VEGETATION MANAGEMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Short title

The Act will be known as the *Vegetation Management Act 1999*

Objectives of the Bill

The objectives of the Bill are to regulate clearing of vegetation on freehold land in order to:

- preserve remnant endangered and of concern regional ecosystems and areas declared to be of high nature conservation value, or vulnerable to degradation.
- ensure that clearing does not cause land degradation;
- maintain biodiversity and ecological processes; and
- allow the sustainable use of land

Reasons for the Bill

The most recent national assessment of land clearing (undertaken by the Commonwealth Bureau of Rural Sciences) reported that, during the 1991-95 period, Queensland accounted for 81 percent of all native vegetation clearing that took place in Australia.

The most recent state assessment of land clearing (undertaken by the Statewide Landcover and Trees Study (SLATS) in the Department of Natural Resources) shows that clearing rates during the 1995 -1997 period were 18 percent higher than those during the 1991-1995 period. Based on satellite monitoring data, clearing rates during the 1991-95 period have been estimated at 289,000 ha a year and 340,000 ha a year during the 1995-97 period.

The introduction of tighter clearing controls on leasehold land during 1995 has had some impact. Clearing rates on freehold land increased by 55% after 1995, whereas clearing on leasehold land fell by 12%.

Scientific evidence indicates that clearing is contributing to long term loss of biodiversity, particularly where existing vegetation cover drops below 30% of original extent. There is also a growing body of evidence that clearing contributes to loss of water quality, salinity problems and soil erosion.

Through the associated release of stored carbon, excessive clearing also makes a contribution to greenhouse gas emissions. Under the Kyoto Protocol, clearing may be an issue for Australia in meeting its international greenhouse gas abatement obligations.

Way in which policy objective is to be achieved

The policy objectives will be achieved by

- Giving the State the power to regulate clearing of vegetation on freehold land.
- Requiring the development of a State vegetation management policy, approved by the Governor in Council, which will include criteria for assessing development applications involving clearing.
- Providing for the development of Regional Vegetation Management Plans, to be approved by the Minister following public consultation, which set out detailed assessment criteria for each region.
- Establishing penalties for illegal clearing (up to $125,000 plus the power for courts to order restoration of damage caused by the illegal clearing)
- Establishing provisions for enforcement and compliance.

Processes established under the State's *Integrated Planning Act 1997* will be used to assess applications for clearing and development applications which involve clearing. This will ensure that clearing which is the consequence of other forms of development is assessed efficiently.

Alternative ways of achieving the objective

On freehold land, existing legislation applies to vegetation management only in limited situations. The *Water Resources Act 1989* applies to

clearing the beds and banks of watercourses; the *Nature Conservation Act 1992* aims to provide protection to rare and endangered species; and the *Environmental Protection Act 1994* allows for Codes of Practice to be developed by industry. In addition, local governments have the power to prepare local laws in relation to vegetation management under the *Local Government Act 1993*. However, only 35 out of 125 councils have local laws dealing with vegetation management and these apply predominantly to urban areas.

Options of using the *Environmental Protection Act 1994*, the *Nature Conservation Act 1992*, and/or the *Land Act 1994* were considered. New legislation and consequential amendments to the *IPA* is the preferred option, as this:

- creates an head of power to regulate clearing vegetation on freehold land, ;
- closely links the use of this head of power to *IPA* as the accepted vehicle for reflecting state interests in planning and development decisions;
- integrates use of the head of power with an established framework for handling development applications (the Integrated Development Approval System);
- is Statewide in its application;

Administrative cost to government of implementation

There are two major costs to government that relate to administration and potential financial assistance to landholders. It is intended that the Queensland Government meets the administrative cost. Financial assistance arrangements for land holders are being discussed with the Commonwealth

Consultation

Consultation was initially through the Vegetation Management Advisory Committee, which included representatives from Queensland Conservation Council, Queensland Farmers Federation, Local Government Association of Queensland, Urban Development Institute of Australia, and the Landcare and Catchment Management Council.

Consultation with other major stakeholder groups has also occurred.

ANALYSIS OF THE BILL

Part 1—Preliminary

Clause 1 sets out the short title of the Act

Clause 2 identifies that the Act commences on a day to be fixed by proclamation

Clause 3 sets out the purposes of the Act, that aim to regulate clearing of vegetation on freehold land and include the preservation of

- remnant endangered and of concern regional ecosystems, and
- areas declared by the Minister under this Act, to be of high nature conservation value, or vulnerable to degradation.

Regulation will also ensure that clearing does not cause land degradation; maintain biodiversity and ecological processes; and allow the sustainable use of land.

The purposes of the Act are achieved through the development of codes for vegetation clearing that are applicable codes for the assessment of development under IDAS.

As the *Integrated Planning Act 1997* relies on the Local Government Act for its enforcement provisions, this Act includes enforcement provisions for vegetation clearing.

Clause 4 provides that an entity performing a function under the Act must do so in a way which advances the Act's purpose.

