

Queensland



VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2004

Act No. 1 of 2004



VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2004

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Queensland



Vegetation Management and Other Legislation Amendment Act 2004

Act No. 1 of 2004

**An Act to amend legislation about vegetation management, and for
other purposes**

[Assented to 29 April 2004]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Vegetation Management and Other Legislation Amendment Act 2004*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF VEGETATION MANAGEMENT ACT 1999

3 Act amended in pt 2

This part amends the *Vegetation Management Act 1999*.

4 Amendment of title

Title, ‘on freehold land’—
omit.

5 Omission of s 2 (Commencement)

Section 2—
omit.

6 Replacement of s 3 (Purposes of Act)

Section 3—

omit, insert—

‘3 Purpose of Act

‘(1) The purpose of this Act is to regulate the clearing of vegetation in a way that—

- (a) conserves the following—
 - (i) remnant endangered regional ecosystems;
 - (ii) remnant of concern regional ecosystems;
 - (iii) remnant not of concern regional ecosystems; and
- (b) conserves vegetation in declared areas;¹ and
- (c) ensures the clearing does not cause land degradation; and
- (d) prevents the loss of biodiversity; and
- (e) maintains ecological processes; and
- (f) manages the environmental effects of the clearing to achieve the matters mentioned in paragraphs (a) to (e); and
- (g) reduces greenhouse gas emissions.

‘(2) The purpose is achieved mainly by providing for—

- (a) codes for the Planning Act relating to the clearing of vegetation that are applicable codes for the assessment of vegetation clearing applications under IDAS; and
- (b) the enforcement of vegetation clearing provisions; and
- (c) declared areas; and
- (d) a framework for decision making that, in achieving this Act’s purpose in relation to subsection (1)(a) to (e), applies the precautionary principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage; and
- (e) the phasing out of broadscale clearing of remnant vegetation by 31 December 2006.

¹ For declared areas, see sections 17 and 18.

‘(3) In this section—

“environment” includes—

- (a) ecosystems and their constituent parts including people and communities; and
- (b) all natural and physical resources; and
- (c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions affecting the matters in paragraphs (a) to (c) or affected by those matters.’.

7 Amendment of s 7 (Application of Act)

(1) Section 7(1)—

omit, insert—

‘(1) This Act applies to all clearing of vegetation other than vegetation on—

- (a) a forest reserve under the *Nature Conservation Act 1992*; or
- (b) a protected area under the *Nature Conservation Act 1992*, section 28; or
- (c) an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or
- (d) a forest entitlement area under the *Land Act 1994*.’.

(2) Section 7(8)—

omit.

8 Replacement of s 8 (What is vegetation)

Section 8—

omit, insert—

‘8 What is vegetation

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

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

9 Amendment of s 10 (State policy for vegetation management)

(1) Section 10(1), ‘on freehold land’—

omit.

(2) Section 10(2)(b)—

omit.

10 Replacement of pt 2, div 3 (Regional vegetation management plans)

Part 2, division 3—

omit, insert—

‘Division 3—Regional vegetation management codes

‘11 Minister must approve regional vegetation management codes

‘(1) The Minister must approve codes for vegetation management for regions of the State (“**regional vegetation management codes**”).

‘(2) The codes must not be inconsistent with the State policy for vegetation management mentioned in section 10.

‘12 Preparing codes

‘(1) Before approving a regional vegetation management code, the Minister may seek appropriate public input in preparing a draft code.

‘(2) Before approving the regional vegetation management code, the Minister must give notice of the draft code.

‘(3) The notice must—

- (a) be published in a newspaper the Minister considers appropriate;
- and

- (b) state the places where copies of the draft code—
 - (i) may be inspected; or
 - (ii) may be bought, on payment of the reasonable fee decided by the chief executive; and
- (c) invite submissions on the draft code; and
- (d) state a day by which submissions may be made on the contents of the draft code.

‘13 Minister must consider all properly made submissions

‘Before approving a regional vegetation management code, the Minister must consider all submissions on the code properly made under section 12(3)(c).

‘14 Publication of codes

‘After the Minister has approved a regional vegetation management code, the chief executive must—

- (a) publish notice of the code in a newspaper the chief executive considers appropriate; and
- (b) keep a copy of the code available for inspection—
 - (i) at the department’s head office and regional offices at all times when the offices are open for the transaction of public business; and
 - (ii) on the department’s web site on the Internet; and
- (c) on payment by a person of the reasonable fee decided by the chief executive, give a copy of the code to the person.

‘15 Minor or stated amendments of regional vegetation management code

‘Despite sections 11 to 14, the Minister may amend a regional vegetation management code without complying with those sections if—

- (a) the amendment is only to correct a minor error in the code, or make another change that is not a change of substance; or

- (b) the code states that an amendment of a stated type may be made to the code by amendment under this section and the amendment is of the stated type.’

11 Replacement of s 16 (Preparing declaration)

Section 16—

omit, insert—

‘16 Preparing declaration

‘(1) The Minister may prepare a declaration that a stated area is—

- (a) an area of high nature conservation value; or
- (b) an area vulnerable to land degradation.

‘(2) Also, a person may request the Minister to prepare a declaration mentioned in subsection (1).

‘(3) The proposed declaration must include a proposed code for the clearing of vegetation in the stated area.

‘(4) The Minister must consult with the following entities in preparing the declaration—

- (a) an advisory committee established to advise the Minister about vegetation management;
- (b) each local government whose area is affected by the declaration.

‘(5) The Minister must give each owner of land that is in the stated area a written notice inviting the owner to make a submission about the proposed declaration.

‘(6) The Minister must also give notice of the proposed declaration.

‘(7) The notice must—

- (a) be published in a newspaper the Minister considers appropriate; and
- (b) state the places where copies of the proposed declaration may be inspected; and
- (c) invite submissions on the proposed declaration; and
- (d) state a day by which submissions may be made on the proposed declaration.’

12 Amendment of s 17 (Making declaration)

(1) Section 17(2), after ‘declared area’—

insert—

‘(a “**declared area code**”)’.

(2) Section 17(3)—

omit.

13 Amendment of s 19 (Criteria for declarations)

(1) Section 19(1) and (2), ‘declare, or provide for’—

omit, insert—

‘make an interim declaration of, or prepare’.

(2) Section 19(1)(d)—

omit.

(3) Section 19—

insert—

‘(3) An area declared under subsection (1) or (2) may include an area of regrowth vegetation.’.

14 Replacement of pt 2, div 5 (Declarations about codes for IDAS)

Part 2, division 5—

omit, insert—

‘Division 5—Declarations about codes

‘20 IDAS codes for the clearing of vegetation

‘(1) A regional vegetation management code for a region is—

(a) a code for IDAS for a vegetation clearing application for land in the region; and

(b) an applicable code for the clearing of vegetation in the region.

‘(2) A code for a declared area is—

- (a) a code for IDAS for a vegetation clearing application for land in the area; and
- (b) an applicable code for the clearing of vegetation in the area.

‘(3) To the extent that a regional vegetation management code for a region that includes a declared area is inconsistent with the declared area code for the declared area, the declared area code prevails.

‘20A Forest practice codes

‘(1) If the Minister has approved a code applying to native forest practice, native forest practice must be conducted in the way required by the code.

‘(2) A person who conducts a native forest practice must give the chief executive a notice in the approved form stating the location of the native forest practice.

‘(3) The approved form must be given—

- (a) for a native forest practice starting after 31 December 2004—before the practice starts; or
- (b) in any other case—before 1 January 2005.

