Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 32

made under the

Nature Conservation Act 1992

General Outline

Short title

The short title is the *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014*.

Authorising law

Section 175 of the *Nature Conservation Act 1992*.
Section 165 of the State Penalties Enforcement Act 1999.

Policy objectives and the reasons for them

The protected plants legislative framework includes the *Nature Conservation Act 1992*, the *Nature Conservation (Administration) Regulation* 2006 ('Administration Regulation'), the *Nature Conservation (Protected Plants) Conservation Plan 2000* ('Conservation Plan'), the *Nature Conservation (Wildlife Management) Regulation 2006* ('Wildlife Management Regulation'), the *Nature Conservation (Wildlife) Regulation 2006* and the *Nature Conservation (Protected Plants Harvest Period) Notice 2013* ('Harvest Period Notice').

The review of the protected plants legislative framework arose out of a need to contemporise the framework, and to assess its currency and effectiveness in achieving the conservation and preservation of threatened plants. Businesses, landholders and other interested parties operating under the framework identified that the existing legislation concerning protected plants is complicated and burdensome, and difficult for operators to interpret and regulators to effectively implement and administer. These factors have led to a lack of compliance with regulatory requirements and, in turn, poor conservation outcomes for protected plants.

The policy objectives of the *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014* (Amendment Regulation) are to specify the necessary detail,

operation and management for a new, simplified protected plants legislative framework which ensures threatening processes are effectively managed in a manner that:

- maintains or improves the current conservation status of all protected plant species in Queensland;
- facilitates the sustainable take, use and trade of protected plants; and
- operates efficiently and does not impose a significant regulatory or administrative burden on business, government or the community.

Achievement of policy objectives

The Amendment Regulation forms the second stage of amendments that are required to facilitate the implementation of a new legislative framework for protected plants. *The Nature Conservation (Protected Plants) and Other Legislation Amendment Act 2013* was passed by State Parliament on 16 October 2013 and amended primary legislation in order to lay the foundations for subsequent changes to relevant subordinate legislation. The Amendment Regulation will outline the necessary administrative and operational changes to subordinate legislation, in order to implement the new framework.

The Administration Regulation will be amended to:

- replace the eleven types of licences, permits and authorities under the current framework with three licences and permit types;
- introduce a new fee system for protected plant licences and permits; and
- specify administrative requirements for the new permit and licences.

The Wildlife Management Regulation will be amended to:

- de-regulate the trade of protected plants, provided lawful records are kept of trade and movement;
- remove the regulation of least concern protected plants for harvesting, growing and clearing activities where the plants do not form supporting habitat of endangered, vulnerable or near threatened plants;
- introduce a protected plant harvesting licence to create opportunities for the harvest of whole plants and plant parts, where the applicant can demonstrate the sustainability of the harvest;
- introduce a protected plant growing licence to regulate the sustainable harvest of whole protected plants or plant parts, for the cultivation or propagation of protected plants;
- introduce a risk based framework for the regulation of clearing activities, where a protected plant clearing permit will only be required for activities considered as high risk;
- provide an exemption from a clearing permit for low risk clearing activities, where there is no record of endangered, vulnerable or near threatened plants present; and
- introduce a number of new offences, exemptions and definitions to support the revised framework.

Consistency with policy objectives of authorising Act

The Amendment Regulation is consistent with the main policy objectives of the *Nature Conservation (Protected Plants) and Other Legislation Amendment Act 2013*, specifically the operation and management of a new, simplified protected plants regulatory framework which ensures threatening processes are effectively managed.

The Amendment Regulation is consistent with the objective of the *Nature Conservation Act 1992*, which is the conservation of nature, and is consistent with how the objective is to be achieved, specifically the protection of native wildlife and its habitat, and ensuring the use of protected wildlife is ecologically sustainable.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

A Consultation Regulatory Impact Statement (RIS) was released for public comment in February 2013, outlining three options for the regulation of protected plants. These included two reform options, (red tape reduction and regulatory simplification and co-regulation), along with an option of retaining the current framework. The RIS compared the three regulatory options to a baseline position of no state regulation for protected plants, in order to identify the costs and benefits of each option to business, landholders, the general community and the environment.

Subsequently, based on the results of the cost-benefit analysis—and the relevant issues raised by members of the public in response to the RIS—the option of reducing 'red tape and providing regulatory simplification was identified as the preferred regulatory option. This is because the option will significantly reduce business and government costs and improve compliance with the protected plants legislative framework, primarily by adopting a risk based approach to regulation and removing unnecessary regulatory burden.

In comparison, the option of retaining the current framework would continue to impose a high regulatory and administrative burden on business, landholders and the government, while the co-regulation option would involve high establishment costs and received very little support from business and the community for various reasons. The RIS also established that a non-regulatory approach to the management of protected plants would pose too high a risk to the environment and to businesses and industries that rely on the effective management of native plants.

The *Nature Conservation (Protected Plants) and Other Legislation Amendment Act 2013* formed the first stage of amendments that were required to facilitate the implementation of the preferred regulatory option and the majority of provisions to support this option will be outlined in the Amendment Regulation.

Estimated cost for government implementation

The RIS estimated that government would incur annual costs of $381,000 as a result of the new protected plants legislative framework. The total yearly costs have been averaged over a ten year period to establish this annual figure, as higher costs will be incurred over the first few years, while lower costs will be incurred after the framework has been implemented.

In particular, implementation of the new protected plants legislative framework is expected to cost the government approximately $757,000, which equates to $75,700 per annum of the

total annual figure of $381,000 when averaged over a 10-year period. The average annual cost of the framework also comprises $280,000 of permit and licence assessment costs.

When compared to the costs incurred by government as a result of the current protected plants legislative framework, it can be seen that the savings resulting from the changes to the protected plants legislative framework will be substantial. As the current framework costs government an estimated $705,000 per year, the new framework will provide savings of approximately $324,000 a year.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted with regard to the fundamental legislative principles as defined in section 4 of the *Legislation Standards Act 1992*. While the Amendment Regulation is generally consistent with fundamental legislative principles, four potential issues were identified and are addressed below.

Additionally, the Amendment Regulation has sufficient regard to Aboriginal tradition and Island custom, as no changes were made to the existing rights under the Act and subordinate legislation.

Amendments to chapter 4, part 3 (Exemptions for taking or using protected plants)

The *Nature Conservation (Protected Plants) and Other Legislation Amendment Act 2013* outlined amendments to section 89 of the Act, to remove exemptions from the restriction on taking protected plants. This amendment raised the potential issue of whether the amendment has sufficient regard to the institution of Parliament and authorises the amendment of an Act only by another Act.

The purpose of this amendment was to allow for exemptions to be located in the Wildlife Management Regulation, as part of the subordinate legislation process. Section 89 of the Act provides the legislative power for an exemption to be prescribed in a Regulation. For this reason, a significant number of exemptions relating to the take, keep, and use of protected plants are already provided in the Wildlife Management Regulation. This approach is therefore considered to be consistent with how other exemptions are established for other wildlife under the Act.

The Amendment Regulation therefore carries over exemptions from section 89 of the Act, in addition to exemptions from the Conservation Plan, and the Harvest Period Notice, where the exemptions remain relevant to the new legislative framework for protected plants. These exemptions are located together in the amended chapter 4, part 3 (exemptions for taking or using protected plants), making it easier for a person to determine their requirements under the Act, and ensuring the subordinate legislation is consistent with the policy objectives of the amendments to the Act. Exemptions will also be subject to the parliamentary scrutiny as per the requirements for subordinate legislation in the *Statutory Instruments Act 1992*, sections 49 – 51. These amendments are therefore considered to be a reasonable and appropriate way of handling the policy framework that is consistent with fundamental legislative principles.

Amendment to section 352 (No conservation value payable for protected wildlife taken under particular authorities)

Amendments made under section 95 of the Act (payment of a conservation value), raised the potential issue of whether the Act had sufficient regard to the institution of parliament, allowing the delegation of legislative power only in appropriate cases and to an appropriate person. The intention of the amendment was that a payment of a conservation value will not be required in most circumstances, however the amendment enabled the chief executive to decide that a conservation value may be appropriate in certain circumstances for a wildlife authority for protected plants.

Accordingly, the Amendment Regulation amends section 352 of the Wildlife Management Regulation to clarify that no wildlife authority for protected plants is exempt from payment of a conservation value. This will enable the chief executive to decide that a conservation value may be required in certain circumstances, consistent with the new section 95 of the Act.

The conservation values for particular classes of wildlife are prescribed in the Wildlife Management Regulation s351(1), which provides different amounts based on the conservation status of the wildlife. These prescribed amounts have been in place since the regulation was first passed.

This is a consistent and appropriate way of handling this policy framework, as the Act provides a discretionary power and the decision is being delegated to an appropriate person, where there are existing constraints on the amount that can be required.

Amendments to the *Code of Practice for the taking and use of protected plants* (Code of Practice) under the Amendment Regulation

The amendments to the Code of Practice and the Amendment Regulation raise the potential issue of whether the delegation of legislative power is delegated only in appropriate cases and to an appropriate person, and only if authorised by an Act.

The Amendment Regulation relies on the Code of Practice to list additional requirements of a detailed and more technical nature for taking and using protected plants. A number of provisions from the existing Code of Practice will be removed where no longer necessary and provisions relating to the new requirements of the Amendment Regulation will be inserted.

The amendments to the Code of Practice and the Amendment Regulation are consistent with the principle that legislative power should be delegated only in appropriate cases and to appropriate people as authorised under an Act. The Code of Practice has the ability to exist under section 174A of the Act, which allows the chief executive to approve or make codes of practice specifically for protected wildlife. The Act also outlines that relevant sections of the *Statutory Instrument Act 1992* apply to a code of practice as if it were subordinate legislation.

Accordingly, the Code of Practice will be subject to tabling in Parliament and to disallowance. The Amendment Regulation also prescribes that the Code of Practice will be made available on the department's website. It is therefore considered that the Amendment Regulation and amendments to the Code of Practice are not inconsistent with fundamental legislative principles.

Creation of a Protected Plants Assessment Guideline

The Amendment Regulation's reliance on the Protected Plants Assessment Guideline raises the potential issue of the delegation of legislative power and whether this would have sufficient regard to the institution of parliament.

The Assessment Guideline will be made under the new section 174B of the Act, which allows the chief executive to approve or make assessment guidelines about how applications for a wildlife authority are to be considered. This provision was established to improve consistency and transparency in decision making processes. The new section 174B was inserted to clearly provide for the ability to make guidelines for how applications are to be considered, and enabling public access to guidelines so that applicants may be aware of criteria and considerations at the application stage.

The Amendment Regulation is relevant and appropriate to the Act by referring to the Protected Plants Assessment Guideline to specify how an application will be assessed. This is consistent with the ability provided under the authorising law and is therefore an appropriate way of handling this policy framework.

Creation of new offences

The Amendment Regulation introduces a number of new offences and amendments to existing offences, which are required to support the changes to the legislative framework. This raises a potential issue of regulation changing or potentially increasing a penalty that applies or creating new offences. Changes to existing offences or creation of new offences will only be made where it is appropriate and is required to ensure the effective enforcement of requirements relating to the take keep and use of protected plants. The amendment is a relevant and appropriate way of handling this policy framework and is consistent with how other offences are established for plants and other wildlife under the Act.

Consultation

Formal consultation on proposed policy directions and options for the regulation of protected plants has been undertaken both through the release of a public notice announcing the review of the protected plants legislative framework in July 2011, and the release of a Consultation RIS in February 2013. Extensive informal consultation has also been undertaken with interested parties, including native plant harvesting, growing and trading businesses, interest groups, as well as businesses and industry bodies with an interest in clearing native vegetation.

Matters raised during preliminary consultation undertaken in 2011 and 2012 informed the development of three regulatory options for inclusion in the RIS. The RIS then provided a cost-benefit analysis of the regulatory options, and sought feedback from the public on each option.

All identified interested parties were notified of the RIS release, including all current permit and licence holders, businesses, industry bodies, interest groups, the local government body in Queensland and the Federal government. A public notice of the release of the RIS was also published in the Queensland Government gazette, and a copy of the RIS was available for

download from the Department of Environment and Heritage Protection website and the Queensland Government Get Involved website. Electronic and hard copies were provided to interested parties upon request. Additionally, public notification of the RIS release was also aided by the dissemination of information by interest groups and industry bodies to over 4,000 members and interested parties.

A total of 102 formal submissions were received in response to the RIS.

Based on submissions received on the RIS, in combination with the results of the cost-benefit analysis of the regulatory options, a preferred regulatory option for protected plants was identified.

The *Nature Conservation (Protected Plants) and Other Legislation Amendment Act 2013* formed the first stage of amendments, and was subject to an inquiry by the Agriculture, Resources and Environment Committee. There were 20 submissions received on the Bill and the overarching reforms. The department provided a formal response on key issues raised by stakeholders during the inquiry and this was tabled in the Legislative Assembly on the 17 October 2013.

Final consultation on the Amendment Regulation and supporting documentation, including the explanatory notes, flora survey trigger map, flora survey guidelines and protected plants code of practice commenced on 22 November 2013. Consultation occurred over a three-week period with submissions closing on 16 December 2013.

A total of 56 submissions were received during final consultation. Submissions were received from the following interest groups:

- consultancy sector;
- conservation and cultural groups;
- agriculture and horticulture industry;
- energy and electricity sector;
- mining, petroleum and gas industry; and
- government bodies.

The main issues raised during final consultation were focused on the development of the flora survey trigger map and flora survey guidelines, and clarifying clearing exemptions under the Amendment Regulation.

In addition to responding to the key issues raised during formal consultation, the department continued to proactively consult key industry groups until 19 February 2014.
Changes were appropriately made to the Amendment Regulation and supporting documentation response to the key issues raised.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

This clause states that the subordinate legislation may be cited as the *Nature Conservation (Protected Plants) and Other Legislation Amendment and Repeal Regulation 2014*.

Clause 2 Commencement

This clause specifies that the Regulation commences on 31 March 2014.

Part 2 Amendment of Nature Conservation (Administration) Regulation 2006

Clause 3 Regulation amended

This clause states that this part amends the *Nature Conservation (Administration) Regulation 2006* (the Administration Regulation).

Clause 4 Amendment of s 14 (Licences for protected plants other than in a protected area)

This clause amends section 14 of the Administration Regulation to replace the licences listed in paragraphs (a) to (e), which become redundant following changes to the licencing and permitting options for protected plants, with just two types of licences which may be granted by the chief executive for protected plants, other than in a protected area. Two new licences types are provided for:

- a protected plant growing licence for the harvest (take) of protected plants from the wild for the purposes of propagation and cultivation using the plants or parts harvested under the licence; and
- a protected plant harvesting licence for the harvest of protected plants from the wild.

The intention of these amendments is to simplify the licencing regime for protected plants by providing for licences specifically for harvest and focusing to a lesser degree on defining the licence type according to the purpose of the harvest or intended use of harvested material: with the exception of the growing licence.

The growing licence provides for harvest of whole plants and plant parts specifically for the purpose of cultivation or propagation using the harvested material. This is in recognition that these types of activities generally only require smaller quantities of whole plants or plant parts and may have a conservation benefit for the target. Separate authorisation of propagation and cultivation activities will no longer be required. A growing licence will only be required to source whole plants, for stock, or plant parts from the wild, it will not apply to propagators or cultivators who grow using plants or material obtained from non-wild sources, nor will it apply to wholesale nurseries that “grow-on” plants but do not cultivate or propagate the plants.

Harvesting activities that would previously have required a scientific purposes permit or educational purposes permit will be covered by a harvesting licence, in most instances, or a growing licence if the purpose of the harvest is to cultivate or propagate protected plants.

Harvesting activities that would previously have required a herbarium licence will be covered by a harvesting licence or by new exemptions being introduced by this Amendment

Regulation as Part 3 Chapter 4 of the Wildlife Management Regulation.

Commercial wildlife licence and recreational wildlife licence related to trade in protected plants. Under the new framework being introduced by this Amendment Regulation, licences for trade in protected plants will no longer be required. Instead, record keeping, tag and labelling requirements will be provided for by the introduction of Division 6 of the Wildlife Management Regulation by this Amendment Regulation.

