Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- reinstate a responsible vegetation management framework to more effectively manage vegetation clearing in Queensland thereby reducing clearing rates and consequential carbon emissions;
- guard against excessive clearing of riparian vegetation, especially in the Great Barrier Reef catchments; and
- amend the *Water Act 2000* (Water Act) to reinstate the application of the riverine protection permit framework to the destruction of vegetation in a watercourse, lake or spring; and
- amend the *Environmental Offsets Act 2014* (Environmental Offsets Act) to reinstate environmental offset requirements that ensure adequate conservation outcomes for prescribed environmental matters.

In 2015, the Queensland government made several election commitments to protect the Great Barrier Reef including:

- reduce Queensland's carbon emissions by reinstating the nation-leading vegetation protection laws repealed by the previous government; and
- re-introduce riverine protection permits to guard against excessive clearing of riverine vegetation.

In 2015, the Australian and Queensland Governments developed the *Reef 2050 Long-Term Sustainability Plan* (Reef 2050 Plan) to reverse the decline in the health of the Great Barrier Reef. The community, Traditional Owners, scientists, industry and non-government organisations were consulted during its development. The United Nations' World Heritage Committee considered the Reef 2050 Plan in June-July 2015, and decided against declaring the Great Barrier Reef as "in danger", but requested regular updates on the Reef 2050 Plan.

Reversing the decline in the reef's health is supported by maintaining vegetation cover in Great Barrier Reef catchments. This is a key action (EHA20) of the Reef 2050 Plan: "*Strengthen the Queensland Government's vegetation management legislation to protect remnant and high value regrowth native vegetation, including in riparian zones*".

The Statewide Landcover and Trees Study (SLATS report) released in November 2015, showed that the rate of clearing of woody vegetation has been increasing since 2009–10 from about 78 000 hectares per year to about 296 000 hectares per year in 2013–14. In turn, this has increased carbon emission rates and risks to the Great Barrier Reef from sediment and pollutant run-off.

Riparian vegetation plays an important role in reducing the sediment and nutrient runoff that enters waterways. Deteriorating water quality caused by catchment runoffs is recognised as the most immediate risk to the condition of the Great Barrier Reef. The previous government removed the vegetation clearing consideration from riverine protection permits under the Water Act which resulted in clearing of previously regulated riparian vegetation becoming unregulated.

Core to addressing these problems and achieving these commitments is to reinstate provisions in the *Vegetation Management Act 1999* (Vegetation Management Act), the Water Act and the environmental offset framework repealed by the previous government.

To ensure effective implementation of the Acts, certain compliance provisions removed by the previous government will also be reinstated.

This Bill will deliver on the government's commitments and contribute to reducing clearing rates and associated carbon emissions that threaten the health of the Great Barrier Reef.

Achievement of policy objectives

Reinstate a responsible vegetation management framework

The policy objectives will be achieved by amending the:

- Vegetation Management Act to:
  - reinstate the protection of high value regrowth on freehold and indigenous land;
  - remove provisions which permit clearing applications for high value agriculture and irrigated high value agriculture;
  - broaden the protection of regrowth vegetation in watercourse areas to the Burnett-Mary, Eastern Cape York and Fitzroy Great Barrier Reef catchments; and
  - reinstate compliance provisions for the reverse onus of proof and remove the 'mistake of fact' defence for vegetation clearing offences.
- *Sustainable Planning Act 2009* (Sustainable Planning Act) to ensure that operational works and material change of use development applications must be for a relevant clearing purpose under section 22A of the Vegetation Management Act.

The approach adopted in the Bill is reasonable as it balances the government's commitment to reduce carbon emissions and protect the Great Barrier Reef with landholders' ability to responsibly manage vegetation on their properties.

Reinstate the application of riverine protection framework to destroying vegetation

Reinstating the application of the riverine protection provisions to the destruction of vegetation in a watercourse, lake or spring will ensure appropriate consideration and management of the risks associated with riverine activities to prevent adverse impacts to the integrity of the watercourse, environment, agriculture, infrastructure and property.

The Bill achieves the objective of reinstating the application of the riverine protection framework to the destruction of vegetation in a watercourse, lake or spring by amending the provisions of the *Water Act 2000* to expand their application. The current provisions only apply to activities that involve the excavation or placing of fill in a watercourse, lake or spring. The amendments proposed by the Bill will reinstate the destruction of vegetation back into these provisions as they were prior to amendments that were made through the *Land, Water and Other Legislation Amendment Act 2013*.