‘Division 5A—Property map of assessable vegetation

‘20B When chief executive may make property map of assessable vegetation

‘(1) The chief executive may make a property map of assessable vegetation for an area if—

- (a) a development approval for the area has been given for—
 - (i) fodder harvesting; or
 - (ii) thinning; or
 - (iii) clearing of encroachment; or
 - (iv) control of non-native plants or declared pests; or
 - (v) control of regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes; or

- (b) the area becomes a declared area; or
- (c) the chief executive has been notified that the area is subject to a native forest practice; or
- (d) the area—
 - (i) contains forest products under the *Forestry Act 1959*; and
 - (ii) has been defined by agreement with the chief executive responsible for administering the *Forestry Act 1959*, as an area in which the State has an interest in commercial timber; or
- (e) the area has been unlawfully cleared; or
- (f) the area is subject to any of the following notices containing conditions about the restoration of vegetation—
 - (i) a compliance notice;
 - (ii) an enforcement notice under the *Planning Act*; or
- (g) the area has been cleared of native vegetation and in relation to the clearing a person has been found guilty by a court, whether or not a conviction has been recorded, of an offence under the *Forestry Act 1959*, the *Nature Conservation Act 1992* or the *Environmental Protection Act 1994*.

‘(2) In this section—

“**unlawfully cleared**” includes clearing of vegetation by a person in contravention of a tree clearing provision under the *Land Act 1994*, as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

‘20C When owner may apply for property map of assessable vegetation

‘(1) An owner of land may apply to the chief executive for the making of a property map of assessable vegetation for the land or part of the land.

‘(2) The application must—

- (a) be in the approved form; and
- (b) state the information prescribed under a regulation; and
- (c) be accompanied by the fee prescribed under a regulation.

‘(3) If the applicant and the chief executive agree to the making of the map, the chief executive must make the map.

‘20D When maps may be replaced

‘(1) The chief executive may replace a property map of assessable vegetation for an area (the “**previous area**”) with a new property map of assessable vegetation.

‘(2) The new map may apply to—

- (a) part or all of the previous area; or
- (b) part or all of the previous area and another area.

‘(3) Subsection (1) applies only—

- (a) if a matter mentioned in section 20B occurs in relation to an area mentioned in subsection (2); or
- (b) to reflect a change to an endangered, of concern or not of concern regional ecosystem in an area mentioned in subsection (2);² or
- (c) for a matter other than a matter mentioned in paragraphs (a) and (b) if an owner of the land included in the map agrees to the replacement.

‘20E When maps may be revoked

‘(1) The chief executive may revoke a property map of assessable vegetation for an area if—

- (a) for a map made under section 20B(1)(a)—the area is shown on a regional ecosystem map or remnant map as remnant vegetation and the approval for clearing the area has expired; or
- (b) for a map made under section 20B(1)(c)—the area is shown on a regional ecosystem map or remnant map as remnant vegetation and the chief executive has been notified that the area is no longer subject to a native forest practice; or
- (c) for a map made under section 20B(1)(d)—the area is shown on a regional ecosystem map or remnant map as remnant vegetation

² A change may only be made by amending the *Vegetation Management Regulation 2000*.

and the chief executive responsible for administering the *Forestry Act 1959* has advised that the State no longer has an interest in commercial timber in the area; or

- (d) for a map made under section 20B(1)(e), (f) or (g)—the area is shown on a regional ecosystem map or remnant map as remnant vegetation.

‘(2) Also, the chief executive may revoke a property map of assessable vegetation made under section 20C(3) if the owner of the land agrees to the revocation.

‘20F Copies of maps to be available

‘(1) If a property map of assessable vegetation is made or replaced, a copy must be given, free of charge, to each owner of land that is included in the map.

‘(2) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the map to the person.

‘20G Owners to be advised of revocation of maps

‘If a property map of assessable vegetation is revoked, the chief executive must give each owner of land that is included in the map written notice of the revocation and the reasons for the revocation.’.

15 Replacement of s 22A (Refusing development application after conviction for vegetation clearing offence)

Section 22A—

omit, insert—

‘22A Particular vegetation clearing applications may be assessed

‘(1) Despite the Planning Act, section 3.2.1³, if a vegetation clearing application is not for a relevant purpose under this section—

- (a) the application is taken, for the Planning Act, not to be a properly made application; and

³ Planning Act, section 3.2.1 (Applying for development approval)

(b) the assessment manager must refuse to receive the application.

‘(2) A vegetation clearing application is for a relevant purpose under this section if the applicant satisfies the chief executive that the development applied for is—

- (a) a project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26; or
- (b) necessary to control non-native plants or declared pests; or
- (c) to ensure public safety; or
- (d) for establishing a necessary fence, firebreak, road or other built infrastructure, if there is no suitable alternative site for the fence, firebreak, road or infrastructure; or
- (e) a natural and ordinary consequence of other assessable development for which a development approval as defined under the Planning Act was given, or a development application as defined under the Planning Act was made, before 16 May 2003; or
- (f) for fodder harvesting; or
- (g) for thinning; or
- (h) for clearing of encroachment; or
- (i) for an extractive industry; or
- (j) for clearing regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes.

‘(3) In this section—

“**extractive industry**” means 1 or more of the following—

- (a) dredging material from the bed of any waters;
- (b) extracting rock, sand, clay, gravel, loam or other material, from a pit or quarry;
- (c) screening, washing, grinding, milling, sizing or separating material extracted from a pit or quarry.

‘22B Modifying Planning Act effect for delegations and appointment of referees

‘(1) For a vegetation clearing application for which the chief executive is the assessment manager, the Planning Act, sections 4.2.36(1) and 5.8.1A apply as if a reference to the Minister in those sections were a reference to the Minister for this Act.

‘(2) For a vegetation clearing application for which the chief executive is the assessment manager, the Planning Act, chapter 4, part 2 applies as if a reference to the chief executive in that part were a reference to the chief executive for this Act.

‘22C Modifying Planning Act effect of appeal rights on ongoing applications (assessment manager)

‘(1) This section applies for an ongoing application if the chief executive is the assessment manager for the application.

‘(2) An appeal about an application for which this section applies may only be made to a tribunal under the Planning Act, section 4.2.9.

‘(3) However, an appeal, other than for a deemed refusal, may not be made unless the applicant has made representations about the matter.⁴

‘(4) The representations may also be about a refusal.

‘(5) The Planning Act, section 3.5.17, applies for the representations, including representations about a refusal.

‘22D Modifying Planning Act effect of appeal rights on ongoing applications (concurrence agency)

‘(1) This section applies for an ongoing application if the chief executive is a concurrence agency for the application.

‘(2) Before an appeal may be made in relation to the application, the applicant must make representations under the Planning Act, section 3.5.9 about the matter being appealed.

⁴ See the Planning Act, section 3.5.17 (Changing conditions and other matters during the applicant’s appeal period).

‘Division 7—Broadscale applications and ballots

‘22E Application of div 7

‘This division applies for a broadscale application.

‘22F Exception to s 22A(1)

‘(1) Section 22A(1) does not apply to a broadscale application if the application is—

- (a) only for land in a single region prescribed under section 22G(1)(a); and
- (b) properly made during the ballot application period.

‘(2) The chief executive must, for each region of the State for which a ballot must be conducted, conduct a ballot for all broadscale applications for that region that comply with subsection (1).

‘(3) If, during the ballot application period, another broadscale application mentioned in subsection (1) is made for clearing land already included in a ballot, section 22A(1) applies to the other application to the extent the other application includes land already included in a ballot.

‘22G Regions and ballots

‘(1) A regulation may prescribe—

- (a) the regions of the State for which a ballot must be conducted; and
- (b) the way, and the time at which, each ballot must be conducted; and
- (c) the clearing allocation for each region; and
- (d) the matters a broadscale application must contain.

‘(2) The purpose of conducting the ballot for a region is to decide the priority in which applications included in the ballot will be assessed under subsection (3) for receiving part of the clearing allocation for the region until the allocation is exhausted.

‘(3) After the ballot for a region is conducted—

- (a) the applications for the ballot must be assessed in their priority against the regional vegetation management codes; and
- (b) subject to the finalisation of any appeals, development approvals may be given only until the clearing allocation for the region is exhausted.

‘(4) When the clearing allocation for a region has been exhausted, any applications not assessed from the ballot for the region must be refused and need not be assessed, despite the Planning Act, section 3.5.13.