Clause 5 Replacement of s 15 (Permits for protected plants other than in a protected area)

This clause amends section 15 of the Administration Regulation to replace the list of permits that may be granted for protected plants with a single permit for clearing of protected plants, other than in a protected area. Take of protected plants that would previously have been subject to a damage mitigation permit will be assessed under a clearing permit. Take under an educational or scientific permit will be assessed under a protected plant harvesting licence or protected plant growing licence, whichever is applicable, as introduced by Clause 4 of this Amendment Regulation. Movement of protected plants will not be subject to a licence. However, record keeping, tag and labelling requirements may apply and will be provided for by the introduction of Division 6 of the Wildlife Management Regulation by this Amendment Regulation.

Clause 6 Amendment of s 20 (Maximum term for licences for wildlife)

This clause amends section 20 of the Administration Regulation to introduce a maximum currency period for a protected plant growing licence and a protected plant harvesting licence. A currency period of five years is being introduced to allow for increased harvest opportunities that may be sustainable over a longer period of time.

Clause 7 Amendment of s 21 (Maximum term for permits for wildlife)

This clause amends section 21 of the Administration Regulation to increase the maximum currency period for a protected plant clearing permit from six months to two years. This change is intended to provide greater certainty to permit holders and reduce the administrative burden associated with permit holders needing to reapply to clear previously approved areas because the clearing couldn’t be completed within six months.

Clause 8 Amendment of s 24 (Particular applications must include request for record book or approval of electronic record system)

This clause amends section 24 of the Administration Regulation to make it clear that if a person makes an application for a protected plant growing licence or a protected plant harvesting licence, they do not have to apply for a record book nor have an electronic record system approved by the chief executive for the keeping of records. Section 24 does not apply to a licence for protected plants as this Amendment Regulation introduces an alternative record keeping system for protected plant harvesting, growing, and trade activities under Division 6 of the Wildlife Management Regulation.

This clause also provides for consequential renumbering of relevant subsections.

Clause 9 Insertion of new section 27A Fee payable for major amendments to particular applications

This clause inserts a new section 27A into the Administration Regulation to provide for circumstances where a fee is payable for an amendment of an application (for a protect plant harvesting licence, protected plant growing licence or protected plant clearing permit) agreed to by the chief executive prior to the application being decided. No fee is payable for an amendment considered to be minor. Under section 27A, a reduced fee will be payable, equivalent to the concessional fee for the licence or permit type, if the amendment is a major amendment. Generally, minor amendments are those which will not require significant additional assessment or re-assessment of the application. Major amendments are generally those which will result in a significant increase in assessment or re-assessment requirements for the application.

Clause 10 Amendment of s 120 (Application of pt 6)

This clause amends section 120 of the Administration Regulation to introduce a new sub-section 120(d) so that part 6 of the Administration Regulation (Provisions about records) applies to:

- a record (a protected plant harvest record) required to be kept for a whole restricted plant or restricted plant part taken under a protected plant growing licence, protected plant harvesting licence, or an exemption under the Wildlife Management Regulation chapter 4, part 3; or
- a record (a protected plant trade record) required to be kept for a whole restricted plant or restricted plant part used for trade under a protected plant harvesting licence or a protected plant trade exemption under the Wildlife Management Regulation.

In addition, section 120 is amended to include notes to cross reference s261ZJ of the Wildlife Management Regulation that includes a provision about who is required to keep a protected plant trade record.

This clause also amends sub-section 120(c) to reflect the new requirements for protected plants and make it clear that sub-section 120(c) only applies to a wildlife authority for animals. This is because, for restricted plants, records may be required to be kept for a wildlife authority and/or for an exempt activity.

A sectional definition for *restricted plant* is also inserted and cross referenced to the definition in Wildlife Management Regulation, schedule 5.

Clause 11 Amendment of s 121 (How records must be kept)

This clause amends section 121 of the Administration Regulation to insert new sub-sections 121(1)(c) and (d) about how a protected plant harvest record or protected plant trade record must be kept. Unlike other records, a protected plant harvest record or protected plant trade record need not be kept in a record book or record and return book or an electronic record system approved by the chief executive. Rather, they can be kept in any suitable written record system or in an electronic record system, neither of which need to be a system approved by the chief executive. The intention is that the system in which a record is kept does not need to be specifically approved, as long as the required information (particulars)

are recorded and the record is kept in the written or electronic record system in a way that is reliable, accurate and available on demand for checking by a conservation officer.

Section 121 is also amended to clarify that subsection (1)(b) applies to wildlife authorities for animals only, as different record keeping requirements apply to wildlife authorities for protected plants. Activities undertaken under exemptions for protected plants may also be subject to record keeping requirements. This clause also amends section 121 to remove note 2 after section 121(1)(b) as it will cease to be relevant once the Protected Plants Conservation Plan is repealed under this Amendment Regulation. Note 1 is amended to say Note to reflect the removal of note 2.

Clause 11 also amends section 121 to renumber subsection (3) as (6) and insert a new subsection (3) to establish that if a record is kept in an electronic record system (the primary system) and it is not working on the day particular information must be included in the record, the information must be recorded in an alternative written or electronic record system (the alternative) system, and the alternative system is taken to be part of the primary system.

Section 121(4) is introduced to make it clear that an electronic record system mentioned in subsection 1(c) or (d) may, but need not be, a system approved by the CE.

In addition, a new subsection (5) is inserted to make it clear that a protected plant harvest record or a protected plant trade record must be kept in a way that is available on demand for checking by a conservation officer.

Clause 12 Amendment of s 122 (Where records or copies must be kept)

This clause amends section 122 of the Administration Regulation to introduce a new subsection (e) to specify the place where a person who keeps a protected plant harvest record or a protected plant trade record must keep the record or a copy of the record. If an individual is keeping the record, it must be kept at the person's place of residence; if a recreational plant society is keeping the record, it must be kept at the society's office or usual place for keeping the society's records. If a corporation is keeping a record it depends whether the record is being kept in relation to a wildlife authority for protected plants or under an exemption under the Wildlife Management Regulation. If the record is being kept under a wildlife authority for protected plants, it must be kept at the licensed premises for the authority or, if the licensed premises are not open for business, at an office of the corporation that is in the State. If the record is being kept under and exemption, it must be kept at an office of the corporation in the State.

The intention is that the record or copy of the record will be kept in a secure way at a place, in Queensland, that relates most directly to the licenced or exempt activity for which the record is being kept, or the corporation or entity undertaking the activity.

This clause also removes the note for subsection (2) as it will cease to be relevant once the Protected Plants Conservation Plan is repealed under this Amendment Regulation.

Clause 13 Amendment of s125 (When record particulars to be included in record)

This clause amends s125 of the Administration Regulation to remove note 2, as it will cease to be relevant once the Protected Plants Conservation Plan is repealed under this Amendment Regulation. Note 1 has been reinserted as a note, to reflect the removal of note 2.

Clause 14 Amendment of s 132 (When return of operations must be given and the period for which they must be given)

This clause removes the note relating to the return of operations for protected plants, as this function will no longer be required under the new protected plants legislative framework. Note 1 has been reinserted as a note, to reflect the removal of note 2.

Clause 15 Amendment of s 143 (Reduced fee for particular landholders)

This clause removes reference to authorities for protected plants in section 143, as these authorities will no longer exist under the Amendment Regulation. Reduced fees for wildlife authorities for protected plants will remain available, however these circumstances will now be listed under amended section 144.

Clause 16 Replacement of s 144 (Reduced fee for commercial wildlife harvesting licence for protected plants)

This clause replaces the existing s 144, as commercial wildlife harvesting licences for protected plants will no longer exist. This clause inserts a new section 144, relating to a reduced fee for particular wildlife authorities for protected plants. The new section specifies that for an application for a wildlife authority for a protected plant, a reduced fee will be available for an educational or scientific purpose, an activity directed at conservation, clearing to establish necessary property infrastructure, or a traditional owner activity. The amended section also specifies that the fee payable for an authority for these purposes is the concessional fee, stated in schedule 3 for the authority. This means the concessional fee for a protected plant growing licence is $125, for a protected plant harvesting licence the concessional fee is $250, and for a protected plant clearing permit the concessional fee is $625.

Clause 17 Omission of ss 151-153

This clause removes sections 151-153, as recreational wildlife harvesting licences will no longer exist in the Amendment Regulation, and exemptions mentioned in these sections have been carried over to the Wildlife Management Regulation if they remain relevant to the new legislative framework. Under the new legislative framework, a fee exemption for wildlife authorities will be provided to a recreational plant society, voluntary conservation organisations or volunteer community organisations, in the Administration Regulation. This amendment is necessary to carry over the eligibility previously provided under section 151-153, ensuring it will apply to the Amendment Regulation.

Clause 18 Amendment of s 154 (Application for exemption of fee)

This clause amends section 154 to specify that a person may now apply to the chief executive for an exemption from the payment of a fee for a wildlife authority for protected plants. The purpose of this amendment is to clarify the eligibility of a fee exemption. The current requirements under section 154 will continue to apply to the Amendment Regulation, where a

fee exemption application must be written, include details about the contribution the activities to be carried out under the authority will make to the conservation of nature generally, and be made before or when the application for the authority is made.

Clause 19 Amendment of s 155 (Deciding fee exemption application)

This clause amends section 155 to specify that for an application for an exemption from the payment for a fee for a wildlife authority for protected plants, the chief executive may grant the fee exemption to a recreational plant society, a voluntary conservation organisation or a volunteer community organisation. These organisations are awarded a fee exemption as they were previously provided an exemption under the Administration Regulation, as the activities they undertake generally support the conservation of nature and are not for a commercial gain or personal benefit. It is therefore required to clarify that this eligibility for a fee exemption will continue in the Amendment Regulation.

Clause 20 Amendment of s 162 (Period for which particular documents must be kept)

This clause amends section 162 to specify that additional documents are required to be kept under amended sections of the Wildlife Management Regulation. A reference to amended sections 245 and 261ZMis therefore inserted, to specify the record keeping requirements of the Amendment Regulation and the period that they must be kept.

Clause 21 Insertion of new pt 12, div4 (Transitional provisions for the Nature Conservation and Other Legislation Amendment and Repeal Regulation (No.) 2014)

This clause inserts a new division to outline the transitional provisions for the Amendment Regulation.

Section 176 provides the definitions for division 4 and identifies that there are transitional arrangements for discontinued authorities, equivalent authorities and transitioned authorities. A discontinued authority means a commercial wildlife licence, a recreational wildlife licence and a wildlife movement permit. A protected plant harvesting licence will apply to an existing commercial wildlife harvesting licence, recreational wildlife harvesting licence, herbarium licence, educational purposes permit and scientific purposes permit, under the unamended regulation. Furthermore under the transitional arrangements a protected plant clearing permit, will apply to an existing clearing permit or damage mitigation permit under the unamended regulation.

Section 177 stipulates that an existing licence or permit in force under the unamended regulation immediately before the commencement, or granted under section 181(3), will continues in force for the term provided for under the amended regulation, however is taken to be its equivalent authority under the amended regulation. This only has effect for the term of the authority as was granted under the amended regulation. On the commencement of this amended regulation, a discontinued authority ceases to have effect. The purpose of this amendment is to clarify transitional arrangements for authorities issued under the unamended regulation. Existing authorities will continue to be in effect, only for the term the authority was issued for. A note has also been inserted to clarify that activities that were carried out

under a discontinued authority may be carried out under a protected plant trade exemption under the regulation.

Section 178 outlines the transitional requirements for a person or entity who holds an exemption under section 41(1)(a)(ii) of the Conservation Plan, in force immediately before repeal of the Conservation Plan. The person may continue to take a protected plant that the person was permitted to take under the exemption, and subject to the same conditions, for a period of 2 years after commencement of the Amendment Regulation. Therefore a person operating under an exemption that was in force immediately prior to the commencement of this section will be able to continue to operate under the exemption for a period of two years, even if that exemption expires within that two year period. In exercising this ability, the person must continue to comply with the conditions that applied under the exemption.

Section 179 outlines the transitional arrangements for an authorised cultivator or propagator for protected plants in force under the unamended regulation and that this will only be in effect for the term of the approval.

Section 180 outlines the transitional arrangements for an application for an authority made under the unamended regulation that is not decided prior to the commencement of the amended regulation. In this circumstance, an application is taken to be made under the amended regulation for the equivalent authority for the licence or permit, listed in the amended section 179. However, an application made for a discontinued authority that has not been decided before the commencement, lapses on commencement of the section. A refund will be issued for any applications made for discontinued authorities that are not decided before the commencement.

Section 181 is required to list the transitional requirements for an application to review a relevant decision (both an internal and external review), where the decision being reviewed is the refusal to grant a licence or permit under the unamended regulation and the review was started but not decided before the commencement of the Amendment Regulation. The relevant decision maker must review the application and if found to be approved, the application continues to be a licence or permit under the unamended regulation and any further decision about the application must be made under the unamended regulation.

Section 182 outlines existing reviews about discontinued authorities. This section applies to an application for review made under part 4 if the decision being reviewed is about the refusal under the unamended regulation, to grant a discontinued authority, and where an application was made but not decided before the commencement. On commencement, the application will lapse. This is required to clarify that any application made to review a decision to refuse a discontinued authority, which has not been decided before the commencement of this section, will lapse.

Clause 22 Amendment of sch 3 (Fees)

This clause amends schedule 3 (Fees) in order to omit division 4 and replace with a new division 4 with the new licence and permit fee structure relevant to new wildlife authorities for protected plants. Amendments are required to the previous fee structure to introduce fees that are relative to the departmental resources required to assess a permit or licence application. The concessional fee prescribed for a licence or permit, is the fee for applications eligible for a reduced fee under section 144 of the Administration Regulation.

Clause 23 Amendment of sch 7 (Dictionary)

This clause amends schedule 7 (Dictionary) as a number of new terms have been introduced and existing terms have been expanded to allow for a new meaning. It is therefore necessary to amend schedule 7 to correctly reference these terms which are used in the Administration Regulation and throughout the Amendment Regulation.

Part 3 Amendment of Nature Conservation (Wildlife Management) Regulation 2006

Clause 24 Regulation Amended

This clause states that this part amends the *Nature Conservation (Wildlife Management) Regulation 2006*.

Clause 25 Insertion of new 6A

This clause inserts a new section to define the meaning of trade for protected plants under the new legislative framework. A person keeps or uses a protected plant or protected plant part if the person uses or keeps the plant or plant part for a commercial purpose or related purpose or otherwise sells, gives away, buys, obtains or exchanges the plant or plant part for benefit or reward. Examples of a commercial or related purpose include a landscape contractor using a protected plant in a landscaping job, a nursery owner using a whole protected plant to produce other whole plants for potential sale, a plant hobbyist selling at a flea market the progeny of a whole protected plant the hobbyist has propagated at their home. This section also clarifies that a protected plant or a protected plant part is not used or kept for trade if a person uses or keeps the plant or plant part for the person's own personal use.

This amendment establishes a system for exempting trade in protected plants from licencing requirements, provided that tag, label and record keeping requirements are complied with. The purpose of this amendment is to clarify the meaning of trade and the circumstances where requirements for trading in protected plants would apply.

Clause 26 Insertion of new s 7A

This clause inserts a new section to clarify the meaning of taking a whole plant in the wild for the purpose of harvest. A whole plant is taken for a protected plant, other than sandalwood, where no part of the plant that may naturally and readily regrow is left behind. However, for sandalwood, any take of the trunk or main stem of the plant, will be treated as the take of the whole plant, even if there is part of the plant that is left behind that may naturally or readily regrow. This purpose of this amendment is to give effect to the policy intent to ensure an appropriate level of protection for sandalwood. In particular this clarifies that any take of sandalwood by pulling the plant or by removing the main stem, is considered to be the taking of a whole plant and can only be harvested under a protected plant harvesting licence. This amendment is required due to the particular physiological traits of this species and the commercial interest in the plant. This clause also specifies that if a person divides a plant into two or more viable sections, even if a viable section remains in the wild, the each viable section taken from the wild is considered to be a whole plant. The purpose of this amendment is to make clear that where plants can be divided into viable sections, this is not considered to be plant part harvest. The intention is that each viable section is a whole plant and must be

treated as such. Also if a person takes a plant that propagates by creeping rhizomes, a whole plant is taken if this is a continuous piece of rhizome bearing living fronds, or if it is any removed section of joined rhizomes bearing living fronds. The purpose of this amendment is to clarify that where a rhizome bears a living frond, each individual section bearing living fronds is considered to be a whole plant and must be treated as such.