Reinstate environmental offset requirements that ensure adequate conservation outcomes for prescribed environmental matters

The policy objective will be achieved by amending the Environmental Offsets Act to:

- require offsets for any residual impact on prescribed environmental matters rather than only significant residual impacts; and
- provide an ability to legally secure offset areas and make payments into Queensland's offset account for conditions required under Australian Government approvals.

The approach adopted in the Bill also contributes to delivering the government's commitment to reduce carbon emissions and protect the Great Barrier Reef.

Alternative ways of achieving policy objectives

To fulfil the Government's election commitment and commitments under the Reef 2050 Plan, the Vegetation Management Act, the Sustainable Planning Act, the Water Act and the Environmental Offsets Act must be amended. There is no alternative way to achieve the policy objective.

Estimated cost for government implementation

There will be an increase of landholder notifications for clearing high value regrowth vegetation on freehold and indigenous land, and regrowth vegetation along watercourses in the additional Great Barrier Reef catchments, in accordance with category C and R self-assessable vegetation clearing codes, respectively. However, this is largely done through an automated electronic data system that captures and stores the notifications.

There is likely to be additional auditing and compliance activities by the Department of Natural Resources and Mines in relation to the newly regulated regrowth vegetation.

There is likely to be a reduction in compliance costs by reinstating reverse onus of proof and removing mistake of fact defence provisions.

There may be increased costs in assessing the destruction of vegetation in riverine protection permits under the Water Act and delivering environmental offsets under the amendments to the Environmental Offsets Act due to an increased number of applications.

There will be a reduction in resources required to assess vegetation clearing applications for high value agriculture and irrigated high value agriculture.

Overall, the financial cost of administering the legislation is expected to be neutral and covered within existing resources of the department.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. The Bill potentially breaches fundamental legislative principles (FLPs) as outlined in section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act). These inconsistencies only occur in order to achieve the policy objective of enforcing a balanced vegetation management framework and providing adequate conservation outcomes for prescribed environmental matters under the environmental offsets framework. Justification for these potential breaches of FLPs is outlined below.

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

The following parts of the Bill have retrospective commencement, from the date the Bill was introduced in Parliament:

- amendment of the Vegetation Management Act to restrict vegetation clearing to self-assessable vegetation clearing codes or exemptions under the Sustainable Planning Regulation 2009, where the vegetation is:
    - high value regrowth vegetation on freehold and indigenous land across the state (similar to restrictions which already apply on lease under the *Land Act 1994* for agriculture and grazing purposes);
    - regrowth vegetation within 50 metres of certain watercourses and drainage features in the Burnett-Mary, Eastern Cape York and Fitzroy Great Barrier Reef catchments (similar to current restrictions applying in priority Great Barrier Reef catchments—Burdekin, Mackay Whitsunday and Wet Tropics); and
- amendment of the Sustainable Planning Act to make development for high value agriculture or irrigated high value agriculture prohibited development across the state.

The proposed Bill may adversely affect the following rights retrospectively:

- the right to clear particular vegetation within the period between 17 March 2016 and the date of assent for the legislation; and
- the right to have certain applications considered or amended.

Arguably these amendments offend section 4(3)(g) of the Legislative Standards Act which provides that legislation have sufficient regard to the rights and liberties of individuals and consequently should not adversely affect rights and liberties, or impose obligations, retrospectively.

Pre-emptive clearing or submission of applications ahead of Parliament enacting reforms to the vegetation management framework can cause significant impacts on the environment, business and the community. While the Bill is before Parliament, retrospectivity is necessary to ensure pre-emptive clearing and increases in certain applications do not render the reforms less effective.

There may be some detrimental effects on individual rights in relation to these applications; however individual rights are outweighed by the public interest to protect the long-term health of our biologically diverse state and our world heritage listed Great Barrier Reef, and to reduce carbon emissions from vegetation clearing.

Does the legislation reverse the onus of proof in criminal proceedings without adequate justification—Legislative Standards Act, section 4(3)(d).

