NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

Title of the Bill

Natural Resources and Other Legislation Amendment Bill 2003

Policy Objectives of the Bill

There are two distinct sets of policy objectives contained within the Bill. The first set of policy objectives relate to mining and native title (**native title policy objectives**) that are set out immediately below.

- To amend the Alternative State Provisions contained in the *Mineral Resources Act 1989* so that the Commonwealth right to negotiate process will apply to mining tenement applications made after 31 March 2003 over land subject to native title.
- To amend the *Environmental Protection Act 1994* so that the administering authority may amend an environmental authority to ensure compliance with any conditions included in a determination made by the National Native Title Tribunal under the right to negotiate process.
- To amend the Alternative State Provisions contained in the *Mineral Resources Act 1989* to allow the Alternative State Provisions to continue to apply to fruition for the processing of mining tenement applications lodged after 18 September 2000 and on or before 31 March 2003 over land subject to native title.
- To amend the Alternative State Provisions contained in the *Mineral Resources Act 1989* to allow the Commonwealth right to negotiate process to apply to the processing of mining tenement applications lodged before 18 September 2000 over land subject to native title where the applicant has not been given a notification commencement date under section 727 of the *Mineral Resources Act 1989* on or before 31 March 2003.

- To amend the *Mineral Resources Act 1989* to allow the Minister to be able to impose conditions on the grant of exploration permits and mineral development licences, and for a Mining Registrar to impose conditions on prospecting permits, which may be granted over land subject to native title in order to satisfy the specific requirements of section 237 of the Commonwealth *Native Title Act 1993*.

The second set of policy objectives relate to vegetation clearing (**vegetation clearing policy objectives)** that are set out immediately below.

- The Bill amends the *Land Act 1994*, *Vegetation Management Act* 1999 (VMA) and other legislation about tree clearing to improve the ability to enforce existing tree clearing regulations and provide greater deterrents to illegal clearing.
- The Bill provides for clarification of existing provisions, and additional enforcement provisions under the *Land Act* 1994 and *Vegetation Management Act 1999*. Minor amendments to the vegetation clearing provisions in the *Integrated Planning Act 1997* (IPA) are made.

Achieving the Policy Objectives of the Bill

Native title policy objectives

The Commonwealth *Native Title Act 1993* provides that the States and Territories can develop legislative schemes, known as Alternative State Provisions, which substitute for the Commonwealth right to negotiate process. The Commonwealth right to negotiate applies to grants of rights to mine over land subject to native title. The Commonwealth *Native Title Act 1993* provides that the responsible Minister, in this case the Commonwealth Attorney-General, must determine by a legislative instrument known as a determination, that the proposed State scheme complies with the requirements set out in the Commonwealth *Native Title Act 1993*. On 31 May 2000 Queensland obtained 13 determinations from the Commonwealth Attorney-General under the Commonwealth *Native Title Act 1993* approving Alternative State Provisions contained in the *Mineral Resources Act 1989*, the *Land and Resources Tribunal Act 1999* and the *Supreme Court of Queensland Act 1991* for rights to mine granted under the *Mineral Resources Act 1989* over land subject to native title.

In June 2000, as required under the Commonwealth *Native Title Act 1993*, the Commonwealth Attorney-General tabled his determinations in

the House of Representatives and the Senate. On 8 June 2000, the Australian Democrats moved a motion to disallow all of the determinations. On 30 August 2000 the Senate disallowed 6 of the 13 determinations being those approved under section 26B and section 43A of the Commonwealth *Native Title Act 1993*. The effect of this was that the remaining 7 determinations would have applied to some Queensland mining tenements and the Commonwealth right to negotiate would have applied to the remainder. Accordingly, on 14 September 2000, the *Native Title Resolution Act 2000* amended the *Mineral Resources Act 1989* to modify the Alternative State Provisions to extend the section 43 schemes to all land and waters in Queensland where the right to negotiate process would otherwise have applied and repealed the section 26B and section 43A schemes that had been disallowed by the Senate. In addition the *Native Title Resolution Act 2000* further modified the section 26A schemes to provide substantive procedural rights and acceptable definitions of the nature of low impact exploration that were no less favourable to indigenous interests than those proposed in New South Wales. On 18 September 2000 the State commenced using the Alternative State Provisions.