‘22H Modifying Planning Act effect on changing broadscale application

‘Despite the Planning Act, a broadscale application included in the ballot for a region—

- (a) may only be changed under the Planning Act, section 3.2.9(1) until 20 business days after an information request has been made for the application; and
- (b) can not be changed after the ballot application period has ended in a way that increases the area proposed to be cleared.

‘22I Modifying Planning Act time frames

‘For a broadscale application included in the ballot for a region, each of the following sections of the Planning Act applies as if—

- (a) in section 3.3.6(4), there were no time limit within which the assessment manager must make the request; and
- (b) in section 3.3.8, if the applicant did not respond within 20 business days, the assessment manager may assess the application as if the applicant had sent a notice under the Planning Act, section 3.3.8(1)(c); and
- (c) in section 3.5.7(1), there were no time limit within which the assessment manager must decide the application; and
- (d) in section 3.5.18(3) and (4), the period were 10 business days; and
- (e) in section 4.2.9(2), the period were 10 business days.

‘22J Modifying Planning Act effect on changing development approval

‘Despite the Planning Act, a development approval for the application can not be changed to extend the currency period.

‘22K Modifying Planning Act effect of appeal rights on broadscale applications

‘(1) Subject to section 22L(c), an appeal may only be made to a tribunal under the Planning Act, section 4.2.9.

‘(2) However, an appeal, other than for a deemed refusal, may not be made unless the applicant has made representations about the matter.⁵

‘(3) The representations may also be about a refusal.

‘(4) The Planning Act, section 3.5.17, applies for the representations, including representations about a refusal.

‘22L Appeals

‘A person can not appeal under any Act against—

- (a) the ballot process or result; or
- (b) a refusal under section 22G(4); or
- (c) the length of the currency period; or
- (d) the decision of a tribunal.⁶

‘Division 8—Miscellaneous

‘22M Refusing vegetation clearing application after conviction for vegetation clearing offence

‘(1) The assessment manager may refuse a vegetation clearing application if—

5 See the Planning Act, section 3.5.17 (Changing conditions and other matters during the applicant’s appeal period).

6 See the Planning Act, section 4.1.37 (Appeals from tribunals).

- (a) the applicant has been convicted of a vegetation clearing offence in the relevant period, regardless of whether the offence was committed before the relevant period; or
- (b) the owner of the land has been convicted of a vegetation clearing offence in the relevant period, regardless of whether the offence was committed before the relevant period.

‘(2) Subsection (1) does not limit the grounds on which the assessment manager may refuse the application under the Planning Act.

‘(3) In this section—

“**conviction**” includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

“**relevant period**” means—

- (a) for an application made before 28 March 2008—the period from 28 March 2003 until the application is made; or
- (b) for an application made on or after 28 March 2008—the period of 5 years immediately before the application is made.

“**vegetation clearing offence**” includes a tree clearing offence under the *Land Act 1994*, as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.’.

16 Amendment of s 30 (Power to enter places)

Section 30(1)(ba)(i)—

insert—

‘(AA) a lease, licence or permit under the *Land Act 1994*; or’.

17 Amendment of s 33 (Issue of warrant)

(1) Section 33(2)(a), ‘that a’—

omit, insert—

‘that any authorised officer or’.

(2) Section 33—

insert—

‘(3) The warrant may, as well as authorising entry of the place, authorise re-entry by stating it on the warrant.

‘(4) A provision of this part applying to entry authorised under a warrant is taken also to apply to any re-entry authorised under the warrant.’.

18 Amendment of s 35 (Warrants—procedure before entry)

Section 35(1)—

omit, insert—

‘(1) This section applies if an authorised officer is intending to enter a place under a warrant issued under this division.’.

19 Amendment of s 55 (Compliance notice)

Section 55(4), penalty, ‘100’—

omit, insert—

‘1 665’.

20 Insertion of new s 59A

After section 59—

insert—

‘59A Impersonation of authorised officer

‘A person must not pretend to be an authorised officer.

Maximum penalty—50 penalty units.’.

21 Amendment of s 62 (Who may appeal)

Section 62—

insert—

‘(2) The appeal must be made within 20 business days after the day the compliance notice is issued.’.

22 Amendment of s 67 (Evidentiary aids)

Section 67(1)(a)—

insert—

‘(ix) a property map of assessable vegetation;’.

23 Amendment of s 67A (Responsibility for unauthorised clearing of vegetation)

Section 67A(2)—

omit, insert—

‘(2) In this section—

“**occupier**”, of land, includes—

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

24 Insertion of new s 68D

Part 5, before section 69—

insert—

‘68D Approved forms

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

25 Insertion of new ss 70A and 70B

After section 70—

insert—

‘70A Application of development approvals and exemptions for Forestry Act

‘(1) If a development approval is given in relation to a forest product on forestry land, the approval is taken to be, for the *Forestry Act 1959*,

section 53, a permit, lease, licence, agreement or contract required under that section.

‘(2) If a development approval is given in relation to a forest product on forestry land, the approval is taken to be, for the *Forestry Act 1959*, section 54, the authority of another Act.

‘(3) If the clearing of remnant vegetation on forestry land does not involve the removal of a species prescribed under a regulation and the clearing falls within 1 or more of the exemptions listed in the Planning Act schedule 8, part 1, items 3AA to 3AG, the clearing is taken to be authorised under the *Forestry Act 1959*, section 53 or 54.

‘(4) If the clearing of vegetation, that is not remnant vegetation, on forestry land falls within 1 or more of the exemptions listed in the Planning Act schedule 8, part 1, items 3AA to 3AG, the clearing is taken to be authorised under the *Forestry Act 1959*, section 53 or 54.

‘(5) To remove doubt, it is declared that subsections (3) and (4) only authorise the use of a forest product cleared if the clearing is—

- (a) on land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes; and
- (b) to source construction timber to repair existing infrastructure on the land, if—
 - (i) the infrastructure is in need of immediate repair; and
 - (ii) the clearing does not cause land degradation; and
 - (iii) restoration of a similar type, and to the extent of the removed trees, is ensured.

‘(6) In this section—

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

‘70B Record of development approvals and property maps of assessable vegetation in land registry

‘(1) This section applies if—

- (a) a development approval is issued; or
- (b) a property map of assessable vegetation is made.

‘(2) As soon as practicable after the approval is issued or the map is made, the chief executive must give the registrar of titles written notice of the approval or the map.

‘(3) The registrar must keep records showing the approval has been issued or the map has been made.

‘(4) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land the subject of the approval or map will show the approval has been issued or the map has been made.

‘(5) If the approval is cancelled under the Planning Act, section 3.5.26, or the map is replaced or revoked, the chief executive must give written notice of the fact to the registrar.

‘(6) As soon as practicable after receiving the notice, the registrar must adjust or remove the particulars of the approval or map from the registrar’s records.’.

26 Insertion of new pt 6, div hdg

Part 6, before section 73—

insert—

‘Division 1—Transitional provisions for Act No. 90 of 1999’.

27 Insertion of new pt 6, div 2

After section 74—

insert—

‘Division 2—Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2004

‘75 What may be approved as codes

‘(1) Subsection (2) applies if before the commencement of this section—

- (a) the Minister prepared a regional vegetation management plan under section 12, as in force before the commencement; and
- (b) the Minister consulted on the plan under section 13, as in force before the commencement; and

- (c) part of the plan was identified as a code for the clearing of vegetation; and
- (d) the plan had not been made under section 15, as in force before the commencement.

‘(2) The Minister may approve the part of the plan identified as a code for the clearing of vegetation as a regional vegetation management code.

‘(3) Before approving the part under subsection (2), the Minister may amend the part in any way the Minister could have amended the part under section 15, as in force immediately before the commencement.

‘(4) The Minister may approve a regional vegetation management code for Cape York Peninsular based on the local guideline for Cape York Peninsular previously approved by the Minister under the *Land Act 1994*, section 272.