Clause 27 Amendment of s 10 (Who may obtain wildlife authority)

This clause removes section 10(3) from the regulation. The amendment is necessary as under the risk based approach of the new legislative framework, there is no longer a requirement to restrict who may apply for a wildlife authority for protected plants. Under the Amendment Regulation, activities will be assessed on the sustainability of the activity, therefore section 10 will no longer be required.

Clause 28 Amendment of s 11 (General restriction on grant of wildlife authorities)

This clause inserts a note to refer to section 137 of the Act. This amendment is required to specify that the chief executive may grant a wildlife authority only if the chief executive is satisfied that the application is consistent with section 137 of the Act. This amendment is necessary to provide a link to the additional restrictions under the Act, where a licence must be consistent with management principles, and a management intent or plan under the Act.

Clause 29 Amendment of s 16 (Wildlife authority only authorises keeping, using and moving of lawfully obtained wildlife)

This clause amends section 16(1) note 2, to remove the reference to section 88B and replace the reference with section 90A. This amendment is required to be consistent with the recent amendments to the Act, where section 88B was relocated to after section 90 and renumbered as section 90A.

Clause 30 Omission of ss 28 and 29

This clause removes section 28 and section 29 as these sections are no longer relevant to the protected plants regulatory framework.

Clause 31 Amendment of ch 4, hdg (Using or moving protected plants)

This clause amends the heading of chapter 4 as the amended chapter will outline the restrictions regarding the taking, keeping, using, or moving of protected plants. This amendment is required to consolidate provisions within the Wildlife Management Regulation.

Clause 32 Replacement of s 241 (Purpose of ch 4)

This clause amends the existing purpose of chapter 4, to reflect the new purpose of this section which is to regulate the taking, keeping, using or moving of protected plants and how this is to be achieved. The purpose of this amendment is to make clear why the taking, keeping, using and movement of protected plants is regulated and that this is to ensure the continued existence in the wild of biologically viable populations of all taxa of protected

plants, allow the ecologically sustainable use of protected plants taken from the wild, control threatening processes to protected plants, minimise the impact of the taking of protected plants including for example adopting the precautionary approach in setting limits for taking and granting of wildlife authorities for protected plants, encourage greater reliance on obtaining protected plants from propagation or cultivation, while recognising that there may be grounds for taking them from the wild and minimise the potential for illegally taken protected plants to be used for any purpose. This will be achieved by providing exemptions for taking, using or moving protected plants in particular circumstances and providing for a licensing scheme that allows only particular person to take, keep, use or move protected plants and only in particular circumstances. This licensing scheme will allow for the commercial cultivation and propagation of protected plants to reduce the demand for taking protected plants from the wild.

Clause 33 Replacement of ch 4, pts 2 and 3

This clause replaces the existing chapter 4, parts 2 and 3 to insert a new section to outline the requirements for and restrictions about taking and using protected plants.

The purpose of this section is to give effect to the policy intent to simplify and consolidate provisions relating to the requirements, restrictions and exemptions for the take and use of protected plants. Clause 33 amends this section to establish the new general requirements for taking protected plants by clearing or by harvest, and the new circumstances for when the taking and/ or use of protected plants will be exempt from requiring a protected plant clearing permit or licence.

Division 1 Preliminary

Division 1 amends section 242 to state the new purpose of part 2, which is to state the particular requirements and restrictions that apply in relation to protected plants. It also removes reference to the Conservation Plan as the Conservation Plan is being repealed.

Division 2 General Requirements for taking protected plants

Division 2 outlines the general requirements for taking any protected plants.

Insertion of new sections 243 and 244

This division removes sections 244 and 255, as the licence types in both sections will cease to exist and under the Amendment Regulation.

This division inserts a new section 243 to state the general requirements that must be complied with for the taking of any protected plant under any protected plant authority or exemption. The requirements listed in section 243 have in part been carried over from the Conservation Plan, as they will continue to apply under the Amendment Regulation, however, have been clarified to state the circumstances in which these requirements must be complied with, including for any protected plant authority or relevant exemption (excluding an exemption under part 3, division 2) as they apply to the taking and use of any protected plant or protected plant part. This means section 243 applies to the take of all protected plants and therefore also applies to any take of least concern plants under a protected plant authority or relevant exemption.

Section 243(1)(a) establishes requirements for any taking of protected plants by clearing and / or harvesting, and that this must only disturb soil to the extent this is necessary to remove the

plant. The nature of clearing and certain harvesting activities (such as the removal of a whole plant from the soil) means that these activities will always have some impact to the soil. Therefore the intention of this provision is not to completely restrict activities that may cause damage to the soil, but to ensure that any take of protected plants that may require disturbance of soil, is kept to a minimum.

Section 243(1)(b) establishes minimum requirements for the take of protected plant parts by harvest, and that this must not result in the death of the plant from which the part is taken and enough of the plant remains to allow for reproduction of the plant and provides provide habitat and food for other wildlife. This provision ensures that any take of protected plants parts will leave enough of the plant remaining for this to be viable in the wild, and the harvest of plant parts does not remove the whole plant from the wild.

Section 243(2) sets out requirements for taking of any protected plants by harvest. This section establishes that any taking of protected plants by harvest must comply with the protected plants code of practice, an applicable harvest period notice and the sustainable harvest plan approved by the chief executive, to the extent that it is relevant to the taking under an exemption or licence. The intention of this provision is to clarify that activities that may be exempt under the regulation are subject to the general requirements under this section, which must be met in order to comply with the regulation and therefore meet the conditions of an exempt activity.

Section 243(3) establishes a defence to a prosecution for an offence under s243(1). This amendment ensures that if a person can demonstrate that the taking of the plant complied with the code of practice, even if this resulted in the death of the plant, this is not an offence under the regulation.

This clause also inserts a new section 244 to outline restrictions on taking a protected plant in a monitoring plot. This section has been carried over from the Conservation Plan as this restriction will continue to apply under the Amendment Regulation, however has been amended to remove reference to licences that have been repealed and replaces this with a protected plant harvesting licence.

Division 3 Requirements for taking protected plants by harvest

This division inserts a new section 245 to outline general record keeping requirements for taking protected plants for harvest. The purpose of this section is to ensure that a person who harvests any restricted whole plant or plant part, either under a licence or an exemption, is required to keep a protected plant harvest record if this plant or plant part is to be used for trade. Accordingly, a person does not need to keep a harvest record of the restricted plant or plant part, if the harvest is exempt and the person does not trade the restricted plant or plant part (i.e. the plant is kept for personal use).

This division inserts a new section 246 to outline harvest label requirements for whole restricted plants and restricted plant parts that have been taken from the wild. The purpose of this section is to establish that a harvest label is required, in the approved format, for all restricted whole plants and restricted plant parts at the point of harvest. This provision ensures that an approved harvest label is attached to each whole plant, bundles of plant parts or container of plant parts, and this label must not be removed until an approved trade label has been attached, or the plant parts start being used for another purpose other than trade. This may include purposes such as propagation or cultivation. Under this provision, harvest

labels must contain the minimum information specified under the code of practice and be legible for the life of the label. It will also be an offence under this section for a person to state any inaccurate or misleading information on the approved harvest label.

The intention of this amendment is to clarify that the new harvest labelling requirements that will apply under the regulation. This is required because under the risk based approach, the harvest of restricted plants will now be permitted, where the take is demonstrated to be sustainable. Therefore labelling requirements will ensure that a person is able to demonstrate that whole restricted plants or restricted plant parts have been legally sourced from the wild, under the relevant licence or exemption, and that this has complied with the regulatory requirements under the regulation.

Division 4 Requirements for taking protected plants by clearing

This division establishes the new requirements for taking protected plants by clearing, including setting out when a clearing permit is required, and how the risk based approach will be applied.

Subdivision 1 Interpretation

This subdivision outlines the new terms and their definitions for use under Division 4.

Section 247 defines the meaning of a flora survey trigger map. The purpose of this amendment is to establish that the flora survey trigger map is the map that has been developed for the purpose of clearing protected plants in Queensland. The map also includes any digital electronic spatial information that is used to produce the map. The purpose of the flora survey trigger map is to enable identification of high risk areas where a flora survey is required.

Section 248 defines the meaning of a high risk area. This purpose of this amendment is to prescribe how a high risk area is established, and how this can be identified. A high risk area is an area where plants that are endangered, vulnerable or near threatened wildlife are present or are likely to be present. High risk areas will be shown on the flora survey trigger map.

This section is required to give effect to the risk based approach to the regulation, which will now focus regulatory effort on high risk areas. Clearing within a high risk area will require the applicant to conduct a flora survey in accordance with the flora survey guidelines, to identify the presence or absence of endangered, vulnerable or near threatened plants. Clearing outside a high risk area will not be required to undertake a flora survey to identify presence or absence of endangered, vulnerable or near threatened plants.

Section 249 defines the meaning of a clearing impact area and specifically that this only applies in an area identified as high risk. A clearing impact area means an area to be cleared to the extent it is within a high risk area, and a buffer zone that is an additional area of 100m in width around the boundary of the area to be cleared in a high risk area. The 100m buffer area is included to account for the impact the clearing may have on plants that are endangered, vulnerable or near threatened wildlife within 100m of the clearing. This is because, while the clearing may not directly impact on endangered, vulnerable or near threatened plants, it may clear the supporting habitat of these species and therefore indirectly result in the loss of these species from the wild. This section also specifies that the buffer may be an additional area of less than 100m in width around the boundary of the area to be cleared in a high risk area that has been agreed to by the chief executive. The purpose of this

amendment is to clarify that where the chief executive has agreed to a reduced buffer area under section 249(2), the clearing impact area is the area to be cleared to the extent that this is within a high risk area, plus the buffer zone that has been agreed to be the chief executive. To be clear, the buffer zone will always be an additional area of 100m in width unless the chief executive agrees otherwise.

Section 249(2) also establishes that the chief executive may agree to a buffer zone for a clearing impact area that is less than 100m in width around the boundary of the area to be cleared in a high risk area, if the chief executive is satisfied that it is not reasonably practicable for a flora survey to be undertaken in that area of 100m in width or the reduction in the width of the buffer zone is consistent with any requirements of the flora survey guidelines. The purpose of this amendment is to provide for the ability for the chief executive to agree to an alternative buffer zone where it is appropriate to do so. For example, and without limiting the application of Section 249 (2), where the applicant does not have the permission of a landholder to undertake a flora survey of the area, or where the reduction in width of the buffer zone is required because the terrain is too difficult to access. The flora survey guideline will describe the circumstances where a reduced buffer zone will be accepted, and where for example, it is not suitable for the flora survey to include a buffer zone of 100m in width around the area to be cleared.

The intention of this amendment is to also clarify that a buffer zone is only to be applied to clearing that is being undertaken in a high risk area.

Section 250 inserts two new definitions for the meaning of a flora survey and a flora survey report. The purpose of this section is to establish what constitutes a flora survey and a flora survey report for the purposes of the Amendment Regulation, and when this is required.

A flora survey is required in order to identify the presence of endangered, vulnerable, near threatened plants or their supporting habitat. This is to ensure that the flora survey identifies any direct impacts that the clearing has on endangered, vulnerable or near threatened plants, and any indirect impacts that the clearing may have on endangered, vulnerable or near threatened plants by clearing the supporting habitat.

A flora survey report is a report about the results of a flora survey undertaken for the clearing impact area. The purpose of this amendment is to establish what is to be submitted to the chief executive for a clearing permit application or as a record of exempt clearing.

Subdivision 2 Provisions about flora survey trigger map

Section 251 establishes the process for the chief executive to review and amend the flora survey trigger map. The purpose of this amendment is to ensure that the chief executive reviews the flora survey trigger map at least once per year, and if necessary, amends the flora survey trigger map. This may for example include amending the map by adding or removing a high risk area. This amendment is required to ensure the maps are able to be regularly updated to account for new data on endangered, vulnerable and neat threatened plants, and that the information remains current.

Section 252 inserts a new section outlining public availability of flora survey trigger map. This states that the chief executive must make the current version of the flora survey trigger map publicly available for inspection in the way the chief executive considers appropriate. An example of a way the chief executive may consider appropriate is making the map

available for inspection on a website. The purpose of this amendment is to specify where the map is located and to ensure public access to the map.

Subdivision 3 Flora survey guidelines

Section 253 establishes that the chief executive may, by gazette notice, approve or make guidelines about the conduct of a flora survey. This section also establishes that the guidelines may contain requirements or provisions about who may undertake a flora survey, the extent of the area to be surveyed, and the information that to be included in the flora survey report, and for this to be available on the department's website. The purpose of this amendment is to ensure that the chief executive approves or makes a guideline that sets the minimum requirements that must be met for flora surveys, and for this to be publically available.

Subdivision 4 Steps to be taken before taking protected plants by clearing

Section 254 establishes that the flora survey trigger map is required to be checked for all clearing. This amendment is required as checking the flora survey trigger map is necessary to determine whether the clearing activity is high risk and underpins the risk based approach to the regulation. The flora survey map must be checked prior to any clearing, to find out if the area to be cleared is within a high risk area. The extent to which the clearing falls within a high risk area will trigger the requirement for a flora survey before clearing can be undertaken. This provision ensures that a person cannot take any protected plants, unless the person has checked the flora survey trigger map to determine if the area to be cleared is within a high risk area or they are taking the plants under a relevant exemption.

Section 255 establishes where a copy of the flora survey trigger map can be obtained for the purposes of checking flora survey requirements under section 254, and how long the map is valid for. Once a person has checked the flora survey trigger map, a copy of the map can be obtained from the department's website or from the chief executive. The purpose of this amendment is to ensure that a person obtains a copy of the map as evidence that they have checked the flora survey trigger map to identify if the area to be cleared is within a high risk area or outside a high risk area. This copy will be valid for a period of 12 months from the day the person obtains a copy of the map. A note is inserted to refer to section 261Z(3) about when a flora survey trigger map is valid for 5 years in particular circumstances.

Section 256 establishes when a flora survey is required. This section applies if any part of an area to be cleared is within a high risk area. Before any clearing is started, a flora survey must be undertaken of the clearing impact area. The purpose of this amendment is to clarify that a flora survey is required before any clearing can occur in a high risk area. This flora survey will need to survey the area to be cleared, plus the buffer zone of an additional area of 100m in width around the boundary of the clearing, or a reduced buffer zone that has been agreed to by the chief executive as specified under section 249. This also clarifies that if only part of the clearing is within a high risk area a flora survey is only required for that part of the clearing that is in a high risk area and the buffer area as required under section 249. The part of the clearing that falls outside the high risk area, would not be required to undertake a flora survey prior to clearing, except if this falls within the buffer.

Section 257 establishes that a flora survey and flora survey report must comply with certain guidelines or methodology, and that a clearing permit must not be approved if the flora survey or report does not comply with the approved guidelines or methodology. This

amendment ensures that a flora survey and flora survey report comply with the guideline approved or made by the chief executive under section 253.

Section 257 specifies that a flora survey must comply with the flora survey guidelines approved or made by the chief executive, or an alternative flora survey methodology that has been agreed to by the chief executive. The purpose of this amendment to ensure that the chief executive is able to accept a flora survey that meets the guideline, or an alternative which has been agreed to. This amendment is required to ensure that all flora surveys conducted are to the appropriate standard and are presented to the department in the appropriate format.

Section 257(2) ensures that the chief executive can agree to an alternative flora survey methodology for carrying out a flora survey or preparing a flora survey report, if the chief executive is satisfied the methodology is suitable for identifying whether plants that are endangered, vulnerable and near threatened wildlife are present within the clearing impact area. An example of what an alternative flora survey methodology could include is an alternative methodology for identifying protected plants and assessing the impacts of particular activities.

The purpose of this amendment is to allow for circumstances where an alternative methodology may be required, for example, where the approved flora survey guideline may not be appropriate or, where a particular activity faces particular constraints or requires additional considerations that are not provided for in the approved guideline.

Section 258 inserts a new provision that a person must not state any inaccurate or misleading information in a flora survey report. The purpose of this amendment is to ensure that true and correct information is submitted to the department, and that a person does not deliberately change results of their report to omit information about known presence of endangered, vulnerable or near threatened plants, to either remove the need for a clearing permit, or to reduce the impact management strategies (including any mitigation or offsets) that may be required. As a flora survey is now only required in a high risk area, an important component of the risk based approach is to ensure that flora surveys are conducted to the appropriate standard, and that all impacts to plants that are endangered, vulnerable or near threatened wildlife are adequately managed to ensure no net loss of these species in the wild.