Clause 6 reinstates reverse onus of proof offence provision, which existed prior to the 2013 legislative amendment to the Vegetation Management Act. The provision placed the responsibility for unlawful clearing with the 'occupier' of the land, such as the owner or lessee, in the absence of evidence to the contrary. While this provision potentially breaches FLPs, reinstating this provision is justified for the following reasons:

- Unlawful clearing often occurs in remote areas, meaning that in many cases there is a lack of evidence available to the government (e.g. direct witnesses, copies of contracts as they are commercial in confidence), to establish who undertook the clearing.
- Due to the expense of clearing, it is highly unlikely that an unknown third party would undertake clearing on someone else's property without the occupier's invitation or consent.
- The landholder may still provide evidence to prove their innocence, using evidence that would be readily accessible to the landholder but not the government (e.g. where a contract may be commercial in confidence the contract does not need to be disclosed to government during its investigation).
- The state is still responsible for establishing and proving that a vegetation clearing offence has occurred.

There is also precedent of the reverse onus of proof, such as under the *Forestry Act 1959* (Forestry Act), and for red light and speed camera traffic offences which assume the owner of the car is responsible for the offence unless evidence is provided otherwise.

Does the legislation have sufficient regard to the rights and liberties of individuals—Legislative Standards Act, section 4(3)

Prior to 2013, for a vegetation clearing offence, the Vegetation Management Act provided that it is not a defence that the person had a reasonable and honest but mistaken belief that led to the offence – in other words, a 'mistake of fact' defence.

This defence was provided in 2013, as its absence raised issues with FLPs primarily related to providing procedural fairness and natural justice for landholders, who make an honest mistake which led to the offence.

It is proposed to again remove the 'mistake of fact' (s.24 of the Criminal Code) as a defence for a vegetation clearing offence for the following pertinent reasons:

- This mistake of fact defence often arises in prosecutions, such as mistakes in map interpretation, or in identifying the conservation status of vegetation. While such a defence is easy to raise, because it involves the state of mind of the defendant, it is very difficult to negate conclusively; presenting difficulties for the investigation of clearing offences.
- Unlawful clearing has the potential for significant environmental impacts, and having the mistake of fact defence, may discourage a landholder or developer from exercising due diligence before undertaking a clearing activity.
- The Department of Natural Resources and Mines has made widely available, at no, or little charge, all the information required by landholders to ensure they clear in accordance with vegetation management laws. New tools and products are also being developed to further assist landholders in applying the laws correctly.

Further, the vegetation management framework has been in place for over fifteen years with minimal procedural amendments that have altered an individual's responsibilities. Therefore, the likelihood of an honest mistake resulting in unlawful clearing occurring has been mitigated, effectively nullifying the defence.

Does the legislation have sufficient regard to the institution of Parliament by authorising the amendment of an Act only by another Act—Legislative Standards Act, section 4(c)?

New section 89D of the Environmental Offsets Act allows a regulation to be made to prescribe the circumstances under which a proposed payment of an amount as a financial settlement offset for a Commonwealth offset condition cannot be made into the offset account. The inclusion of this power raises the issue of whether the Bill has sufficient regard to the institution of the Parliament.

It is possible that unanticipated matters may arise given the innovative nature of this new arrangement. The regulations will provide an ability to ensure that the delivery of offsets by the state is consistent with the purpose of the Act and in the best interest of the state.

Under the *Statutory Instruments Act 1992*, any regulation made under the proposed new power must be tabled in the Legislative Assembly and will be subject to potential disallowance.

Consultation

Limited consultation was undertaken in the development of the Reinstatement Bill. No consultation was undertaken in relation to the changes to the Environmental Offsets Act.

Consistency with legislation of other jurisdictions

While this Bill is specific to Queensland, all jurisdictions regulate clearing of native vegetation.

For example, the Australian Government regulates actions (including clearing) that will have a significant impact on nine matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999*. Matters of national environmental significance include the Great Barrier Reef Marine Park and listed threatened species and ecological communities.

The New South Wales Government regulates clearing of remnant and protected regrowth vegetation under the *Native Vegetation Act 2003*. Similar to Queensland, the New South Wales legislation has particular exemptions where approval is not required, self-assessable codes for low risk activities and activities where approval is required.

All jurisdictions support vegetation clearing regulations with mapping and compliance frameworks.

All jurisdictions suppose the use of environmental offsets to at least maintain the viability of significant environmental values affected by development.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 states that this Act may be cited as the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Commencement

Clause 2 provides for when particular provisions of the Bill will commence.

Part 1, Part 2 (apart from section 6) and Part 3 commence on 17 March 2016. This is the date of introduction of the Bill into Parliament. Retrospectively commencing these provisions back to the date of introduction aims to prevent pre-emptive clearing and increases in applications during the interim period, which reduce the effectiveness of the reforms and potentially result in significant environmental impacts on the Great Barrier Reef and increases in carbon emissions.