Clause 5 provides that the dictionary contained within a schedule of the act defines the particular words used in the Act

Clause 6 states that the Act binds all persons including the State, Commonwealth and other states to the limit of the legislative powers of the parliament.

Clause 7(1) limits the application of the Act to native vegetation on freehold land which includes freehold leases under the *Land Act 1994* .

Clauses 7(2) and *(5)* provide that the Act does not prevent a local government from regulating vegetation clearing in its area by local law or local planning instrument under the IPA.

Clauses 7(3) and *(4)* provide that regulation of native vegetation clearing by a local government is not affected by section 31 of the *Local Government Act 1993*[1] . A local government may therefore continue to regulate native vegetation clearing in a way that is not regulated by the Act, such as regulating the removal of single trees, or preserving vegetation for aesthetic or cultural heritage reasons.

*Clauses 7(6)*and *(7)* provide that the requirements of s 3.1.3 of the IPA[2] do not prevent a local government from regulating vegetation clearing in its area by local law or local planning instrument under the IPA.

Part 2—Vegetation Management

Clause 8 defines vegetation for the purpose of the Act.

Clause 9(1) and (2) provide a definition of vegetation management for the purpose of the Act and gives examples of the ways that vegetation management may apply to achieve the purposes of the Act.

Clause 10(1) and (2) provides for the Minister to prepare a State policy on vegetation management and what the State policy must include.

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1 Section 31 of the LGA provides that if a State law and a local law are inconsistent, the State law prevails over the local law to the extent of the inconsistency.

2 Section 3.1.3(4) and (5) provide that a code can be identified as a code that a local planning instrument or a local law cannot change. To the extent a local planning instrument or local law is inconsistent with the scope of a code so identified, the local planning instrument or local law is of no effect.

Clause 10(3) provides that the Governor in Council may approve the State policy for vegetation management by gazette notice.

Clause 10(4), (5) and (6) defines the ways that the policy must be made available for inspection and purchase.

Clause 10(7) provides that the policy does not constitute subordinate legislation.

Clause 11 provides for the Minister to prepare regional vegetation management plans for the management of vegetation on freehold land.

Clause 12(1) The regional plan must identify what area it covers, state the outcomes and actions proposed for vegetation management, and include a code for assessing vegetation clearing applications under IDAS.

Clause 12(2) allows areas of high conservation value, or areas vulnerable to land degradation to be declared through a vegetation management plan

Clause 12(3) states that the contents of a regional vegetation management plan is not limited to the requirements set out in Clause 12(1) and (2).

Clause 13 provides that the Minister must consult with the vegetation management advisory committee (established by clause), the relevant regional vegetation management committee (established by clause), and the relevant local government in preparing the draft regional vegetation management plan.

Clause 14(1) and (2) provide for the minister to notify the public that a regional vegetation management plan is being prepared and stipulates where the notice is to be published and what information the notice must contain.

Clause 15 (1) and (2) provide for the minister to make the draft regional vegetation management plan or amended plan a regional vegetation management plan under the Act

Clause 15(3), (4) and (5) provide for how the plan must be kept and made available for inspection, including on the Internet or purchase by the public.

Clause 15(6) provides that regional vegetation management plans do not constitute subordinate legislation.

Clause 16(1) allows for the Minister to declare areas of high nature conservation value, and areas vulnerable to degradation. Declaration of such areas will ensure that landholders and others can be informed to the location

of these areas, and that the processes for identifying these areas is publicly transparent.

Clause 16(2) outlines who must be consulted when preparing the declaration.

Clause 17(1) outlines that the Governor in Council declares areas of high nature conservation value and areas vulnerable to land degradation by gazette notice.

Clause 17(2), (3) and (4) provide for how the declaration must be kept and made available for inspection, including on the Internet, or purchase.

Clause 17(5) makes it clear that declaration is not subordinate legislation

Clause 18(1) and (2) give the Minister power to make an interim declaration for areas of high nature conservation, or areas vulnerable to land degradation. that require urgent protection

Clause 18(3) provides that an interim declaration must state that it is only an interim declaration and the date when the interim declaration will expire, which is a maximum of 3 months after it is declared.

Clause 18(4) makes it clear that interim declaration is not subordinate legislation.

Clause 19 identifies the criteria for areas of high conservation value and areas vulnerable to land degradation.

Division 5—Declarations about codes for IDAS

Clause 20 (1) and *(2)* provide for part of a regional vegetation management plan or a State policy to be identified as a code for IDAS[3], and as an applicable code[4] for the assessment of development that is operational works for the clearing of vegetation made assessable under schedule 8[5] of the *Integrated Planning Act 1997* (IPA).

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3 See definition of "code" in schedule 10 of the IPA.

4 See definition of "applicable code" in schedule 10 of the IPA.

5 See *clause 78*.

The IPA, and in particular the Integrated Development Assessment System (IDAS), provides the means for delivering the regulatory framework within which the control of vegetation clearing will be exercised. The IPA provides for codes to be prepared for IDAS against which applications are assessed for their compliance or otherwise. Relevant parts of regional vegetation management plans or a State policy will be the codes for assessing development which is the clearing of vegetation, under IDAS.

