **Enforcement and investigations**

#### **Subdivision 1**          **Authorised officers**

##### **24**      **Appointment and qualifications of authorised officers**

- (1) The chief executive may appoint a person as an authorised officer.
- (2) The chief executive may appoint a person as an authorised officer only if the chief executive is satisfied the person has the necessary expertise or experience to be an authorised officer.

##### **25**      **Functions and powers of authorised officers**

- (1) An authorised officer has the functions of—
  - (a) conducting investigations and inspections to monitor and enforce compliance with—
    - (i) this Act; and
    - (ii) a vegetation clearing provision; and
  - (b) giving stop work notices and restoration notices.
- (2) An authorised officer has the powers given under this or another Act.
- (3) An authorised officer is subject to the directions of the chief executive in exercising the powers.
- (4) The powers of an authorised officer may be limited—
  - (a) under a regulation; or
  - (b) under a condition of appointment; or

- (c) by notice of the chief executive given to the authorised officer.

## **26 Conditions of appointment of authorised officers**

- (1) An authorised officer holds office on the conditions stated in the officer's instrument of appointment.
- (2) An authorised officer—
  - (a) if the appointment provides for a term of appointment—ceases to hold office at the end of the term; and
  - (b) may resign by signed notice of resignation given to the chief executive.

## **27 Authorised officer's identity card**

- (1) The chief executive must give each authorised officer an identity card.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised officer; and
  - (b) be signed by the authorised officer; and
  - (c) identify the person as an authorised officer under this Act.
- (3) This section does not prevent the giving of a single identity card to a person for this Act and other Acts.

## **28 Failure to return identity card**

A person who ceases to be an authorised officer must return the person's identity card to the chief executive as soon as practicable, but within 15 business days, after ceasing to be an authorised officer, unless the person has a reasonable excuse for not returning it.

Maximum penalty—50 penalty units.

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## **29 Production or display of identity card**

- (1) An authorised officer may exercise a power under this Act in relation to someone else only if the authorised officer—
  - (a) first produces his or her identity card for the person’s inspection; or
  - (b) has the identity card displayed so it is clearly visible to the person.
- (2) If it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person’s inspection at the first reasonable opportunity.

## **Subdivision 2 Power to enter places**

### **30 Power to enter places**

- (1) An authorised officer may enter a place if—
  - (a) an occupier of the place consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the place is—
    - (i) the subject of—
      - (A) a development approval; or
      - (B) a lease, licence or permit under the *Land Act 1994*; or
      - (C) a stop work notice or restoration notice; or
      - (D) an enforcement notice under the Planning Act relating to the contravention of a vegetation clearing provision; or
      - (E) an activity, being carried out at the time of entry, to which an enforceable undertaking relates; or

[s 30A]

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- (F) a notification of an intention to clear vegetation given under an accepted development vegetation clearing code or an area management plan; and
  - (ii) entered during daylight hours; or
  - (d) the entry is for the purpose of giving an occupier a stop work notice requiring the occupier to immediately stop committing a vegetation clearing offence; or
  - (e) the entry is under section 30A or is authorised by a warrant.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—
- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) Subsection (1)(c) does not apply to a part of a place where a person resides.

### **30A Power to enter place on reasonable belief of vegetation clearing offence**

- (1) This section applies if an authorised officer believes on reasonable grounds that a vegetation clearing offence is happening, or has happened, at a place.
- (2) The authorised officer may enter and re-enter the place without the occupier's consent or a warrant to investigate whether a vegetation clearing offence is happening, or has happened, at the place.
- (3) The authorised officer may exercise powers under subsection (2), at the time, with the help, and using the force, that is necessary and reasonable in the circumstances.



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- (4) However, before first entering the place, the authorised officer must give at least 24 hours written notice of the proposed entry to an occupier of the place.
  - (5) Notice of the proposed entry must include the following information—
    - (a) that the authorised officer believes on reasonable grounds that a vegetation clearing offence is happening, or has happened, at the place;
    - (b) the reasons for the authorised officer's belief;
    - (c) that the authorised officer intends to enter the place and may re-enter the place;
    - (d) the purpose of the proposed entry;
    - (e) the dates and times of entry and re-entry.
  - (6) In exercising a power under this section, an authorised officer must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage, as is practicable in the circumstances.
  - (7) This section does not apply to a part of a place where a person resides.

### **Subdivision 3 Procedure for entry**

#### **31 Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 30(1)(a).
- (2) Before asking for the consent, the authorised officer must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.

- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this division; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- (6) A court must find the occupier of a place did not consent to an authorised officer entering the place under this division if—
  - (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry under section 30(1)(a); and
  - (b) an acknowledgement mentioned in subsection (4) is not produced in evidence for the entry; and
  - (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

## **32 Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **33 Issue of warrant**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of a vegetation clearing offence; and
  - (b) the evidence is at the place, or, within the next 7 days, may be at the place.
- (2) The warrant must state—
  - (a) that any authorised officer or stated authorised officer may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for the entry; and
    - (ii) exercise the authorised officer's powers under this division; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.
- (3) The warrant may, as well as authorising entry of the place, authorise re-entry by stating it on the warrant.
- (4) A provision of this part applying to entry authorised under a warrant is taken also to apply to any re-entry authorised under the warrant.

### 34 Special warrants

- (1) An authorised officer may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the special warrant before the application is sworn.
- (4) After issuing the special warrant, the magistrate must promptly fax a copy (a *facsimile warrant*) to the authorised officer if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the authorised officer—
  - (a) the magistrate must tell the authorised officer—
    - (i) what the terms of the special warrant are; and
    - (ii) the date and time the special warrant is issued; and
  - (b) the authorised officer must complete a form of warrant (a *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the special warrant; and
    - (iii) the terms of the special warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

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- (7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
    - (a) the sworn application; and
    - (b) if the authorised officer completed a warrant form—the completed warrant form.
  - (8) On receiving the documents, the magistrate must attach them to the special warrant.
  - (9) A court must find the exercise of the power by an authorised officer was not authorised by a special warrant if—
    - (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant mentioned in subsection (1); and
    - (b) the special warrant is not produced in evidence; and
    - (c) it is not proved by the person relying on the lawfulness of the entry that the authorised officer obtained the special warrant.

### **35 Warrants—procedure before entry**

- (1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this division.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the authorised officer's identity card or a copy of another document evidencing the authorised officer's appointment;
  - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 34(6), a copy of the facsimile warrant or warrant form;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;

- (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) If there is no person present at the place who is an occupier of the place, or it is vacant land, it is sufficient compliance with subsection (2) for the officer, before entering the place, to do or make a reasonable attempt to do the following things—
  - (a) contact an owner or occupier of the place;
  - (b) tell the owner or occupier the authorised officer is permitted by the warrant to enter the place;
  - (c) give the owner or occupier an opportunity to allow the authorised officer immediate entry to the place without using force.

## **Subdivision 4 Powers after entering a place**

### **36 General powers after entering places**

- (1) This section applies to an authorised officer who enters a place.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to the authorised officer only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring or enforcing compliance with this Act or a vegetation clearing provision, the authorised officer may, subject to subsection (5)—
  - (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or

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- (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
  - (d) copy a document at the place; or
  - (e) take into or onto the place any person, equipment and materials the authorised officer reasonably requires for the exercise of a power under this division; or
  - (f) require an occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e); or
  - (g) require an occupier of a place, or a person at the place, to give the authorised officer information to help the authorised officer ascertain whether the Act or a vegetation clearing provision is being complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
- (5) If the authorised officer enters the place under section 30(1)(d) for the purpose of giving an occupier a stop work notice, the authorised officer may only—
- (a) give the occupier the stop work notice; and
  - (b) take into or onto the place any person the authorised officer reasonably requires for giving the notice.

### **37 Failure to help authorised officer**

- (1) A person required to give reasonable help under section 36(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) If the requirement is to be complied with by an individual giving information, or producing a document, it is a reasonable excuse for the individual not to comply with the

requirement that complying with the requirement may tend to incriminate the individual.

### **38 Failure to give information**

- (1) A person of whom a requirement is made under section 36(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement may tend to incriminate the individual.

## **Subdivision 5 Power to seize evidence**

### **39 Seizing evidence**

- (1) This section applies if, under this division, an authorised officer enters a place after obtaining the consent of an occupier or under section 30A or a warrant.
- (2) If the authorised officer enters the place with the occupier's consent or under section 30A, the authorised officer may seize a thing at the place if—
- (a) the authorised officer reasonably believes the thing is evidence of a vegetation clearing offence; and
  - (b) either—
    - (i) if the authorised officer entered the place with the occupier's consent—seizure of the thing is consistent with the purpose of the entry as told to the occupier when asking for the occupier's consent; or
    - (ii) if the authorised officer entered the place under section 30A—seizure of the thing is consistent with the purpose of the proposed entry stated in the



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written notice of entry given to the occupier under that section.

- (3) If the authorised officer enters the place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer may seize anything else at the place if the authorised officer reasonably believes—
  - (a) the thing is evidence of a vegetation clearing offence; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) Also, the authorised officer may seize a thing at the place if the authorised officer reasonably believes it has just been used in committing a vegetation clearing offence.

#### 40 Securing seized things

Having seized a thing, an authorised officer may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

*Examples of restricting access to a thing—*

- 1 sealing a thing and marking it to show access to it is restricted
  - 2 sealing the entrance to a place where the thing is situated and marking it to show access to it is restricted
- (c) if the thing is equipment—make it inoperable.

*Example of making equipment inoperable—*

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

## **41 Tampering with seized things**

- (1) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—100 penalty units.

- (2) If an authorised officer makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without an authorised officer's approval.

Maximum penalty—100 penalty units.

## **42 Powers to support seizure**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and  
(b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

- (2) The requirement—

- (a) must be made by notice in the approved form; or  
(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by a notice in the approved form as soon as practicable.

- (3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

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### **43 Receipts for seized things**

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable, or would be unreasonable, to give the receipt, having regard to the thing's nature, condition and value.

### **44 Forfeiture by authorised officer**

- (1) A thing that has been seized under this subdivision is forfeited to the State if the authorised officer who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*  
the owner of the thing has migrated to another country
- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and

- (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

#### **45 Forfeiture on conviction**

- (1) On conviction of a person for a vegetation clearing offence, the court may order the forfeiture to the State of anything owned by the person and seized under this subdivision.
- (2) The court may make any order to enforce the forfeiture it considers appropriate.
- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

#### **46 Dealing with forfeited things**

- (1) On forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

#### **47 Return of seized things**

- (1) If a seized thing is not forfeited, the authorised officer must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for a vegetation clearing offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing is forfeited, the authorised officer must immediately return a thing seized to its owner if the authorised officer stops being satisfied—
  - (a) its continued retention as evidence is necessary; or

- (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, the offence.

#### **48 Access to seized things**

- (1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable, or would be unreasonable, to allow the inspection or copying.

### **Subdivision 6 Power to obtain information**

#### **49 Power to require name and address**

- (1) This section applies if an authorised officer—
  - (a) finds a person committing a vegetation clearing offence; or
  - (b) finds a person in circumstances that lead the authorised officer reasonably to suspect the person has just committed a vegetation clearing offence; or
  - (c) has information that leads the authorised officer reasonably to suspect a person has just committed a vegetation clearing offence.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address to be false.