Subdivision 5 when protected plant clearing permit is required for area other than high risk area

A new subdivision has been inserted to clarify when a protected plant clearing permit is required for an area other than a high risk area.

Section 259 establishes when a protected plant clearing permit is required for an area other than a high risk area. This section applies if, before a person starts clearing in an area other than a high risk area, the person is, or becomes, aware that there are plants that are endangered, vulnerable or near threatened wildlife within the area to be cleared and the plants would be taken by the clearing or there would be clearing within 100m of the plants. A protected plant clearing permit is required for clearing of the plants. A note has been inserted to refer to part 4A, for protected plant clearing permits to link to the clearing permit requirements under the regulation.

The intention of this amendment is to clarify that a clearing permit is only required if a person is aware of the presence of plants that are endangered, vulnerable or near threatened

wildlife within the area to be cleared, before the person starts clearing. It is not the intention to require a person to apply for a clearing permit if they identify the presence of plants that are endangered, vulnerable or near threatened during the clearing activity.

Part 3 Exemptions for taking or using protected plants

Division 1 Purpose of part

This part replaces chapter 4, part 3 to specify the new purpose of this part relates to exemptions for taking or using protected plants. The purpose of this part is to provide exemptions for offences for taking protected plants under section 89 of the Act, or using plants under section 90 of the Act and part 2 of the Wildlife Management Regulation.

This amendment is required to remove exemptions that are either no longer required, ensure certain provisions remain relevant and applicable in the absence of the Conservation Plan, and to give effect to the policy intent to co-locate exemptions for taking protected plants in the Wildlife Management Regulation.

Section 261 is inserted to clarify in this part, unless otherwise stated, a reference to a protected plant (including a restricted plant), or type of protected plant (including a type of restricted plant), is a reference to the whole plant and to parts of the plant.

Division 2 Exemptions for taking protected plants generally

Chapter 4, part 3, division 2 amends this section to list the general exemptions for taking protected plants. These exemptions have been moved from the Act, in order to give effect to the policy intent to co-locate exemptions regarding the taking of protected plants within the Wildlife Management Regulation. Exemptions under this division will not be subject to the general requirements under s243 of the regulation, as they are for extenuating circumstances only, which may necessitate the taking of the plant in any way that is necessary to remove the risk or hazard.

Section 261A inserts an exemption that has been carried over from the Act for taking a protected plant to avoid or reduce risk or death or serious injury. The purpose of this amendment is to ensure that a person may take any protected plant, if the taking is necessary and reasonable to avoid or reduce imminent risk of death or serious injury to a person, and cannot reasonably be avoided or minimised. The intention of this provision is to allow a person to take a plant without the need of a permit or licence, if the risk is imminent only, for example if a storm has damaged a tree where it is at risk of falling over and injuring a person. A person cannot use a plant taken under this exemption.

Section 261B inserts an exemption that has been carried over from the Act for taking a protected plant to avoid or reduce risk of damage to buildings or property. The purpose of this amendment is to ensure that a person may take any protected plant, if the taking is necessary and reasonable to avoid or reduce imminent risk of serious damage to a building or other structure on land or personal property, and if the damage is not prevented or controlled a person may suffer significant economic loss and the taking cannot reasonably be avoided or minimised. The intention of this provision is to allow a person to take a plant without the need of a permit or licence, in limited circumstances where the risk is imminent and would cause serious damage to property which would result in a significant economic cost. For example if a storm has damaged a tree where it is at serious risk of falling on a house, and

causing structural damage on the house. A person cannot use a plant taken under this exemption.

Section 261C inserts an exemption that has been in part carried over from the Act for taking a protected plant under the *Fire and Rescue Service Act 1990*. The purpose of this amendment is to ensure that a person may take a protected plant if the taking is or is a necessary part of a measure that is authorised under specific sections of the *Fire and Rescue Service Act 1990*, or the person takes the plant by lighting a fire that is authorised under a notification under specific sections of the *Fire and Rescue Service Act 1990* that is necessary as a means of hazard reduction. The intention of this provision is to remove any regulatory requirements for an activity that is required in specific circumstances under the *Fire and Rescue Service Act 1990* to manage or minimise risk of fire.

Division 3 Exemptions for using and moving protected plants generally

Division 3 inserts a number of provisions that have been moved from the Conservation Plan or from within the Wildlife Management Regulation and inserts new provisions to establish exemptions relating to use and movement of protected plants.

Section 261D inserts an exemption that has been carried over from the Conservation Plan for using protected plants registered under the *Plant Breeder's Rights Act 1994* (Cwlth). The purpose of this amendment is to ensure that a person may use a protected plant for which a plant breeder's right has been granted under that Act and therefore will not be subject to any harvesting or growing requirements. A person is required to provide evidence that a plant breeders right has been granted for the plant, unless that person has a reasonable excuse.

Section 261E inserts an exemption that has been carried over from the Conservation Plan. The purpose of this exemption is to ensure that a landholder of private land may gain benefit for allowing a person to take a protected plant from the landholder's land if the taking is authorised under the Act. This allows a landholder of private land only to gain a benefit such as request a financial payment, to compensate for the loss of the plants taken. A landholder of State land such as a leaseholder, is not entitled to gain benefit from the plants being taken, as this resource belongs to the State.

Section 261F has been inserted to clarify that a person may move a restricted plant, in and out of Queensland, or within Queensland, if the plant is to be used for their own personal use. The purpose of this amendment is to de-regulate the movement of plants, if the plant is being used for the persons on use. This amendment is only required for restricted plants, as all movement of least concern plants is exempt under the regulation.

Section 261G has in part been carried over from the unamended Wildlife Management Regulation and inserted to allow for a person to use a whole restricted plant that has been propagated in an approved way by the holder, or relevant person for the holder, of a protected plant harvesting or growing licence, or by a person acting under an exemption. The purpose of this amendment is to generally enable use of a plant, for any purpose, for any plant that was propagated in an approved way from a restricted plant taken under a licence or exemption. However, a stock plant is not considered to be propagated in an approved way, if the plant is divided less than 12 months after it was taken from the wild. It also states that if asked by a conservation officer, the propagator must, unless the propagator has a reasonable excuse, give the officer details about the source of the reproductive or propagative material used in the propagation, and the date on which the material was obtained. The intention of

this provision is prevent a person from misusing plants or placing additional pressure on whole plants harvested from the wild. This amendment is only required for restricted plants as the use of least concern plants is exempt under the regulation under 261K.

Section 261H has in part been carried over from the unamended Wildlife Management Regulation and inserted to allow a person to use restricted plant parts that have been cultivated using only reproductive or propagative material, that was obtained lawfully and under controlled conditions, for the holder, or relevant person for the holder, of a protected plant growing or harvesting licence, or by a person acting under an exemption. It also states that if asked by a conservation officer, the cultivator must, unless the cultivator has a reasonable excuse, give the officer details about the source of the reproductive or propagative material used for the cultivation. The purpose of this amendment is to enable the use of the restricted plant parts that have been cultivated, under a licence or an exemption, for any purpose. This amendment is only required for restricted plants as the use of least concern plants is exempt under the regulation. This does not remove the trade requirements under division 6 of the regulation if the person intends to use the plants for trade.

Division 4 Exemptions for taking and using particular protected plants

Subdivision 1 preliminary

Section 261I outlines the purpose of division 4 and that this is about providing exemptions for taking and using particular protected plants for particular purposes or in particular circumstances.

Section 261J specifies the application of exemptions under division 4. This amendment has been inserted to ensure that an exemption under this division does not authorise a person to take a protected plant if the taking would require the person to hold a protected plant clearing permit under part 4A. The intention of this amendment is to clarify that an exemption cannot be given if the clearing activity requires a clearing permit.

Subdivision 2 Exemptions for taking and using whole protected plants and protected plant parts

Section 261K inserts an exemption for a person to take by harvest and use a protected plant that is least concern wildlife, other than a special least concern plant, without a protected plant licence, only if the person, when taking the plant, ensures the taking does not impact on a plant that is endangered, vulnerable or near threatened wildlife growing in close proximity. This amendment supports the simplified and risk based approach to regulation, by in most circumstances removing regulation relating to protected plants classified as ‘least concern’, as these activities are not considered to pose a significant risk to plant biodiversity. However, where the take of a least concern plant directly impacts on an endangered, vulnerable or near threatened plant, this activity is considered to be taking an endangered, vulnerable or near threatened plant which requires a protected plant clearing permit or harvesting licence under the regulation.

A plant taken under this section can be used for any purpose however a person cannot take a plant under this section for the use of the land for which the plant is growing.

The intention of this section is to stop someone using this exemption as a way to take by clearing least concern plants in a high risk area when they would otherwise need to do a flora survey and potentially apply for a clearing permit because they intend use or access the land

on which the plants are growing. This exemption must not be used as a way of removing plants to avoid other regulatory obligations.

Section 261L is inserted to make it clarify existing provisions of the *Biodiscovery Act 2004* and make it clear that a person may take and use a whole protected plant or plant part under a collection authority under the *Biodiscovery Act 2004*.

Section 261M inserts an exemption to give the chief executive the ability to take and use a protected plant for conservation purposes. This exemption was provided previously under the Conservation Plan and the exemption is carried over to the Amendment Regulation as this section may continue to be relevant in certain circumstances where it is necessary for the chief executive to take a protected plant for conservation.

Section 261N inserts an exemption for Queensland Herbarium employees to take and use a protected plant, for the purposes for which the Queensland Herbarium was established. The Queensland Herbarium is the government body responsible for research and information on Queensland ecosystems, plants, fungi and algae, and is required to take and use protected plants for research or identification purposes. A person under this exemption must not use a protected plant for trade.

Section 261O inserts an exemption for taking particular plants for a conservation or regeneration program and has been carried over from the Conservation Plan. Under this section a landholder may take the seed or propagative material from vulnerable, near threatened, special least concern and least concern plants, or near threatened, special least concern or least concern whole plants, from their land or land directly adjacent to their land, for use in a conservation or revegetation program. The landholder must not use the whole plants, seed or other propagative material taken for trade. The intention of this provision is to enable a landholder to take or use protected plants to improve their conservation outcomes on their land, without the need of a protected plant permit or licence. This section applies to protected plants, except endangered plants, as it is not intended to be subject to the requirements of s261K. Any take and use of endangered plants for any purpose would require a protected plant permit or licence.

Section 261P inserts for an exemption for taking or using protected plants for grazing activities. The landholder of private land may take and use a protected plant on the land if the plant is consumed by stock on the land, and the grazing activity is authorised or permitted under another Act. A person may take and use a protected plant on State land if the plant is taken by stock grazing under a lease, licence, permit or other authority, or an exemption, given under another law. This amendment maintains an exemption that was provided previously under the Conservation Plan, while also ensuring the exemption will apply to both State and private land under the Amendment Regulation. The purpose of this exemption is to clarify that a permit is not required for stock grazing on the land to consume protected plants and is not subject to other requirements for the take and use of protected plants under this division. This exemption does not allow a person to take protected plants to feed the stock, or to use a protected plant taken under this section for trade.

Section 261Q inserts an exemption for the Australian Defence Force taking and using particular protected plants. The purpose of this exemption is to enable a member of the Australian Defence Force to take and use a least concern, special least concern and near threatened plant for food during survival exercises, if the plant is taken under a military

standing order, is on private land with the permission of the landholder, or under a permit or other approval under the Forestry Act 1959. This exemption was provided previously under the Conservation Plan for least concern protected plants and has been amended to include special least concern plants and near threatened plant species. The purpose of this amendment is to ensure that a member of the Australian Defence Forces can take and use a plant for food without the need for a protected plant permit or licence, and is not subject to other requirements for the take and use of protected plants under this division. This exemption does not allow a person to take and use a protected plant for trade.

Section 261R inserts an exemption for taking or using a marine plant lawfully taken under the Fisheries Act 1994 or the plant is a special least concern plant. The purpose of this amendment is to maintain an exemption that was provided previously under the Conservation Plan for least concern plants and to clarify that this also includes special least concern plants.

Subdivision 3 Exemptions for taking and using protected plant parts

Section 261S inserts an exemption for taking protected plant parts for identification or an educational or scientific purpose. The purpose of this section is to specify the circumstances when a protected plant parts can be taken for identification or an educational or scientific purpose, and includes to enable the chief executive to grant a person a wildlife authority for the protected plant, a flora survey, for a record that may be kept by the Queensland Herbarium, or to carry out an environmental impact assessment study under an Act, as condition of an approval by a government entity or to ensure the person complies with the general environmental duty under the Environmental Protection Act 1994. A person may take up to two specimens from a protected plant. The purpose of this amendment is to allow for the correct information to be collected to enable identification of the plant to ensure impacts can be correctly assessed.

Under s261S(4) a person cannot take more of the protected plant that will fit on a standard sheet of herbarium paper unless the person reasonably believes the plant exhibits special life forms and might not be correctly identified if a smaller part of the plant was taken, and the taking will not cause the death of the plant. The purpose of this amendment is to ensure the taking for identification does not impact the species or result in the death of the plant. Section 261S(5) establishes that a person must complete specimen label for each specimen taken before leaving the place where the specimen is taken and give each specimen to the Queensland Herbarium with a period of 28 days. The purpose of this amendment is to ensure that any specimen taken for identification purposes or educational or scientific purposes must be labelled and sent to the Queensland Herbarium for analysis within 28 days in order be exempt under this section. The period of 28 days is the maximum allowable time, however this does not remove the requirement for a person to submit the specimen to the Queensland Herbarium as soon as is reasonably practicable, and ensure the integrity of the specimen so that this is able to be analysed for the purposes of identification. This amendment is necessary to allow for the taking of any specimens for identification, or for an educational or scientific purpose and that specimens are submitted with a certain timeframe. This section also inserts definitions for specimen, specimen label and standard sheet of herbarium paper to clarify what these terms mean in this section.

Section 261T establishes an exemption for taking or using protected plant parts, other than plant parts that are endangered wildlife. The purpose of this amendment is to outline the circumstances where a person is exempt to take and use seed and propagative material, and other plant parts. Under subsection (1) a person may take and use a part from a protected

plant, other than a plant that is endangered wildlife, if the person is the landholder of the land from which the plant part is taken, or has the landholder's written permission to take the plant part, and takes no more of the plant part from a species of plant than the quantity of the plant part that is specified for the species in the protected plants code of practice. If the person is trading the plant, trade requirements will apply under division 6. Under subsection (2), if a person takes seed or other propagative material from a relevant plant under subsection (1), the seed or other propagative material must not be used for trade.

A relevant plant means a plant of the family Cycadaceae or a plant of the family Zamiaceae. The intention of this subsection is also to ensure that previously exempt activities under the unamended regulation continue to be exempt under the Amendment Regulation. This exemption does not allow for the take or use of any plant parts including seed and propagative material from an endangered plant for any purpose. The take of seed or other propagative material from a relevant plant can only be taken for a purpose other than trade. This is because relevant plants face particular types of commercial pressure, and therefore take of plant parts for trade purposes would place further pressure on these species.

However, a person who is a member of a recreational plant society may use the seed or other propagative material of a relevant plant for trade only if the person sells the plant part, or plants propagated from the plant part, at an annual show or meeting of the society that is open to the public and the sale price is not more than a reasonable amount to meet the costs of propagating or taking the plant. The intention of this section is to only allow for the trade of these plant parts of a relevant plant where the propagated plants are being sold at meetings of the recreational plant society, and they are only be sold to cover costs of the propagation i.e. they cannot be sold at a profit. All other requirements would apply to the take and use of plant parts under this section. In particular, nothing in this section allows a person to take and use a sandalwood plant other than its leaves and twigs. This amendment carries over in part an exemption provided previously for private land under the Conservation Plan and has extended this to capture State land. The code of practice lists the requirements for taking plant parts, and outlines the quantities of plant parts that are able to be taken under this exemption.

Section 261U inserts an exemption for taking and using particular protected plant parts for fodder. This exemption enables the landholder of private land to take or use parts of a protected plants other than a plant that is endangered or vulnerable wildlife on the land without a protected plant licence, provided the plant parts are taken or used for fodder for stock on the land they were taken from, the keeping of the stock on the land is authorised under another Act or law, or the taking is in a course of an activity authorised under the *Vegetation Management Act 1999* or otherwise complies with the protected plants code of practice. Also, a person may take and use parts of a protected plant that is least concern, special least concern and near threatened wildlife on State land if the plant parts are taken or used for fodder for stock on the land under a lease, licence, permit or other authority given, or an exemption, granted under another law and the taking is in the course of an activity done for fodder harvesting under the *Vegetation Management Act 1999*.