‘76 Existing applications (pre VACA) and development approvals

‘(1) Despite the Planning Act—

- (a) an existing application (pre VACA)⁷ can not be changed in any way that increases the area proposed to be cleared; and
- (b) the development approval for the application can not be changed in any way that increases the area approved for the clearing of vegetation or extends the currency period.

‘(2) An existing application (pre VACA) must be dealt with as if the *Vegetation Management and Other Legislation Amendment Act 2004* had not commenced.

‘(3) In this section—

“existing application (pre VACA)” means a development application, as defined under the Planning Act, involving the clearing of vegetation and made before midday 16 May 2003.

⁷ References to VACA relate to the *Vegetation (Application for Clearing) Act 2003*.

‘77 Existing applications (pre VACA) and permits under the Land Act 1994

‘(1) An existing application (pre VACA) must be dealt with under the *Land Act 1994*, as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

‘(2) Despite subsection (1)—

- (a) the application can not be changed in any way that increases the area of the proposed tree clearing; and
- (b) the tree clearing permit issued for the application can not be changed in any way that—
 - (i) increases the area permitted to be cleared; or
 - (ii) extends the term of the permit.

‘(3) In this section—

“existing application (pre VACA)” means an application for a tree clearing permit, made before midday 16 May 2003 under the *Land Act 1994*, chapter 5, part 6, as in force at that time.

‘78 Existing applications (post VACA) under the Land Act 1994

‘(1) An existing application (post VACA) must be dealt with under the *Land Act 1994*, as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.

‘(2) In this section—

“existing application (post VACA)” means an application for a tree clearing permit made on or after midday 16 May 2003 under the *Land Act 1994*, chapter 5, part 6, as in force at that time.

‘79 When the Land Act 1994 continues to apply

‘(1) The *Land Act 1994*, as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3, continues to apply for tree clearing permits issued under the *Land Act 1994* or as a result of an application dealt with under section 77 or 78.

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

‘80 Modifying effect of Planning Act for owner’s consent

‘(1) This section applies to a vegetation clearing application, but only until the commencement of the *Integrated Planning and Other Legislation Amendment Act 2003*, section 49.

‘(2) For applying the Planning Act, section 3.2.1(3)(a)(ii), the owner of the land, the subject of the application, is taken to be the owner of the land under this Act.’.

28 Amendment of sch (Dictionary)

(1) Schedule, definitions “area of unlawfully cleared vegetation”, “clear”, “destroy”, “development application”, “development approval”, “forest practice”, “freeholding lease”, “freehold land”, “regional vegetation management plan” and “vegetation clearing provision”—

omit.

(2) Schedule—

insert—

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

“ballot application period” means the period notified by the Minister in the gazette as the ballot application period.

“broadscale application” means a vegetation clearing application that—

- (a) does not include any other development; and
- (b) is not for a relevant purpose under section 22A.

“category 1 area” means an area that—

- (a) is an endangered regional ecosystem; or

- (b) was an endangered regional ecosystem when the chief executive was notified of a native forest practice in the area or when an approval was given for an ongoing application for the area; or
- (c) contains vegetation that, at the time of the notification or approval, was a not of concern regional ecosystem or an of concern regional ecosystem, but would, at the time a property map of assessable vegetation for the area is replaced, be considered an endangered regional ecosystem; or
- (d) is a declared area; or
- (e) has been unlawfully cleared.

“category 2 area” means an area that—

- (a) is an of concern regional ecosystem; or
- (b) was an of concern regional ecosystem when the chief executive was notified of a native forest practice in the area or when an approval was given for an ongoing application for the area; or
- (c) contains vegetation that, at the time of the notification or approval, was a not of concern regional ecosystem or an endangered regional ecosystem, but would, at the time a property map of assessable vegetation for the area is replaced, be considered an of concern regional ecosystem.

“category 3 area” means an area that—

- (a) is a not of concern regional ecosystem; or
- (b) was a not of concern regional ecosystem when the chief executive was notified of a native forest practice in the area or when an approval was given for an ongoing application for the area; or
- (c) contains vegetation that, at the time of the notification or approval, was an of concern regional ecosystem or an endangered regional ecosystem, but would, at the time a property map of assessable vegetation for the area is replaced, be considered a not of concern regional ecosystem.

“category 4 area” means an area that—

- (a) is a lease issued under the *Land Act 1994* for agriculture or grazing purposes; and
- (b) was cleared of vegetation before 31 December 1989; and

- (c) does not contain remnant vegetation at the time the property map of assessable vegetation for the area is made or replaced.

“category X area” means an area—

- (a) in which clearing has occurred; and
- (b) that is not a category 1 area, category 2 area, category 3 area or category 4 area on a property map of assessable vegetation made under section 20B; and
- (c) that at the time of the making, under section 20B or 20C, or the replacement, under section 20D, of the property map of assessable vegetation applying to the area—
 - (i) does not contain remnant vegetation; or
 - (ii) is not cleared due to burning, flooding or natural causes and the vegetation in the area forms a predominant canopy that—
 - (A) has cover that averages less than 50% of the undisturbed predominant canopy; or
 - (B) has height that averages less than 70% of the vegetation's undisturbed height; or
 - (C) is not composed of species characteristic of the vegetation's undisturbed predominant canopy.

“clear”, for vegetation—

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

“clearing allocation”, for a region, means the total area of the region for which broadscale applications may be approved.

“currency period” means the currency period as worked out under the Planning Act, section 3.5.21.⁸

“declared area” means an area declared under section 17 or 18.

“declared area code” see section 17(2).

⁸ Planning Act, section 3.5.21 (When approval lapses)

“declared pest” means a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002*.

“deemed refusal” means a deemed refusal as defined under the Planning Act.

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

“encroachment” means a woody species that has invaded an area of a grassland regional ecosystem to an extent the area is no longer consistent with the description of the regional ecosystem.

“forest practice”—

1. “Forest practice” means planting trees, or managing, felling and removing standing trees, on freehold land, for an ongoing forestry business in a—
 - (a) plantation; or
 - (b) native forest, if, in the native forest—
 - (i) all the activities are conducted in a way that is consistent with a code applying to a native forest practice; or
 - (ii) if there is no code, the all activities are conducted in a way that—
 - (A) ensures restoration of a similar type, and to the extent, of the removed trees; and
 - (B) ensures trees are only felled for the purpose of being sawn into timber or processed into another value added product (other than woodchips for an export market); and
 - (C) does not cause land degradation.
2. The term includes carrying out limited associated work, including, for example, drainage, road construction and maintenance, and other necessary engineering works.
3. The term does not include clearing vegetation for the initial establishment of a plantation.

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

“grassland regional ecosystem” means a regional ecosystem prescribed under a regulation as a grassland regional ecosystem.

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

- (a) the *Local Government (Aboriginal Lands) Act 1978*;
- (b) the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;
- (c) the *Aboriginal Land Act 1991*;
- (d) the *Torres Strait Islander Land Act 1991*;
- (e) the *Land Act 1994*.

“information request” means an information request as defined under the Planning Act.

“native forest practice” means a forest practice other than in a plantation.

“ongoing application” means a vegetation clearing application that is for a relevant purpose under section 22A.

“owner”, of land, includes—

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

“property map of assessable vegetation” means a map—

- (a) certified by the chief executive as the property map of assessable vegetation for a particular area; and
- (b) maintained by the department for the purpose of showing, for the area—
 - (i) category 1 areas; and
 - (ii) category 2 areas; and
 - (iii) category 3 areas; and

- (iv) category 4 areas; and
- (v) category X areas; and
- (c) showing areas subject to a remnant map or regional ecosystem map for the area.

“regional vegetation management code” see section 11.

“thinning”—

1. “Thinning” means the selective clearing of vegetation at a locality to restore a regional ecosystem to the floristic composition and range of densities typical of the regional ecosystem surrounding that locality.
2. The term does not include clearing using a chain or cable linked between 2 tractors, bulldozers or other traction vehicles.