On 6 February 2001 the Central Queensland Land Council Aboriginal Corporation applied to the Federal Court for judicial review of the decisions of the Commonwealth Attorney-General to approve Queensland's Alternative State Provisions. On 8 February 2002 Justice Wilcox of the Federal Court found that the Commonwealth Attorney-General's section 43 determinations were invalid on the basis of a technical point. His Honour found that the section 26A determinations were valid. The consequences of this decision for the State at the time (and until or unless an Appellant Court decided otherwise) were that the section 26A schemes had replaced the Commonwealth right to negotiate process and had operated since 18 September 2000 but the State's section 43 schemes had not operated from 18 September 2000 and the Commonwealth right to negotiate process had instead continued to apply. Because there had been no compliance with the Commonwealth right to negotiate process then any processes undertaken and grants made under the section 43 schemes would not be valid as against native title.

On 1 March 2002 the State joined with the Commonwealth in appealing to the Full Federal Court the decision relating to the invalidity of the section 43 determinations. The Central Queensland Land Council Aboriginal Corporation cross-appealed the decision about the validity of the section 26A determinations.

On 8 February 2002 and then on 25 June 2002 the State requested the Commonwealth Attorney-General to make new section 43 determinations

remedying the technical issue identified by the Federal Court. On 9 July 2002 the Commonwealth Attorney-General refused the State's requests and indicated that he would, in any case, await the Court's determination of the legal issues.

On 17 July 2002, the Premier requested that the Department of Natural Resources and Mines review the State's native title process for future grants of exploration and mining tenements. In making that announcement the Premier noted that the use of Alternative State Provisions as the State's preferred policy option for dealing with mining, exploration and native title, had become complicated by the Senate's disallowance of part of the State's original package of 13 schemes and by the Federal Court's finding that some of Commonwealth Attorney-General's determinations approving the State's schemes were invalid. As part of this review the views of the Queensland Mining Council, the Queensland Indigenous Working Group and the 7 Aboriginal/Torres Strait Islander Representative Bodies in Queensland were sought and obtained.

On 27 November 2002 the Full Federal Court delivered its decision on the appeals. The Full Federal Court unanimously reversed the earlier decision of invalidity and instead found that the Attorney-General's section 43 determinations were valid. Therefore the State's section 43 schemes for high impact exploration and mining production had in fact always been operative since commencing on 18 September 2000 and the processes undertaken and grants made under the scheme are valid as against native title. The Court also unanimously dismissed the challenge by the Central Queensland Land Council Aboriginal Corporation to the validity of the low impact section 26A exploration schemes. The Central Queensland Land Council Aboriginal Corporation has not sought leave to appeal that decision.

On Thursday 28 November 2002 the Premier and the Minister for Natural Resources and Mines announced the outcome of the review of the State's native title processes for future grants of exploration and mining. They announced that in 2003 that the State would move away from using the Alternative State Provisions and that the State would instead adopt the Commonwealth's right to negotiate process.

The Bill makes the necessary amendments to the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994* to give effect to the Premier's and the Minister for Natural Resources and Mines' announcement of 28 November 2002 that in 2003 the Queensland Government would adopt the Commonwealth right to negotiate process for the grant of mining tenements over land subject to native title.

Specifically the Bill does three things.

a. Firstly, the Bill amends the application provisions of the Alternative State Provision contained in Parts 13 to 19 of the *Mineral Resources Act 1989* so that the Parts do not apply to mining tenement applications made after 31 March 2003 over land subject to native title. This in effect closes the class of mining tenement applications to which the Alternative State Provisions apply to those made in the period between 18 September 2000 and 31 March 2003. The Commonwealth right to negotiate process will instead apply to mining tenement applications made after this period.

b. In addition the Bill provides that those applications that are in what is colloquially described as the "backlog" i.e. pre-18 September 2000 mining tenement applications, and which have not been given a *notification commencement date* on or before 31 March 2003, will not be progressed under the Alternative State Provisions. These backlog tenement applications will instead be progressed under the Commonwealth right to negotiate process.

c. The State's Land and Resources Tribunal, as the arbitral body under the Alternative State Provisions, will as a result of the Bill have a finite number of matters for which it continues to have jurisdiction. The exercise of this jurisdiction may however not be exhausted for a number of years as the jurisdiction includes for example dealing with applications for the making of compensation decisions for the effect of the grant of mining tenements on native title. This can only be done once there has been an approved determination by the Federal Court that native title exists over the land the subject of the mining tenement. The Bill does not otherwise impact on the other jurisdictions of the Land and Resources Tribunal.

d. The Bill also makes some minor amendments to some notification periods for the Alternative State Provision schemes to enhance ease of compliance. Experience of the operation of the Alternative State Provisions has provided feedback that the notification period by which an applicant for a low impact exploration permit or a low impact mineral development licence must inform each native title notification party for the land the subject of their permit or licence of their application, namely 7 days, may be too short to be complied with easily by the applicant. The Bill extends this period to instead be 14 days.