The remainder of the Act—Part 2 section 6 (reverse onus of proof and mistake of fact defence provisions), Part 4 (amendment of the *Water Act 2000*) and Part 5 (amendment of the *Environmental Offsets Act 2014)* are to commence on a day to be fixed by proclamation.

Part 2 Amendment of Vegetation Management Act 1999

Act amended

Clause 3 provides that the part amends the *Vegetation Management Act 1999* (Vegetation Management Act).

Amendment of s22A (Particular vegetation clearing applications may be assessed)

Clause 4 makes consequential amendments to the Vegetation Management Act to align the Act with relevant terminology under the current planning framework. This clause also updates the reference to category C area to include a reference to freehold and indigenous land and leasehold land for agriculture and grazing purposes as a consequence of definition amendments under this amendment Act.

Clause 4 also omits sections 22A(2)(k) and (l) to remove high value agriculture clearing and irrigated high value agriculture clearing as relevant purposes for making a development application under the *Sustainable Planning Act 2009* (Sustainable Planning Act).

Omission of pt 2, div 6, subdiv 1A (Particular vegetation clearing applications)

Clause 5 omits Part 2, Division 6, Subdivision 1A. The subdivision provided the requirements and considerations for applications for high value agriculture clearing and irrigated high value agriculture clearing. As applications will no longer be able to be made for high value agriculture clearing and irrigated high value agriculture clearing purposes, the associated considerations and requirements are no longer necessary.

Insertion of new s67A and new pt 4, div 2A

Clause 6 inserts a new section 67A to clarify the evidentiary burden for determining the person responsible for unauthorised clearing. The clause also introduces a new Division 2A under Part 4 to clarify that the defence of mistake of fact, established under section 24 of the Criminal Code does not apply to the Vegetation Management Act.

These provisions reinstate provisions which were removed under the *Vegetation Management Framework Amendment Act 2013*.

New section 67A Responsibility for unauthorised clearing of vegetation

The new section 67A effectively reverses the onus of proof for determining who is responsible for undertaking a demonstrated unauthorised clearing activity. The provision provides that where vegetation is cleared in contravention of the Act, the occupier of the land is taken to be responsible for the offence in the absence of any contrary evidence. While considered to be a breach of the fundamental legislative principles, the presumption that the occupier of the land has undertaken the clearing is justified.

The state continues to be responsible for establishing and proving that a vegetation clearing offence has occurred. Once the offence has been demonstrated, this provision will be applied to require the occupier of the land to accept responsibility or provide evidence on who was responsible for undertaking the unlawful clearing activity.

The expense of clearing makes it highly improbable that an unknown third party would undertake clearing on someone else's property, without the occupier's invitation or consent. Further, unlawful clearing often occurs in remote areas. Consequently, in many cases, there is a lack of evidence available to the government to definitively establish who undertook the clearing. The lack of access to official documents such as service contracts and property records also hinders the state's ability to build its evidentiary brief to take compliance action.

The reversal of the onus of proof does not remove the occupier's right to natural justice. Once unlawful clearing is demonstrated on the occupier's land, the occupier is given the opportunity to provide evidence to prove their innocence.

There is precedence under the Forestry Act and for some traffic offences to reverse the onus of proof. In each of these cases the reasoning for the reversal, similar to the reasons for unlawful clearing, is that the only people in a position to provide evidence of innocence or culpability are the offender or the owner of the vehicle or holder of the permit to which the offence relates.

The 'occupier' of land may be, depending on the land tenure, the registered owner, a lessee, licensee or permittee, the holder of title to the land or holder of the tenure.

Division 2A Defences

New section 67B Defence in proceeding for vegetation clearing offence

The inserted Section 67B provides that section 24 of the Criminal Code—the mistake of fact defence—does not apply during proceedings for a vegetation clearing offence. This means that a person cannot avoid responsibility for unlawfully clearing vegetation by stating that they were operating under a reasonable and honest but mistaken belief that the clearing activity was lawful.

This defence is easy to claim during a prosecution because it is premised on the state of mind of the defendant at the time the offence occurred. It is very difficult to establish an evidentiary base which will negate the claim conclusively. The mistake of fact defence often arises in unlawful clearing prosecutions in relation to occupiers of land mistakenly interpreting relevant maps and in relation to identifying the conservation status of vegetation. However, the government maintains publicly available information at a minimal or nil charge. This information, as well as other services offered by the government, is intended to assist occupiers of land and other interested persons understand the vegetation management laws and ensure clearing activities are conducted under their approvals or within established self-assessable vegetation clearing codes and exemptions.