“unlawfully cleared” means cleared of vegetation by a person in contravention of a vegetation clearing provision if the person—

- (a) has not contested an infringement notice given for the contravention; or
- (b) has been convicted of the contravention, whether or not the conviction is recorded.

“vegetation clearing application” means a development application as defined under the Planning Act that involves assessable development mentioned in that Act, schedule 8, part 1, items 3AA to 3AG.

“vegetation clearing provision” means the Planning Act, section 4.3.1(1), 4.3.3(1), 4.3.4(1), 4.3.5 or 4.3.15(1)⁹ to the extent the provision relates to the clearing of vegetation.’.

(3) Schedule, definition “regional ecosystem map”, item 1(b)(v) to (vii)—

omit.

(4) Schedule, definition “remnant map”, item 1(b)—

omit, insert—

⁹ Planning Act, section 4.3.1 (Carrying out assessable development without permit), 4.3.3 (Compliance with development approval), 4.3.4 (Compliance with identified codes about use of premises), 4.3.5 (Carrying on unlawful use of premises) or 4.3.15 (Offences relating to enforcement notice)

‘(b) maintained by the department for the purpose of showing, for the area, areas of remnant vegetation.’.

PART 3—AMENDMENT OF INTEGRATED PLANNING ACT 1997

29 Act amended in pt 3

This part amends the *Integrated Planning Act 1997*.

30 Amendment of s 1.3.5 (Definitions for terms used in “development”)

(1) Section 1.3.5, definition “operational work”, paragraph (e), ‘not on freehold land’—

omit, insert—

‘to which VMA does not apply’.

(2) Section 1.3.5, definition “operational work”, paragraph (f), ‘on freehold land’—

omit, insert—

‘to which VMA applies’.

31 Insertion of new ch 6, pt 3

After section 6.2.2—

insert—

‘PART 3—TRANSITIONAL PROVISION FOR VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2004

‘6.3.1 Application of VMA for mining and petroleum activities

‘The following paragraph is taken to have been inserted in schedule 8, part 1, item 3A on 15 September 2000 and had effect until the commencement of this section—

- (g) a mining activity or a petroleum activity as defined under the *Environmental Protection Act 1994*.’.

32 Amendment of sch 8 (Assessable, self-assessable and exempt development)

(1) Schedule 8, part 1, item 3A—

omit, insert—

‘**3AA.** Carrying out operational work that is the clearing of native vegetation on freehold land and indigenous land, unless the clearing is—

- (a) the clearing of vegetation to which VMA does not apply; or
- (b) for a forest practice, other than on indigenous land on which the State owns the trees; or
- (c) to the extent necessary to build a single residence on a lot, the building of which is approved under this Act, and any reasonably associated building or structure; or
- (d) necessary for essential management; or
- (e) in an area shown on a property map of assessable vegetation as a category X area; or
- (f) in an area for which there is no property map of assessable vegetation, and the vegetation is not remnant vegetation; or
- (g) for urban purposes in an urban area that is—
 - (i) shown on a property map of assessable vegetation as a category 2 area or a category 3 area; or

-
- (ii) if there is no property map of assessable vegetation for the area—a remnant of concern regional ecosystem or a remnant not of concern regional ecosystem; or
 - (h) necessary for routine management in an area of the land—
 - (i) shown on a property map of assessable vegetation as a category 3 area; or
 - (ii) for which there is no property map of assessable vegetation, and the vegetation is a remnant not of concern regional ecosystem; or
 - (i) on indigenous land, gathering, digging or removing forest products for—
 - (i) the purpose of improving the land or for use under the *Local Government (Aboriginal Lands) Act 1978*, section 28; or
 - (ii) use under the *Community Services (Aborigines) Act 1984*, section 175; or
 - (iii) use under the *Community Services (Torres Strait) Act 1984*, section 185; or
 - (j) for a specified activity.

‘3AB. Carrying out operational work that is the clearing of native vegetation on land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes, unless the clearing is—

- (a) the clearing of vegetation to which VMA does not apply; or
- (b) to the extent necessary to build a single residence on a lot, the building of which is approved under this Act, and any reasonably associated building or structure; or
- (c) necessary for essential management; or
- (d) in an area shown on a property map of assessable vegetation as a category X area; or
- (e) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation and the area has been cleared of vegetation after 31 December 1989; or
- (f) necessary for routine management in an area of the land—
 - (i) shown on a property map of assessable vegetation as a category 3 area or category 4 area; or

- (ii) for which there is no property map of assessable vegetation, and the vegetation is a remnant not of concern regional ecosystem or the vegetation is not remnant vegetation; or
- (g) for a specified activity.

‘3AC. Carrying out operational work that is the clearing of native vegetation on land subject to a lease under the *Land Act 1994*, other than a lease issued for agriculture or grazing purposes, unless the clearing is consistent with the purpose of the lease and is—

- (a) the clearing of vegetation to which VMA does not apply; or
- (b) to the extent necessary to build a single residence on a lot, the building of which is approved under this Act, and any reasonably associated building or structure; or
- (c) necessary for essential management; or
- (d) in an area shown on a property map of assessable vegetation as a category X area; or
- (e) for a category 3.1, 3.2, 4, 5, 8.2, 9.1 or 9.2 lease under the *Land Regulation 1995*, part 4, in an area for which there is no property map of assessable vegetation and in which the vegetation is not remnant vegetation; or
- (f) for a specified activity.

‘3AD. Carrying out operational work that is the clearing of native vegetation on a road under the *Land Act 1994*, unless the clearing is—

- (a) carried out by a local government and is—
 - (i) necessary to construct road infrastructure or to source construction material for roads; or
 - (ii) in an urban area and the vegetation is a remnant not of concern regional ecosystem or the vegetation is not remnant vegetation; or
 - (iii) for an activity approved by the chief executive administering VMA; or
- (b) necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure; or

-
- (c) by fire under the *Fire and Rescue Service Act 1990* to reduce hazardous fuel load; or
 - (d) necessary to maintain infrastructure located on the road, other than fences; or
 - (e) necessary to maintain an existing boundary fence, to a maximum width of 1.5 m; or
 - (f) necessary for reasonable access to adjoining land from the existing formed road for a maximum distance of 100 m with a maximum width of 10 m; or
 - (g) necessary to maintain an existing firebreak or garden located on the road; or
 - (h) for a specified activity.

‘3AE. Carrying out operational work that is the clearing of native vegetation on trust land under the *Land Act 1994*, other than indigenous land, unless the clearing is—

- (a) carried out by the entity that, under that Act, is the trustee and is—
 - (i) necessary for essential management; or
 - (ii) in an area shown on a property map of assessable vegetation as a category X area; or
 - (iii) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or
 - (iv) for an activity approved by the chief executive administering VMA; or
- (b) for a specified activity.

‘3AF. Carrying out operational work that is the clearing of native vegetation on unallocated State land under the *Land Act 1994*, unless the clearing is—

- (a) carried out by the chief executive administering that Act and is necessary for—
 - (i) essential management; or
 - (ii) the control of non-native plants or declared pests; or
- (b) for a specified activity.

‘3AG. Carrying out operational work that is the clearing of native vegetation on land that is subject to a licence or permit under the *Land Act 1994*, unless the clearing is—

- (a) carried out by the licensee or permittee and is necessary for essential management; or
- (b) for a specified activity.’.

(2) Schedule 8, part 3, item 13(a)(i), ‘on freehold land’—
omit.

(3) Schedule 8, part 3, item 13(b), ‘item 3A’—
omit, insert—
‘items 3AA to 3AG’.

(4) Schedule 8, part 4, definitions “area of high nature conservation value”, “area of unlawfully cleared vegetation”, “area vulnerable to land degradation”, “essential management”, “non-urban area”, “routine management” and “urban area”—

omit.

(5) Schedule 8, part 4—
insert—

‘**“category 2 area”** means a category 2 area as defined under VMA.