Similarly the period in which the applicant has to inform the mining registrar that the above notification has been sent, which is currently 2 days, is extended to 7 days. These amended time periods do not adversely impact upon any native title or procedural rights afforded under the Alternative State Provisions.

e. It has also become apparent under the Alternative State Provisions that the end of the advertisement period for a high impact exploration permit and a high impact mineral development licence, which is currently 14 days from the Minister decision about the amount to be deposited by the holder as security, may be too short to be complied with easily by the holder. Any difficulty is compounded by the commercially imposed pre-lodgment requirements for advertisements in the relevant special interest publication, The Koori Mail, which publishes only once a fortnight. The Bill amends the relevant period so it is the same as that currently provided for mining leases and mining claims, namely 28 days. These amended time periods do not adversely impact upon any native title or procedural rights afforded under the Alternative State Provisions.

f. Secondly, as a consequence of excluding the application of the Alternative State Provisions in Parts 13 to 19 of the *Mineral Resources Act 1989* to mining tenement applications over land subject to native title where those applications are made after 31 March 2003, the effect of the Bill is that the Commonwealth right to negotiate process will instead apply to those applications. Under the Commonwealth right to negotiate, where agreement is not reached then the arbitral body is the National Native Title Tribunal. An amendment is made to the *Environmental Protection Act 1994* so that the Environmental Protection Agency may amend an environmental authority for a mining tenement to ensure compliance with any conditions included in a determination made by the National Native Title Tribunal under a right to negotiate process for that mining tenement.

g. Lastly, the Bill inserts a specific power to allow the Minister to impose conditions on exploration permits and mineral development licences, and for a Mining Registrar to impose conditions on prospecting permits, to condition exploration activities under these exploration tenements to meet the requirements of the expedited procedure under section 237 of the Commonwealth *Native Title Act 1993*. This will allow the State when issuing a notice to commence the right to negotiate process

to include a statement that the State considers the exploration tenement attracts the expedited procedure.

h. For the expedited procedure to apply the mining activity cannot involve major disturbance to the land or interfere with community life or sites of particular significance to native title holders. Where the mining act attracts the expedited procedure there is no requirement to negotiate in good faith. Under the expedited procedure the procedural rights are instead limited to a notification and a right to object. If an objection is made the National Native Title Tribunal must then determine whether the act does or does not attract the expedited procedure. If the mining act does not attract the expedited procedure then good faith negotiations are required.

Vegetation clearing policy objectives

Illegal clearing is a major threat to our natural resources. The implications of illegal clearing include the loss of significant areas of vegetation, loss of associated critical habitat and species and land degradation. It is imperative that clearing only occurs in accordance with the provisions of the legislation.

The current enforcement powers of the *Vegetation Management Act 1999* and the *Land Act 1994* in particular do not appear to be significant deterrents to illegal clearing. 61,000 ha of potential illegal clearing have been identified in the latest State Land and Trees Study (SLATS) report. This includes 25,000 ha on freehold and 36,000 ha on leasehold.

In the two and half years since the VMA commenced the enforcement provisions have been tested during many investigations and a number of prosecutions. As a result the potential for improvement have been identified, and are reflected in the Bill.

The objectives will be achieved by:

- Amending the *Land Act 1994* to improve powers to investigate and prosecute tree-clearing offences. Additional provisions will also be added to provide greater deterrents to illegal clearing including the ability to issue compliance notices that require remediation, refusing applications for clearing permits from applicants found guilty of illegal clearing and requiring a lessee to show cause why their lease should not be forfeited if

successfully prosecuted for illegal clearing on more than one occasion.

- Amending the *Vegetation Management Act 1999* to clarify and improve existing enforcement provisions in relation to offences, evidentiary provisions, and remediation.
- Amending the *Integrated Planning Act 1997* to provide that areas illegally cleared cannot be re-cleared without a development approval.

Alternative to the Bill

Native title policy objectives.

There is no alternative way of achieving the policy objectives other than by the Bill amending the Alternative State Provisions contained in the *Mineral Resources Act 1989* and the Bill amending the *Environmental Protection Act 1994*.