Division 6—Modifying effect of Integrated Planning Act 1997

Modifying effect on development application

Clause 21 modifies the effects of the IPA for particular development applications.

Clause 21(1) provides that the section applies for a development application[6] involving native vegetation clearing[7].

Clause 21(2) requires that where the chief executive is the assessment manager for native vegetation clearing[8], the applicant must submit a property vegetation management plan in addition to the other requirements for a development application under IDAS.[9]

Clause 21(3) requires that where the local government is the assessment manager, a property vegetation management plan must be submitted to the chief executive at the concurrence referral stage of the application.

These provisions ensure that a vegetation management plan will only be required where the chief executive is either the assessment manager or a concurrence agency for an application, and the local government will not be responsible for checking that a vegetation management plan accompanies an application.

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6 See definition of "development application" in the schedule of definitions for this Bill.

7 See definition of "vegetation" in the schedule of definitions for this Bill.

8 Schedule 1A of the IP Regulation (Alternative assessment managers) will provide that the chief executive is the assessment manager for operational work that (a) is the clearing of native vegetation, and (b) is assessable development under schedule 8 of the IPA, and (c) does not include other assessable development.

9 See section 3.2.1 of the IPA.

A property vegetation management plan must supply details of clearing of native vegetation proposed for the entire property, not just the area for which approval to clear is being sought in the application.

Clause 21(4) modifies the chief executive's powers as concurrence agency under the relevant provisions of the IPA, by enabling the chief executive to refuse an application involving assessable vegetation clearing if there is non-compliance with the applicable code[10].

Clause 21(5) modifies the IPA, by requiring that the decision of an assessment manager in assessing a development application involving assessable vegetation clearing must not conflict with the applicable code[11], even if there are sufficient grounds to justify the decision, having regard to the purpose of the code.

The relevant codes are therefore intended to operate in a way that allows only limited flexibility for deciding applications involving clearing native vegetation, within the context of performance criteria specified in the code.

Clause 21(6) defines the term "official" for the purposes of the section.

Declaration for the *Integrated Planning Act 1997*, s 1.3.4

Clause 22 has been included to remove any doubt about whether an existing lawful use also protects, within the use, the carrying out of development, such as vegetation clearing, that is subsequently made assessable under IDAS.

The scheme of the IPA, and IDAS in particular, is designed to integrate into a single system all development related approval systems in Queensland. When development related controls are integrated into IDAS, it is not intended that existing use rights limit the effect of these controls. For example, a person may be able to clear vegetation now because there are no controls applying to clearing on their land and their existing land use practices may involve periodic land clearing. However, nothing in law prevents a local government from introducing clearing controls under a local law and the effect of the local law would be to require an approval for any

10 See *clause 20*.

11 See *clause 20*.

further clearing on the land.

Under IDAS those local law controls over works (as distinct from use) will in the future be implemented by local governments through their planning schemes. Nothing in the IPA is intended to prevent those works-related controls from being introduced.

Transitional modifying effect

Clause 23 modifies the effects of the IPA for certain development applications for a transitional period.

Clause 23(1) limits the development that can be applied for in any one application[12] involving the clearing of native vegetation. For the transitional period an applicant must make separate applications for:

- the approval of development that is the clearing of native vegetation only, and
- other assessable development for which native vegetation must be cleared to allow it to occur.

An example is given in the section. A further example is where a development application for material change of use, building work, and operational works for a car parking area requires an area of land to be cleared to enable the proposed work to be carried out. The clearing of native vegetation to that extent would be an ordinary and natural consequence of the development. If the applicant also proposed to clear a further area not associated with the building and operational work, a separate development application would be required for the additional clearing.

Clause 23(2) also modifies the IPA transitionally by providing that the time frames for the assessment of the development imposed by the IPA on assessment managers will not apply to applications involving assessable vegetation clearing only (ie where the chief executive is the assessment manager).

Clause 23(3) provides that these transitional arrangements will cease on 31 December 2000.

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12 See section 3.2.3(2) of the IPA.

The provision should be read in conjunction with the amendments to schedule 8 of the IPA.[13]

The effect of *clauses 23(1)* and *(2)* is that :

- it is mandatory that all assessable native vegetation clearing other than that which is the ordinary and natural consequence of other development is applied for separately;
- all of these applications must be made to the chief executive, Department of Natural Resources[14];
- where an application is made for native vegetation clearing that is the ordinary and natural consequence of other development, the assessment manager will be the local government;
- applications to the chief executive, Department of Natural Resources, will not be limited by the time frames for assessment managers in the IPA.

This delay in the assessment of applications for development approval for clearing native vegetation, responds to concerns that this legislation will trigger "panic clearing". The delay also recognises that arrangements to effectively operate the system need to be made, particularly with respect to identifying local government's responsibilities and training their personnel.