This amendment carries over an exemption that was previously provided under the Conservation Plan for private land, and has extended this to State land. The intention of this amendment is to ensure that the taking of protected plant parts, excluding endangered plant parts, is exempt for the purposes of fodder harvesting where this is being used for the stock

and is an authorised activity under another Act or law. A person must not use a protected plant part taken under this section for trade.

Section 261V inserts an exemption for taking protected plant parts for sick, injured or orphaned wildlife. This exemption enables a person to take least concern, near threatened or special least concern plant parts for the care of sick, injured or orphaned protected animals, and if the person holds a rehabilitation permit for the animal or is a veterinary practitioner, specialist or surgeon, or a person acting on behalf of one. The purpose of this exemption is to carry over an exemption for wildlife carers, provided previously under the Conservation Plan and extend this all veterinary practitioners, specialists or surgeons, or a person acting on behalf of these professions, and requires plant parts for the rehabilitation of the wildlife. A person taking and using a plant part under this section must carry a copy of the person's rehabilitation permit and must not use a protected plant part taken under this section for trade.

Section 261W inserts an exemption for the taking or using of protected plant parts by way of operational salvage. This exemption allows for the take and use of restricted plant parts by way of operational salvage and that a person may use the plant parts for any purpose. This amendment is necessary to allow for the take and use of plants that are to be destroyed as part of a clearing activity. The amendment also specifies that this exemption does not apply to the take and use of sandalwood under operational salvage, other than leaves, twigs, or propagative material. This amendment is required to reduce the illegal whole plant harvest of sandalwood by closing an existing loophole in the legislation.

Division 5 Exemptions for taking protected plants when clearing

Subdivision 1 Preliminary

Section 261X outlines the purpose of division 5, and that this is to provide exemptions for the taking of protected plants when clearing protected plants in particular circumstances.

The intention of this division is to consolidate all provisions relating exemptions for clearing activities, in the one location within the regulation. This in part is to give effect to the policy intent to simplify the regulation to improve usability and understanding.

Section 261Y outlines the application of exemptions under division 5. The purpose of this amendment is to make clear that the take of a plant under this division does not generally allow the use of the plant and unless this is specifically provided for under this division. A person can use a least concern plant, other than a special least concern plant, that has been taken under an exemption and use this for any purpose, including trade. A person can use a special least concern plant to transplant this somewhere else within the vicinity of the land from which it is taken, or if it is to be used or given away for a conservation purpose. The intent of this provision is to allow landholders to move or transplant special least concern plants if this has a conservation benefit or they need to use the land for another purpose and these plants would otherwise be destroyed. A special least concern plant taken under an exemption cannot be used for trade. A protected plant part taken by way of operation salvage can be used for any purpose. This is because the plants would otherwise be destroyed, and therefore, no quantity limits or restrictions are placed on how plant parts can be used under this division.

Subdivision 2 Exemption for taking protected plants in an area other than a high risk area

The purpose of subdivision 2 is to specify the circumstances where a person does not require a protected plant clearing permit for taking protected plants in an area other than a high risk area and the circumstances this is allowed for.

Section 261Z establishes that a person may take a protected plant by clearing, if, for a person who is a proponent for a project for which an environmental impact statement is required under a relevant Act, the proponent has received or obtained a copy of the flora survey trigger map for the area to be cleared on or after the relevant terms of reference date, or, for any other person, the person has received or obtained the flora survey trigger map for the area to be cleared and the area to be cleared is not within a high risk area. This applies if the person is not aware of the presence of any plants that are endangered, vulnerable or near threatened plants in the area to be cleared or, if they are aware of the presence of plants that are endangered, vulnerable or near threatened wildlife in the area to be cleared, no clearing occurs either of the plants themselves or within 100m of the plants.

The purpose of this provision is to clarify the circumstances when a clearing permit is not required in an area that is not a high risk area. A person can clear without a protected plant clearing permit in an area outside a high risk area if the person has received or obtained a copy of the flora survey trigger map that shows the area to be cleared is not within a high risk area, and the person is not aware of the presence of any endangered, vulnerable or near threatened plants in the area to be cleared or there is no clearing within 100m of known endangered, vulnerable or near threatened plants. For a proponent for a project for which an environmental impact statement is required, and the conditions outlined in the paragraph above are met, a clearing permit is not required if the clearing happens within 5 years from the relevant terms of reference date. The intention of this amendment is to give projects subject to environmental impact assessment a longer period for clearing to occur, to accommodate the longer timeframes associated with the assessment processes for these projects. It is not the intention of this section to amend or influence survey requirements that are required under the environmental impact assessments, and the environmental impacts that must be assessed under these legislative processes. For the purposes of this exemption, a relevant Act means the Environmental Protection Act 1994, the State Development and Public Works Organisation Act 1971 and the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth). For any other person, a clearing permit is not required if the clearing happens within 12 months after the date the person receives or obtains a copy of the flora survey trigger map. The purpose of this amendment is to clarify that a person has a period of 12 months under this exemption to clear the area.

If a person clears during the relevant period under this exemption, they must keep a copy of the trigger map for a period of 5 years from the date clearing occurred. This is to ensure that a person must be able to provide the appropriate evidence that they checked the flora survey trigger map, and that the clearing was exempt at the time of clearing.

Subsection (3) specifies that despite subsection 255(2) and 255(4), a copy of a flora survey trigger map received or obtained by a proponent for the purposes of this section is valid for 5 years from the relevant terms of reference date.

If a person has not commenced the clearing within the relevant period prescribed, the intention of this amendment is to ensure that a person must check the flora survey trigger map again to determine if their requirements have changed.

This amendment means that if a person has checked the flora survey trigger map and the clearing is not in an identified high risk area and they have no knowledge of the presence of endangered, vulnerable or near threatened plants, the person may clear the area under the regulation without the need for a clearing permit. This forms an essential component of the risk based approach, where the clearing activities that are considered lower risk are provided an exemption under the regulation, providing significant benefits to landholders, business and government. However, it is not the intention of the amendment to exempt a person from the requirement of a clearing permit, where a person knows there are plants that are endangered, vulnerable or near threatened wildlife within the clearing impact area, even if the clearing is outside a high risk area. In these circumstances, a person would still be required to apply for a clearing permit. This is because, under the Act, where a person knows of the presence of a plant that is endangered, vulnerable or near threatened wildlife, they have an obligation to demonstrate that these species will not be adversely affected by the clearing. This will also assist in compensating for the gaps in official records of species presence and help to improve conservation outcomes.

Subdivision 3 Exemption for taking protected plants in any areas

The purpose of subdivision 3 is to specify the exemptions for taking protected plants in any area, including where a person does not require a protected plant clearing permit for taking protected plants. Exemptions that are no longer necessary under a risk based approach have also been removed and /or consolidated within new exemptions.

Section 261ZA inserts an exemption for taking a protected plant after a flora survey report is given to the chief executive. A person may take a protected plant in any area by clearing if the person has given a flora survey report for the clearing impact area to the chief executive and the report identifies that plants are endangered, vulnerable and near threatened wildlife were not present in the clearing impact area, or they were present in the clearing impact area but the plants will not be cleared and there will be no clearing within 100m of the plants. This amendment is required to ensure consistency with the risk based approach, whereby if the flora survey has identified that the clearing activity will avoid plants that are endangered, vulnerable or near threatened wildlife or their supporting habitat, then the activity is considered to be low risk and a clearing permit is not required.

Under this section, a person must give the flora survey report to the chief executive at least one week before the person starts clearing and not later than 12 months after the survey is undertaken for the report was completed. This is to be submitted to the chief executive using an online system on the department’s website, or by some other way, such as by mail. Once this has been given to the chief executive, a person will have 2 years within which the clearing must be conducted. This timeframe has been selected to be consistent with the length of time provided for under a clearing permit. The purpose of this amendment is to clarify that a flora survey cannot be more than 12 months old, and will need to be submitted at least 7 days before clearing is to commence so that the department knows that a flora survey was undertaken and a clearing permit is not required. This is also required from a compliance perspective, so that the department is able to determine where clearing in a high risk area is in breach of the regulation.

Section 261ZB inserts an exemption for taking protected plants from an area from which plants have already lawfully taken. A person may take a protected plant in any area by clearing if the taking is within an area from which the plants have already been taken under a protected plant clearing permit granted under part 4A of the regulation, an exemption under

section 261ZA(1) and within the period mentioned in section 261ZA(4) or an authority mentioned in section 261ZF. The taking must only be to the extent that was authorised as lawful taking and happens within 10 years from the granting of the clearing permit, or from the day the chief executive is given the flora survey report, or from the granting of the authority.

The purpose of this amendment is to reduce the need for an applicant to reapply for the same clearing activity, if the activity is to re-clear plants that have already been lawfully cleared under a clearing permit, the relevant exemption or another authority. This applies consistency across permits, authorities and exemptions, for where impacts to protected plants have been considered and either have been addressed or avoided, a person will be able to re-clear to the extent that has been authorised. It is not the intention for this to apply to all exempt activities, but rather, only where a flora survey has been conducted and this shows that the clearing can avoid all impacts to plants that are endangered, vulnerable or near threatened wildlife or these plants were not present, and the flora survey report was given to the chief executive within the permitted timeframes.

This means that a person will have a period of 2 years to clear plants under the clearing permit, relevant or authority and will be eligible to re-clear plants for a period of up to 10 years (i.e. an additional 8 years from the expiry of the permit, exemption or authority). However, if a person does not clear within the timeframes permitted under the permit, exemption or authority, then the take of plants would not be lawful and this exemption will not apply.

Section 261ZC inserts an exemption for taking protected plants for particular maintenance activities. A person may take a protected plant in any area by clearing if the taking is for any of the following maintenance activities for an existing land use of the area and is for routine maintenance of existing infrastructure, is for maintenance in the course of a plantation management activity on land that was previously lawfully clearing or is for maintenance in the course of a cropping activity on land that was previously lawfully cleared.

Under this section, land use of an area means a use of the land in the area that is a lawful use of the land under another Act. The intention of this definition is to clarify that the exemption only applies where the land use is already existing and approved. Any changes in land use that would require a new approval, would not be eligible under this provision.

A cropping activity means an activity undertaken in connection with the management of a cropping area, including site preparation, weed control, harvesting and debris clearing. The intention of this definition is to clarify that this section applies to any activity associated with a cropping activity, if it for maintenance of that cropping activity. Therefore, if an activity is not in connection with the cropping activity, for example, it is to establish or upgrade infrastructure such as a building a new fence line, this is not exempt.

A plantation management activity means an activity undertaken in connection with the management of a tree plantation, including site preparation, weed control, harvesting and harvest debris clearing. The intention of this definition is to clarify that this section applies to any activity undertaken in connection with a plantation management activity, if it is for the maintenance of the plantation management activity. Therefore, if an activity is not in connection with the plantation management activity, for example, it is to establish or expand

the plantation or to provide new points of access, this is not exempt. If the clearing is required to maintain existing plantations, for example, to harvest the timber, this is exempt.

Routine maintenance of existing infrastructure means maintenance done for an electricity entity under the *Electricity Act 1994* that is necessary to maintain infrastructure established under that Act for the generation, transmission or distribution of electricity, or necessary to maintain infrastructure within the meaning of the *Transport Infrastructure Act 1994*, or necessary to maintain other infrastructure including any core airport infrastructure, buildings, fences, helipads, oil and gas pipelines, roads, stockyards, vehicular tracks, water pipelines, watering facilities and constructed drains other than contour banks. The intention of this definition is to clarify the types of infrastructure for which maintenance clearing would be exempt. Infrastructure that is not listed under this definition is not exempt. Examples of routine maintenance include, slashing, mowing, pruning or trimming of plants. Therefore routine maintenance of existing infrastructure should generally not involve clearing that will result in the death of a whole plant, unless the plant needs to be removed as part of the operation. It is not the intention of this section to provide an exemption for clearing required for the construction of new infrastructure, or the expansion of existing infrastructure. This would be considered as new clearing, and would not be exempt under this section.

The purpose of the amendment is to ensure that an applicant does not need to apply or reapply for a clearing permit for continuous clearing activities necessary for maintenance of existing infrastructure, plantation management activities or cropping activities, for which the clearing occurred prior to the commencement of this section.

Section 261ZD inserts an exemption for taking protected plants for a firebreak or fire management line. Under this section a person may take a protected plant in any area by clearing if the taking is for establishing or maintaining a necessary firebreak to protect infrastructure which is not a fence, road or vehicular track, if the maximum width of the firebreak is equivalent to 1.5 times the height of the tallest vegetation adjacent to the infrastructure or 20m (whichever is greater); or establishing a necessary fire management line if the maximum width of the line is 10m.

The purpose of this amendment is to allow landholders to clear protected plants in order to establish a firebreak or fire management line for safety purposes, in any area regardless of whether this is mapped as high risk on the flora survey trigger map. The intention is not to exempt any clearing activities that involve fire, but to restrict this to particular types of fire management activities that are necessary to protect structural infrastructure. A person cannot use fire to clear for fence lines, roads or vehicular tracks under this exemption to remove the need for a clearing permit.

Section 261ZE inserts a new exemption for taking protected plants under a self-assessable vegetation clearing code. Under this section a person may take a protected plant in any area by clearing if the taking complies with the requirements of a self-assessable vegetation clearing code that applies to the area, for thinning, managing weeds or managing encroachment.

The purpose of this section is to reduce duplication and provide consistency with the *Vegetation Management Act 1999* where reasonable and appropriate. Therefore, where an activity has been conducted in a way that is authorised under the *Vegetation Management Act 1999* for thinning, managing weeds or clearing encroachment; a protected plant clearing

permit will not be required, even if the clearing activity is in a high risk area. Where thinning, managing weeds or clearing encroachment does not comply with the self-assessable code under the *Vegetation Management Act 1999* or is not subject to the *Vegetation Management Act 1999*, this exemption does not apply.

Section 261ZF inserts a new exemption for taking a protected plant if authorised under another Act of law. Under this section a person may take a protected plant in any area by clearing if the taking has been assessed and authorised under another law in a way that complies with the protected plants assessment guideline; the taking is only to the extent authorised under the other law; and at least 7 days before the taking starts person gives the chief executive written notice of the taking and a copy of the authorisation for the taking under another Act.

The intention of this section is to reduce duplication by allowing for integration with other assessment frameworks, provided that protected plants have been assessed and authorised under another Act or law in a way that meets the requirements under this regulation. It is not the intention of this section to provide an exemption for any clearing activity that may be authorised under other Act or law, but to provide an exemption if the taking of protected plants complies with the protected plants assessment guideline and that it is only to the extent that was authorised under the other law. This means that if the clearing activity is subject to another approval process, under this section, a person has the option to have an exemption from a clearing permit requirement, if the taking of a protected plant assessment and authorisation complies with the protected plants assessment guideline. A person must provide written notice of the taking and a copy of the authorisation at least 7 days prior to the clearing. This is generally required from a compliance perspective, so that the department is notified that the take is lawful, prior to the clearing commencing.

Section 261ZG inserts an exemption for taking protected plants for conservation purposes. Under this section a person may take a protected plant in any area by clearing if the taking is for a conservation purpose only and causes only disturbance to protected plants only to the extent necessary. The purpose of this exemption is to remove the need for flora survey and a protected plant clearing permit, if the take is for a conservation purpose, and is only to the extent necessary to achieve that purpose. The take needs to be done in a way that causes minimal disturbance only, and must not be used as a reason to take protected plants for where a clearing permit would otherwise be required. Therefore, for example, where a weed management activity is required to improve the conservation outcomes for protected plants, and this may require some clearing of protected plants in the area to be managed, this would be exempt. If the weed management activity is to improve pasture and would require the take of protected plants, this would not be exempt under this section.

Division 6 Exemption for using restricted plants for trade

This clause also introduces a new division 6: Exemption for using restricted plants for trade to establish an exemption framework for trade in restricted plants. This Amendment Regulation clarifies, under 263, that a reference to a restricted plant is a reference to a whole restricted plant and a restricted plant part.

Section 261ZH establishes that division 6 is about providing exemptions for using restricted plants for trade (a protected plant trade exemption). The use of restricted plants for trade will be exempt provided that tag, label and record keeping requirements are complied with. This Division specifies the requirements that apply to all restricted plants used for trade.