“category 3 area” means a category 3 area as defined under VMA.

“category 4 area” means a category 4 area as defined under VMA.

“category X area” means a category X area as defined under VMA.

“declared pest” means a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002*.

“essential management” means clearing native vegetation—

- (a) for establishing or maintaining a necessary fire break to protect infrastructure other than a fence or road, if the maximum width of the fire break is equivalent to 1.5 times the height of the tallest vegetation adjacent to the infrastructure, or 20 m, whichever is the greater; or

- (b) for establishing a necessary fire management line if the maximum width of the clearing for the fire management line is 10 m; or
- (c) necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure; or
- (d) by fire under the *Fire and Rescue Service Act 1990* to reduce hazardous fuel load; or
- (e) necessary to maintain infrastructure including airstrips, buildings, fences, helipads, roads, stock yards, watering facilities and constructed drains other than contour banks, other than to source construction material; or
- (f) for maintaining a garden or orchard, other than clearing predominant canopy trees to maintain under-plantings established within remnant vegetation; or
- (g) on land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes to source construction timber to repair existing infrastructure on the land, if—
 - (i) the infrastructure is in need of immediate repair; and
 - (ii) the clearing does not cause land degradation as defined by VMA; and
 - (iii) restoration of a similar type, and to the extent of the removed trees, is ensured; or
- (h) by the owner on freehold land to source construction timber to maintain infrastructure on any land of the owner, if—
 - (i) the clearing does not cause land degradation as defined by VMA; and
 - (ii) restoration of a similar type, and to the extent of the removed trees, is ensured.

“freehold land”, for regulating the clearing of vegetation under VMA, includes land in a freeholding lease under the *Land Act 1994*.

“indigenous land” means, for regulating the clearing of vegetation under VMA, land held under a following Act by, or on behalf of or for the

benefit of, Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes—

- (a) the *Local Government (Aboriginal Lands) Act 1978*;
- (b) the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;
- (c) the *Aboriginal Land Act 1991*;
- (d) the *Torres Strait Islander Land Act 1991*;
- (e) the *Land Act 1994*.

“property map of assessable vegetation” means a property map of assessable vegetation as defined under VMA.

“remnant not of concern regional ecosystem” means a remnant not of concern regional ecosystem as defined under VMA.

“remnant of concern regional ecosystem” means a remnant of concern regional ecosystem as defined under VMA.

“routine management” means clearing native vegetation—

- (a) to establish a necessary fence or road if the maximum width of clearing for the fence or road is 10 m; or
- (b) for establishing necessary infrastructure other than contour banks, fences or roads if—
 - (i) the clearing is not to source construction timber; and
 - (ii) the total extent of clearing is less than 2 ha; and
 - (iii) the total extent of the infrastructure is on less than 2 ha; or
- (c) by the owner on freehold land to source construction timber for establishing necessary infrastructure on any land of the owner, if—
 - (i) the clearing does not cause land degradation as defined by VMA; and
 - (ii) restoration of a similar type, and to the extent of the removed trees, is ensured; or
- (d) before 30 June 2004, for sustainable harvesting of fodder for stock on freehold land, in drought conditions only.

“specified activity” means—

-
- (a) clearing under a development approval for a material change of use or the reconfiguration of a lot, if the approval is given for a development application—
 - (i) made after the commencement of this definition; and
 - (ii) for which the chief executive administering VMA is a concurrence agency; or
 - (b) a traditional Aboriginal or Torres Strait Islander cultural activity, other than a commercial activity; or
 - (c) a mining activity or a petroleum activity as defined under the *Environmental Protection Act 1994*; or
 - (d) an activity under the *Fire and Rescue Service Act 1990*, section 53, 68 or 69; or
 - (e) an activity under—
 - (i) the *Electricity Act 1994*, section 101 or 112A; or
 - (ii) the *Electricity Regulation 1994*, section 14; or
 - (f) for a State-controlled road under the *Transport Infrastructure Act 1994*—
 - (i) road works carried out on the State-controlled road; or
 - (ii) ancillary works and encroachments carried out under section 50 of that Act; or
 - (g) clearing, for routine transport corridor management and safety purposes, on existing rail corridor land, new rail corridor land, non-rail corridor land or commercial corridor land (within the meaning of the *Transport Infrastructure Act 1994*) that is not subject to a commercial lease; or
 - (h) any activity authorised under the *Forestry Act 1959*.

“trust land” means trust land under the *Land Act 1994*, other than indigenous land.

“urban area” means—

- (a) an area identified as a priority infrastructure area in a priority infrastructure plan; or
- (b) if no priority infrastructure area exists, an area identified in a gazette notice by the chief executive under VMA as an urban area; or

- (c) if no priority infrastructure area exists or gazette notice has been published—an area identified on a map in a planning scheme as an area for urban purposes, including future urban purposes, but not rural residential or future rural residential purposes.

“urban purposes” means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes, but not including environmental, conservation, rural, natural or wilderness area purposes.

“VMA” means the *Vegetation Management Act 1999*.

33 Amendment of sch 10 (Dictionary)

(1) Schedule 10, definitions “clear”, “forest practice” and “native vegetation”—

omit.

(2) Schedule 10—

insert—

‘ **“clear”**, for vegetation—

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

“forest practice”—

1. “Forest practice” means planting trees, or managing, felling and removing standing trees, on freehold land, for an ongoing forestry business in a—
- (a) plantation; or
- (b) native forest, if, in the native forest—
- (i) all the activities are conducted in a way that is consistent with a code applying to a native forest practice; or
- (ii) if there is no code, all the activities are conducted in a way that—

- (A) ensures restoration of a similar type, and to the extent, of the removed trees; and
 - (B) ensures trees are only felled for the purpose of being sawn into timber or processed into another value added product (other than woodchips for an export market); and
 - (C) does not cause land degradation as defined under VMA.
- 2. The term includes carrying out limited associated work, including, for example, drainage, road construction and maintenance, and other necessary engineering works.
 - 3. The term does not include clearing native vegetation for the initial establishment of a plantation.

“native vegetation” means a native tree or plant other than the following—

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

“native forest practice” means a forest practice other than in a plantation.’.

PART 4—AMENDMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003

34 Act amended in pt 4

This part amends the *Integrated Planning and Other Legislation Amendment Act 2003*.

35 Amendment of s 36 (Amendment of s 1.3.5 (Definitions for terms used in “development”))

(1) Section 36(2), inserted definition “operational work”, item 1(f), ‘on freehold land’—

omit, insert—

‘to which VMA applies’.

(2) Section 36(2), inserted definition “operational work”, item 2(b), ‘on land that is not freehold land’—

omit, insert—

‘to which VMA does not apply’.

36 Amendment of s 109 (Replacement of sch 8 (Assessable, self-assessable and exempt development))

(1) Section 109, inserted schedule 8, part 1, table 4, item 1 and heading—

omit, insert—

‘For clearing native vegetation on freehold land and indigenous land	
‘1A	Operational work that is the clearing of native vegetation on freehold land and indigenous land, unless the clearing is— (a) the clearing of vegetation to which VMA does not apply; or (b) for a forest practice, other than on indigenous land on which the State owns the trees; or (c) to the extent necessary to build a single residence on a lot, the building of which is approved under this Act, and any reasonably associated building or structure; or (d) necessary for essential management; or (e) in an area shown on a property map of assessable vegetation as a category X area; or (f) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or (g) for urban purposes in an urban area that is— (i) shown on a property map of assessable vegetation as a category 2 area or a category 3 area; or (ii) if there is no property map of assessable vegetation for the area—a remnant of concern regional ecosystem or a remnant not of concern regional ecosystem; or (h) necessary for routine management in an area of the land— (i) shown on a property map of assessable vegetation as a category 3 area; or (ii) for which there is no property map of assessable vegetation and the vegetation is a remnant not of concern regional ecosystem; or (i) on indigenous land, gathering, digging or removing forest products for— (i) the purpose of improving the land or for use under the <i>Local Government (Aboriginal Lands) Act 1978</i>, section 28; or (ii) use under the <i>Community Services (Aborigines) Act 1984</i>, section 175; or (iii) use under the <i>Community Services (Torres Strait) Act 1984</i>, section 185; or (j) for a specified activity.