Unlawful clearing has potentially significant environmental impacts. Removing the availability of this defence will ensure that occupiers and developers conduct robust due diligence prior to undertaking a clearing activity.

Insertion of new pt 6, div 12

Clause 7 inserts a new Part 6, Division 12 to provide a number of transitional provisions for the Act.

Division 12 Transitional provisions for Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016

New section 125 definition for division

A new section provides a definition of interim period and unlawful clearing for the purposes of the division. Interim period defines the period between introduction and the date of assent of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Unlawful clearing is development during the interim period that has become unlawful as a result of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016* commencing.

New section 126 Applications under s20C made but not decided before 17 March 2016

New section 126 provides that applications for a Property Map of Assessable Vegetation (PMAV) made but not decided before17 March 2016, must be dealt with and decided by the chief executive as if the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016* had not commenced. In effect, these PMAV applications must be decided in accordance with the Vegetation Management Act, as if no changes had been made.

New section 127 Applications under s20C made during the interim period

When the chief executive receives a PMAV application during the interim period and makes a decision during that period to make category X on a PMAV over an area that will become category C or category R on commencement, that decision during the interim period will have no effect once the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016* commences. Although the decision over these areas will have no effect, the chief executive may reconsider and decide the application after commencement in accordance with the provisions in the amending Act.

New section 128 Proposed regulated vegetation management map

This new section provides for the chief executive to publish a map during the interim period - Proposed Regulated Vegetation Management Map, on the Department of Natural Resources and Mines website. The map shows proposed category C and category R areas. The chief executive may also republish the map during the interim period. From 17 March 2016 and for the interim period, the Proposed Regulated Vegetation Management Map will indicate to landholders where new category C and category R areas are proposed. This will assist landholders to determine what new requirements may apply to their property on the commencement of the amending Act, which in turn can help guide clearing to ensure it does not become unlawful following commencement.

On commencement, the Proposed Regulated Vegetation Management Map becomes the Regulated Vegetation Management Map with effect from 17 March 2016.

New section 129 How definition *high value regrowth vegetation* and category C code apply during interim period

New section 129 provides that during the interim period, the definition of high value regrowth vegetation is taken to include a reference to freehold and indigenous land. These areas will be identified on the Proposed Regulated Vegetation Management Map as proposed category C areas.

During the interim period, the *Managing category C regrowth vegetation* self-assessable vegetation clearing code approved under the vegetation management regulation applies to the clearing of proposed category C on freehold and indigenous land in the same way that it applies to vegetation located on a lease issued under the Land Act.

On commencement of the amending Act, the clearing of proposed category C area will not be considered to have been an offence if it was undertaken in accordance with the *Managing category C regrowth vegetation* self-assessable vegetation clearing code made on 14 November 2013.

New section 130 How definition *regrowth watercourse and drainage feature area* and category R code apply during interim period

This new section provides that during the interim period, the definition of regrowth watercourse and drainage feature area is also taken to mean an area located within 50 meters of a watercourse or drainage feature located in the Burnett-Mary, Eastern Cape York and Fitzroy Great Barrier Reef catchments identified on the vegetation management watercourse and drainage feature map. These areas will be identified on the Proposed Regulated Vegetation Management Map as proposed category R areas.

During the interim period, the *Managing category R regrowth vegetation* self-assessable vegetation clearing code approved under the Vegetation Management Regulation 2014 on 14 November 2013 applies to clearing within proposed category R areas.

On commencement of the amending Act, the clearing of proposed category R will not be considered to have been an offence if it was undertaken in accordance with the *Managing category C regrowth* vegetation self-assessable vegetation clearing code made on 14 November 2013.

New section 131 Restoration and other requirements after unlawful clearing

This new section requires that the chief executive give a person a restoration notice under the Vegetation Management Act if they undertake unlawful clearing during the interim period between introduction and commencement of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*. Although clearing that will become unlawful on commencement of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016* it will not be considered an offence under the Sustainable Planning Act, a restoration notice will be issued.

The chief executive may also include additional requirements in the restoration notice requiring restoration of additional land to the land subject to the unlawful clearing. The chief executive is required to have regard to the Environmental Offsets Act and Environmental Offsets Policy when deciding the additional requirements of the restoration notice.