The amendments effectively introduce a three phase regulatory regime for control of vegetation clearing.

First phase (from commencement until 30 June 2000[15]):

- separate applications for assessable vegetation clearing other than the natural and ordinary consequence of other assessable development—made to the chief executive as assessment manager—no time limit on assessment.

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13 See *clause 84*.

14 The Integrated Planning Regulation, schedule 1A, will specify the chief executive, DNR, as the assessment manager where clearing of vegetation is the only development applied for in an application.

15 See *clause 84(1)* – inserted paragraph (3A)(i)

- applications for assessable development involving native vegetation clearing that is the natural and ordinary consequence of that development—made to the local government. The clearing is not assessable development[16].

Second phase (1 July 2000 to 31 December 2000):

- separate applications for assessable vegetation clearing other than the natural and ordinary consequence of other assessable development—made to the chief executive as assessment manager—no time limit on assessment.
- applications for assessable development involving assessable vegetation clearing that is the natural and ordinary consequence of that development—made to the local government and referred to the chief executive, Department of Natural Resources, within the ordinary IPA time frames.

Third phase (from 3l December 2000)

- transitional arrangements cease;
- an application for assessable vegetation clearing alone (as specified in schedule 8 of the IPA) continue to be made to the chief executive;
- local government is the assessment manager, and the chief executive is a concurrence agency for applications involving assessable native vegetation clearing that is:
  - the natural and ordinary consequence of other development; and
  - other than that which is the natural and ordinary consequence of other development.

Part 3—Enforcement, Investigations and Offences

Clause 24 provides for the chief executive to appoint a person as an authorised officer provided that the chief executive considers the person has the necessary expertise or experience to be an authorised officer.

16 As for 12.

Clause 25 specifies that an authorised officer has the function of conducting investigations and inspections to monitor and enforce compliance with the legislation. It also provides that an authorised officer has powers under the legislation and may have powers given under another Act. However an authorised officer's powers may be limited:

- under a regulation;
- under a condition of employment; or
- by a notice given by the chief executive.

The chief executive may also give directions to an authorised officer in respect to the exercise of the powers.

Clause 26 specifies that an authorised officer holds office on the conditions stated in their instrument of appointment; that if an authorised officer's appointment provides for a term of appointment, that the authorised officer ceases to hold office at the end of the term; and the manner in which an authorised officer may resign the authorised officer's office.

Clause 27 requires the chief executive to provide each authorised officer with an identity card, containing a recent photograph of the person and other relevant particulars.

Clause 28 sets out the circumstances under which an identity card issued to an authorised officer must be returned to the chief executive.

Clause 29 requires that an authorised officer first produce or display the authorised officer's identity card before exercising any powers under the Act. However provision is also made for the authorised officer to produce the card at the first reasonable opportunity where it is not immediately practical to do so

Clause 30 sets out the entry powers available to an authorised officer to enter a place. Under this clause, an authorised officer may enter a place if:

(a) The occupier consents to the entry;

(b) It is a public place, when the place is open to the public; or

(c) The entry is authorised by a warrant.

If the authorised officer intends to enter the land to ask the occupier for consent to enter under paragraph (a), the authorised officer may enter the place to the extent that it is reasonable to contact the occupier or;

If the place is a public place, enter part of the place that the authorised officer reasonably considers members of the public are allowed to enter when they wish to contact the occupier.

Clause 31 outlines the procedures an authorised officer must follow when seeking consent to enter a place.

Clause 32 makes provision for an authorised officer to apply to a Magistrate for a warrant to enter a place. Under this provision, a Magistrate may refuse to consider an application until an authorised officer provides the Magistrate with the information he or she has requested.

Clause 33 sets out the conditions under which a Magistrate may issue a warrant and specifies the information that must be stated in a warrant.

Clause 34 makes provision for and outlines the procedures by which an authorised officer can apply for a warrant by phone, fax, radio or another means of communication because of urgent or special circumstances.

Clause 35 outlines the procedures that must be followed by an authorised officer prior to entering a place under a warrant.

Clause 36 specifies what powers are available to an authorised officer who has entered a place under clause 35 for the purposes of monitoring and enforcing compliance with the legislation.

Clause 37 makes it an offence for a person to fail to give reasonable help to an authorised officer under clause 36(3)(f), unless the person has a reasonable excuse.

Clause 38 makes it an offence for a person to fail to comply with a requirement made by an authorised officer under clause 36(3)(g), unless the person has a reasonable excuse.

Clause 39 provides that if an authorised officer enters a place which can only be entered with the consent of the owner or with a warrant the authorised officer may:

(a) If the authorised officer enters with the occupiers consent, seize a thing at the place if the authorised officer reasonably believes the thing is evidence of a vegetation clearing offence and the seizure of the thing is consistent with the purpose of entry as told to the occupier when the occupier's consent was sought; and

(b) If the entry was authorised by a warrant, seize the evidence for which the warrant was issued.