## **50 Failure to give name or address**

- (1) A person of whom a requirement is made under section 49 must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
- (a) the person was required to state the person's name and residential address by an authorised officer who suspected the person had committed a vegetation clearing offence; and
  - (b) the person is not proved to have committed the offence.

## **51 Power to require information**

- (1) This section applies if an authorised officer reasonably believes—

- (a) a vegetation clearing offence has been committed; and
- (b) a person may be able to give information about the offence.

- (2) The authorised officer may, by notice given to the person, require the person to give information about the offence to the authorised officer at a stated reasonable place and at a stated reasonable time.

- (3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (4) It is a reasonable excuse for an individual not to comply if doing so might tend to incriminate the individual or expose the individual to a penalty.
- (5) If a person is convicted of an offence against subsection (3), the court may, as well as imposing a penalty for the offence, order the person to comply with the requirement.

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## 52 Power to require production of documents

- (1) An authorised officer may require a person to make available for inspection by an authorised officer, or produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer, a document relating to the clearing of vegetation.
- (2) The authorised officer may keep the document to copy it.
- (3) If the authorised officer copies a document mentioned in subsection (1), or an entry in the document, the authorised officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The authorised officer must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the authorised officer may keep the document until the person complies with the requirement.
- (6) A requirement under subsection (1) is a *document production requirement*.

## 53 Failure to certify copy of document

- (1) A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is a reasonable excuse for an individual not to comply if doing so might tend to incriminate the individual or expose the individual to a penalty.

## 54 Failure to produce document

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is a reasonable excuse for an individual not to comply if doing so might tend to incriminate the individual or expose the individual to a penalty.
- (3) If a person is convicted of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the requirement.

## Subdivision 7      Power to require compliance

### 54A      Stop work notice

- (1) This section applies if an official reasonably believes a person is committing, or has committed, a vegetation clearing offence.
- (2) The official may give the person a notice (a *stop work notice*) requiring the person to stop committing the offence or not to commit that type of offence again.

*Examples of what a stop work notice may require—*

The notice may require a person to do any or all of the following on or before a stated time or within a stated period—

- to stop carrying out development
  - to demolish or remove development
  - to not remove, burn, dispose of, or otherwise cause to be removed, burnt, or disposed of, any felled vegetation
- (3) The stop work notice must state—
    - (a) that the official believes the person is committing, or has committed, a vegetation clearing offence; and
    - (b) the vegetation clearing offence the official believes is being, or has been, committed; and
    - (c) briefly, how it is believed the offence is being, or has been, committed.
  - (4) The stop work notice must be accompanied by or include an information notice about the decision to give the notice.



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- (5) The person must comply with the stop work notice unless the person has a reasonable excuse.

Maximum penalty—4,500 penalty units.

#### **54B Restoration notice**

- (1) This section applies if an official reasonably believes—
- (a) a person has committed a vegetation clearing offence, whether before or after the commencement of this section; and
  - (b) the matter is capable of being rectified.
- (2) The official may give the person a notice (a *restoration notice*) requiring the person to rectify the matter.
- (3) The restoration notice must state—
- (a) that the official believes the person has committed a vegetation clearing offence; and
  - (b) the vegetation clearing offence the official believes has been committed; and
  - (c) briefly, how it is believed the offence has been committed; and
  - (d) the matter the official believes is reasonably capable of being rectified; and
  - (e) the reasonable steps the person must take to rectify the matter; and
  - (f) the stated reasonable period in which the person must take the steps.
- (4) The restoration notice must be accompanied by or include an information notice about the decision to give the notice.
- (5) The person must comply with the restoration notice unless the person has a reasonable excuse.

Maximum penalty—4,500 penalty units.

- (6) In this section—

*step* includes any action or other measure the official believes is necessary to rectify the matter.

*Examples—*

- giving a proposed restoration plan under section 55AB(1) or making a request under section 55AB(3)
- setting objectives and timeframes for restoring the vegetation
- giving the chief executive a progress report about whether the steps taken within a particular period to rectify the matter have satisfied a stated objective

#### **54C Contravention of stop work notices and restoration notices**

- (1) This section applies to a person who is given a stop work notice or a restoration notice.
- (2) If the person does an act, or makes an omission, in contravention of the stop work notice or restoration notice, an official may use reasonable force and take any other reasonable action to stop the contravention.
- (3) Any reasonable cost or expense incurred by the official in doing anything under subsection (2) may be recovered as a debt owing to the State by the person.

#### **55 Transfer of land the subject of restoration notice**

- (1) If a person has an interest in land the subject of a restoration notice and all or part of the interest, to the extent it is the subject of the restoration notice, is transferred, in any way, to another person (the *transferee*), on the transfer—
  - (a) a reference in the restoration notice to the person is taken to be a reference to the transferee; and
  - (b) the restoration notice is taken to have been given to the transferee on the transfer of the interest; and
  - (c) any outstanding liability, other than criminal liability, of the person becomes a liability of the transferee.

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- (2) If the restoration notice requires a matter to be rectified by a stated day or within a stated period and it is not reasonably practical for the transferee to comply with the notice by the stated day or within the stated period, the transferee may ask the chief executive to extend the time for compliance with the notice.

*Example—*

A is given a restoration notice on 1 January 2010 requiring A to rectify a matter by 30 June 2010. In May 2010, A transfers the land the subject of the restoration notice to B.

- (3) If the chief executive, by written notice given to the transferee, extends the time for compliance with the restoration notice, the restoration notice is taken to require the matter to be rectified within the extended time for compliance stated in the chief executive's written notice.
- (4) To remove any doubt, it is declared that on the transfer of the interest, the person to whom the restoration notice was given is not criminally liable for any contravention of the restoration notice that happens on or after the transfer of the interest.
- (5) Subsections (1) to (4) have effect in relation to each successor in title to the transferee's interest in the same way the subsections had effect in relation to the transferee.

## **55A Record of restoration notice in land registry**

- (1) As soon as practicable after a restoration notice is given, the chief executive must give the registrar of titles written notice of the giving of the restoration notice.
- (2) The registrar must keep records showing the restoration notice has been given.
- (3) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land the subject of the restoration notice will show the notice has been given.
- (4) As soon as practicable after the restoration notice has been complied with, withdrawn or in any other way terminated, the

chief executive must give written notice of the fact to the registrar.

- (5) As soon as practicable after receiving a notice under subsection (4), the registrar must remove the particulars of the restoration notice from the registrar's records.

## **Subdivision 8      Restoration plans**

### **55AA Application of sdiv 8**

This subdivision applies if—

- (a) an official gives a person a restoration notice in relation to the committing of a vegetation clearing offence on land; and
- (b) the notice requires the person to prepare a plan (a *restoration plan*) to rectify the matter by restoring vegetation on the land.

### **55AB Preparing restoration plan**

- (1) The person must, within the reasonable period stated in the restoration notice, prepare and give the chief executive a proposed restoration plan for the land.
- (2) The restoration plan must include the matters stated for the plan in the restoration notice.
- (3) However, the person may, within 20 business days after the restoration notice is given, ask the chief executive to prepare a restoration plan for the land.
- (4) The fee payable to the chief executive for preparing the plan must not be more than the fee prescribed under a regulation.

### **55AC Approving restoration plan**

- (1) The chief executive must review a proposed restoration plan given to the chief executive under section 55AB(1) and—

- (a) approve the plan; or
  - (b) if the chief executive considers the plan does not adequately rectify the matter, ask the person—
    - (i) to consider or further consider any matter; and
    - (ii) to amend the plan in the light of the person's consideration or further consideration; and
    - (iii) to give the amended plan to the chief executive for approval; or
  - (c) ask the person to make stated changes to the plan and give the amended plan to the chief executive for approval.
- (2) The person must give the amended restoration plan to the chief executive within 20 business days after the chief executive makes a request under subsection (1)(b) or (c).
- (3) The chief executive must review the amended restoration plan and approve the plan or refuse to approve the plan.
- (4) If the chief executive approves the restoration plan under subsection (1)(a) or (3), the chief executive must give the person notice that the plan or amended plan is the approved restoration plan.
- (5) If the chief executive refuses to approve the amended restoration plan, the chief executive must give the person—
- (a) notice of the refusal; and
  - (b) an information notice about the decision to refuse to approve the plan.
- (6) If the person asks the chief executive to prepare the restoration plan under section 55AB(3), the plan prepared by the chief executive is the approved restoration plan.

### **55AD Chief executive may amend approved restoration plan**

- (1) The chief executive may amend the approved restoration plan at any time.

- (2) Before amending the approved restoration plan, the chief executive must give the person a written notice inviting the person to show why the plan should not be amended.
- (3) The notice must state each of the following—
  - (a) the grounds for the proposed amendment of the plan;
  - (b) the facts and circumstances forming the basis for the grounds;
  - (c) the proposed amendment of the plan;
  - (d) that the person may make submissions about the proposed amendment;
  - (e) how to make a properly made submission;
  - (f) where the submission may be made or sent;
  - (g) a period within which the submission must be made.
- (4) The stated period must be at least 20 business days after the notice is given.
- (5) If, after considering any properly made submission by the person, the chief executive still considers the approved restoration plan should be amended, the chief executive may amend the plan.
- (6) In this section—

***properly made submission*** means a submission that—

  - (a) is written; and
  - (b) is signed by each person (a ***signatory***) who made the submission; and
  - (c) states the name and address of each signatory; and
  - (d) states the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
  - (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.

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### **55AE Steps after, and taking effect of, decision**

- (1) If the chief executive decides to amend the approved restoration plan—
  - (a) the chief executive must give the person an information notice about the decision; and
  - (b) the amendment does not take effect until the end of the review period for the decision; and
  - (c) the plan, as amended, becomes the approved restoration plan for the land.
- (2) If the chief executive decides not to amend the approved plan, the chief executive must give the person notice of the decision.
- (3) In this section—

*review period*, for a decision, means the period provided for under section 63 for applying for an internal review of the decision.

### **55AF Failure to comply with restoration notice**

- (1) The person is taken not to have complied with the restoration notice if—
  - (a) the person fails to give the chief executive a proposed restoration plan within the period stated in the restoration notice; or
  - (b) for a restoration plan not approved under section 55AC(1)(a)—
    - (i) the person fails to comply with section 55AC(2); or
    - (ii) the chief executive refuses to approve the restoration plan under section 55AC(5).
- (2) Also, the person is taken not to have complied with the restoration notice if the person fails to comply with the approved restoration plan.

*Note—*

For the effect of a failure to comply with a restoration notice, see section 54B(5).

- (3) Subsection (1) does not apply if the person has under section 55AB(3) asked the chief executive to prepare a restoration plan for the land.

## **Division 2            Other enforcement provisions**

### **Subdivision 1        Obtaining criminal history reports**

#### **55B    Purpose of sdiv 1**

The purpose of this subdivision is to help an authorised officer to decide whether the authorised officer's unaccompanied entry of a place under division 1 would create an unacceptable level of risk to the authorised officer's safety.

#### **55C    Chief executive's power to obtain criminal history report**

- (1) The chief executive may ask the commissioner of the police service for a written report about the criminal history of a person if the authorised officer reasonably suspects the person may be present at the place when the authorised officer enters the place under division 1.
- (2) The commissioner must give the report to the chief executive.
- (3) However, the report is required to contain only criminal history that is in the commissioner's possession or to which the commissioner has access.
- (4) The chief executive must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence against a person.
- (5) The chief executive may give the authorised officer information in the report about the offences identified under subsection (4).