Restricted plants are plants that are endangered, vulnerable or near threatened wildlife, or a plant that is least concern wildlife that is prescribed to be a special least concern plant (as mentioned in schedule 3A introduced by this Amendment Regulation).

The purpose of this amendment is to support the conservation of restricted protected plants and effective management of harvest threats following removal of the licencing regime (of the pre-amendment framework) for trade in restricted plants.

The record keeping, label and tag requirements that form part of the exemption for the use of restricted plants for trade are necessary to enable effective regulation of trade in restricted plants and minimise opportunities for unlawfully harvested plants to enter trade. They also support and assist in effective enforcement and protection of plant species that may be at risk from commercial demand and harvesting pressures.

With respect to least concern plants (other than special least concern plants), refer to section 261K as introduced by this Amendment Regulation. Section 261K provides an exemption for using least concern plants (other than special least concern plants) for trade. There are no further requirements associated with using least concern plants (other than special least concern plants) for trade.

Section 261ZI establishes that a person may use a restricted plant for trade only if they comply with the record keeping, labelling and tagging requirements introduced by this Amendment Regulation under sections 261ZJ, 261ZK, 261ZL and 261ZM of the Wildlife Management Regulation.

This clause also introduces a note under s261ZI to link to identification and information requirements for selling, giving away, buying or accepting protected wildlife under sections 337 and 338 of the Wildlife Management Regulation.

Section 261ZJ specifies, under subsection (1), who this section applies to, and, under subsection (2), that a person to whom this section applies must keep a protected plant trade record.

The persons required to keep a protected plant trade record are: a person who uses a restricted plant for trade; a person who harvests a restricted plant under an exemption under Chapter 4, part 3 (Exemptions for taking or using protected plants) of the Wildlife Management Regulation or a protected plant licence for a trade related purpose, or a person who moves a restricted plant a trade related purpose. This amendment also establishes that it is an offence if a person does not keep a protected plant trade record as required by s261ZJ(2).

This clause also introduces a note under s261ZJ(2) to create a clear link to the requirements for a protected plant trade record set out in part 6 of the Administration Regulation.

The purpose of this amendment is to ensure that where a restricted plant is used or intended to be used for trade, records of the origins and movement of restricted plants are kept by all persons involved in the harvest and use of a restricted plant. The requirement for a protected plant trade record will apply to all persons involved in the trade or movement of a restricted plant whether the plant is sourced directly from the wild or from a non-wild source (such as purchased from a wholesale nursery) from within Queensland or from another State. A

restricted plant ceases to be used for trade when it is acquired for a person's own personal use.

This amendment will enable the origin of a restricted plant to be traced through the protected plant trade records for the plant. As established by this Amendment Regulation through amendments to Administration Regulation, the particular information required to be recorded in a record is stated in the Protected Plants Code of Practice. The information required to be kept in a protected plant trade record will, at a minimum, need to be sufficient to enable a protected plant to be traced from the end use back to the origin (for example, wild harvested or propagated, including the source of the seed, propagative material or parent plant) and for all parties connect to the plant, from source to end use to be identified and located. This would include, for example, details about the use and trade of the plant, including where the plant is kept, moved from and too, all parties, including individuals and businesses, involved in the trade, when trade occurred, the type and number of plants involved in the trade, and any other information to assist in verifying the lawful origin of the plant, including for example, the species name, licence or exemption under which the plant was harvested or the parent material was sourced.

Section 261ZK inserts labelling of restricted plants for trade and specifies, under subsection (1), who this section applies to, and, under subsection (2), that a person to whom this section applies must not use the plant for trade or move the plant unless a label that complies with subsection (3) (an approved trade label) is attached to the whole plant, bundle of plant parts or container of plant parts. It establishes that it is an offence to trade, or move in relation to trade, a restricted plant without an approved trade label attached to the whole plant, bundle of plant parts or container of plant parts. Subsection (3) prescribes that the approved trade label must state the matters set out for the label under the Protected Plants Code of Practice; and be legible for the life of the label. A label is only an approved trade label if it complies with subsection (3). Subsection (4) establishes that it is an offence for a person to state anything in an approved trade label that the person knows is inaccurate or misleading in a material particular. This amendment establishes that it is an offence to trade or move a restricted plant if the approved trade label does not comply with this section.

A trunk, log, or timber of a sandalwood plant is considered to be a whole plant under section 7A. The purpose of this section is to clarify that an approved trade label does not need to be attached to a trunk, log, or timber of a sandalwood plant.

The purpose of this amendment is to support the conservation of restricted protected plants and effective management of harvest threats following removal of the licencing regime (of the pre-amendment framework) for trade in restricted plants. An approved trade label is in essence a public and visible declaration that a native plant has been lawfully obtained, from a wild or non-wild source, and supports continuity of lawful possession throughout the supply chain from harvest site to end user. The approved trade label will also make it easier for consumers to make an informed decision about the purchase of protected plants. This requirement is also intended to help minimise the opportunity for unlawfully harvested plants to be used for trade. In conjunction with record keeping requirements and official tags (where applicable), the approved trade label requirements will support and assist in effective enforcement and protection of native plant species that may be at risk from commercial demand and harvesting pressures. The information required by the Protected Plants Code of Practice to be stated on an approved trade label will be sufficient to enable, at a minimum, identification of the origin of the protected plant (e.g. wild harvested or propagated), the

species and, if wild harvested, whether it was harvested in Queensland or another State and whether it was harvested under a licence, exemption or other authority.

Section 261ZL introduces additional labelling requirements for a restricted plant being moved outside of Queensland, if the restricted plant is being used for trade. Subsection (1) specifies that section 261ZL applies to a person who trades or moves a restricted plant outside of the State. Subsection (2), specifies the process and requirements that a person must follow before trading or moving the plant. It also establishes that it is an offence to trade or move, for a trade related purpose, a restricted plant outside of Queensland without labelling the container used to trade or move the plants with the origin of the plants in the container.

Under this section all persons who trade or move (in relation to the use of a plant for trade) a restricted plant outside of Queensland will be subject to the additional labelling requirements. All containers—including shipping containers and containers on trucks or other vehicles for example—of restricted plants (whole or parts) being traded or moved out of the State for trade or in relation to the use of the plants for trade to be labelled or marked in a manner that clearly identifies the origin the plants within the container. The purpose of this amendment is to minimise the opportunity for unlawfully harvested or obtained restricted plants to be used for trade or transported out of the State and to support the conservation of restricted protected plants and effective management of harvest threats following removal of the licencing regime and movement permits and advice (of the pre-amendment framework) for trade and movement of restricted plants.

Section 261ZM provides the particular plants for trade to be tagged, and when this is required. A person who takes a whole restricted plant in the wild other than the trunk, log, or timber of a sandalwood plant, and uses or intents to use the plant for trade must attach an official tag to the plant before it is traded or moved. An official tag must be attached to the plant in addition to a harvest label and an approved trade label. A trunk, log, or timber of a sandalwood plant is considered to be a whole plant under section 7A. The purpose of this section is to clarify that an official tag does not need to be attached to a trunk, log, or timber of a sandalwood plant.

If the person has an official tag for the plant when the plant is taken, the person must attach the tag to the plant before it is moved from the place where it was taken. However, if the person does not have an official tag for the plant when the plant is taken, as soon as practicable after the plant is taken, the person must apply to the chief executive to be supplied with an official tag for each plant taken. The person may move the plant from the place where it was taken to another place in the State but must not otherwise use the plant. When the person receives an official tag for the plant the person must attach the tag to the plant. A person must not use the plant for trade unless an official tag supplied by chief executive for the plant is attached to the plant. A person must not remove an official tag from a plant unless the person starts using the plant for the person’s own personal use.

The purpose of this amendment is to clarify that a person must attach an official tag to the plant prior to moving the plant from the site of harvest, if the person has been supplied with a tag by the chief executive. If a person has not been supplied with an official tag for the plant by the chief executive, they must apply to the chief executive for an official tag for the plant as soon as practicable after harvest and cannot use or offer the plant up for trade, other than moving it from the site of harvest to another location within the State (but not outside of the

State), until an official tag, provided for the plant by the chief executive, is attached to the plant.

The person (or a person acting on behalf of the business or entity) who harvests a whole restricted protected plant is responsible for attaching the official label to the plant. That is, the plant must not change hands or become the possession of another person, business or entity until an official tag is attached to the plant by the harvester or business or entity responsible for the harvest.

It is an offence for a person to trade (sell, giveaway, exchange) a whole wild harvested restricted plant that does not have an official tag, supplied for it by the chief executive, attached to the plant. In addition, it is an offence for a person to trade (buy, obtain or take possession of) a whole wild harvested restricted plant that does not have an official tag, supplied for it by the chief executive, attached to the plant.

A person must not remove an official tag from a whole restricted plant, unless the plant has been obtained for the person's own personal use and will not be used for trade.

It is an offence for a person to attach an official tag to a whole restricted plant that the person knows, or reasonably suspects, has not been lawfully harvested from the wild.

The purpose of section 261ZM is to support the conservation of whole restricted plants by establishing requirements that enable tracing of wild harvested plants and quantification of the number of wild harvested whole restricted plants entering trade. It is also intended to maintain the visibility of legally harvested whole restricted plants, remove incentives for plants to be unlawfully harvested by minimising the opportunity for unlawfully harvested plants to enter trade.

Clause 34 Replacement of ch4, pt 4, hdg (Licences, permits and other authorities for taking or using protected plants)

This clause replaces the heading of chapter 4, part 4 of the Wildlife Management Regulation with 'Licences for protected plants' to specifically list the provisions relating to licences for protected plants.

Clause 35 Replacement of ch 4, pt 4, divs 1-3

This clause replaces chapter 4, part 4, divisions 1 to 3 of the Wildlife Management Regulation with new divisions and sections for licences for harvesting of protected plants.

Division 1 Purpose

Clause 35 inserts a new section 262 to introduce subsection (1) to outline the purpose of chapter 4 part 4, which is to ensure that the grant of a licence for the taking of a protected plant does not adversely affect the conservation of protected plants, and subsection (2), which details how this purpose is to be achieved.

To ensure that the grant of a licence for a protected plant does not adversely affect the conservation of protected plants, the chief executive can grant a licence for a protected plant only in limited circumstances; the activities that a person is authorised to do under a licence

for a protected plant will be limited; and the activities of persons acting under a licence for a protected plant will be regulated.

Section 263 is introduced to clarify that, in this part, unless otherwise stated a reference to a protected plant (including a restricted plant), or type of protected plant (including a type of restricted plant), is a reference to the whole plant and to parts of the plant. The purpose of this amendment is remove any doubt that a reference to a protected plant includes the whole plant and plant parts.

Division 2 Protected plant growing licence

Clause 35 also inserts division 2, to outline particular requirements relating to a protected plant growing licence.

Subdivision 1 Purpose of licence

Section 264 establishes that the purpose of a protected plant growing licence is to allow a person to take a whole restricted plant or part of a restricted plant for cultivating the restricted plant, or propagating the restricted plant part in controlled conditions. A definition for controlled conditions is introduced to schedule 5 (Dictionary) through this Amendment Regulation. This concept as it applies to propagation and cultivation of protected plants is carried over from the current framework.

A protected plant growing licence is needed to harvest certain protected plants from the wild specifically for the purpose of cultivation or propagation. A protected plant growing licence is not required to propagate or cultivate protected plants obtained from a non-wild source (even if the plants or parts were lawfully sourced by another party from the wild) nor is a protected plant growing licence required to “grow-on” protected plants to a stage or size where they are suitable for trade.

The section clarifies that a restricted plant taken under a protected plant growing licence can only be used for the purpose of propagation and cultivation, under controlled conditions. Plants harvested under a protected plant growing licence cannot be used for any other purpose. However, the offspring, progeny or parts of plants harvested under a growing licence may be used for any purpose. This section does not remove trade requirements if plants are being used for trade.

Subdivision 2 Restrictions on grant

Clause 37 also introduces a new subdivision on restrictions on grant, to set parameters on the issue of a protected plant growing licence.

A note is inserted under this subdivision to reference section 137 of the Act. The purpose of this amendment is to provide a link to the additional restrictions under the Act, where a licence must be consistent with management principles, and a management intent or plan under the Act.

Section 265 establishes the general restrictions on grant of a protected plant growing licence. Subject to subdivision 2, the chief executive may only grant a protected plant growing licence for the taking of a restricted plant, if the chief executive is satisfied that, if the licence relates to the taking of whole plants to be used as stock plants, there is a need to introduce the plant into cultivation for commercial purposes or replenish or supplement the genetic variation of the plant already in cultivation, and the application has the necessary knowledge, facilities

and resources to propagate the plants and use the progeny of the plants. The chief executive must also be satisfied that the taking is ecologically sustainable and will not adversely affect the plant's survival in the wild, and complies with the protected plants assessment guidelines.

The purpose of this amendment is to clarify that under a protected plant growing licence, the take of whole plants is only permitted if these plants are to be used as stock plants i.e. for cultivation or propagation, and not for any other purpose. This section also clarifies that whole plants can only be taken for stock purposes, if there is a commercial need to introduce the plant into cultivation, or the person needs to new plants of that species to improve the genetic variation of that species already in cultivation. This means that whole plants cannot be taken for stock purposes if there is no commercial driver for the plant to be cultivated. An applicant must have the appropriate knowledge, facilities and resources. This is to ensure that whole plants are legitimately being harvested from the wild for growing purposes, and the progeny of the plants are being used appropriately, thereby reducing demand and pressure on wild harvested whole plants.

A protected plant growing licence will not be granted if the proposed taking is not sustainable, and affects the ability of the species to survive in the wild. This means that while individual plants may be harvested from the wild under this licence, this must be demonstrated to be sustainable and will not be allowed if the harvest adversely impacts on the extent or distribution of the species population from where the plant was taken. All applications for a licence will need to comply with the assessment guideline.

Section 266 inserts a restriction on grant of licence for salvage. This establishes that the chief executive must not grant a protected plant licence for the taking of whole protected plants only by way of salvage. The purpose of this amendment is to clarify that a person operating under a growing licence is not permitted to take whole protected plants under salvage and a growing licence cannot be granted for that purpose. This is because a protected plant growing licence only authorises the take of whole protected plants for stock purposes, and does not require the same level of knowledge, skills and resources to harvest whole protected plants as is required under a protected plants harvesting licence. Therefore a person is only able to take a whole protected plant by way of salvage under a protected plant harvesting licence.

Section 267 inserts a restriction on grant of licence to take seeds or propagative material from particular protected plants. This section applies to the following protected plants, each a relevant plant, from the family Cycadaceae or the family Zamiaceae (both are types of Cycads) or any protected plant that is endangered wildlife. This section establishes that chief executive must not grant a protected plant growing licence to take seed or other propagative material from a relevant plant unless the chief executive is satisfied the holder, or the relevant person for the holder, is able to identify the plant.

A relevant person is defined under the Administration Regulation.

The purpose of this amendment is to provide particular restrictions on relevant plants, as the seeds and other propagative parts of these plants face particular harvesting pressure, due in large part to their biological traits and commercial value. Therefore, unless the person knows how to identify these plants, the chief executive must not approve the take of seed and other propagative material from relevant plants.

Section 268 establishes that the chief executive may require preparation of sustainable harvest plan. Under this section, the chief executive may require the applicant for a protected plant growing licence to prepare a sustainable harvest plan to demonstrate that the proposed level of harvest is ecologically sustainable, provides a benefit for the conservation of the species of protected plant proposed to be taken under the licence. An example of a conservation benefit includes increasing the extent or abundance of the wild population or improving knowledge of species biology. Subsection 268(2) is inserted to clarify that if the chief executive requires the preparation of a sustainable harvest plan, the chief executive must not grant a protected plant growing licence until the chief executive has approved the plan. The chief executive may approve a sustainable harvest plan only if the plan demonstrates the matters outlined in subsection 268(1) and states the information required under the protected plant assessment guideline.

The purpose of this amendment is to clarify that a person applying for a protected plant growing licence may be required by the chief executive to submit a sustainable harvest plant as part of their application, to demonstrate that the take is sustainable or provides a conservation benefit. Where a sustainable harvest plan is required, this amendment ensures that the chief executive cannot approve a growing licence unless the harvest of whole plants from the wild is demonstrated under the plan to be sustainable or provides a conservation benefit.