An authorised officer may also seize the following things in the place:

(a) A thing the authorised officer reasonably believes is evidence of a vegetation clearing offence and which the authorised officer reasonably believes may be hidden, lost or destroyed, or used to continue or repeat the offence; and

(b) a thing which the authorised officer reasonably believes has just been used in committing a vegetation clearing offence.

Clause 40 enables an authorised officer to take the following actions in relation to a thing which is seized—that is, move the thing from the place where it was seized; leave the thing at the place of seizure but restrict access to it; or make any seized equipment inoperable.

Clause 41 makes it an offence for a person to tamper, or attempt to tamper with a seized thing or something restricting access to the thing; or equipment which the authorised officer has made inoperable; without an authorised officer's approval.

Clause 42 makes provision for an authorised officer to require the person in control of a seized thing to take it to a stated reasonable place by a stated reasonable time, and if necessary, to remain in control of it at the stated place for a reasonable time. It is an offence for a person to fail to comply with a requirement or further requirement made under clause 31, unless the person has a reasonable excuse.

Clause 43 requires an authorised officer to issue a receipt for any seized thing and give the receipt to the person from whom it was seized. However, if for some reason this proves impractical, the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Where a thing is seized under clause 43, the receipt must generally describe each thing seized and its condition. Clause 43 does not apply to a thing if it is impractical, or would be unreasonable, to give a receipt, having regard to the thing's nature, condition and value.

Clause 44 sets out the circumstances under which a seized thing will be forfeited to the State, for example, if the owner cannot be found, after making reasonable enquiries, or if it cannot be returned to its owner, after making reasonable efforts.

Clause 45 makes provision for a court, upon conviction of a person for a vegetation clearing offence, to order forfeiture to the State of anything owned by the person which had been seized under the legislation.

The court may make any order it considers appropriate to enforce the forfeiture and the court's powers under the *Penalties and Sentences Act 1992*, or another Act, are not limited by clause 45.

Clause 46 enables the chief executive to deal with a thing which has been forfeited to the State, as the chief executive considers appropriate, including the destruction or disposal of the thing.

Clause 47 sets out the circumstances under which an authorised officer must return a thing which has been seized but not forfeited to the State, for example, at the end of 6 months or where the authorised officer is satisfied that the thing does not need to be retained as evidence.

Clause 48 provides for the owner of a seized thing to have access to it for inspection or copying (if a document), until it is forfeited or returned.

Clause 49 provides that where the authorised officer finds a person committing a vegetation clearing offence, or reasonably suspects the person has just committed a vegetation clearing offence, the authorised officer may require the person to state the person's name and residential address. When making such a requirement, the authorised officer must warn the person it is an offence to fail to state their name and address, unless the person has a reasonable excuse.

If the authorised officer reasonably suspects that the name or address stated is false, the authorised officer may require the person to give evidence of the correctness of the stated name or residential address

Clause 50 makes it an offence to fail to comply with a requirement made under clause 49, unless the person has a reasonable excuse. However, a person does not commit an offence by not complying with such a requirement, if it is not proven that the person committed the vegetation clearing offence.

Clause 51 provides that an authorised officer may, by written notice, require a person to attend before the authorised officer to provide information about a vegetation clearing offence. It is an offence not to comply with such a requirement, unless the person has a reasonable excuse.

Clause 52 makes provision for an authorised officer to:

- require a person to produce a document relating to the clearing of vegetation for inspection by the authorised officer, which the authorised officer may keep to copy;
- require a person to certify that a copy of the document, or an entry in a document is a true copy; and
- keep a document until such time of a copy of the document or an entry in a document is certified as a true copy.

Clause 53 makes it an offence not to comply with a request under clause 52 to certify that a copy of the document or an entry in a document is a true copy, unless the person has a reasonable excuse.

Clause 54 makes it an offence to fail to produce a document in accordance with a requirement under clause 52, unless the person has a reasonable excuse.

Clause 55 enables an authorised officer to give a person a compliance notice requiring the person to stop committing an offence under the act; to stop committing an offence under the act and rectify the matter if reasonably able to be rectified; or to rectify a matter relating to an offence which has been committed under the act if it is reasonably capable of being rectified.

The compliance notice must state the vegetation clearing offence the authorised officer believes is being or has been committed, and if requiring a person to rectify the matter, the steps the person must take to comply with the notice. Failure to comply with a compliance notice, unless a person has a reasonable excuse is an offence.

If a person contravenes a compliance notice, the authorised officer may take reasonable action to stop the contravention and recover associated costs from the person. However, where the person complies with a compliance notice, the person cannot be prosecuted for the vegetation clearing offence to which the notice relates.

Clause 56 requires an authorised officer to give written notice if an authorised officer damages property when exercising or purporting to exercise a power; or a person acting under the direction or authority of an authorised officer damages property. The notice must set out particulars of the damage and be given to the person who appears to be the owner of the property. However, if for some reason this proves impractical, the authorised officer must leave the notice in a conspicuous place and in a secure way.