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## 55D Criminal history is confidential document

- (1) A person must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 55C.

Maximum penalty—100 penalty units.

- (2) However, the person does not contravene subsection (1) if—
  - (a) the disclosure is for the purpose of the other person performing a function under or in relation to this Act; or
  - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive or an authorised officer to whom the report or written information in the report is provided must destroy the report or information as soon as practicable after the authorised officer considers the risk mentioned in section 55B.

## Subdivision 2 Notice of damage and compensation

### 56 Notice of damage

- (1) This section applies if—
  - (a) an authorised officer damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction or authority of an authorised officer damages property.
- (2) The authorised officer must immediately give notice of particulars of the damage to the person who appears to the authorised officer to be the owner of the property.
- (3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's, or other person's, control, the authorised officer may state the belief in the notice.

[s 57]

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- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the authorised officer reasonably believes is trivial.
- (6) In this section—  
*owner*, of property, includes the person in possession or control of it.

## **57 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under division 1, subdivision 2, 4 or 5.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for a vegetation clearing offence brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

## **Division 3 General offences**

### **58 False or misleading statements**

- (1) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

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Maximum penalty—500 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, false or misleading.

## **59 False or misleading documents**

- (1) A person must not give an authorised officer a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—500 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (3) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, false or misleading.

## **59A Impersonation of authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—200 penalty units.

## **60 Obstructing an authorised officer**

- (1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

- (2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—

[s 60A]

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- (a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and
  - (b) the authorised officer considers the person's conduct an obstruction.
- (3) In this section—
- obstruct* includes assault, hinder and threaten, and attempt to obstruct.

### **60A Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) In this section—

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

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## **61 Ability to prosecute under other Acts**

Nothing in this Act prevents a person from being prosecuted for any of the following offences in relation to the clearing of vegetation—

- (a) a development offence under the Planning Act or the repealed *Sustainable Planning Act 2009*;
- (b) an offence against a following provision of the *Environmental Protection Act 1994*—
  - section 437(1)
  - section 437(2)
  - section 438(1)
  - section 438(2).

*Note*—

Under the *Environmental Protection Act 1994*, the maximum penalties are—

- for section 437(1)—4,165 penalty units or 5 years imprisonment
- for section 437(2)—1,665 penalty units
- for section 438(1)—1,665 penalty units or 2 years imprisonment
- for section 438(2)—835 penalty units.

# **Part 4 Reviews and legal proceedings**

## **Division 1 Internal reviews by chief executive**

### **62 Internal review process before external review**

Every review of an original decision must be, in the first instance, by way of an application for an internal review of the decision.

### **63 How to apply for internal review**

- (1) A person who is given, or is entitled to be given, an information notice about a decision made under this Act may apply for an internal review of the decision.
- (2) An application for internal review of a decision must be—
  - (a) in the approved form; and
  - (b) made to the chief executive; and
  - (c) supported by enough information to enable the chief executive to decide the application.
- (3) The application must be made within 20 business days after—
  - (a) the day the person is given the information notice about the decision; or
  - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.
- (4) The chief executive may extend the time for applying for the internal review.
- (5) The application does not stay the decision.

### **63A Review decision**

- (1) The chief executive must, within 30 business days after receiving the application—
  - (a) review the decision (the *original decision*); and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the applicant notice (the *review notice*) of the review decision.

- (2) If the review decision is not the decision sought by the applicant, the review notice must comply with the QCAT Act, section 157(2).
- (3) However, subsection (2) does not apply if the review decision relates to an original decision under section 138(1)(b).

## **Division 1A External reviews by QCAT**

### **63B Who may apply for external review**

- (1) A person who is dissatisfied with a review decision may apply, as provided under the QCAT Act, to QCAT for a review of the review decision.
- (2) However, subsection (1) does not apply if the review decision relates to an original decision mentioned in section 63A(3).

## **Division 2 Evidence**

### **64 Application of div 2**

This division applies to a proceeding under this Act.

### **65 Appointments and authority**

It is not necessary to prove—

- (a) the chief executive's appointment; or
- (b) an authorised officer's appointment; or
- (c) the authority of the chief executive or an authorised officer to do anything under this Act.

### **66 Signatures**

A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

## **66A Instruments, equipment and installations**

- (1) An instrument, equipment or installation prescribed under a regulation that is used in accordance with any conditions prescribed under a regulation is taken, in the absence of evidence to the contrary—
  - (a) to be accurate and precise; and
  - (b) to have been used by an appropriately qualified person.
- (2) A party to the proceeding intending to challenge a matter mentioned in subsection (1)(a) or (b) must give each other party notice of the party's intention to adduce relevant evidence at least 20 business days before the evidence is adduced.
- (3) The notice must state the grounds on which the party intends to rely to prove that the instrument, equipment or installation—
  - (a) was not accurate or precise; or
  - (b) was not used by an appropriately qualified person.

## **66B Certificate or report about remotely sensed image**

- (1) A signature on a certificate or report purporting to be the signature of an appropriately qualified person who gave the certificate or report is evidence of the signature it purports to be.
- (2) A statement of any of the following matters in the certificate or report is evidence of the matters stated in the absence of evidence to the contrary—
  - (a) the person's qualifications;
  - (b) a stated document is a remotely sensed image, or a copy of a remotely sensed image, of a stated area;
  - (c) the date on which a stated remotely sensed image was produced;
  - (d) the person's stated conclusions drawn from a stated remotely sensed image;



- (e) the location of a stated area;
  - (f) whether vegetation in a stated area has been cleared;
  - (g) whether a stated area is or is likely to be an area of remnant vegetation or regulated regrowth vegetation.
- (3) A party to the proceeding intending to challenge the statement must give each other party notice of the party's intention to adduce relevant evidence at least 20 business days before the evidence is adduced.
- (4) The notice must state the grounds on which the party intends to rely to prove that the statement was not correct.

## **67 Evidentiary aids**

- (1) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
- (a) a stated document is one of the following things made, certified, maintained, given or issued under this Act or the Planning Act—
    - (i) an appointment, approval or decision;
    - (ii) a direction, notice or requirement;
    - (iii) a code, plan or policy;
    - (iv) a map;
  - (b) a stated document is another document kept under this Act or the Planning Act;
  - (c) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
  - (d) on a stated day—
    - (i) a stated person was given a stated decision, direction or notice under this Act; or
    - (ii) a stated requirement under this Act was made of a stated person.

- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of the matter stated.

## **Division 3                      Proceedings**

### **68            Summary proceedings for offences**

- (1) A proceeding for an offence against this Act, or for a vegetation clearing offence, must be taken in a summary way under the *Justices Act 1886*.
- (2) Subject to subsection (4), a proceeding for an offence against this Act must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 5 years after the offence is committed.
- (3) Despite the Planning Act, and subject to subsection (4), a proceeding for a vegetation clearing offence must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 5 years after the offence is committed.
- (4) If a Magistrates Court considers it just and equitable in the circumstances, the court may, at any time, extend a time set under this section.
- (5) Subsection (4)—
  - (a) applies to an offence regardless of whether it was committed before or after the commencement of the subsection; and
  - (b) does not apply to an offence if the time for starting a proceeding for the offence had expired before the commencement of the subsection.

- (6) A vegetation clearing offence does not come to the complainant's knowledge merely because the complainant receives a remotely sensed image that may provide evidence of the offence.

**68A Particulars to be stated for complaint for vegetation clearing offence**

- (1) This section applies to a complaint for a proceeding for a vegetation clearing offence.
- (2) It is enough, for identifying the vegetation cleared and the place where the vegetation was cleared, for the particulars for the complaint to state the following—
- (a) the number of hectares of vegetation that have been cleared unlawfully;
  - (b) the location where the vegetation was cleared;
  - (c) a description of the vegetation;

*Example—*

remnant vegetation that is an endangered regional ecosystem and essential habitat for protected wildlife

- (d) whether the vegetation was in—
  - (i) an area of high nature conservation value; or
  - (ii) an area vulnerable to land degradation.

**68B Representation of departmental officer in court**

- (1) Any departmental officer may appear for and represent another departmental officer in a Magistrates Court in a proceeding brought by the other officer under this Act or for a vegetation clearing offence.
- (2) In this section—

*departmental officer* means a public service officer employed in the department.

## **68C Recovery of costs of investigation**

- (1) If a court convicts a person of an offence against this Act or a vegetation clearing offence, the court may order the person to pay the department's reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence.

*Examples of reasonable costs—*

- 1 obtaining and analysing remotely sensed images
  - 2 costs of travelling for departmental officers and experts
- (2) Subsection (1) does not limit the orders for costs the court may make.

## **Division 4 Restrictions on legal proceedings**

### **68CA Definitions for div 4**

In this division—

***decision*** means—

- (a) a decision by the chief executive to—
- (i) certify, amend or replace a regulated vegetation management map; or
  - (ii) agree to make a PMAV the subject of a relevant PMAV application; or
- (b) a failure to make a decision to make a PMAV the subject of a relevant PMAV application; or
- (c) a purported decision relating to a matter mentioned in paragraph (a).

***PMAV application*** means an application under section 20C to make a PMAV for an area.

***relevant PMAV application*** means a PMAV application made on or after 8 October 2009 and before 3 November 2009.

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## 68CB Limitation of review and appeal

- (1) This section applies to a decision by the chief executive.
- (2) Unless there is a determination by the Supreme Court that the decision is affected by jurisdictional error, the decision—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
  - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

## Division 5 Enforceable undertakings

### 68CC Chief executive may accept enforceable undertakings

- (1) The chief executive may accept a written undertaking (an *enforceable undertaking*) made by a person in relation to a contravention or alleged contravention by the person of this Act or the Planning Act to the extent that Act relates to the clearing of vegetation.
- (2) An enforceable undertaking must be in the approved form.
- (3) The chief executive must give the person written notice of—
  - (a) the chief executive's decision to accept or reject the enforceable undertaking; and
  - (b) the reasons for the decision.
- (4) The chief executive must not accept the enforceable undertaking unless the chief executive reasonably believes the undertaking will—
  - (a) secure compliance with this Act or the Planning Act; or
  - (b) advance the purpose of this Act.

[s 68CD]

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- (5) If the chief executive decides to accept the enforceable undertaking, the chief executive must publish the details of the undertaking the chief executive considers appropriate on the department's website.
- (6) The chief executive may accept an enforceable undertaking in relation to a contravention or alleged contravention at any time before any proceedings in relation to the contravention end.
- (7) If the chief executive accepts an enforceable undertaking after proceedings in relation to the contravention have started, the chief executive must take all reasonable steps to have the proceedings discontinued as soon as practicable.

### **68CD Effect of enforceable undertaking**

- (1) An enforceable undertaking takes effect when the chief executive gives the person who made the undertaking notice of the decision to accept the undertaking.
- (2) No proceedings for a contravention or alleged contravention of this Act, or the Planning Act to the extent that Act relates to the clearing of vegetation, may be taken against the person in relation to the enforceable undertaking if the person is complying, or has complied, with the undertaking.
- (3) The making of an enforceable undertaking does not constitute an admission of guilt by the person making the undertaking.