‘For clearing native vegetation on leasehold land used for agriculture or grazing	
‘1B	Operational work that is the clearing of native vegetation on land subject to a lease issued under the <i>Land Act 1994</i> for agriculture or grazing purposes, unless the clearing is— (a) the clearing of vegetation to which VMA does not apply; or (b) to the extent necessary to build a single residence on a lot, the building of which is approved under this Act, and any reasonably associated building or structure; or (c) necessary for essential management; or (d) in an area shown on a property map of assessable vegetation as a category X area; or (e) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation and the area has been cleared after 31 December 1989; or (f) necessary for routine management in an area of the land— (i) shown on a property map of assessable vegetation as a category 3 area or category 4 area; or (ii) for which there is no property map of assessable vegetation, and the vegetation is a remnant not of concern regional ecosystem or the vegetation is not remnant vegetation; or (g) for a specified activity.
‘For clearing native vegetation on land that is subject to a lease under the <i>Land Act 1994</i> , other than a lease used for agriculture or grazing	
‘1C	Operational work that is the clearing of native vegetation on land subject to a lease under the <i>Land Act 1994</i>, other than a lease issued for agriculture or grazing purposes, unless the clearing is consistent with the purpose of the lease and is— (a) the clearing of vegetation to which VMA does not apply; or (b) to the extent necessary to build a single residence on a lot, the building of which is approved under this Act, and any reasonably associated building or structure; or (c) necessary for essential management; or (d) in an area shown on a property map of assessable vegetation as a category X area; or (e) for rental category 3.1, 3.2, 4, 5, 8.2, 9.1 and 9.2 leases under the <i>Land Regulation 1995</i> in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or (f) for a specified activity.

‘For clearing native vegetation on a road under the <i>Land Act 1994</i>	
‘1D	Operational work that is the clearing of native vegetation on a road under the <i>Land Act 1994</i>, unless the clearing is— (a) carried out by a local government and is— (i) necessary to construct road infrastructure or to source construction material for roads; or (ii) in an urban area and the vegetation is a remnant not of concern regional ecosystem or the vegetation is not remnant vegetation; or (iii) for an activity approved by the chief executive administering VMA; or (b) necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure; or (c) by fire under the <i>Fire and Rescue Service Act 1990</i> to reduce hazardous fuel load; or (d) necessary to maintain infrastructure located on the road, other than fences; or (e) necessary to maintain an existing boundary fence to the maximum width of 1.5 m; or (f) necessary for reasonable access to adjoining land from the existing formed road for a maximum distance of 100 m with a maximum width of 10 m; or (g) necessary to maintain an existing firebreak or garden located on the road; or (h) for a specified activity.
‘For clearing native vegetation on trust land under the <i>Land Act 1994</i>	
‘1E	Operational work that is the clearing of native vegetation on trust land under the <i>Land Act 1994</i>, other than indigenous land, unless the clearing is— (a) by the trustee and is— (i) necessary for essential management; or (ii) in an area shown on a property map of assessable vegetation as a category X area; or (iii) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or (iv) for an activity approved by the chief executive administering VMA; or (b) for a specified activity.

‘For clearing native vegetation on unallocated State land under the <i>Land Act 1994</i>	
‘1F	Operational work that is the clearing of native vegetation on unallocated State land under the <i>Land Act 1994</i> , unless the clearing is— (a) carried out by the chief executive administering that Act and is necessary for— (i) essential management; or (ii) the control of non-native plants or declared pests; or (b) for a specified activity.
‘For clearing native vegetation on land that is subject to a licence or permit under the <i>Land Act 1994</i>	
‘1G	Operational work that is the clearing of native vegetation on land that is subject to a licence or permit under the <i>Land Act 1994</i> , unless the clearing is— (a) carried out by the licensee or permittee and is necessary for essential management; or (b) for a specified activity.’

(2) Section 109, inserted schedule 8A, table 3, item 2(a), ‘on freehold land’—

omit.

(3) Section 109, inserted schedule 9, table 4, item 9(a)(i) and (b), ‘on freehold land’—

omit.

37 Amendment of s 110 (Amendment of sch 10 (Dictionary))

(1) Section 110(3), inserted definitions “area of high nature conservation value”, “area of unlawfully cleared vegetation”, “area vulnerable to land degradation”, “essential management”, “non-urban area”, “routine management” and “urban area”—

omit.

(2) Section 110(3), inserted definitions—

insert—

‘ “category 2 area” means a category 2 area as defined under VMA.

“category 3 area” means a category 3 area as defined under VMA.

“category 4 area” means a category 4 area as defined under VMA.

“category X area” means a category X area as defined under VMA.

“declared pest” means a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002*.

“essential management” means clearing native vegetation—

- (a) for establishing or maintaining a necessary fire break to protect infrastructure other than a fence or road, if the maximum width of the fire break is equivalent to 1.5 times the height of the tallest vegetation adjacent to the infrastructure, or 20 m, whichever is the greater; or
- (b) for establishing a necessary fire management line if the maximum width of the clearing for the fire management line is 10 m; or
- (c) necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure; or
- (d) by fire under the *Fire and Rescue Service Act 1990* to reduce hazardous fuel load; or
- (e) necessary to maintain infrastructure including airstrips, buildings, fences, helipads, roads, stock yards, watering facilities and constructed drains other than contour banks, other than to source construction material; or
- (f) for maintaining a garden or orchard, other than clearing predominant canopy trees to maintain under-plantings established within remnant vegetation; or
- (g) on land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes to source construction timber to repair existing infrastructure on the land, if—
 - (i) the infrastructure is in need of immediate repair; and
 - (ii) the clearing does not cause land degradation as defined by VMA; and
 - (iii) restoration of a similar type, and to the extent of the removed trees, is ensured; or
- (h) by the owner on freehold land to source construction timber to maintain infrastructure on any land of the owner, if—

- (i) the clearing does not cause land degradation as defined by VMA; and
- (ii) restoration of a similar type, and to the extent of the removed trees, is ensured.

“freehold land”, for regulating the clearing of vegetation under VMA, includes land in a freeholding lease under the *Land Act 1994*.

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

- (a) the *Local Government (Aboriginal Lands) Act 1978*;
- (b) the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;
- (c) the *Aboriginal Land Act 1991*;
- (d) the *Torres Strait Islander Land Act 1991*;
- (e) the *Land Act 1994*.

“property map of assessable vegetation” means a property map of assessable vegetation as defined under VMA.

“remnant not of concern regional ecosystem” means a remnant not of concern regional ecosystem as defined under VMA.

“remnant of concern regional ecosystem” means a remnant of concern regional ecosystem as defined under VMA.

“routine management” means clearing native vegetation—

- (a) to establish a necessary fence or road if the maximum width of clearing for the fence or road is 10 m; or
- (b) for establishing necessary infrastructure other than contour banks, fences or roads if—
 - (i) the clearing is not to source construction timber; and
 - (ii) the total extent of clearing is less than 2 ha; and
 - (iii) the total extent of the infrastructure is on less than 2 ha; or
- (c) by the owner on freehold land to source construction timber for establishing necessary infrastructure on any land of the owner, if—

- (i) the clearing does not cause land degradation as defined by VMA; and
- (ii) restoration of a similar type, and to the extent of the removed trees, is ensured; or
- (d) before 30 June 2004, for sustainable harvesting of fodder for stock on freehold land, in drought conditions only.