New section 132 No compensation payable

This new section confirms that no compensation will be payable by the state as a consequence of this division that relates to the interim period.

Amendment of sch (Dictionary)

Clause 8 makes a number of amendments to the dictionary of the Vegetation Management Act.

The definitions for ‘high value agriculture clearing’ and ‘irrigated high value agriculture clearing’ are omitted as they are being removed as relevant clearing purposes under the Vegetation Management Act.

The definition of ‘high value regrowth vegetation’ is amended to include vegetation located on freehold land and indigenous land. These new areas are in addition to the existing

leasehold land areas defined as a lease issued under the Land Act for agriculture or grazing purposes. This gives effect to the policy objective of re-regulating high value regrowth vegetation on freehold and indigenous land.

The definition of 'regrowth watercourse and drainage feature area' is amended to apply to the Burnett-Mary, Eastern Cape York, and Fitzroy Great Barrier Reef catchments, in addition to the Burdekin, Mackay Whitsunday and Wet Tropics catchments. This amendment gives effect to the policy objective of broadening protection of regrowth vegetation in watercourse areas to these additional Great Barrier Reef catchments.

Part 3 Amendment of Sustainable Planning Act 2009

Act amended

Clause 9 provides that this part amends the *Sustainable Planning Act* 2009 (Sustainable Planning Act).

Insertion of new ch 10, pt 15

Clause 10 inserts a new part into chapter 10 of the Sustainable Planning Act that provides transitional provisions required as a consequence of this amendment Act.

Part 15 Transitional provisions for Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016

New section 999 Definition for part

New section 999 provides definitions necessary for interpreting Chapter 10, Part 15.

The amending Act refers to this Act—*Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

The interim period defines the period between introduction and the date of assent of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

Unlawful clearing is development during the interim period that has become unlawful as a result of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016* commencing.

New section 1000 Development applications made but not decided before commencement

New section 1000 provides for development applications for high value agriculture and irrigated high value agriculture that were both properly made under the Sustainable Planning Act and undecided before 17 March 2016 to continue to be assessed and finalised as if the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act* 2016 had not commenced.

In effect this section enables relevant applications to continue to be assessed and decided under the Sustainable Planning Act, as if no changes had been made to the vegetation

management framework despite the amendments making that development prohibited development on commencement of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

New section 1001 Certain development approvals not affected

This new section outlines that development approval given before 17 March 2016 will not be affected or further regulated by the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*.

New section 1002 Unlawful clearing not an offence during interim period

This section removes the offence for a person carrying out assessable development without a development permit and for carrying out prohibited development to the extent that the offence became unlawful clearing on the commencement of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016*. In effect, it will not be an offence under the Sustainable Planning Act if this clearing is undertaken. However, while this unlawful clearing is not an offence, a restoration notice must be given under the Vegetation Management Act for the unlawful clearing.

New section 1003 Development application for certain operational works during interim period

On commencement, this section stops a development application for operational works made during the interim period from being a properly made application under the Sustainable Planning Act where the application is for high value agriculture clearing or irrigated high value agriculture clearing and is not for another relevant purpose.

New section 1004 Development application for certain material change of use during interim period

On commencement, this section stops particular development applications made during the interim period for material change of use that involves clearing for high value agriculture and irrigated high value agriculture and the Sustainable Planning Act chief executive would be a concurrence agency for these applications from becoming properly made applications. This is because on commencement high value agriculture and irrigated high value agriculture clearing will no longer be a relevant purpose for which clearing can occur for under the vegetation management framework.

New section 1005 No compensation payable

This new section confirms that no compensation will be payable by the state as a consequence of a provision of this part that relates to the interim period.

Amendment of sch 1 (Prohibited development)

Clause 11 amends Schedule 1 (Prohibited development) of the Sustainable Planning Act to insert new item 4, which prevents material change of use applications being made to clear native vegetation for purposes that are not relevant purposes under the Vegetation Management Act. This will prevent material change of use applications being made for clearing purposes, such as high value agriculture clearing and irrigated high value agriculture clearing, not permitted under the Vegetation Management Act.

Part 4 Amendment of Water Act 2000

Act amended

Clause 12 provides that this part amends the *Water Act 2000* (Water Act).

Amendment of ch 2, pt 4, div 1, hdg (Granting permits for excavating or placing fill in a watercourse, lake or spring)

Clause 13 amends the heading to include 'destroying vegetation'.