### **68CE Withdrawal or variation of enforceable undertaking**

- (1) A person who has made an enforceable undertaking may, at any time, with the written agreement of the chief executive—
  - (a) withdraw the undertaking; or
  - (b) vary the undertaking.
- (2) However, the undertaking may not be varied to provide for a different contravention or alleged contravention of this Act or the Planning Act.

- (3) The chief executive must publish the details of the withdrawal or variation of an enforceable undertaking the chief executive considers appropriate on the department's website.

### **68CF Amending enforceable undertaking—with agreement**

The chief executive may amend an enforceable undertaking with the written agreement of the person who made the undertaking.

### **68CG Amending enforceable undertaking—clerical or formal errors**

The chief executive may amend an enforceable undertaking to correct a clerical or formal error if—

- (a) the amendment does not adversely affect the interests of the person who made the undertaking or anyone else; and
- (b) the person has been given written notice of the amendment.

### **68CH Amending or suspending enforceable undertaking—after show cause process**

- (1) The chief executive may amend or suspend an enforceable undertaking if the chief executive is satisfied—
  - (a) the undertaking was accepted relying on a representation or declaration, made either orally or in writing, that was false or misleading in a material particular; or
  - (b) the undertaking was accepted on the basis of a miscalculation of the impacts of the contravention or alleged contravention; or
  - (c) the amendment or suspension is necessary or desirable because of an inspection, investigation or other matter under part 3; or

- (d) the amendment or suspension is necessary or desirable because of a significant change in the way in which, or the extent to which, an activity is being carried out that affects the likelihood of the undertaking—
  - (i) securing compliance with this Act or the Planning Act; or
  - (ii) advancing the purpose of this Act.
- (2) The chief executive must give the person who made the enforceable undertaking a notice that states—
  - (a) the action the chief executive proposes to take; and
  - (b) if the action is an amendment of the undertaking—the amendment; and
  - (c) if the action is a suspension of the undertaking—the period of the suspension; and
  - (d) the grounds for taking the action; and
  - (e) the facts and circumstances that are the basis for the grounds; and
  - (f) that the person may make written representations to show why the action should not be taken; and
  - (g) the period, of at least 20 business days after the person is given the notice, within which the person may make the representations.
- (3) If the chief executive proposes to amend the enforceable undertaking, the notice must be accompanied by a copy of the undertaking that shows the amendment.
- (4) The chief executive must consider any written representation the person makes within the period stated in the notice.
- (5) If the chief executive still believes a ground exists to take the action, the chief executive may decide to take the action.
- (6) Within 10 business days after making a decision to take the action, the chief executive must give the person an information notice about the decision.



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- (7) If the chief executive, at any time, decides not to take the action, the chief executive must promptly give the person written notice of the decision.
- (8) In this section—
- impacts*, of a contravention or alleged contravention, include the following—
- (a) loss of vegetation;
  - (b) loss of biodiversity;
  - (c) land degradation;
  - (d) loss of connectivity;
  - (e) altered ecological processes;
  - (f) contributions to greenhouse gas emissions.

### **68CI Contravention of enforceable undertaking**

- (1) A person must not contravene an enforceable undertaking made by the person that is in effect.
- Maximum penalty—
- (a) if the offence is committed wilfully—6,250 penalty units; or
  - (b) otherwise—4,500 penalty units.
- (2) Regardless of whether the person is prosecuted for an offence against subsection (1), the chief executive may apply to a Magistrates Court for an order if the person contravenes the enforceable undertaking.
- (3) If the court is satisfied the person contravened the undertaking, the court, in addition to imposing any penalty, may make either or both of the following orders—
- (a) an order directing the person to comply with the undertaking;
  - (b) an order discharging the undertaking.

- (4) Also, the court may make any other order the court considers just and appropriate in the circumstances, including an order directing the person to pay to the chief executive—
- (a) the costs of the proceedings; and
  - (b) the costs associated with the investigation of the contravention of the enforceable undertaking; and
  - (c) the reasonable costs of the chief executive in monitoring compliance with the enforceable undertaking in the future.

## Part 5 Miscellaneous

### 68D Approved forms

The chief executive may approve forms for use under this Act.

### 69 Advisory committees

- (1) The Minister may establish advisory committees to advise the Minister about vegetation management.
- (2) The Minister may decide—
  - (a) the functions or terms of reference of a committee; and
  - (b) the membership of a committee; and
  - (c) how a committee is to operate.
- (3) A committee member is entitled to be paid the fees and allowances decided by the Governor in Council.

### 70 Regional vegetation management committees

- (1) The Minister may establish regional vegetation management committees to advise the Minister about vegetation management.
- (2) The Minister may decide—

- (a) the functions or terms of reference of a committee; and
  - (b) the membership of a committee; and
  - (c) how a committee is to operate.
- (3) A committee member is entitled to be paid the fees and allowances decided by the Governor in Council.

### **70AA Copies of vegetation management maps to be available for inspection and purchase**

- (1) This section applies to vegetation management maps.
- (2) The chief executive must—
- (a) keep the digital electronic form of the map available for inspection, free of charge, by members of the public at particular regional offices; and
  - (b) publish the digital electronic form of the map on the department's website.

*Editor's note—*

The regional offices where the digital electronic form of a relevant map can be inspected are stated on the department's website.

- (3) The chief executive may publish 2 or more maps as a single map in digital electronic form on the department's website.
- (4) The exact location of the boundary of each of the areas shown on the map is held in digital electronic form by the department.

*Note—*

The department uses a geographic information system for capturing, managing, analysing and displaying the data for a map for an area.

- (5) The information held in digital electronic form can be reduced or enlarged to show the details of the boundaries of the areas shown on the map.
- (6) On payment of a fee, a person may buy—
- (a) a copy of the map or part of the map; or

[s 70AB]

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- (b) information about the boundaries of an area shown on the map.

*Note—*

The information about the boundaries of an area, taken from the geographic information system, would include the coordinates of the corners and bends of the area.

- (7) The fee for the copy of the map, or part of the map, or the information about the boundaries of an area must not be more than the reasonable cost of publishing the copy or giving the information.

### **70AB Copies of documents to be available for inspection and purchase**

- (1) This section applies to each of the following documents—
  - (a) the State policy;
  - (b) an accepted development vegetation clearing code;
  - (c) a declaration made under section 17;
  - (d) for each declaration made under section 19F—
    - (i) the notice given to the proponent under section 19F(1); and
    - (ii) the management plan relevant to the declaration;
  - (e) an area management plan.
- (2) The chief executive must—
  - (a) keep a copy of the document available for inspection, free of charge, by members of the public at particular regional offices; and
  - (b) publish the document, other than a document mentioned in subsection (1)(d), on the department's website.

*Editor's note—*

The regional offices where the document can be inspected are stated on the department's website.

- (3) On payment of a fee, a person may buy a copy of the document.

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- (4) The fee for the copy of the document must not be more than the reasonable cost of publishing the copy.

## **70A Application of development approvals and exemptions for Forestry Act**

- (1) If a development approval is given in relation to a forest product on forestry land, the approval is taken to be, for the *Forestry Act 1959*, section 53, a permit, lease, licence, agreement or contract required under that section.
- (2) If a development approval is given in relation to a forest product on forestry land, the approval is taken to be, for the *Forestry Act 1959*, section 54, the authority of another Act.
- (3) If the clearing on forestry land of vegetation shown on the regulated vegetation management map as a category B area does not involve the removal of a species prescribed under a regulation and the clearing is not categorised as assessable development under a regulation made under the Planning Act, the clearing is taken to be authorised under the *Forestry Act 1959*, section 53 or 54.
- (4) If the clearing on forestry land of vegetation shown on the regulated vegetation management map as other than a category B area is not categorised as assessable development under a regulation made under the Planning Act, the clearing is taken to be authorised under the *Forestry Act 1959*, section 53 or 54.
- (5) To remove doubt, it is declared that subsections (3) and (4) only authorise the use of a forest product cleared if the clearing is—
- (a) on land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes; and
  - (b) to source construction timber to repair existing infrastructure on the land, if—
    - (i) the infrastructure is in need of immediate repair; and
    - (ii) the clearing does not cause land degradation; and

(iii) restoration of a similar type, and to the extent of the removed trees, is ensured.

(6) In this section—

*forestry land* means land to which the *Forestry Act 1959*, section 53 or 54 applies.

## **70B Record of particular matters in land registry**

- (1) This section applies if a PMAV is made and contains a category A area.
- (2) As soon as practicable after the PMAV is made, the chief executive must give the registrar of titles written notice that the PMAV has been made.
- (3) The registrar must keep records showing the PMAV has been made.
- (4) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land the subject of the PMAV will show the PMAV has been made.
- (5) If the PMAV is replaced, the chief executive must give written notice of the fact to the registrar.
- (5A) Also, the chief executive may, by written notice, ask the registrar to remove the particulars of the PMAV from the registrar's records if the chief executive considers it is necessary or desirable to remove the particulars—
  - (a) to achieve the purposes of this Act: or
  - (b) because the particulars are no longer relevant for the land the subject of the PMAV.
- (6) As soon as practicable after receiving a notice under subsection (5) or (5A), the registrar must adjust or remove the particulars of the PMAV from the registrar's records.

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**70C Particular vegetation not natural resource owned by person as improvement on leasehold land**

- (1) Subsection (2) applies if—
  - (a) a person—
    - (i) is given a restoration notice in relation to land; or
    - (ii) was or is given a trespass notice if the trespass related act under the *Land Act 1994* for the notice is the clearing of vegetation on the land; or
    - (iii) was given before the commencement of this section a compliance notice in relation to land; and
  - (b) the land is subject to a lease under the *Land Act 1994*; and
  - (c) the person is required under the notice to plant vegetation on the land; and
  - (d) the person complies with the notice.
- (2) The vegetation is not a natural resource owned by the person as an improvement.
- (3) Subsection (4) applies if vegetation is or was planted on land subject to a lease to comply with a Land Act notice.
- (4) To remove any doubt, it is declared that the vegetation is not and never has been a natural resource owned by the lessee of the land as an improvement.

**71 Protecting officials from civil liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—

*official* means—

  - (a) the Minister; or

- (b) the chief executive; or
- (c) an authorised officer; or
- (d) a person acting under the direction of an authorised officer.

## **72 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may prescribe the fees that are payable under this Act.

# **Part 6 Transitional and declaratory provisions**

## **Division 1 Transitional provisions for Act No. 90 of 1999**

### **73 Existing development approvals and applications for development approvals under the repealed Integrated Planning Act 1997**

- (1) Subsection (2) applies to a development approval under the repealed *Integrated Planning Act 1997* involving the clearing of vegetation in force immediately before the commencement of this section.
- (2) The approval has effect as if this Act had not been enacted.
- (3) Subsection (4) applies to a development application under the repealed *Integrated Planning Act 1997* involving the clearing of vegetation made to the assessment manager that—
  - (a) has not been decided before the commencement of this section; or
  - (b) has been decided, but is the subject of an appeal under the repealed *Integrated Planning Act 1997* and the



appeal has not been decided before the commencement of this section.

- (4) The application may be decided as if this Act had not been enacted and, if a development approval is given for the application, the approval has effect as if this Act had not been enacted.