Clause 57 makes provision for a person to be compensated by the State, where the person has incurred a loss or expenses because of the exercise or purported exercise of a power by an authorised officer under the following subdivisions of Division 1 of Part 3:

- Subdivision 2—entry to places;
- Subdivision 4—powers after entry;
- Subdivision 5—power to seize evidence.

Clause 58 makes it an offence for a person to state anything to an authorised officer that the person knows is false or misleading.

Clause 59 makes it an offence to give an authorised officer a document containing information that the person knows is false or misleading, unless the person advises the authorised officer how it is false or misleading at the time.

Clause 60 makes it an offence to obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Clause 61 provides that a person may be prosecuted for certain offences contained in the *Integrated Planning Act 1997* or the *Environmental Protection Act 1994*.

Part 4—Appeals and Legal Proceedings

Clause 62 enables a person to appeal to the Magistrates Court against a decision to give a compliance notice or an information notice

Clause 63 makes provision for a court to grant a stay of the operation in relation to a decision to give a compliance notice or an information notice.

Clause 64 states that Division 2 of Part 4 of the legislation applies to a proceeding under the legislation and a proceeding relating to certain offences under the *Integrated Planning Act 1997* (vegetation clearing offences).

Clause 65 to Clause 67 specifies those matters which do not have to be proved or which are considered to be evidence.

Clause 68 provides for offences under the legislation, and certain offences under the *Integrated Planning Act 1997* (vegetation clearing offences), to be dealt with as summary offences according to the *Justices*

Act 1886 and specifies the period within which a proceeding for such offences must commence.

Part 5—Miscellaneous

Clause 69 gives the minister the power to establish advisory committees to advise on vegetation management issues and the Minister can determine the terms of reference, the membership and the operations of those committees. Fees and allowances decided by the Governor in Council may be paid to committee members.

Clause 70 gives the minister the power to establish regional vegetation management committees to advise on the derivation of regional vegetation management plans and other relevant vegetation management issues. It provides that the minister can determine the terms of reference, the membership and the operations of that committee. Fees and allowances decided by the Governor in Council may be paid to committee members.

Clause 71 provides that an official is not civilly liable for an act done or an omission made honestly and without negligence under the Act.

Clause 72 provides that the Governor General can make regulations under this Act.

PART 6—TRANSITIONAL PROVISIONS

Existing development approvals and applications for development approvals

Clauses 73(1) and *(2)* provide that a development approval in force at commencement of the provision continues to have full effect according to its terms, and is not affected in any way by the enactment of the legislation.

Clauses 73(3) and *(4)* provide that any development application either made but not decided, or decided and the subject of an undecided appeal, may continue to be decided, and if approved, have full effect according to its terms, as if the legislation had not been enacted.

Existing development control plans and special facilities zones

Clause 74(a) provides that a development control plan under the IPA[17] continues to regulate development in the area to which it applies as if the legislation had not been enacted.

Clause 74(b) makes similar provision for an area designated as a "special facilities zone" in a planning scheme under the IPA. The zoning allows for development of a particular type to occur in that zone without approval and has a similar effect to a development approval under the IPA.

This normal transitional approach taken in *Clauses 73* and *74* avoids legislation having retrospective effect on approvals and applications given or made prior to legislation coming into effect.

PART 7—AMENDMENT OF *INTEGRATED PLANNING ACT 1997*

Act amended in pt 7

Clause 75 states that part 4 amends the IPA.

Amendment of s 1.3.5 (Definitions for terms used in "development")

Clause 76(1) replaces the existing description of forestry business in existing paragraph (b) with the concise term "forest practice". A detailed definition of that term that is essentially a refinement of the existing description is included in Schedule 10 of the IPA[18].

Clause 76(2) amends paragraph (e) of the definition of "operational work" to exclude vegetation clearing on freehold land from the existing exemption under that provision.

Clause 76(3) inserts a new paragraph (f) in the definition of "operational work" to bring vegetation clearing on freehold land within the definition of "development" under the IPA. (The current definition specifically excludes vegetation clearing from being development under the IPA.)

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17 See section 6.1.45A of the IPA (Development control plans under repealed Act).

18 See *clause 85* and explanatory note.

The definition does not differentiate between native and non-native vegetation. Vegetation is not defined for the purposes of the IPA and has its generally understood meaning. As a consequence clearing of all vegetation on freehold land is brought within the concept of development to allow the development to be regulated under the IPA and IDAS, either by a planning scheme or in schedule 8[19]. This avoids the need for multiple regulatory mechanisms, eg local laws and planning schemes.

Amendments to schedule 8[20] make certain clearing of native vegetation[21] assessable development.

The amendment brings vegetation clearing on freehold land only, within the framework of the concept of development. The development is restricted to vegetation clearing on freehold land because it is not intended that the amendment interfere with the separate system operating under the *Land Act 1994* for the regulation of vegetation clearing on State land.