Amendment of s 218 (Applying for permit to excavate or place fill in a watercourse, lake or spring)

Clause 14 amends section 218, of the Water Act to allow a person to apply to the chief executive for a riverine protection permit to destroy vegetation in a watercourse, lake or spring. Currently this section only requires a person to apply for a riverine protection permit to excavate or place fill in a watercourse, lake or spring. This clause reinstates its application to destruction of vegetation. Vegetation is defined under the Water Act to mean native plants including trees, shrubs, bushes, seedlings, saplings and reshoots and the destruction of vegetation refers to the removing, clearing, killing, cutting down, felling, ringbarking, digging up, pushing over, pulling over or poisoning of the vegetation.

Replacement of s 220 (Criteria for deciding application)

Clause 15 replaces section 220 to include criteria relevant for deciding an application for a riverine protection permit to destroy vegetation in a watercourse, lake or spring. This reflects that the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring is being reinstated by the Bill.

Amendment of s 746 (Power to enter land to monitor compliance)

Clause 16 amends section 746 of the Water Act to expand its application to allow an authorised officer to enter land of a person authorised to destroy vegetation to monitor compliance. For example, enter land to calculate or measure the amount of vegetation destroyed. This reflects the reinstatement by the Bill of the application of the riverine protection provisions to the destruction of vegetation.

Amendment of s 748 (Power to enter land to search for unauthorised activities)

Clause 17 amends section 748 of the Water Act to allow an authorised officer to enter land to assess whether the unauthorised destruction of other resources has occurred, or is occurring. The term 'other resources' is defined under the Water Act to mean quarry material and riverine vegetation. This amendment reflects the reinstatement by the Bill of the application of the riverine protection provisions to the destruction of vegetation.

Amendment of s 814 (Excavating or placing fill without permit)

Clause 18 amends section 814 of the Water Act to make it an offence to destroy vegetation in a watercourse, lake or spring without a riverine protection permit. This reflects the reinstatement by the Bill of the application of the riverine protection provisions to the destruction of vegetation. Section 814 of the Water Act provides for a number of circumstances when the offence does not apply, for example when the activity is permitted under regulation. This clause also amends section 814 to expand the application of existing exemptions to the destruction of vegetation and also reinstates some vegetation specific exemptions that were provided for prior to the destruction of vegetation provisions being removed from the Water Act. These include, for example: where required under the *Fire and Emergency Services Act 1990* to reduce the risk of fire, where vegetation has been unlawfully planted for woodlot, fodder, agriculture, forestry, garden or horticultural purposes, or where it is necessary to prevent personal injury or property damage or to provide for emergency access.

Amendment of sch 4 (Dictionary)

Clause 19 amends the definition of 'other resources' for the Water Act to ensure it appropriately includes reference to vegetation in a watercourse, lake or spring.

Amendment of Environmental Offsets Act 2014

Act amended

Clause 20 provides that the part amends the *Environmental Offsets Act 2014* (Environmental Offsets Act).

Amendment of long title

Clause 21 omits the word 'significant' from the long title of the Environmental Offsets Act clarifying that the Act is an Act to, amongst other things, provide for environmental offsets to counterbalance residual impacts from particular activities on prescribed environmental matters rather than significant residual impacts.

Amendment of s3 (Purpose and achievement)

Clause 22 omits the word 'significant' from section 3(1) of the Environmental Offsets Act clarifying that the main purpose of the Act is to counterbalance the residual impacts of particular activates on prescribed environmental matters through the use of environmental offsets.

Amendment of s7 (What is an *offset condition* and an *environmental offset*)

Clause 23 omits the word 'significant' from section 7(2) of the Environmental Offsets Act to align with the amended main purpose of the Act in section 3(1) of the Act.

Amendment of s8 (What is a *significant residual impact*)

Clause 24 makes a number of amendments to section 8 of the Environmental Offsets Act so that it defines what is a residual impact rather than significant residual impact. This amendment is necessary to align with the amended main purpose of the Act in section 3(1) of the Act.

Amendment of s13 (Content of environmental offsets policy)

Clause 25 omits the word 'significant' from section 13(d) of the Environmental Offsets Act to align with the amended main purpose of the Act in section 3(1) of the Act.

Amendment of s14 (Imposing offset condition)

Clause 26 omits the word 'significant' from section 14(1)(a) of the Environmental Offsets Act to align with the amended main purpose of the Act in section 3(1) of the Act.