Subdivision 3 Activities authorised by licence

Section 269 establishes activities authorised by a protected plant growing licence. The holder of a protected plant growing licence, or relevant person for the holder, may take a restricted plant stated in the licence for cultivating the restricted plant, or propagating restricted plant parts, in controlled conditions. A note is also inserted to refer to part 3, division 6 for requirements for using plants for trade as a growing licence does not authorise the trade of restricted plants, and trade requirements may still apply.

A relevant person is defined under the Administration Regulation. The purpose of this amendment is to state that a protected plant growing licence allows the holder or relevant person for the holder to take whole restricted plant or plant parts stated in the licence for cultivating or propagating a plant, and only under controlled conditions. The licence is only required for restricted plants, as the take and use of least concern plants for harvest or growing are exempt under section 261K of the regulation. If a person wishes to trade in restricted plants that they have propagated under a growing licence, trade requirements under part 3, division 6 will apply.

Subdivision 4 Carrying out activities under licence

Section 270 establishes taking and using restricted plants under licence. A holder of a protected plant growing licence, or a relevant person of the holder, may take whole restricted plants under the licence to be used as stock plants, only if the taking complies with the protected plants code of practice. A holder, or relevant person for the holder, of a protected plant growing licence must not sell a plant taken under the licence, or give away a plant taken under the licence if the plant is to be used for trade. Examples of this include, giving away a plant taken under the licence to a person who intends to sell the plant, giving away the plant to a property developer who intends to use the plant for landscaping purposes in a property development, or giving away a plant to a person who has purchased, or otherwise intends to carry on, a licence holder’s business of growing plants. Nothing in this section restricts the

use of the progeny, or parts of the progeny, of restricted plants taken under a protected plant growing licence.

The purpose of this amendment is to ensure that a holder of a protected plant growing licence complies with the code of practice, and to be clear that they are not permitted to sell a whole plant or plant part taken under the licence, or give the whole plant or plant part to someone that intends to use this for trade. This is because, plants and plant parts taken under this licence have only been authorised to be taken as stock plants, for cultivation or propagation purposes. Therefore, if a person no longer intends to keep a plant taken under their licence, this can only be given away to another person for a purpose other than for trade i.e. for personal use, for conservation or educational purposes. However, this does not apply to the progeny of stock plants taken under a licence. If a person intends to sell whole plants or plant parts harvested from the wild, or give them away to someone for trade purposes, a protected plant harvesting licence would be required except where an exemption may apply.

Section 271 inserts taking of protected plants during a harvest period. This section applies if a holder of a protected plant growing licence, or a relevant person for the holder, may take a particular protected plant under the licence and a harvest period is declared for the plant. This section has been established to make clear that the holder, or relevant person for the holder, may only take the plant during the harvest period for the plant and must comply with the conditions stated in the harvest period notice. However a person does not have to comply with the harvest period notice if a plant is taken by way of salvage. The Amendment Regulation repeals the existing Harvest Period Notice, however retains the ability for the chief executive to declare a harvest period if required. The intention of this amendment is to ensure that if a harvest period is declared by the chief executive, any take of restricted plants authorised under a licence would be subject to the conditions stated in the harvest period notice.

Section 272 inserts compliance with sustainable harvest plan. The holder of a protected plant growing licence, or a relevant person for the holder, must comply with a sustainable harvest plan for the licence approved by the chief executive for the licence. The purpose of this amendment is to ensure that a holder, or relevant person for the holder of a protected plant growing licence complies with the sustainable harvest plan, and that what has been approved in the sustainable harvest plan is complied with when undertaking the harvest, after the authority has been granted.

Division 3 Protected plant harvesting licence

This clause inserts a new division 3 relating to a protected plant harvesting licence.

Subdivision 1 Purpose of licence

Section 273 inserts the purpose of a protected plant harvesting licence. The purpose of the protected plants harvesting licence is to allow a person to take a restricted plant in particular circumstances and use the plant to the extent authorised under the licence. This amendment clarifies that a person can use a plant taken under a harvesting licence, if this is authorised under their licence.

Subdivision 2 Grant of licence

This section introduces a new subdivision on restrictions on grant, to set parameters on the issue of a protected plant harvesting licence.

A note is inserted under this subdivision to reference section 137 of the Act. The purpose of this amendment is to provide a link to the additional restrictions under the Act, where a licence must be consistent with management principles, and a management intent or plan under the Act.

Section 274 establishes the restrictions on grant of licence. Subject to subdivision 2, the chief executive may grant a protected plant harvesting licence for the taking of a restricted plant only if the chief executive is satisfied that the applicant is the landholder or has the written approval of the landholder of the land on which the plant is located, the taking is ecologically sustainable and will not adversely affect the plant's survival in the wild, and the taking complies with the relevant provisions of the protected plants assessment guidelines. However, these requirements do not apply if the chief executive is satisfied the licence is only for the taking of whole restricted plants by way of salvage. Also, the chief executive may grant a protected plant harvesting licence for a restricted plant that has not been adequately identified only for the purpose of research, education or conservation.

The purpose of this amendment is to clarify the general requirements in which the chief executive must be satisfied in order to grant a protected plant harvesting licence. Before a licence can be approved, the applicant must be the landholder or have written approval of the landholder of the land on which the plants are located. This means that if the landholder does not consent to a person entering their property, or does not consent to a person taking plants from their land, a harvesting licence cannot be given for that plant.

A protected plant harvesting licence will not be granted if the proposed taking is not ecologically sustainable, and adversely affects the ability of the species to survive in the wild. This means that while plants may be harvested from the wild under this licence, this must be demonstrated to be sustainable and will not be allowed if the harvest adversely impacts on the extent or distribution of the species population from where the plant was taken. All applications for a licence will need to comply with the assessment guideline. However, if the taking of whole restricted plants is by way of salvage, it is not intended that these restrictions will apply as the plants would otherwise be destroyed under a clearing permit. A licence can also be granted for research, education or conservation even if the restricted plant has not been adequately identified.

Section 275 establishes particular restrictions on grant of licence for particular species or if threat exists. The chief executive must not grant a protected plant harvesting licence to more than one person for the same species of protected plant for the same place for the same period or if the proposed harvesting poses a threat of serious or irreversible environmental damage related to the taking of the plant. The purpose of this amendment is to ensure that only licence can be issued for the harvest of same species in the same area at any point in time. This means that if a person has already been given a protected plant harvesting licence for a particular plant in a particular area, another person cannot apply to harvest that particular plant in that particular area during the licenced period. Also, a harvesting licence cannot be granted if the take of plants poses any threat of serious or irreversible environmental damage.

Section 276 inserts a research and monitoring condition. This section applies if the chief executive grants a protected plant harvesting licence for taking protected plant parts. The chief executive may impose a research and monitoring condition on the licence requiring the holder of the licence to research and monitor the effects of taking plant parts under the licence, adopt an environmental management system and give a copy of the system to the

chief executive when it is adopted and each time it is significantly changed, establish one or more monitoring plots to sample all species of plants taken under the licence and carry out a yearly survey of the plants in the plots. The holder of the licence must comply with the research and monitoring condition and must give the chief executive within one month after each monitoring plot is established, a map or sketch showing the location of the plot, and within one month after each yearly survey, a statement containing the required information.

The purpose of this amendment is to outline the research and monitoring conditions which may be imposed under a protected plant harvesting licence for taking plant parts. This ensures that the chief executive has the ability to impose monitoring and research conditions on a protected plant harvesting licence if the chief executive deems this necessary.

Section 277 establishes that an applicant for a protected plant harvesting licence must prepare a sustainable harvest plan. Under this section, the applicant must to prepare a sustainable harvest plan to demonstrate that the proposed level of harvest is ecologically sustainable or provides a benefit for the conservation of the species of protected plant proposed to be taken under the licence. An example of a conservation benefit includes increasing the extent or abundance of the wild population or improving knowledge of species biology. Subsection 276(2) is inserted to clarify that the chief executive must not grant a protected plant harvesting licence until the chief executive has approved the plan. The chief executive may approve a sustainable harvest plan only if the plan meets the requirements outlined in subsection 276(1) and states the information required under the protected plant assessment guidelines.

The purpose of this amendment is to clarify that a person applying for a protected plant harvest licence will always be required to submit a sustainable harvest plant as part of their application, which will need to demonstrate that the take is sustainable or provides a conservation benefit. This amendment ensures that a harvesting licence cannot be granted, unless a sustainable harvest plan for the plant to be taken has been approved by the chief executive. This amendment gives effect to the policy intent to allow for the harvest of whole restricted plants from the wild, if the take is demonstrated to be sustainable.

Subdivision 3 Activities authorised by licence

Section 278 establishes activities authorised by protected plant harvesting licence. The holder of a protected plant harvesting licence, or relevant person for the holder, may take and use a restricted plant or plant part stated in the licence, to the extent authorised under the licence, and may also take any restricted plant by way of contingent salvage. A note is also inserted to refer to part 3, division 6 for using restricted plants for trade, as a harvesting licence does not authorise the trade of restricted plants.

The purpose of this amendment is to clarify that a holder of a protected plant harvesting licence is able to take and use whole restricted plant or plant parts to the extent authorised under the licence. A licence is only required for restricted plants, as the take and use of least concern plants for any purpose are exempt under section 261K of the regulation. If a person wishes to trade in restricted plants that they have harvested from the wild, trade requirements under part 3, division 6 will apply.

Subdivision 4 Carrying out activities under licence

Section 279 inserts taking of protected plants during a harvest period. This section applies if a holder of a protected plant harvesting licence, or a relevant person for the holder, may take a

particular protected plant under the licence and a harvest period is declared for the plant. This section makes clear that the holder, or relevant person for the holder, may only take the plant during the harvest period for the plant and must comply with the conditions stated in the harvest period notice. This section does not apply if a plant is taken by way of salvage. The Amendment Regulation repeals the existing Harvest Period Notice, however retains the ability for the chief executive to declare a harvest period if required. The intention of this amendment is to ensure that if a harvest period is declared by the chief executive, any take of plants authorised under a licence is subject to the conditions stated in the harvest period notice.

Section 280 establishes that a holder of a protected plant harvesting licence must comply with a sustainable harvest plan that is approved by the chief executive for the licence. The purpose of this amendment is to ensure that a holder of a protected plant harvesting licence complies with the sustainable harvest plan, and that what has been approved in the sustainable harvest plan must be followed when undertaking the harvest, after the authority has been granted.

Part 4A Protected plant clearing permit

This clause also inserts a new part 4A to outline the new requirements for a protected plant clearing permit.

Division 1 Purpose of part 4A

Section 281 outlines the purpose of this part 4A and how this will be achieved. The purpose of this new part 4A is to regulate the taking by clearing of protected plants, including plants that are endangered, vulnerable or near threatened wildlife. This purpose is to be achieved by ensuring areas where protected plants that are endangered, vulnerable or near threatened wildlife and their supporting habitat are present, or are likely to be present, are identified and assessed for risk before clearing. If clearing cannot avoid protected plants that are endangered, vulnerable or near threatened wildlife, then this will be achieved by regulating the impact on these plants through a protected plant clearing permit and ensuring any impacts on protected plants that are endangered, vulnerable or near threatened wildlife are managed, limiting the circumstances in which the chief executive can grant a protected plant clearing permit, stating the activities a person is authorised to do under a protected plant clearing permit and regulating the activities of a person acting under a protected plant clearing permit. In this section, avoid for a plant in an area being cleared, means the plant is not cleared and there is no clearing within 100m of the plant.

The intention of this section is to ensure a risk based approach is applied to clearing and establishes how this will be achieved. This ensures that areas where endangered, vulnerable or near threatened plants and their supporting habitat are present, or likely to be present, are identified and assessed for risk prior to approving a protected plant clearing permit. It is not the intention of this part to prohibit any clearing of plants that are endangered, vulnerable or near threatened wildlife, but to ensure any impacts to these plants are appropriately identified and assessed on the basis of risk.

Division 2 Purpose of permit

Section 282 inserts the purpose of a permit. The purpose of a protected plant clearing permit is to allow a person to take any protected plant within an area, by clearing the plant in circumstances where the clearing is for the use of the land on which the plant is located, the impacts of the clearing on protected plants that are endangered, vulnerable or near threatened wildlife have been identified, can be managed in a way that does not affect the survival of the

plants in the wild, and impact management measures are to be implemented. A protected plant clearing permit generally does not allow a person to use a restricted plant. A note has been inserted to refer to section 289(2) for circumstances for where a restricted plant can be used under a clearing permit.

The purpose of this section is to establish that a clearing permit allows a person to take any protected plant in certain circumstances. A clearing permit is required if a person intends to use the land on which the plants are located, and this will require directly clearing plants that are endangered, vulnerable or near threatened wildlife, or the clearing is within 100m of plants that are endangered, vulnerable or near threatened wildlife. Therefore, the purpose of the permit is not to allow a person to clear plants for which they intend to use for other purposes. The only circumstances that plants can be used if they are taken under the permit is under a salvage situation, or if this is conditioned as part of the clearing permit for example, if the clearing permit conditions that seed and other propagative material is to be used to propagate new plants to replace plants to be cleared.

Division 3 When a permit is required

This clause inserts a new division 3 to establish when a protected plant clearing permit is required.

Section 283 establishes when a protected plant clearing permit is required for a high risk area, and for an area other than a high risk area.

For a high risk area, a protected plant clearing permit is required for the taking of all protected plants present in the clearing impact area. This has been inserted to clarify that any taking of protected plants in a high risk area is subject to a clearing permit. This amendment also clarifies that the permit is required for the taking of protected plants within the clearing impact area. However, a clearing permit is not required if the clearing is exempt under the regulation.

For an area other than a high risk area, a protected plant clearing permit is required for the taking of all protected plants known to be present in the area to be cleared that is not within a high risk area.

The intention of this section is to clarify that a clearing permit is required in an area other than a high risk area, if a person knows of the presence of a plant that is endangered, vulnerable or near threatened wildlife and intends to clear those plants. This clarifies that a clearing permit is not required if a person is clearing in an area that is outside a high risk area, and is not aware of the presence of any plants that are endangered, vulnerable or near threatened wildlife in the area to be cleared. This amendment is also required to clarify that plants that are endangered, vulnerable or near threatened wildlife may exist outside of high risk areas as not all locations of these plants are known. This is because while the department has some information on the location and distribution of plants that are endangered, vulnerable or near threatened wildlife, data deficiencies still remain due to the difficulty in collecting protected plant data in some locations. This amendment ensures that a person cannot knowingly clear a plant that is endangered, vulnerable or near threatened wildlife outside a high risk area.

However, it is not the intention of this section to require a person to apply for a clearing permit in an area other than a high risk area, if after clearing has commenced, they then

become aware of the presence of plants that are endangered, vulnerable or near threatened wildlife.

Division 4 Restrictions on grant

This clause inserts a new division 4 to outline the restrictions on grant of a protected plants clearing permit.

Section 284 inserts general restrictions on grant of protected plant clearing permit. The chief executive may grant a protected plant clearing permit for the taking of a protected plant, by clearing the plant, only if the chief executive is satisfied that the applicant is the landholder, or has the written approval of the landholder, of the land on which the plant is located. For clearing within a clearing impact area, the applicant must give the chief executive a flora survey report that complies with section 257. For clearing in any other area, the applicant must give the chief executive a document identifying all protected plants that are endangered, vulnerable or near threatened wildlife the person knows exists in the area to be cleared. In both circumstances, the applicant must identify all protected plants that are endangered, vulnerable or near threatened wildlife that the applicant knows will be impacted in the relevant area. For the purpose of this section, relevant area means the clearing impact area, or for clearing in an area other than high risk, the area to be cleared. If the clearing cannot avoid a protected plant that is endangered, vulnerable or near threatened wildlife in the relevant area, the applicant must demonstrate any impacts the clearing is expected to have on the plant, and that all reasonable attempts have been taken in accordance with the protected plants assessment guidelines, to manage any impact on the plant, and the clearing will not adversely affect the plant's survival in the wild. A note has been inserted to refer to section 137 of the Act. The chief executive must not approve an application for a protected plant clearing permit if the flora survey or flora survey report for the application do not comply with section 257. In this section, avoid, for a plant in an area being cleared, means the plant is not cleared and there is no clearing within 100m of the plant.