Vegetation clearing policy objectives

The effort to communicate to landholders the existence of vegetation clearing regulations and the implications of unsustainable clearing practices has been enhanced. Some individuals found guilty of illegal clearing, particularly on freehold land, have claimed that they were unaware that regulations existed. This is despite substantial media coverage regarding the implementation of clearing regulations in Queensland and the prosecution of individuals for illegal clearing, as well as a targeted communication strategy.

In response to these claims, the Department of Natural Resources and Mines has engaged in further communication campaigns including direct mail outs to individual landholders. However, as many landholders that have been found guilty of illegal clearing were aware of the regulations prior to undertaking the clearing, it is anticipated that a greater communication effort will not deter a significant number of individuals from undertaking illegal clearing. Communication of the more stringent enforcement provisions may ensure that landholders take illegal clearing more seriously.

Legislative amendment is the only available option in addressing those deficiencies in the existing enforcement provisions that have been identified during the process of using the provisions in investigating and prosecuting cases of illegal clearing.

Administrative Cost

Native title policy objectives

The administrative cost to Government, as a result of the Bill, will be those costs for the Department of Natural Resources and Mines on behalf of the State arising from the State's initiation of the right to negotiate process and the State's participation, as a negotiation party, under the Commonwealth right to negotiate process.

Use of the Commonwealth right to negotiate process imposes additional processing requirements on the State. The State must publicly advertise and notify the native title parties of its intention to make all grants of exploration and mining tenements. The State is a party to all right to negotiate matters and will need to be represented in any arbitral determinations made by the National Native Title Tribunal. The State will also have to defend any objections to its use of the expedited procedures for exploration tenements brought in the National Native Title Tribunal. There will be additional costs in preparing for and defending these objections in the National Native Title Tribunal.

These costs will be offset in the medium to long term by the revenues, which will flow to the State from the resulting resource development and associated employment opportunities.

Vegetation clearing policy objectives

This Bill places no further costs on government as the provisions all relate to existing functions and activities.

Consistency with Fundamental Legislative Principles

Native title policy objectives.

The Bill is consistent with fundamental legislative principles defined in section 4 of the *Legislative Standards Act 1992*. Section 4 requires that legislation has sufficient regard to:

(a) rights and liberties of individuals; and

(b) the institution of Parliament.

With respect to the rights and liberties of individuals, section 4(3)(a) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The Bill does not derogate from these principles.

With respect to the rights and liberties of individuals, section 4(3)(g) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The Bill does not adversely affect the rights and liberties of individuals.

With respect to whether the legislation has sufficient regard to the institution of Parliament, the Bill is consistent with fundamental legislative principles as the Bill does not allow for the delegation of legislative power, does not authorise the amendment of the Act other than by an Act, and does not restrict, in any way, the scrutiny of any delegated legislative power by the Legislative Assembly.

Vegetation clearing policy objectives

The Bill has been drafted with due regard to the fundamental legislative principles as outlined in Section 4 of the *Legislative Standards Act 1992*. However, for successful enforcement of the vegetation management legislation, a balance between the rights of the individual and the need for the community to be able to provide an effective deterrent is necessary. Effective enforcement of vegetation clearing legislation is required to prevent serious and often irreversible impacts on biodiversity and land degradation.

Aspects of the Bill that raise possible breaches of fundamental legislative Principles are outlined below.

(a) Section 24 of the Criminal Code does not apply to contraventions of vegetation clearing provisions (Clauses 20 and 72)

This section of the Criminal Code provides a defence that the person has a reasonable and honest but mistaken belief that led to the commission of the offense.

The defence of honest and reasonable but mistaken belief arises in many prosecutions relating to tree clearing. For example, mistakes in map interpretation, status of vegetation and errors relating to location on a property are commonly used. Such a defence is easy to raise, but because it involves the state of mind of the defendant it is difficult to negate conclusively. Section 24 of the Criminal Code provides an option for this defence to be excluded by provisions of the law relating to the subject. Exclusion of section 24 of the criminal code relating to tree clearing, requires a person to exercise due diligence before taking action in relation to tree clearing. The impact is limited to those that engage in unauthorized clearing.

(b) Executive officers must ensure corporation complies with the Act (Clauses 27 and 69)

The potential breach is justifiable on the basis that a corporation is more likely to comply with the Act and to cooperate with an investigation into illegal clearing if the executive officer is held accountable for the decision as to whether or not to comply with the Act or cooperate with an investigation.