## **74 Existing development control plans and special facilities zones**

- (1) Nothing in this Act affects the clearing of vegetation—
- (a) under a development control plan mentioned in the repealed *Integrated Planning Act 1997*, section 6.1.45A; or
  - (b) in an area designated, immediately before the commencement of this section, as a special facilities zone under a planning scheme under the repealed *Integrated Planning Act 1997*.
- (2) Subsection (1)(b) applies to an area only if—
- (a) the area continues to be designated as a special facilities zone, or like zone, under the scheme; or
  - (b) the current planning scheme for the area no longer designates the area as a special facilities zone but there is, for the area and in relation to the zone—
    - (i) a development permit that—
      - (A) was given before the designation ceased; and
      - (B) has not lapsed; and
      - (C) is for building work or operational work under the Planning Act; or
    - (ii) an acknowledgement notice mentioned in the repealed *Integrated Planning Act 1997*, section 3.2.5(1); or
    - (iii) a request made under the repealed *Sustainable Planning Act 2009*, section 95(1), or the Planning

- Act, section 29(4)(b), that has been agreed to, or is taken to have been agreed to, by the local government; or
- (iv) a development permit given for a development application (superseded planning scheme) under the repealed *Sustainable Planning Act 2009*; or
  - (v) a development permit given for a superseded planning scheme request under the Planning Act.
- (3) However, subsection (1)(b) also applies to an area if—
- (a) the current planning scheme for the area no longer designates the area as a special facilities zone but the development rights conferred by the earlier designation have been preserved under the scheme; and
  - (b) the clearing of vegetation is in relation to the development rights.
- (4) In this section—
- special facilities zone*** means a zone under the repealed *Local Government (Planning and Environment) Act 1990*—
- (a) for which the permitted use is special facilities, whether or not the zone has been designated under the planning scheme by the name ‘special facilities zone’; and
  - (b) in which development of a particular type may be carried out without a development approval.

## **Division 2                      Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2004**

### **79            When the Land Act 1994 continues to apply**

- (1) The *Land Act 1994*, as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3, continues to apply for tree clearing permits issued under the *Land Act 1994*

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or as a result of an application dealt with under section 77 or 78.

- (2) The *Land Act 1994*, as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3, continues to apply for monitoring, enforcing compliance with or the prosecution of an offence against a tree clearing provision under the *Land Act 1994*, as in force immediately before the commencement.

### **Division 3                      Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2005**

#### **81            Effect on existing riverine protection permits**

- (1) This section applies to the clearing of vegetation carried out—
- (a) after the commencement of this section; and
  - (b) under the authority of a permit—
    - (i) issued under the *Water Act 2000*, section 269; and
    - (ii) in force immediately before the commencement of this section; and
  - (c) in a watercourse or lake; and
  - (d) on land other than freehold land.
- (2) The clearing is taken to be lawfully carried out under this Act and the Planning Act even if there is, for the clearing, no development permit given for operational work as defined under that Act that is—
- (a) the clearing of vegetation; and
  - (b) categorised as assessable development under a regulation made under the Planning Act.

## **82 Validation of particular clearing**

- (1) This section applies to the clearing of vegetation carried out—
  - (a) after 20 May 2004 but before the commencement of this section; and
  - (b) to the extent necessary for an activity approved under another Act; and
  - (c) in a watercourse or lake; and
  - (d) on land other than freehold land.
- (2) The clearing is taken to have been lawfully carried out under this Act and the repealed *Integrated Planning Act 1997* even if there was, for the clearing, no development permit given for operational work under the repealed *Integrated Planning Act 1997*, schedule 8, part 1, table 4, items 1A to 1G.
- (3) In this section—

*activity* does not include an activity relating to a development approval under the repealed *Integrated Planning Act 1997* given for a material change of use of premises or the reconfiguration of a lot.

## **Division 4 Transitional provision for Land and Other Legislation Amendment Act 2007**

### **84 Existing appeals under s 22C**

- (1) Subsection (2) applies if, before the commencement—
  - (a) a person has appealed to a tribunal under the repealed *Integrated Planning Act 1997*, section 4.2.9, about an application for which section 22C as in force before the commencement applied; and
  - (b) the appeal has not been decided.

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- (2) The tribunal may hear, or continue to hear, and decide the appeal as if the *Land and Other Legislation Amendment Act 2007*, part 9, had not commenced.
  - (3) In this section—  
*commencement* means the day this section commences.

## **Division 5                      Declaratory and transitional provisions for Vegetation Management Amendment Act 2008**

### **85            Declaration about types of regional ecosystems**

- (1) It is declared that—
  - (a) if, for any period before the commencement day, the regulation stated that a regional ecosystem was an endangered regional ecosystem for the definition *endangered regional ecosystem* in this Act, the regional ecosystem was an endangered regional ecosystem for the period; and
  - (b) if, for any period before the commencement day, the regulation stated that a regional ecosystem was a not of concern regional ecosystem for the definition *not of concern regional ecosystem* in this Act, the regional ecosystem was a not of concern regional ecosystem for the period; and
  - (c) if, for any period before the commencement day, the regulation stated that a regional ecosystem was an of concern regional ecosystem for the definition *of concern regional ecosystem* in this Act, the regional ecosystem was an of concern regional ecosystem for the period.
- (2) Subsection (1) applies despite any provision of the Act in force before the commencement day including the definitions *endangered regional ecosystem*, *not of concern regional ecosystem* and *of concern regional ecosystem*.

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(3) Subsection (1) applies for all purposes, including a civil or criminal proceeding decided before, or started before or after, the commencement day.

(4) In this section—

*commencement day* means the day this section commences.

*regulation* means the *Vegetation Management Regulation 2000*.

## **Division 7                      Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2009**

### **Subdivision 1              Preliminary**

#### **88              Definitions for div 7**

In this division—

*amending Act* means the *Vegetation Management and Other Legislation Amendment Act 2009*.

*moratorium period* see the repealed Moratorium Act, section 7.

*retrospective period* means the period—

- (a) starting on 8 October 2009; and
- (b) ending immediately before the date of assent of the amending Act.

*unamended Act* means this Act as in force immediately before 8 October 2009.

#### **89              References to unamended Act**

If this division states that a provision of the unamended Act continues to apply—

- (a) the provision applies as if the amending Act had not been enacted; and
- (b) any other provision referred to in the provision continues to apply.

## **Subdivision 2      Transitional provisions for amendments of Vegetation Management Act 1999**

### **96      Existing compliance notices**

- (1) If an existing compliance notice requires the person given the notice to stop committing the offence, the compliance notice is, from 8 October 2009, taken to be a stop work notice.
- (2) If an existing compliance notice requires the person given the notice to stop committing the offence and to rectify the matter the subject of the compliance notice, the person is, from 8 October 2009, taken to have been given a stop work notice and a restoration notice.
- (3) If an existing compliance notice requires the person to rectify the matter the subject of the compliance notice, the compliance notice is, from 8 October 2009, taken to be a restoration notice.
- (4) This section applies despite section 54A(3) or (4) or 54B(3) or (4).
- (5) In this section—  
*existing compliance notice* means—
  - (a) a compliance notice for a vegetation clearing offence in force immediately before 8 October 2009; or
  - (b) a Land Act notice.

## **97 Tree clearing provisions under unamended Land Act**

- (1) From 8 October 2009, section 79(2) continues to apply in relation to an offence against a tree clearing provision under the unamended Land Act except that—
  - (a) a reference to a compliance notice under the unamended Land Act to stop committing the offence is, from 8 October 2009, taken to be a reference to a stop work notice; and
  - (b) a reference to a compliance notice under the unamended Land Act to rectify the matter is, from 8 October 2009, taken to be a restoration notice.
- (2) In this section—

*unamended Land Act* means the *Land Act 1994* as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

## **98 Existing development approvals and development applications**

- (1) A development approval under the Planning Act that is in force immediately before 8 October 2009 has effect as if the amending Act had not been enacted.
- (2) Subsection (3) applies if, immediately before 8 October 2009—
  - (a) a development application had been made; and
  - (b) clearing regulated regrowth vegetation is a natural and ordinary consequence of the development the subject of the application; and
  - (c) the application was a properly made application and had not lapsed under the Planning Act; and
  - (d) the application had not been decided.
- (3) If a development approval under the Planning Act is given for the development, the regulated regrowth vegetation may be



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cleared under the development approval as if the amending Act had not been enacted.

## 99 References to not of concern regional ecosystems

From 8 October 2009, a reference in an Act or document to a not of concern regional ecosystem is, if the context permits, taken to be a reference to a least concern regional ecosystem.

## 100 Clearing of regulated regrowth vegetation in retrospective period not an offence

- (1) The repealed *Integrated Planning Act 1997*, section 4.3.1(1), to the extent the provision relates to unauthorised development, does not apply to a person carrying out unauthorised development.
- (2) However, if an official reasonably believes a person has carried out unauthorised development, the official may give the person a restoration notice for the development.
- (3) In this section—

***unauthorised development*** means development that is the clearing of regulated regrowth vegetation if—

- (a) any of the following apply—
  - (i) the clearing does not comply with the regrowth vegetation code;
  - (ii) there is no moratorium exemption in force for the development;
  - (iii) the clearing is exempt development; and
- (b) the clearing was carried out in the retrospective period.

## 101 Application of s 19Q

Section 19Q does not apply to a person conducting a native forest practice in an area of regulated regrowth vegetation until 1 year after 8 October 2009.

## **102 Not giving notice in retrospective period not an offence**

- (1) Section 19Q does not apply to a person conducting a native forest practice in an area of remnant vegetation in the retrospective period if—
  - (a) the person started the native forest practice before the start of the retrospective period; or
  - (b) otherwise—the person gives the chief executive the notice mentioned in section 19Q within 20 business days after the end of the retrospective period.
- (2) Section 19V does not apply to a person clearing regulated regrowth vegetation in the retrospective period if—
  - (a) the person started the clearing before the start of the retrospective period; or
  - (b) otherwise—the person gives the chief executive the clearing notification mentioned in section 19V within 20 business days after the end of the retrospective period.

## **103 Delayed applications to QCAT**

If a person may apply to QCAT under section 63B before QCAT comes into existence, the person may apply to QCAT within 20 business days after QCAT comes into existence.

## **Subdivision 3 Transitional provisions for repeal of Vegetation Management (Regrowth Clearing Moratorium) Act 2009**

### **107 Existing show cause notices and compliance notices**

- (1) Subsection (2) applies if, before 8 October 2009—
  - (a) a person was given a show cause notice under the repealed Moratorium Act, section 24 in relation to the carrying out of prohibited development under that Act; and

- (b) the chief executive has not under the repealed Moratorium Act, section 25 given the person a notice stating that the proposed action will not be taken; and
  - (c) an official has not under the repealed Moratorium Act, section 26(1) given the person a compliance notice.
- (2) From 8 October 2009—
- (a) the repealed Moratorium Act, sections 25 and 26(1) to (4) continue to apply; and
  - (b) a reference to a compliance notice in the provisions is taken to be a reference to a restoration notice; and
  - (c) a reference in the compliance notice to carrying out prohibited development is taken to be a reference to committing a vegetation clearing offence in the restoration notice.
- (3) Subsection (4) applies if a compliance notice was given under the repealed Moratorium Act, section 26 before 8 October 2009 in relation to the carrying out of prohibited development under that Act.
- (4) From 8 October 2009—
- (a) the compliance notice is taken to be a restoration notice; and
  - (b) a reference in the compliance notice to carrying out prohibited development is taken to be a reference to committing a vegetation clearing offence in the restoration notice.
- (5) In this section—
- compliance notice*** see the repealed Moratorium Act, section 24(2).
- show cause notice*** means a notice that complies with the Moratorium Act, section 24(3).