The purpose of this section is to clarify the circumstances where the chief executive can grant a clearing permit and when a clearing permit cannot be granted. A permit cannot be granted if the person does not have written permission from the landholder for where the clearing is to occur. This is required because the landholder of the land owns the plants which exist on the land, and therefore, must authorise that those plants can be taken. This would be required, irrespective of other landholder permissions that may have been granted for other purposes, such as to access the land. A permit for a high risk area cannot be granted unless a flora survey has been conducted, and this complies with the requirements under the regulation. This amendment ensures that the flora survey requirements are consistently applied for any clearing activities in a high risk area including clearing that is exempt under section 261ZA.

Where a clearing permit is required for clearing that is not in a high risk area, this amendment clarifies that a flora survey is not required to be submitted as part of a clearing permit application. The purpose of this is to ensure consistency with the risk based approach and the exemptions for clearing in an area other than a high risk area, as specified under section 261Z.

This amendment also clarifies that in the first instance, any clearing activity will need to demonstrate why impacts to plants that are endangered, vulnerable or near threatened wildlife cannot be avoided. If impacts cannot be avoided, then all reasonable attempts must be made to minimise impacts to plants to be cleared and in accordance with the protected plants

assessment guideline. However, even if all reasonable attempts have been made to manage impacts to the plants, the chief executive cannot grant a clearing permit if this clearing will adversely impact on the ability of the species survival in the wild. For example, if the clearing activity will remove a highly endangered population of plants, and these plants cannot be translocated or propagated and will result in the loss of this population from the wild, a permit cannot be granted. Also, a link has been inserted to refer to section 137 of the Act to ensure that any licence granted under this section of the regulation must be consistent with management principles, and a management intent or plan under the Act.

Section 285 inserts particular circumstances when chief executive may grant protected plant clearing permit. The chief executive may grant a protected plant clearing permit without being satisfied of the matters mentioned in section 285(1)(d)(iii) and if the chief executive is satisfied there is an overriding public interest for the permit to be granted for an activity related to a public utility easement for the supply of electricity, the refusal of the permit would impede the provision of an essential community service, and the applicant has otherwise made all reasonable attempts to satisfy the chief executive of the matters mentioned in subsection 284(1). If the chief executive grants a protected plant clearing permit under subsection (1), the chief executive may grant the permit with or without conditions and require the applicant to pay a conservation value for the taking to be done under the permit.

The purpose of this section is clarify the limited circumstances where the chief executive may grant a clearing permit, if the applicant is not able to satisfy the requirement that the clearing must not adversely impact of the plant species survival in the wild. It is only when this relates to a public utility easement for the supply of electricity, and only if the refusal of the permit would prevent the provision of an essential community service.

It is not the intention of this section to provide a circumstance where an applicant can ask that a clearing permit be granted even if this clearing will adversely impact on the plant species ability to survive in the wild. An applicant would have to demonstrate that all reasonable attempts have been made to manage any impact to the plant, and subject to those attempts and any conditions that may be imposed on the permit, including an offset, an applicant may still be required to pay a conservation value, in addition to any conditions, to compensate for the loss of those plants from the wild. This is to ensure that while there may be an overriding public interest that the project goes ahead, any resultant loss of species will need to be adequately compensated.

Section 286 inserts where the chief executive may grant protected plant clearing permit in relation to particular areas. The chief executive may grant a clearing permit for taking protected plants in an area identified under a regulation or conservation plan as, or including, a critical habitat or an area of major interest only if the regulation or plan does not prohibit the granting of the permit and the chief executive is satisfied the taking of the plants will not have a significant impact on a viable population of protected wildlife or a community of native wildlife in the area.

The purpose of this amendment is to clarify that the chief executive has the ability to grant a clearing permit in an area of major interest or critical habitat in very limited circumstances. This is to ensure that any area declared as a major interest or critical habitat remains so, and clearing does not result in these areas becoming further threatened.

Section 287 inserts the chief executive may impose conditions on protected plant clearing permit. The chief executive may grant a protected plant clearing permit with or without conditions. This clarifies that the chief executive may impose conditions on a protected plant clearing permit. An example of a condition that may be imposed by the chief executive is to require an applicant to notify the department when approved clearing has been completed, or an offset may be required.

Section 288 inserts the chief executive may require offset. If the chief executive considers it necessary or desirable for ensuring the viability of one or more taxa of protected plant species in the wild, the chief executive may impose a condition on a protected plant clearing permit requiring the applicant for the permit to provide an offset for the activity. This section defines an offset, which includes works or activities undertaken to counterbalance the impacts of a clearing activity on a plant that is endangered, vulnerable and near threatened wildlife.

The purpose of this amendment is to clarify that the chief executive has the ability to require an offset for the taking of a protected plant in the wild. This section is required as an offset may be necessary for a protected plants clearing permit, if there are any significant residual impacts that will need to be accounted for. Any offset that may be required will need to be in line with the relevant Queensland Government offsets policy at the time of the application.

Division 5 Activities authorised under permit

This clause inserts a new division 5 to outline to activities authorised by a protected plant clearing permit.

Section 289 inserts a new section for activities authorised by protected plant clearing permit. The holder of a protected plant clearing permit, or a relevant person for the holder, may take a protected plant by clearing to the extent authorised under the permit and otherwise clear all plants in an area to which the permit relates. However, a person may use a restricted plant taken under a protected plant clearing permit only if the plant is taken under operational or contingent salvage, or the use is authorised under the permit. Any person may take a restricted plant part only by way of operational salvage, while contingent salvage allows the holder of a protected plant harvesting licence, or a relevant person for the holder, to take a whole restricted plant that is to be cleared under a protected plant clearing permit.
A relevant person is defined under the Administration Regulation.

The intention of this amendment is to clarify that a clearing permit allows a person to take an endangered, vulnerable or near threatened plant, but only allows the use of the plant in certain circumstances. This section is required as under a protected plant clearing permit, the only circumstances where a person may use an endangered, vulnerable or near threatened plant, is if the plant is taken under salvage or taken under a condition of the clearing permit for the use of the plant.

Clause 36 Renumbering of ch 4, pt 4, div 4, hdg (Authorities for taking or using protected plants)

This clause renumbers chapter 4, part 4, division 4 to chapter 4, part 4B to outline authorities for taking or using protected plants. This amendment is required due to the insertion of new provisions which has resulted in the renumbering of existing provisions.

Clause 37 Renumbering of ch 4, pt 4, div 4, sdiv 1, hdg (Aboriginal tradition authorities)

This clause renumbers chapter 4, part 4, division 4, subdivision 1 to chapter 4, part 4B division 1 for Aboriginal tradition authorities. This amendment is required due to the insertion of new provisions which has resulted in the renumbering of existing provisions.

Clause 38 Renumbering of ch 4, pt 4, div 4, sdiv 2, hdg (Island custom authorities)

This clause renumbers chapter 4, part 4, division 4, subdivision 2 to chapter 4, part 4B division 2 for Island custom authorities. This amendment is required due to the insertion of new provisions which has resulted in the renumbering of existing provisions.

Clause 39 Replacement of ch 4, pt 5 (Provisions about authorised cultivators and propagators)

This clause inserts a new chapter 4, part 5 for miscellaneous provisions relating to general requirements for protected plants.

Section 299 inserts a new section for the declaration of harvest period. The chief executive may, by notice (a harvest period notice) declare a harvest period for a protected plant. The harvest period notice may impose conditions on the taking of a protected plant during the harvest period, including, the maximum number of plants that may be taken, the way in which a whole plant or plant part may be taken, localities from which a plant must not be taken and how a plant taken may be used. The intention of this amendment is for the chief executive to retain the ability to declare a harvest period for a protected plant, and this may be used to restrict harvest of certain species that may be exposed to a threat such as for example, due to an extreme weather event or emerging commercial interest, impacting the survival of a plant species. This amendment has been in part carried over from section 37 of the Conservation Plan and has been amended to remove the restriction on the harvest of whole plants for commercial purpose. This restriction is no longer required, as under the risk based approach, applicants will be required to demonstrate that the harvest of any whole restricted plants is sustainable, requirements relating to purpose have been removed.

Section 300 inserts a new section for special least concern plants. Each plant mentioned in schedule 3A is prescribed as a special least concern plant for the purposes of the Act 88D(1). This reference has been inserted to make clear that for the purposes of this regulation, special least concern plants are plants listed in the schedule 3A.

Clause 40 Amendment of s 335 (Tags not to be used by unauthorised person)

This clause amends section 335 to amend the definition of an authorised person to also include, for a tag for protected plants, the holder of a protected plant licence, or a person who has taken a whole protected plant under an exemption under Chapter 4, part 3. The purpose of this amendment is to clarify who is taken to be an authorised person in relation to tags for protected plants, and ensures a person acting under a licence for protected plants or an exemption for taking a restricted plant under Chapter 4, part 3 of the regulation is authorised to use tags.

Clause 41 Amendment of s 337 (Record of identification of person selling or giving away protected, international or prohibited wildlife)

This clause amends section 337(a) to insert a new s337(a)(iii) to specify, if the protected wildlife is a whole protected plant or protected plant part obtained by the seller under an exemption under Chapter 4, part 3, ask the seller to identify the exemption. This is to clarify circumstances a person selling or giving away protected wildlife is required can be asked to identify the exemption in which the whole protected plant or protected plant part has been obtained.

This clause also amends section 337(b) to insert a new 337(b)(iv) to specify if the protected wildlife is a whole protected plant or protected plant part obtained by the seller under an exemption under Chapter 4, part 3, the exemption identified by the seller. The purpose of this amendment is to clarify that a person selling or giving away protected wildlife is required to identify the exemption under which the plant was obtained.

This clause also amends section 337 to insert, that subsection (1) does not apply to a person who buys or accepts a protected plant that is least concern wildlife, other than a special least concern plant. This amendment clarifies that the record of identification requirements do not apply to a person who buys or accepts a least concern plant, other than a special least concern plant.

The purpose of this amendment is to allow for people trading in protected plants to identify how plants have been taken in the wild, in order to reduce unlawfully harvested plants being used for trade. It is also necessary to remove the requirements for least concern plants, as trade of these plants will no longer be regulated.

Clause 42 Amendment of s 338 (Record of identification of person buying or accepting protected, international or prohibited wildlife)

This clause amends section 338 to insert a new subsection 338(b)(iv) to specify if the buyer is a corporation, the name of the corporation, or is a business or a person operating under a business or trading name, the name of the business or the trading name. The purpose of this amendment is to list additional requirements for recording identification of the person buying or accepting the wildlife if this is on behalf of a corporation.

This clause also amends section 338 to insert a new subsection (2) to specify that subsection (1) does not apply to a person who sells or gives away a protected plant that is least concern wildlife, other than a special least concern plant, or a person who sells or gives away a protected plant in the course of a retail activity to a buyer for the buyer's personal use.

The purpose of these amendments is to clarify that the trade of least concern plants will no longer be regulated and identification will not apply. This also clarifies that requirements relating the trade will not apply where the plants are sold or given away for personal use.

Clause 43 Amendment of s 345 (Procedure if wildlife stolen)

This clause amends section 345(4) to renumber as section 345(6) as two new subsections have been inserted. A new subsection 345(4) has been inserted to specify that a reference in this section to wildlife is, for protected plants, a reference only to a whole protected plant that

is a restricted plant taken from the wild, and required to be tagged under the regulation. A new subsection 345(5) has been inserted to specify that this section does not apply to wildlife that is a protected plant if the plant is kept for personal use.

The purpose of this section is to clarify the circumstances when this procedure applies to restricted plants. This also clarifies that this procedure does not apply to restricted plants kept for personal use and least concern plants.

Clause 44 Insertion of new s 348A (Approved tags for protected plants taken under salvage)

The clause inserts a new section 348A to establish approved tags for protected plants taken under salvage for a person who harvests a whole protected plant by way of salvage and the plant is to be used for trade. This section establishes that a person must apply to the chief executive to be supplied with an official tag for each plant and that this must be in the approved form. In order to be in the approved form, an application will be required to include certain information such as the number of tags required, the species of plant for which the tag is required, the title reference for the land from which the plants are to be taken, the date the plant is to be taken, the protected plant clearing permit under which the plant is to be taken. A person must not state anything in an application that the person knows is inaccurate or misleading in a material particular.

The purpose of this amendment is to list requirements relating to approved tags for whole protected plants harvested under salvage, where the plants are to be traded. The amendment is necessary to clarify that application process for official tags, and these must be supplied by the chief executive. This ensures that an official tag must always be supplied by the chief executive and is not able to supplied from another source. This amendment also clarifies the application process for applying for an official tag, and the information that needs to be included in the application in order for an official tag to be supplied. A person must not include any false or misleading information in the application, such as for example, incorrectly stating where the plants have been salvaged from.

This clause also clarifies that official tags are required for restricted plants that have been harvested as a whole plant from the wild, even if this is under salvage. An official tag provides evidence of lawful harvest of whole protected plants.

Clause 45 Amendment of s 352 (No conservation value payable for protected wildlife taken under particular authorities)

This clause removes section 352(g), as a herbarium licence is being repealed under the regulation. This amendment is necessary to remove reference to repealed licences from the regulation.

As the Conservation Plan is repealed, an amendment was made to the Act to retain the ability for the chief executive to decide that a monetary payment is appropriate for protected plants in certain circumstances. Therefore, under the regulation the chief executive may require payment of conservation value for protected plants under any protected plant authority.

Clause 46 Omission of ch 8, pt 4 (Amendments of Protected Plants Conservation Plan)

This clause removes chapter 8, part 4, as it is no longer as the Conservation Plan is being repealed.

Clause 47 Insertion of new ch 9

This clause inserts a new chapter 9 in relation to transitional provisions.

Section 385 inserts a transitional provision for taking protected plant if authorised in particular circumstances. This section applies if a person was authorised to take a protected plant by clearing in the course of an activity under an authority, that was in force immediately before the commencement of this section, made, granted or given under another Act by the Governor in Council, or a mining lease or a petroleum lease that was in force immediately before the commencement of this section. Under this section the person may continue to take the plant. A person who takes a protected plant has an exemption for offences for taking protected plants under section 89 of the Act or using protected plants under section 90 of the Act. For the purposes of this section, a mining lease means a mining lease granted under the *Mineral Resources Act 1989*, and a petroleum lease means a petroleum lease granted under the *Petroleum Act 1923*.

The purpose of this provision is to clarify the transitional arrangements for a clearing permit exemption that was previously provided under the Conservation Plan, where the taking happens in the course of an activity under an authority made, granted or given by the Governor in Council, or mining leases granted under the *Mineral Resources Act 1989* and petroleum leases granted under the *Petroleum Act 1923*.

Under the risk based approach, this exemption from the requirement for a clearing permit will be removed for new authorities granted, made or given by the Governor in Council, for new mining leases or for new petroleum leases granted after the commencement of the Amendment Regulation. However, the intention of this transitional arrangement is to ensure that authorities, including relevant mining and petroleum leases that were previously exempt from a protected plants clearing permit, are able to continue to operate under the exemption. It is not the intention to provide an exemption for authorities made, granted or given by the Governor in Council, or mining leases and petroleum leases granted, after the commencement of the Amendment Regulation.

Clause 48 Insertion of new sch 3A (Special least concern plants)

This clause inserts a new schedule 3A, to list all protected plants classified as special least concern plants. The insertion of this schedule is necessary to list the least concern plants that are categorised as special least concern plants. Special least concern plants are plants that are either commercially valuable or are known to have sensitive reproductive biology. Special least concern plants are restricted under the regulation for the take, keep, use and movement of the plants. The list includes species previously classified as Type A or listed in sections 11 or schedule 1 of the Conservation Plan, and any individual plants that were previously restricted under the Harvest Period Notice.

Clause 49 Amendment of sch 5 (Dictionary)

This clause inserts new definitions required to reference new terms introduced in the Amendment Regulation.

Part 4 *Amendment of State Penalties Enforcement Regulation 2000*

Clause 50 Regulation amended

This clause amends the *State Penalties Enforcement Regulation 2000* to provide for new penalty infringement notices for new offences and certain existing offences under the Act and regulation.

Clause 51 Amendment of sch 2 (Environmental legislation)

This clause amends the *State Penalties Enforcement Regulation 2000* to remove penalties that are no longer relevant, and to insert references to new penalties prescribed in the Amendment Regulation.

Part 5 Repeals

Clause 52 Repeal

This clause repeals the following subordinate legislation—
• *Nature Conservation (Protected Plants) Conservation Plan 2000*, SL No. 353
• *Nature Conservation (Protected Plants Harvest Period) Notice 2013*, SL No. 33.