Amendment of s16 (Conditions that apply under this Act to authority)

Clause 27 omits the word 'significant' from section 16(1) of the Environmental Offsets Act to align with the amended main purpose of the Act in section 3(1) of the Act.

Amendment of s18 (Electing how to deliver environmental offset)

Clause 28 omits the word 'significant' from sections 18(1) and 18(5)(d) of the Environmental Offsets Act to align with the amended main purpose of the Act in section 3(1) of the Act.

Amendment of s95 (Application of this Act or existing Act)

Clause 29 omits the word 'significant' from section 95(4)(b) of the Environmental Offsets Act to align with the amended main purpose of the Act in section 3(1) of the Act.

Amendment of s95B (Amendment of existing authorities)

Clause 30 omits the word 'significant' from section 95B(2)(c)(ii) of the Environmental Offsets Act to align with the amended definition under section 8 of the Act.

Insertion of new Part 11A - Application of Act to Commonwealth offset conditions

Clause 31 amends the Environmental Offsets Act by inserting a new Part 11A in the Act to clarify how the Act applies to Commonwealth offset conditions.

New section 89A of the Act provides for part 11A definitions for 'authority', 'Commonwealth offset condition', 'Commonwealth prescribed activity', 'grant' and 'impose'.

New section 89B of the Act states that the purpose of the part 11A is to enable an amount, as a financial settlement offset for a Commonwealth offset condition, to be paid into the offset account. The purpose is also to enable the establishment, management and use of legally secured offset areas relating to Commonwealth offset conditions.

New section 89C of the Act states that to achieve the purpose of this part, the Act applies in relation to a Commonwealth offset condition with the following changes:

a) a conservation outcome under this Act is taken to be achieved, by an environmental offset for a Commonwealth prescribed activity for a prescribed environmental matter, if the offset is selected, designed and managed to maintain the viability of the matter;
b) an environmental offset under this Act is taken to include an activity undertaken to counterbalance a residual impact of a Commonwealth prescribed activity on a prescribed environmental matter;
c) a financial settlement offset under this Act is taken to include a payment for delivering a Commonwealth offset condition for a Commonwealth prescribed activity;
d) an offset condition under this Act is taken to include a Commonwealth offset condition;
e) an offset delivery plan under this Act is taken to include a plan or agreement (however described) about the way an environmental offset for a Commonwealth prescribed activity for a prescribed environmental matter will be undertaken;
f) a prescribed activity under this Act is taken to include a Commonwealth prescribed activity;
g) a reference in section 7(1), 8(4)(a), or 29(l)(b) and (3)(a) to another Act is taken to include a reference to a relevant Commonwealth Act.

New subsection 89D(1) of the Act describes certain circumstances under which the state must not accept payment in relation to a Commonwealth offset condition.

New subsection 89D(2) of the Act allows a regulation to be made to prescribe circumstances under which the state will not accept a payment in relation to a Commonwealth offset condition.

Subsections 89D(1) and 89D(2) will enable the state government to control what payments it will accept in relation to Commonwealth offset conditions. For example section 89D(1)(a) will ensure that sufficient funds are received to achieve a conservation outcome no less than is required under the Queensland environmental offsets framework.

Insertion of new pt 13, div 1, hdg

Clause 32 inserts a heading for new Division 1 in part 13 before section 94 of the Act.

Amendment of s 94 (Definitions for pt 13)

Clause 33 replaces reference to ‘pt 13’ in the heading for section 94 with ‘division’. It also replaces reference to ‘part’ in section 94 with ‘division’.

Insertion of new pt 13, div 2

Clause 34 inserts a new division 2 after section 95B of the Act to provide transitional provisions for amendments to the Environmental Offsets Act in this Bill.

New section 96 of the Act applies if, before commencement, an application has been made under an existing Act that may involve the imposition of an offset condition for a prescribed activity and, immediately before commencement, the application has not been decided.
Under new section 96(2), the application must be dealt with and decided as if the *Vegetation Management (Reinstatement) and Other Legislation Amendment Act 2016* had not commenced.

Amendment of sch 2 (Dictionary)

Clause 35 amends the definition of the 'on-site mitigation measure' under Schedule 2 the Environmental Offsets Act. The term 'significant' is also omitted from the reference to 'significant residual impact' in the Dictionary. Both amendments are necessary to align with the amended main purpose of the Act in section 3(1) of the Act.