## **Division 8**                      **Transitional provision for Land, Water and Other Legislation Amendment Act 2013**

### **109**    **Validation for reliance on particular maps**

- (1) This section applies if, before the commencement of this section—
  - (a) the chief executive—
    - (i) assessed, as the assessment manager or a concurrence agency, a vegetation clearing application against a regional vegetation management code; or
    - (ii) assessed, as a concurrence agency, a concurrence agency application against a regional vegetation management code; and
  - (b) the code referred to a document it called the ‘vegetation management watercourse map’; and
  - (c) the chief executive, in assessing the application against the code, relied on the document; and
  - (d) when the application was assessed, the document was known by any of the following names—
    - (i) ‘*Vegetation Management Act* Remnant Watercourses Version 2.1’;
    - (ii) ‘*Vegetation Management Act* Remnant Watercourses 25K Version 2.1’;
    - (iii) ‘Vegetation management watercourse map part 1’;
    - (iv) ‘Vegetation management watercourse map part 2’.
- (2) The chief executive’s reliance on the document is taken to be, and always to have been, valid for assessing the application.

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## Division 9                      Transitional provisions for Vegetation Management Framework Amendment Act 2013

### 110      Definitions for div 9

In this division—

*amending Act* means the *Vegetation Management Framework Amendment Act 2013*.

*clearing activity* means conducting a native forest practice or clearing regulated regrowth vegetation under a relevant code.

*existing PMAV* means a PMAV made before the commencement.

*notice* means—

- (a) a notice given under the unamended Act, section 19Q;  
or
- (b) a clearing notification given under the unamended Act, section 19U.

*relevant code* means each of the following as in force immediately before the commencement—

- (a) the native forest practice code;
- (b) the regrowth vegetation code.

*unamended Act* means this Act as in force before the commencement.

*wild river area* see the *Wild Rivers Act 2005*, schedule.

### 111      Change to category C areas on freehold land or indigenous land

- (1) This section applies to an area located on freehold land or indigenous land shown as a category C area on a PMAV immediately before this section commences.

- (2) From the commencement, the PMAV is taken to be amended to show the area on the regulated vegetation management map as—
  - (a) a category X area; or
  - (b) a category R area.

### **112 Particular PMAV applications**

- (1) This section applies if, before this section commences—
  - (a) an owner of land applied to the chief executive for the making of a PMAV for the land or part of the land; and
  - (b) the chief executive has not made a PMAV for the land or the part of the land the subject of the application.
- (2) The chief executive may consider the application and make the PMAV under the unamended Act.

### **113 Revocation of particular PMAVs over wild river high preservation areas**

- (1) This section applies to a PMAV, in effect immediately before this section commences, if—
  - (a) the PMAV is for an area that includes land in a wild rivers high preservation area; and
  - (b) the chief executive made the PMAV under section 20B(1)(a) because the area became a declared area; and
  - (c) the area became a declared area under section 17(1A) of the unamended Act.
- (2) On the commencement, the PMAV is revoked to the extent it includes the land in the wild river high preservation area.
- (3) In this section—

***wild river high preservation area*** means a high preservation area under the *Wild Rivers Act 2005*.

**114 Vegetation category areas on existing PMAVs**

- (1) This section applies to land identified as a vegetation category area on a PMAV immediately before this section commences.
- (2) Subject to section 111, each category A area, category B area, category C area or category X area on an existing PMAV is taken to be the corresponding vegetation category area shown on the regulated vegetation management map.

**115 Information on register of clearing notifications**

- (1) This section applies to information kept on the register under the unamended Act, section 19X.
- (2) From the commencement of this section, the information is to be included on the register the chief executive must keep under section 19R.

**116 Particular notices**

- (1) This section applies to a notice given to the chief executive immediately before this section commences and not included on the register kept by the chief executive.
- (2) From the commencement, each notice is taken to be a notice given under a self-assessable vegetation clearing code and to be included on the register the chief executive must keep under section 19R.

**117 Compliance with codes**

- (1) This section applies to a clearing activity carried out under a relevant code.
- (2) From the commencement of this section, the clearing activity is taken to be clearing vegetation or conducting a native forest practice under any self-assessable vegetation clearing code applying to the activity.

### **118 Existing development approvals**

- (1) This section applies if, before this section commences, a development approval was given for clearing.
- (2) From the commencement—
  - (a) the development approval has effect as if the amending Act had not been enacted; and
  - (b) a reference in the development approval to the regional ecosystem map or remnant map is taken to be a reference to the regional ecosystem map or remnant map as in force when the development approval was given.

### **119 Reference to particular maps**

- (1) This section applies if, before this section commences, a document makes reference to—
  - (a) the regional ecosystem map; or
  - (b) the regrowth vegetation map; or
  - (c) the remnant map; or
  - (d) the registered area of agriculture map.
- (2) Subject to section 118, from the commencement, if the context permits, the reference in the document is taken to be a reference to the regulated vegetation management map.

### **120 Reference to relevant codes**

- (1) This section applies if, before this section commences, a document makes reference to a relevant code.
- (2) From the commencement, if the context permits, the reference in the document is taken to be a reference to a self-assessable vegetation clearing code relating to the clearing activity to which the relevant code applied.



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**121 Applying guide for deciding penalty**

- (1) This section applies for deciding the end of a proceeding for a vegetation clearing offence commenced before this section commences.
- (2) Section 60B as in force immediately before the commencement continues to apply after the commencement to decide the end of the proceeding.

**Division 10 Transitional provisions for  
Environmental Offsets Act 2014**

**122 Continued effect of particular agreements**

- (1) This section applies despite the repeal of section 22DG by the *Environmental Offsets Act 2014*.
- (2) An agreement mentioned in repealed section 22DG that is in existence immediately before the commencement of this section continues to have effect according to its terms.
- (3) However, on and after the commencement, the area to which the agreement applies is a legally secured offset area for the *Environmental Offsets Act 2014*.

**Division 11 Transitional provision for Water  
Reform And Other Legislation  
Amendment Act 2014**

**124 References to regrowth watercourse area and vegetation  
management watercourse map**

- (1) A reference in an Act or document to the regrowth watercourse area may, if the context permits, be read as a reference to the regrowth watercourse and drainage feature area.
- (2) A reference in an Act or document to the vegetation management watercourse map may, if the context permits, be

read as a reference to the vegetation management watercourse and drainage feature map.

## **Division 12                      Transitional provisions for Planning (Consequential) and Other Legislation Amendment Act 2016**

### **125      Existing self-assessable vegetation clearing code continues in force**

A self-assessable vegetation clearing code in force immediately before the commencement—

- (a) continues in force; and
- (b) is taken to be an accepted development vegetation clearing code.

### **126      Existing vegetation clearing application or existing concurrence agency application**

- (1) This section applies to an existing vegetation clearing application or an existing concurrence agency application.
- (2) This Act, as in force immediately before the commencement, continues to apply in relation to the application as if the *Planning (Consequential) and Other Legislation Amendment Act 2016* had not been enacted.
- (3) In this section—

*existing concurrence agency application* means a concurrence agency application as defined in the schedule immediately before the commencement, to which the Planning Act, section 287 applies.

*existing vegetation clearing application* means a vegetation clearing application as defined in the schedule immediately before the commencement, to which the Planning Act, section 288 applies.

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**127 Declarations prepared under former s 16 or made under former s 17**

- (1) A declaration made under former section 17 and in force immediately before the commencement—
- (2) Subsection (3) applies if—
  - (a) before the commencement, the Minister prepared, or started to prepare, a declaration under former section 16;
  - (b) the declaration had not been made before the commencement.
- (3) Former sections 16 and 17(1) and (3) continue to apply in relation to the preparation and making of the declaration.
- (4) However, the declaration must not include a code for the clearing of vegetation in the area to which the declaration relates.
- (5) A declaration made under subsection (3) is taken to be a declaration made under section 17.
- (6) In this section—

*former*, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

**Division 13 Transitional provisions for  
Vegetation Management and Other  
Legislation Amendment Act 2018**

**128 Definitions for division**

In this division—

*area management plan* means an area management plan in force immediately before 8 March 2018.

*date of assent* means the date of assent of the *Vegetation Management and Other Legislation Amendment Act 2018*.

*interim period* means the period starting on 8 March 2018 and ending immediately before the date of assent.

*near threatened wildlife* see the *Nature Conservation Act 1992*, schedule.

*unlawful clearing* means clearing of vegetation that, because of the amendment of this Act or the Planning Act by the *Vegetation Management and Other Legislation Amendment Act 2018*, constitutes a development offence under the Planning Act.

## **129 Applications under s 20C made but not decided before 8 March 2018**

- (1) This section applies if—
  - (a) before 8 March 2018, an application was made under section 20C; and
  - (b) immediately before 8 March 2018, the application had not been decided.
- (2) The chief executive must continue to deal with and decide the application under this Act as in force before 8 March 2018.

## **130 Applications under s 20C made during the interim period**

- (1) This section applies if, during the interim period, an application was made under section 20C to show an area on a PMAV as a category X area that, after 8 March 2018, becomes a category C area or category R area.
- (2) A decision of the chief executive to show the area as a category X area on a PMAV during the interim period is taken to have no effect.
- (3) The chief executive may reconsider and decide the application and remake the PMAV after the date of assent.

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**131 Proposed regulated vegetation management map**

- (1) During the interim period, the chief executive must publish, and may republish, on the department's website, a proposed regulated vegetation management map showing proposed category C areas and category R areas.
- (2) The proposed regulated vegetation management map is taken to be the regulated vegetation management map on 8 March 2018.

**132 How definition *high value regrowth vegetation* and codes apply during and after interim period**

- (1) During the interim period, the schedule, definition *high value regrowth vegetation*, paragraph (a) is taken to include a reference to vegetation located on freehold land, indigenous land or land subject of an occupation licence under the *Land Act 1994*.
- (2) Until the Minister remakes it under section 190 after the date of assent, the category C code applies to high value regrowth vegetation on land mentioned in subsection (1) in the same way it applies to high value regrowth vegetation located on a lease issued under the *Land Act 1994* for agriculture or grazing purposes.
- (3) Until the Minister remakes it under section 190 after the date of assent, the native forest practice code applies to high value regrowth vegetation on freehold land and indigenous land in the same way it applies to remnant vegetation on freehold land and indigenous land.
- (4) An area management plan applies to high value regrowth vegetation on land mentioned in subsection (1) in the same way it applies to high value regrowth vegetation located on a lease issued under the *Land Act 1994* for agriculture or grazing purposes, until the end of the plan period for the plan.
- (5) In this section—

*category C code* means the accepted development vegetation clearing code called ‘Managing category C regrowth vegetation’.

*native forest practice code* means the accepted development vegetation clearing code called ‘Managing a native forest practice’.