This is a standard clause that is used in many pieces of legislation such as the *Workplace Health and Safety Act 1995* and the *Environmental Protection Act 1994.* The provision will also provide consistency between the *Vegetation Management Act* and the *Land Act* offences, and the offences under the *Integrated Planning Act* with regard to clearing.

(c) Power for authorised officers to enter places without consent or warrant. (Clause 25 and 60)

While provisions allowing entry to a property without a warrant may constitute a breach of the fundamental legislative principle, the provisions of this Bill are limited to the serving or giving of a compliance notice, checking compliance with a development approval, or checking compliance with a compliance notice.

Safeguards are provided as follows:

- The power to enter is limited to places that are not residential dwellings;
- The power is limited to the purposes referred to above and to a reasonable time. If the entering is for a different purpose, including obtaining documents, entry of the place is only by the occupier's consent or by warrant.
- In relation to the giving of the compliance notice, the authorised officer must reasonably suspect an offence has or is occurring.
- No power of seizure accompanies warrantless entry

The provision is justified because monitoring a development permit or compliance notice is in many instances impossible without entering the place where the vegetation may be being cleared. Obtaining and analysing remotely sensed images (satellite and air photo images) is a lengthy process. Consequently, when an offence may be actually occurring and the protection of significant vegetation and the environment is at stake, the ability to enter a place is essential as a matter of timeliness.

Clearing is unlawful without a permit or unless an exemption applies. It is therefore reasonable for authorised officers to check whether a person is complying with the permit, compliance order or legislative requirements. The community's interest in protecting vegetation from being unlawfully cleared must be weighed against the right of the individual to privacy.

(d) Power for an authorised officer to require information and documents, and creation of offences of failure to produce information or documents if required. (Clauses 25 and 64)

It is arguable that these provisions may constitute a breach of the fundamental legislative principles with regard to protection against self-incrimination. The existing provisions in the *Vegetation Management Act* currently provide for the power to require information and the power to require a document to be produced. However they also provide an excuse for failure to provide the information or the document on the basis that it might incriminate the individual. The amendments will remove this excuse.

The amendment is required to avoid the situation where an employee of a company can decline to provide information or produce a document thereby making it extremely difficult to obtain sufficient evidence against the corporate entity regarding an alleged offence. In effect, a corporation can currently affectively choose to accept a smaller penalty (failure to provide information or failure to produce a document) rather than risk prosecution for the original offence of unlawful clearing.

A safeguard is provided in that the information or document may not then be used to prosecute the individual required to provide it. Consequently, the individual is protected against the consequences of self-incrimination. A similar provision is provided under the *Fair Trading Act 1989*. It should be noted that the High Court has determined that a corporate entity is not entitled to protect itself against self-incrimination.

(e) Compliance notice – removal of inability to prosecute a person complying with a compliance notice (Clause 66)

The Bill deletes an existing provision in the *Vegetation Management Act* that prevents prosecution for a vegetation clearing offence if the person complies with a compliance notice requiring rectification of the matter. This does not create a situation in which a person may be punished twice for a single offence. Rather, the punishment of the offence and the ordering of remediation are two separate issues. The punishment of the offence relates to the illegal act itself, and its purpose is to punish the offender as well as deter others from undertaking the illegal act.

The rectification of the matter (through remediation in line with a compliance notice) is to ameliorate the damage done by the illegal act and thereby to return the environment to the way it was before the offence occurred. Remediation offers a chance at regaining lost values or preventing any likely negative consequences of the clearing, such as loss of significant wildlife habitat or increased land degradation. Remediation is, in effect, restitution for the damage done as a result of the illegal clearing.

It is expected that the costs involved in undertaking remediation will be taken into account by magistrates when imposing penalties for the offence.

(f) Compliance notice –obligation to comply with the notice transfers to successors in title (Clause 22 and 66)

This provision may affect the ability of a person to deal with the person's property, as a compliance notice requiring rectification of the damage caused by the illegal clearing may lower the saleability of the affected land.

The provision ensures the on-going effectiveness of a compliance notice by ensuring that it survives a change in title. Without the provision, on a change of title it becomes impracticable for the original offender to comply with the order, while the new title-holder has no obligation to continue the remediation. The provision is justifiable because vegetation takes a period of years to decades to re-establish, and consequently, remediation is often a long-term process.