“specified activity” means—

- (a) clearing under a development approval for a material change of use or the reconfiguration of a lot, if the approval is given for a development application—
 - (i) made after the commencement of this definition; and
 - (ii) for which the chief executive administering VMA is a concurrence agency; or
- (b) a traditional Aboriginal or Torres Strait Islander cultural activity, other than a commercial activity; or
- (c) a mining activity or a petroleum activity as defined under the *Environmental Protection Act 1994*; or
- (d) an activity under the *Fire and Rescue Service Act 1990*, section 53, 68 or 69; or
- (e) an activity under—
 - (i) the *Electricity Act 1994*, section 101 or 112A; or
 - (ii) the *Electricity Regulation 1994*, section 14; or
- (f) for a State-controlled road under the *Transport Infrastructure Act 1994*—
 - (i) road works carried out on the State-controlled road; or
 - (ii) ancillary works and encroachments carried out under section 50 of that Act; or
- (g) clearing, for routine transport corridor management and safety purposes, on existing rail corridor land, new rail corridor land, non-rail corridor land or commercial corridor land (within the meaning of the *Transport Infrastructure Act 1994*) that is not subject to a commercial lease; or
- (h) any activity authorised under the *Forestry Act 1959*.

“trust land” means, for regulating the clearing of vegetation under VMA, trust land under the *Land Act 1994*, other than indigenous land.

“urban area” means—

- (a) an area identified as a priority infrastructure area in a priority infrastructure plan; or
- (b) if no priority infrastructure area exists, an area identified in a gazette notice by the chief executive under VMA as an urban area; or
- (c) if no priority infrastructure area exists or gazette notice has been published—an area identified on a map in a planning scheme as an area for urban purposes, including future urban purposes, but not rural residential or future rural residential purposes.

“urban purposes” means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes, but not including environmental, conservation, rural, natural or wilderness area purposes.

“VMA” means the *Vegetation Management Act 1999*.

PART 5—AMENDMENT OF LAND ACT 1994

38 Act amended in pt 5

This part amends the *Land Act 1994*.

39 Omission of ch 5, pt 6 (Tree management)

Chapter 5, part 6—

omit.

40 Amendment of s 400 (Power to enter land, generally)

(1) Section 400(1), all words before paragraph (a)—

omit, insert—

‘(1) An authorised person may do any 1 or more of the following, with or without assistants, and only for a purpose of this Act or the *Vegetation Management Act 1999*—’.

(2) Section 400(1A)—

omit.

41 Omission of ch 7, pt 1, div 4 (Monitoring and enforcement powers for tree clearing provisions)

Chapter 7, part 1, division 4—

omit.

42 Replacement of s 431C (Further evidentiary aids)

Section 431C—

omit, insert—

‘431C Further evidentiary aids

‘A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things made, given, or issued under this Act—
 - (i) an appointment;
 - (ii) a decision;
- (b) a stated document is a copy of a thing mentioned in paragraph (a);
- (c) on a stated day, or during a stated period, a person’s appointment as an authorised person was, or was not, in force;
- (d) on a stated day, a stated requirement was made of a stated person.’.

PART 6—MISCELLANEOUS

43 Repeal

The *Vegetation (Application for Clearing) Act 2003* is repealed.

44 Minor amendments of Acts

(1) Schedule 1 amends the Acts it mentions.

(2) Schedule 2 amends the Act it mentions.

SCHEDULE 1

MINOR AMENDMENTS

section 44(1)

INTEGRATED PLANNING ACT 1997

- 1 Section 3.5.15(6), first occurring—**
renumber as section 3.5.15(5A).

INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003

- 1 Section 109, inserted schedule 9, table 4, item 2, ‘section 47’—**
omit, insert—
‘section 50’.
- 2 Section 110, inserted definition “ancillary works and encroachments”, ‘schedule 3’—**
omit, insert—
‘schedule 6’.

LAND ACT 1994

- 1 Section 28(4), definition “action”, paragraph (l)—**
omit.

SCHEDULE 1 (continued)

- 2 Section 234(e), ‘tree clearing offences’—**
omit, insert—
‘a vegetation clearing offence’.
- 3 Chapter 5, part 4, division 3, heading, ‘tree clearing offences’—**
omit, insert—
‘vegetation clearing offences’.
- 4 Section 431E(2)(f)—**
omit.
- 5 Section 431F—**
omit.
- 6 Section 431H(1), ‘Subject to subsection (2), a’—**
omit, insert—
‘A’.
- 7 Section 431H(2), (3) and (4)—**
omit.
- 8 Sections 431I and 431K—**
omit.
- 9 Section 517—**
omit.

SCHEDULE 1 (continued)

10 Schedule 2, entries for sections 263(1)(a), 263(1)(b), 266(1) and 274A(2)—*omit.***11 Schedule 6, definitions “broadscale tree clearing”, “compliance notice”, “compliance notice offence”, “destroy”, “document certification requirement”, “document production requirement”, “occupier”, “property vegetation management plan”, “tree clearing offence” and “tree clearing provision”—***omit.***12 Schedule 6—***insert—***‘ “property vegetation management plan” means—**

- (a) a property vegetation management plan under this Act, as in force before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3; or
- (b) a property vegetation management plan as defined under the *Vegetation Management Act*.

“vegetation clearing offence” means—

- (a) a vegetation clearing offence under the *Vegetation Management Act*; or
- (b) a tree clearing offence under this Act, as in force immediately before the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3.’.

SCHEDULE 1 (continued)

LOCAL GOVERNMENT ACT 1993

1 Section 854—

insert—

‘(5) For subsections (1) and (3)—

“**development**” does not include clearing vegetation until 6 months after the day the *Vegetation Management and Other Legislation Amendment Act 2004*, section 3, commences.¹⁰’.

MINERAL RESOURCES ACT 1989

1 Section 4(5), definition “offshore area”—

omit, insert—

‘ “**offshore area**” means an area of the sea bed and subsoil to which the Act applies.’.

VEGETATION MANAGEMENT ACT 1999

1 Section 4, heading, ‘purposes’—

omit, insert—

‘purpose’.

¹⁰ See the *Integrated Planning Act 1997*, section 1.3.5, definition “operational work”, paragraph (f).

SCHEDULE 1 (continued)

2 Section 4, ‘this Act’s purposes’—*omit, insert—*

‘the purpose of this Act’.

3 Section 9(1), ‘purposes’—*omit, insert—*

‘purpose’.

4 Section 17(4) to (7)*renumber* as section 17(3) to (6).**5 Section 21, heading, ‘development’—***omit, insert—*

‘vegetation clearing’.

6 Section 21(1), ‘development’—*omit, insert—*

‘vegetation clearing’.

7 Section 30(1)(ba)(i)(A), ‘involving the clearing of vegetation’—*omit.***8 Section 30(1)(ba) to (c)—***renumber* as section 30(1)(c) to (e).**9 Section 30(1)(c)(i)(A) to (C), as amended—***renumber* as section 30(1)(c)(i)(A) to (D).

SCHEDULE 1 (continued)

10 Section 36(5), ‘30(1)(bb)’*omit, insert—*

‘section 30(1)(d)’.

11 Section 39(1), before ‘a warrant’—*insert—*

‘under’.

12 Section 73, heading, at the end—*insert—*

‘under the Planning Act’.

13 Section 73(1), after, ‘approval’—*insert—*

‘under the Planning Act’.

14 Section 73(3), after, ‘application’—*insert—*

‘under the Planning Act’.

**15 Schedule, definition “property vegetation management plan”,
‘development application’—***omit, insert—*

‘vegetation clearing application’.

SCHEDULE 2

MINOR AMENDMENTS FOR COMMENCEMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2003

section 44(2)

VEGETATION MANAGEMENT ACT 1999

1 Section 70A(3) and (4), ‘items 3AA to 3AG’—

omit, insert—

‘table 4, items 1A to 1G’.

2 Schedule, definition “vegetation clearing application”—

omit, insert—

‘**“vegetation clearing application”** means a development application as defined under the Planning Act that involves assessable development mentioned in that Act, schedule 8, part 1, table 4, items 1A to 1G.’.