**133 How definition *regrowth watercourse and drainage feature area* applies during and after the interim period**

- (1) During the interim period, the schedule, definition *regrowth watercourse and drainage feature area* is also taken to mean an area located within 50m of a watercourse or drainage feature located in the following catchments identified on the vegetation management watercourse and drainage feature map—
  - (a) Burnett-Mary;
  - (b) Eastern Cape York;
  - (c) Fitzroy.
- (2) Until the Minister remakes it under section 19O after the date of assent, the category R code applies to the catchments mentioned in subsection (1)(a), (b) or (c) in the same way it applies to the catchments mentioned in the definition *regrowth watercourse and drainage feature area*.
- (3) An area management plan applies to the catchments mentioned in subsection (1)(a), (b) or (c) in the same way it applies to the catchments mentioned in the definition *regrowth watercourse and drainage feature area*, until the end of the plan period for the plan.
- (4) In this section—

*category R code* means the accepted development vegetation clearing code called ‘Managing category R regrowth vegetation’.

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**134 Restoration and other requirements after unlawful clearing**

- (1) This section applies if a person undertakes unlawful clearing during the interim period.
- (2) The chief executive may give the person a restoration notice in relation to the unlawful clearing.
- (3) The chief executive may, in addition to the matters mentioned in section 54B(3), also include additional requirements in the notice for the person to undertake.
- (4) Without limiting subsection (3), the restoration notice may require the person to restore land in addition to the land the subject of the unlawful clearing.
- (5) In deciding the additional requirements for the restoration notice, the chief executive must have regard to the environmental offsets policy under the *Environmental Offsets Act 2014*.
- (6) The restoration notice, including any additional requirements, is taken to be a restoration notice for this Act.

**135 No compensation payable**

To remove any doubt, it is declared that no amount, whether by way of compensation, reimbursement or otherwise, is payable by the State to any person for, or in connection with, a provision of this division that applies in relation to the interim period.

**136 Area management plans that are to remain in force for 2 years**

- (1) This section applies to an area management plan, other than a plan made by the chief executive under section 20UA, that relates to the following—
  - (a) clearing of encroachment;
  - (b) thinning;

- (c) fodder harvesting, other than on a part of the area that is restricted (fodder harvesting) land.
- (2) The plan continues as an area management plan under this Act and remains in force until 8 March 2020.
- (3) An entity that has given notification of an intention to clear vegetation under the plan before 8 March 2018 may continue to clear under the plan while it remains in force.
- (4) However, an entity may not give notification under the plan after 8 March 2018.
- (5) In this section—  
*thinning* has the meaning given by this Act immediately before 8 March 2018.

### **137 Area management plans that are to remain in force until the end of the plan period for the plan**

- (1) This section applies to an area management plan that relates to the following—
  - (a) controlling non-native plants or declared pests;
  - (b) ensuring public safety;
  - (c) relevant infrastructure activities;
  - (d) necessary environmental clearing.
- (2) The plan continues as an area management plan under this Act and remains in force until the end of the plan period for the plan.
- (3) An entity may continue to give notification of an intention to clear vegetation under the plan, and clear under the plan, while it remains in force.

### **138 Amendment of area management plans**

- (1) An area management plan, other than a plan made by the chief executive under section 20UA, may be amended—



- (a) by agreement between the chief executive and the applicant for the plan; or
  - (b) by the chief executive, if the chief executive considers the plan is not consistent with the State policy.
- (2) If the chief executive amends an area management plan under subsection (1)(b), the chief executive must give the applicant for the plan written notice of the amendment.

### **139 Revocation of particular area management plan**

- (1) The area management plan made by the chief executive under section 20UA called the ‘Managing fodder harvesting Mulga Lands Fodder Area Management Plan’ is revoked.
- (2) For this Act—
- (a) a notice for the intended clearing of vegetation given under the plan ceases to have effect when the plan is revoked; and
  - (b) the clearing can not continue to be carried out under the plan.

### **140 Applications under pt 2, div 5B, sdiv 2 made during the interim period**

- (1) This section applies if, during the interim period, an application was made under part 2, division 5B, subdivision 2.
- (2) Any decision of the chief executive on the application during the interim period is taken to have no effect.

### **141 Proposed map showing essential habitat**

- (1) During the interim period, the chief executive must publish, and may republish, on the department’s website, a map showing areas of proposed essential habitat for protected wildlife and near threatened wildlife.

- (2) For making the proposed map under subsection (1), protected wildlife under this Act is taken to include near threatened wildlife.
- (3) The proposed map is taken to be the essential habitat map on 8 March 2018.

#### **142 Provision about essential habitat**

- (1) During the interim period, a reference to essential habitat for protected wildlife in an accepted development vegetation clearing code or area management plan applies as if protected wildlife included near threatened wildlife.
- (2) An accepted development vegetation clearing code applies in relation to near threatened wildlife as if that wildlife were protected wildlife, until the code is remade under section 190 after the date of assent.
- (3) An area management plan applies in relation to near threatened wildlife as if that wildlife were protected wildlife, until the end of the plan period for the plan.

#### **143 Application of particular instruments**

- (1) This section applies to development for which an environmental offset may be required under State Code 16: Native vegetation clearing of the State development assessment provisions under the Planning Act.
- (2) The *Environmental Offsets Regulation 2014*, schedule 2, section (2)(3)(b) applies as if the reference in that paragraph to an animal or a plant that is endangered wildlife or vulnerable wildlife included a reference to near threatened wildlife.
- (3) Subsection (2) applies until the day the provision mentioned in the subsection is amended to provide for its application to near threatened wildlife.
- (4) The Queensland Environmental Offsets Policy prescribed under the *Environmental Offsets Act 2014*, section 12(1) applies as if—

- (a) section 4.3.6 of the policy provided for a multiplier of 4 for essential habitat for near threatened wildlife; and
  - (b) table one, in section 4.3.13.2 of the policy applies to near threatened wildlife.
- (5) Subsection (4) applies until the day the provision mentioned in the subsection is amended to provide for its application to near threatened wildlife.
- (6) A reference in the *Environmental Offsets Regulation 2014*, schedule 2 to the essential habitat map is taken to include a reference to the map mentioned in section 141.

#### **144 Transitional provision for ss 20AH, 20AI and 20CA**

- (1) For deciding to show category B areas or category C areas on the regulated vegetation management map under this Act, sections 20AH(c) and 20AI(a) are taken to include a reference to thinning.
- (2) For making a relevant area a category X area on a PMAV under this Act, section 20CA(2)(c) is taken to include a reference to thinning.
- (3) In this section—  
*thinning* has the meaning given by this Act immediately before the date of assent.

## Schedule Dictionary

### section 5

***accepted development*** see the Planning Act, section 44(4).

***accepted development vegetation clearing code*** see section 19O(1) and (2).

***approved form*** means a form approved by the chief executive under section 68D.

***approved restoration plan*** means a restoration plan approved by the chief executive under part 3, division 1, subdivision 8.

***area management plan*** see section 21.

***area of high nature conservation value*** means an area declared to be an area of high nature conservation value under—

- (a) a declaration made by the Governor in Council under section 17; or
- (b) an interim declaration made by the Minister under section 18; or
- (c) a declaration made by the chief executive under section 19F.

***area vulnerable to land degradation*** means an area declared to be an area vulnerable to land degradation under—

- (a) a declaration made by the Governor in Council under section 17; or
- (b) an interim declaration made by the Minister under section 18; or
- (c) a declaration made by the chief executive under section 19F.

***assessable development*** see the Planning Act, section 44(3).

***assessment benchmarks*** see the Planning Act, section 43(1)(c).

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**assessment manager** means an assessment manager as defined under the Planning Act.

**biodiversity** means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, and includes—

- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

**bioregion** means a bioregion shown on map number V0001 held by the department.

**category A area** see section 20AL.

**category B area** see section 20AM.

**category C area** see section 20AN.

**category R area** see section 20ANA.

**category X area** see section 20AO.

**centre of endemism** means an area containing concentrations of species that are largely restricted to the area.

**change application** means a change application under the Planning Act.

**clear**, for vegetation—

- (a) means remove, cut down, ringbark, push over, poison or destroy in any way including by burning, flooding or draining; but
- (b) does not include destroying standing vegetation by stock, or lopping a tree.

**clearing offence** means an offence under the *Forestry Act 1959*, the *Nature Conservation Act* or the *Environmental Protection Act 1994*.

**commercial timber** includes timber of a species prescribed under a regulation for section 70A(3).

**contaminant** includes a gas, liquid, solid or energy source, including radioactivity and electromagnetic radiation.

***criminal history***, of a person, means the convictions, including spent convictions, recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this Act.

***CYPH Act*** means the *Cape York Peninsula Heritage Act 2007*.

***decision***, for part 4, division 4, see section 68CA.

***declared area*** means an area declared under section 17, 18 or 19F.

***declared pest*** means a plant or an animal, other than a native species of plant or animal, that is—

- (a) invasive biosecurity matter under the *Biosecurity Act 2014*; or

*Notes—*

- 1 See the *Biosecurity Act 2014*, schedule 1, part 3 or 4 or schedule 2, part 2.
- 2 See also the note to the *Biosecurity Act 2014*, schedules 1 and 2.

- (b) controlled biosecurity matter or regulated biosecurity matter under the *Biosecurity Act 2014*.

***deemed refusal*** means a deemed refusal as defined under the Planning Act.

***development*** means development as defined under the Planning Act.

***development application*** means a development application under the Planning Act.

***development approval*** means a development approval under the Planning Act for a vegetation clearing application.

***document certification requirement*** see section 52(5) and (6).

***downstream limit***, of a watercourse, see the *Water Act 2000*, schedule 4.

***drainage feature*** see the *Water Act 2000*, schedule 4.

***encroachment*** means a woody species that has invaded an area of a grassland regional ecosystem to an extent the area is

no longer consistent with the description of the regional ecosystem.

***endangered regional ecosystem*** means a regional ecosystem declared to be an endangered regional ecosystem under section 22LA.

***enforceable undertaking*** see section 68CC(1).

***equipment*** includes machinery.

***essential habitat***, for protected wildlife, see section 20AC(2).

***essential habitat map*** see section 20AC(1).

***exchange area*** means an area of vegetation that must be protected in the way provided under an accepted development vegetation clearing code in exchange for clearing vegetation under the code.

***extractive industry***—

- (a) means 1 or more of the following—
  - (i) dredging material from the bed of any waters;
  - (ii) extracting, from a pit or quarry, rock, sand, clay, gravel, loam or other material;
  - (iii) screening, washing, grinding, milling, sizing or separating material extracted from a pit or quarry; and
- (b) includes carrying out work that is the natural and ordinary consequence of carrying out the work mentioned in paragraph (a).

*Example*—

constructing roads, buildings and other infrastructure

***FA chief executive*** means the chief executive of the department that administers the *Forestry Act 1959*.

***fodder harvesting***—

- 1 *Fodder harvesting* is the clearing of vegetation, predominantly consisting of fodder species—
  - (a) necessary to provide fodder for stock; and

- (b) carried out in a way that—
  - (i) conserves the vegetation in perpetuity; and
  - (ii) conserves the regional ecosystem in which the vegetation is situated; and
  - (iii) results in the woody biomass of the cleared vegetation remaining where it is cleared.
- 2 For paragraph 1, fodder species are any of the following—
  - (a) *Acacia aneura*;
  - (b) *Acacia brachystachya*;
  - (c) *Acacia excelsa*;
  - (d) *Acacia pendula*;
  - (e) *Acacia sibirica*;
  - (f) *Alphitonia excelsa*;
  - (g) *Flindersia maculosa*;
  - (h) *Geijera parviflora*.