Amendment of s 3.2.2 (Acknowledgment notices generally)

Clause 77 amends section 3.2.3 to include clearing vegetation on freehold land as an aspect of development an acknowledgment notice must address.

Section 3.2.3 requires that if an assessment manager is required to issue an acknowledgment notice, the notice must state which aspects of development the application seeks approval for. The acknowledgment notice confirms the understanding of the applicant about how the assessment of the application will proceed. The amendment ensures that if vegetation clearing is an assessable aspect of the proposed development, this must be confirmed in the acknowledgment notice.

Amendment of s 3.3.15 (Referral agency assesses application)

Clause 78(1) amends section 3.3.15(1) to clarify that a concurrence agency must assess an application against concurrence agency codes, in addition to the laws and policies it applies. The term "concurrence agency

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19 See section 3.1.2 of the IPA and definition of "assessable development" in schedule 10 of the IPA.

20 See *Clause 84*.

21 See definition of "native vegetation" inserted in in schedule 10 of the IPA in *clause 85*.

codes" is defined in the dictionary[22] as codes or parts of codes specified in the IPA or another Act as codes to be applied to the development by the particular concurrence agency for the development.

Clause 78(2) amends section 3.3.15(2)(a) by removing the word "relevant". That word becomes redundant by the amendment of clause 66(3) which, apart from adding a reference to codes, qualifies the applicable planning schemes, policies and codes by referring to those in the previous subsection.

Clauses 78(3) amends section 3.3.15(2)(a) as stated above.

Amendment of s 3.3.18 (Concurrence agency's response powers)

Clause 79(1) and *(2)* amend sections 3.3.18(4)(a) and (b) for consistency with amended section 3.3.15[23] by including a reference to concurrence agency codes. The amendment clarifies that a concurrence agency may direct the assessment manager to refuse an application if development the subject of an application does not comply with its laws and policies, or any code against which the particular concurrence agency is required to assess the proposed development.

Amendment of s 3.5.4 (Code assessment)

Clauses 80(1) and *(2)* amend section 3.5.4 to remove doubt about the relationship between subsections (2) and (3). It has been suggested that the sections read together imply that concurrence agency codes are not part of the laws and policies referred to in subsection 3 and are therefore not applicable codes for the purposes of subsection (2)(b).

The intent of the section is that when the assessment manager for an application is not a local government, the alternative assessment manager must assess the application against:

- the laws and policies applied by the alternative assessment manager (which are taken to be applicable codes) and

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22 *Clause 85* inserts a new definition of "concurrence agency code". See also corresponding amendment to sections 3.3.18 (*Clause 67*).

23 See *Clause 66*.

- the particular codes (also applicable codes) the entity would apply to the development if they were a concurrence agency for the application, ie the concurrence agency codes.

Amendment of s 4.1.33 (Stay of operation of enforcement notice)

Clause 81 amends section 4.1.33 by inserting new paragraph (c) to provide a further exception to the general rule that when a notice of appeal about an enforcement notice is lodged, the operation of the enforcement notice is stayed until the Court decides otherwise, or the appeal is dismissed or withdrawn. Clearing of vegetation cannot be undone and it is important that unauthorised clearing can be stopped quickly and not recommenced until the alleged offence is properly dealt with. The amendment provides that an enforcement notice relating to clearing vegetation cannot be stayed by the lodgement of a notice of appeal against the enforcement notice. Although the person may appeal against the enforcement notice, it remains in force until the appeal is heard.

Amendment of s 4.3.8 (Application of div 2)

Clause 82 amends section 4.3.8(c) by inserting new paragraph (e) to provide a further exception to the general rule that an assessing authority must give a show cause notice to a person before they can give the person an enforcement notice. The amendment provides that no show cause notice is required when an assessing authority proposes to give an enforcement notice about clearing of vegetation. A show cause notice would delay the effect of an enforcement notice and may result in continued or increased clearing that cannot be remedied.

Amendment of s 4.3.26 (Effect of orders)

Clause 83 amends section 4.3.26 to extend the powers of the court specified in the section to making an order for rehabilitation or restoration of an area cleared, if the clearing of vegetation from the area constituted an offence under the IPA.

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

Clause 84(1) amends schedule 8 by inserting a new item 3A that makes assessable the carrying out of operational work that is the clearing of native vegetation.[24]

The item then lists 8 exceptions to that general rule. These exceptions are not assessable development under schedule 8 and to that extent do not require a development application. However, a local government may make the clearing assessable under its planning scheme or continue to regulate it under a local law.[25]

Paragraph (a) provides that works for clearing native vegetation are not assessable development to the extent they are necessary to build a single residence and reasonably associated structures or infrastructure, such as a shed, fence, or drain. The State does not propose by this legislation to regulate the clearing of land to build a house, irrespective of the location of the land.

Paragraph (b) provides that works for clearing native vegetation necessary for essential management are not assessable development. The term "essential management" is defined in part 4 of schedule 8[26] and addresses particular safety and maintenance issues.