***forest practice***—

- 1 *Forest practice* means planting trees, or managing, felling and removing standing trees, on freehold land or indigenous land on which the State does not own the trees, for an ongoing forestry business in a—
  - (a) plantation; or
  - (b) native forest if, in the native forest, all the activities are conducted in a way that—
    - (i) ensures restoration of a similar type, and to the extent, of the removed trees; and
    - (ii) 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
    - (iii) does not cause land degradation; and



- (iv) is consistent with the accepted development vegetation clearing code for native forest practice.
- 2 The term includes carrying out limited associated work, including, for example, drainage, construction and maintenance of roads or vehicular tracks, and other necessary engineering works.
- 3 The term does not include clearing vegetation for the initial establishment of a plantation.

***freehold land*** includes land in a freeholding lease under the *Land Act 1994*.

***grassland regional ecosystem*** means a regional ecosystem prescribed under a regulation as a grassland regional ecosystem.

***high value regrowth vegetation*** means vegetation located—

- (a) on freehold land, indigenous land, or land subject of a lease issued under the *Land Act 1994* for agriculture or grazing purposes or an occupation licence under that Act; and
- (b) in an area that has not been cleared (other than for relevant clearing activities) for at least 15 years, if the area is—
- (i) an endangered regional ecosystem; or
- (ii) an of concern regional ecosystem; or
- (iii) a least concern regional ecosystem.

***indigenous community use area*** see the CYPH Act, schedule.

***indigenous land*** means, for regulating the clearing of vegetation, land held under a following Act by, or on behalf of or for the benefit of, Aboriginal or Torres Strait Islander inhabitants or purposes—

- (a) the *Aboriginal Land Act 1991*;
- (b) the *Torres Strait Islander Land Act 1991*;
- (c) the *Land Act 1994*.

**information notice**, about a decision, means a notice stating each of the following—

- (a) the decision, and the reasons for it;
- (b) the rights of review under this Act;
- (c) the period in which any review under this Act must be started;
- (d) how rights of review under this Act are to be exercised.

**lake** see the *Water Act 2000*.

**Land Act notice** means a compliance notice given for a tree clearing offence under the *Land Act 1994* as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

**Land Act tenure** means any of the following—

- (a) unallocated State land;
- (b) a road;
- (c) an area subject to a lease under the *Land Act 1994*.

**land degradation** includes the following—

- (a) soil erosion;
- (b) rising water tables;
- (c) the expression of salinity;
- (d) mass movement by gravity of soil or rock;
- (e) stream bank instability;
- (f) a process that results in declining water quality.

**least concern regional ecosystem** means a regional ecosystem declared to be a least concern regional ecosystem under section 22LC.

**lopping**, a tree, means cutting or pruning its branches, but does not include—

- (a) removing its trunk; and

- (b) cutting or pruning its branches so severely that it is likely to die.

***managing thickened vegetation*** means the selective clearing of vegetation at a locality that does not include clearing using a chain or cable linked between 2 tractors, bulldozers or other traction vehicles—

- (a) to restore a regional ecosystem to the floristic composition and range of densities typical of the regional ecosystem in the bioregion in which it is located; and
- (b) to maintain ecological processes and prevent loss of biodiversity.

***minor change application*** means a change application for a minor change to a development approval, as defined in the Planning Act.

***moratorium exemption*** means an exemption under the repealed Moratorium Act.

***native forest practice*** means a forest practice other than—

- (a) a forest practice in a plantation; or
- (b) the harvesting, on freehold land, of sandalwood.

***Nature Conservation Act*** means the *Nature Conservation Act 1992*.

***necessary environmental clearing*** means clearing of vegetation that is necessary to—

- (a) restore the ecological and environmental condition of land; or

*Example—*

stabilising banks of watercourses, works to rehabilitate eroded areas, works to prevent erosion of land or for ecological fire management

- (b) divert existing natural channels in a way that replicates the existing form of the natural channels; or
- (c) prepare for the likelihood of a natural disaster; or

*Example—*

removal of silt to mitigate flooding

- (d) remove contaminants from land.

**occupier**, of land, means—

- (a) the person in actual occupation of the land or, if there is no person in actual occupation, the person entitled to possession of the land; and
- (b) if there is more than 1 occupier of the land—any of the occupiers.

**of concern regional ecosystem** means a regional ecosystem declared to be an of concern regional ecosystem under section 22LB.

**official** means—

- (a) the chief executive; or
- (b) an authorised officer.

**offset area** means a legally secured offset area under the *Environmental Offsets Act 2014*.

**original decision** see section 63A(1)(a).

**owner**, of land, includes the following—

- (a) for freehold land—the registered owner;
- (b) for a lease, licence or permit under the *Land Act 1994*—the lessee, licensee or permittee;
- (c) for indigenous land—the holder of the title to the land;
- (d) for any tenure under any other Act—the holder of the tenure.

**plan area**, for part 2, division 5B, see section 21.

**Planning Act** means the *Planning Act 2016*.

**planning chief executive** means the chief executive of the department in which the Planning Act is administered.

**plantation forestry** means the planting and cultivation of timber for commercial purposes.

**PMAV** see section 20AK.

**PMAV application**, for part 4, division 4, see section 68CA.

**pre-clearing extent**, of a regional ecosystem, means the extent of the regional ecosystem before it was cleared.

**primary producer**, for part 2, division 4C, see section 19Y.

**primary production business**, for part 2, division 4C, see section 19Y.

**primary production entity**, for part 2, division 4C, see section 19Y.

**property map of assessable vegetation** see section 20AK.

**proponent**, for part 2, division 4, subdivision 2, see section 19E(1).

**protected wildlife** means native wildlife prescribed under the Nature Conservation Act as endangered wildlife, vulnerable wildlife or near threatened wildlife.

**public place** means a place the public is entitled to use, open to the public or used by the public, whether or not on payment of an amount.

**reasonably believes** means believes on grounds that are reasonable in the circumstances.

**reasonably suspects** means suspects on grounds that are reasonable in the circumstances.

**referral agency**, for a development application, see the Planning Act, section 54(2).

**regional ecosystem** means a vegetation community in a bioregion that is consistently associated with a particular combination of geology, landform and soil.

*Editor's note—*

The Queensland Herbarium publishes a map of the regional ecosystems in Queensland and the map is available on the department's website.

**regional ecosystem number**, for a regional ecosystem, means the regional ecosystem number that is established under the Regional Ecosystem Description Database.

*Note—*

The Regional Ecosystem Description Database is a database containing regional ecosystem numbers and descriptions of the regional ecosystems that is maintained by the Queensland Herbarium. The database is available on the department's website at [www.dnrm.qld.gov.au](http://www.dnrm.qld.gov.au).

***regrowth vegetation*** means vegetation that is not remnant vegetation.

***regrowth watercourse and drainage feature area*** means an area located within 50m of a watercourse or drainage feature located in the Burdekin, Burnett-Mary, Eastern Cape York, Fitzroy, Mackay Whitsunday or Wet Tropics catchments represented on the vegetation management watercourse and drainage feature map.

***regulate*** includes prohibit.

***regulated regrowth vegetation*** is vegetation contained in a category C or category R area.

***regulated vegetation management map*** see section 20A.

***relevant clearing activities*** means—

- (a) fodder harvesting; or
- (b) managing thickened vegetation; or
- (c) clearing of encroachment; or
- (d) controlling non-native plants or declared pests; or
- (e) necessary environmental clearing; or
- (f) managing, felling and removing trees for an ongoing forestry business.

***relevant infrastructure activities*** means—

- (a) establishing and maintaining a necessary fence, firebreak, road, or vehicular track; or
- (b) constructing and maintaining necessary built infrastructure.

***relevant PMAV application***, for part 4, division 4, see section 68CA.

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**remnant vegetation** means vegetation—

- (a) that is—
  - (i) an endangered regional ecosystem; or
  - (ii) an of concern regional ecosystem; or
  - (iii) a least concern regional ecosystem; and
- (b) forming the predominant canopy of the vegetation—
  - (i) covering more than 50% of the undisturbed predominant canopy; and
  - (ii) averaging more than 70% of the vegetation's undisturbed height; and
  - (iii) composed of species characteristic of the vegetation's undisturbed predominant canopy.

**repealed Moratorium Act** means the *Vegetation Management (Regrowth Clearing Moratorium) Act 2009*.

**restoration notice** see section 54B(2).

**restoration plan** see section 55AA(b).

**restricted (fodder harvesting) land**, for part 2, division 5B, see section 21A.

**review decision** see section 63A(1)(b).

**road** see the *Transport Infrastructure Act 1994*, schedule 6.

**sandalwood** means a plant of the species *Santalum lanceolatum*.

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

**State land** means all land (including roads and reserves), other than—

- (a) freehold land or land contracted to be granted in fee simple by the State; or
- (b) indigenous land on which the State does not own the trees.

**State policy** means the policy approved under section 10(3).

**stop work notice** see section 54A(2).

**trespass notice** means a trespass notice under the *Land Act 1994*, section 406.

**undisturbed height**, for vegetation, means the height to which the vegetation normally grows.

**undisturbed predominant canopy**, for vegetation, means the predominant canopy the vegetation normally has.

**unlawfully cleared** means cleared of vegetation by a person in contravention of—

- (a) a vegetation clearing provision, or the repealed *Sustainable Planning Act 2009*, section 578(1), 580(1), 581(1), 582 or 594(1) if the person—
  - (i) has not contested an infringement notice given for the contravention; or
  - (ii) has been convicted of the contravention, whether or not the conviction is recorded; or
- (b) a tree clearing provision under the *Land Act 1994*, as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

**vegetation** see section 8.

**vegetation category area** see section 20AKA.

**vegetation clearing application** means—

- (a) a development application for development that involves the clearing of vegetation and is categorised as assessable development under a regulation made under the Planning Act; or



- 
- (b) a change application, other than a minor change application, to change a development approval, as defined in that Act, to approve development mentioned in paragraph (a), if the development approval does not already approve that development.

**vegetation clearing offence** means an offence against a vegetation clearing provision.

**vegetation clearing provision** means any of the following to the extent the provision relates to the clearing of vegetation—

- (a) the Planning Act, section 162, 163(1), 164, 165 or 168(5);
- (b) for the clearing of vegetation that happened before the repeal of the *Sustainable Planning Act 2009*—section 578(1), 580(1), 581(1), 582 or 594(1) of that Act.

**vegetation management** see section 9.

**vegetation management map** means—

- (a) the essential habitat map; or
- (b) the regulated vegetation management map; or
- (c) the vegetation management watercourse and drainage feature map; or
- (d) the vegetation management wetlands map; or
- (e) a PMAV.

**vegetation management watercourse and drainage feature map** see section 20AB.

**vegetation management wetlands map** see section 20AA.

**watercourse** has the meaning given by the *Water Act 2000*, section 5, but a reference to a watercourse in this Act includes a reference to anywhere that is downstream of the downstream limit of the watercourse.

*Note for definition watercourse—*

For the purposes of this Act, the length of a watercourse is not limited by any downstream limit applying to it under the *Water Act 2000*.

***wetland*** means an area of land that supports plants or is associated with plants that are adapted to and dependent on living in wet conditions for at least part of their life cycle.

***wildlife refugium*** means an area that is a sanctuary to which a species or group of species has retreated, or been confined, in response to threatening processes, including a climatic change.