Paragraphs (c), (d), and (e) provide that works for clearing native vegetation necessary for routine management[27] (including non remnant), are not assessable development in any one or more of the following areas:

- an area covered by a regional ecosystem map[28] and indicated on the map as being outside an area of particular sensitivity;[29]
- an area covered by a remnant map;

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24 See also *clause 11*and explanatory note.

25 See *clause 7*.

26 See *clause 84(5)* – definitions for Schedule 8.

27 See *clause 84(5)* for definition of "routine management".

28 See definition of "regional ecosystem map" inserted in part 4 of schedule 8.

29 See definitions of "remnant endangered regional ecosystem" and "remnant of concern regional ecosystem" inserted in part 4 of schedule 8.

- an area outside of an area declared to be of particular sensitivity[30].

Paragraph (f) provides that clearing vegetation in an urban area[31] is not assessable development unless it occurs in an ecosystem of particular sensitivity[32] that is indicated on a regional ecosystem map, or an area declared to be of high nature conservation value.[33]

Paragraph (g) provides that clearing of native vegetation in a non-urban area[34] is generally assessable. However, in the following circumstances it is not. In the first place, the clearing must be either:

- for a subdivision which does not involve opening a road; or
- the natural and ordinary consequence of carrying out other development, on an area of less than 5 ha.

In the second place, the area must not be in an ecosystem of particular sensitivity[35] that is indicated on a regional ecosystem map, or an area declared to be of high nature conservation value.[36]

To clarify the effect of paragraph (g) - clearing for a subdivision which does involve the opening of a road is assessable development.

Paragraph (h) makes a transitional arrangement and should be read with *clause 23* and the explanatory note on that clause.

The paragraph provides that native vegetation clearing that is the natural and ordinary consequence of other assessable development is not itself assessable development before 1 July 2000. Local government is the default assessment manager for the other development. From 1 July 2000, if the vegetation clearing for that other development becomes assessable

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30 Areas declared under the proposed *Vegetation Management Act 1999* (VMA) to be of high conservation value, or vulnerable to land degradation. See *clause 84(5).* and schedule to the VMA, for definitions of "area of high conservation value" and "area vulnerable to land degradation".

31 See definition of "urban area" inserted in part 4 of schedule 8.

32 As for 23.

33 As for 24 with respect to an area of high conservation value.

34 See definition of "non-urban area" inserted in part 4 of schedule 8..

35 As for 23.

36 As for 24 with respect to an area of high conservation value.

because of the operation of another paragraph in Item 3A of schedule 8, the chief executive, Department of Natural Resources, will be a concurrence agency for that aspect of a development application.

Clause 84(2) amends item 13(a) by providing that native vegetation clearing, as an aspect of management for an agricultural use on freehold land, is not exempt development

Clause 84(3) amends item 13(b) to make it clear that fire hazard reduction for the purposes of the provision is limited to that authorised under the *Fire and Rescue Authority Act 1990.*

Clause 84(4) amends item 13(c) by replacing the existing description of the use of premises for a forestry business, which is exempt development, with the concise term "forest practice". A detailed definition of that term is included in Schedule 10 of the IPA[37].

Clause 84(5) inserts a number of definitions in part 4 of schedule 8 for the amendments to part 1 of that schedule, proposed in this Bill. The definitions are self-explanatory.

Amendment of sch 10 (Dictionary)

Clause 85 inserts definitions in Schedule 10 of the IPA for the purposes of these amendments generally. Other definitions specifically relating to schedule 8 of the IPA, are inserted in part 4 of that schedule. The definitions are self explanatory.

Amendment of the *Land Act 1994*

Clause 86 amends the *Land Act 1994* to ensure consistency in definitions and penalties between freehold and leasehold land.

Clause 87 and 88 amend the terms degradation to the land to land degradation for consistency between the *Land Act 1994* and the *Vegetation Management Act 1999*

Clause 89 amends the definitions of critical area and environmentally sensitive area to areas of high conservation value, and areas vulnerable to land degradation under the *Vegetation Management Act 1999*

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37 See *clause 85*.

Clause 90 increases the penalty units for tree clearing offences to 1665 units, in line with offences for vegetation clearing under the *Vegetation Management Act 1999*

Clause 91 amends critical area to environmentally sensitive area as defined in Clause 87.

Clause 92 means that fees prescribed by regulation must accompany an application for a tree clearing permit. Previously, no fees were charged for tree clearing permits on leasehold land. Introduction of fees will be consistent with the fees charged for development applications regarding vegetation clearing under IPA

Clause 93 adds that a tree management plan must identify any areas affected by land degradation.

Clause 94 amends the issues that the chief executive must consider when issuing a tree clearing permit to include the protection of environmentally sensitive areas; and any effect of the clearing on land degradation.

Clause 95 and 96 amend the definition of a critical area, environmentally sensitive area and land degradation to be consistent with areas of high nature conservation value and areas vulnerable to land degradation under the *Vegetation Management Act 1999.*