The person retains the right to deal with the property. However, the provision will tend to result in the value of the land being adjusted to reflect the costs of remediation. As a result the provision will prevent persons who have cleared illegally from benefiting from the increase in land value that may be created by the illegal clearing. It also prevents individuals from circumventing the compliance notice by selling the land to another family member or company.

(g) Power to obtain criminal history (Clauses 25 and 68)

This provision that enables delegated officers access to advice about a person's criminal history mat be considered a breach of the right to privacy. However, this right must be balanced against officers' right to a safe and secure working environment, and the obligation of the State to provide such an environment to its employees.

Authorised officers are unarmed, and work in remote areas with little chance of immediate assistance should they be confronted with a violent situation.

The provision gives delegated officers the ability to obtain advice as to whether a person has a history of offences involving violence or firearms, before entering a place where the person is likely to be present. This provides an opportunity for the authorised officer to request to be accompanied by a police officer if it is considered that unaccompanied entry to a place would create an unacceptable level of risk to the authorised officer's safety.

The proposed amendments provide stringent safeguards regarding the use, communication and confidentiality of criminal history information provided by the police service.

(h) Evidence of instruments and equipment and evidence of remotely sensed imagery (Clause 27 and 70)

The Bill provides that an instrument, equipment or apparatus is taken to be accurate and precise unless evidence is provided to the contrary. It further provides that a certificate from a qualified person is evidence of the content and date of a remotely sensed image in the absence of evidence to the contrary. These provisions may be a reversal of the onus of proof. However the following safeguards are provided:

- The reversal is limited to types of equipment prescribed under regulation and to remotely sensed images;
- An appropriately qualified person must certify the remotely sensed image;
- The defendant retains the opportunity to provide evidence to the contrary.

This provision is justifiable in relation to the two matters for the following reasons:

- A certificate summarising evidence is evidence that could otherwise be given by an expert or series of experts during a legal proceeding. The provision merely makes the certificate self-evident of the stated facts in the absence of contrary evidence;
- With regard to proving the readings of instruments such as Global Positioning Systems and proving the analysis of remotely sensed images, the information that would be provided by experts about these matters is standard information for most vegetation clearing prosecutions;
- A precedence for these kinds of provisions exist in other legislation such as the *Integrated Planning Act 1997* and the

Fisheries Act 1994 for example and for red light camera and speed camera infringements.

The provision further makes a requirement for the defendant to give 28 day's notice to the prosecution of their intention to raise these evidentiary matters. This is to ensure that time is available to locate relevant experts and prepare the necessary expert reports in order to present the evidence during a court hearing.

(i) Presumption that the occupier is responsible for unauthorised clearing of the land (Clause 27 and 71)

This provision constitutes a reversal of the onus of proof. However, it is justifiable for the following reasons:

- Illegal clearing often occurs in remote areas. The evidence derived from remotely sensed images often forms the basis of a prosecution. There is often little other evidence regarding the offence, due to the lack of witnesses, contracts or receipts with regard to having another person undertake the clearing.
- Because of the high costs of clearing, it is extremely unlikely that an unknown third party would undertake clearing without the occupier's invitation or approval. The crown still bears the onus of proving each element of the offence. The evidentiary aid created by this provision is not conclusive proof of the fact, and the defendant may provide evidence to challenge the fact.
- As a result, the provision does impact on the right to remain silent. However, the High Court has held that remaining silent in circumstances where the defendant could be expected to know the truth can be used as an indication of guilt
- Other legislation uses similar provisions in similar circumstances. For example, under the *Forestry Act 1959* if a forest infringement occurs that involves a vehicle, the owner of the vehicle (at the time the offence occurred) is taken to have committed the infringement. There is an opportunity for the owner to provide evidence to the contrary to prove that they were not in control of the vehicle at the time of the offence. Traffic offences such as red light cameras and speeding offences assume that the owner of the car is responsible for the offence unless the owner provides evidence to the contrary.

Consultation

Native title policy objectives.

The Bill was developed in consultation with the:

- Department of the Premier and Cabinet;
- Office of the Queensland Parliamentary Counsel;
- Department of State Development;
- Department of Justice and Attorney-General;
- Land and Resources Tribunal;
- Environmental Protection Agency;
- Department of Aboriginal and Torres Strait Islander Policy; and
- Native Title Division of the Commonwealth Attorney-General's Department.

Vegetation clearing policy objectives

The following State agencies were consulted during the preparation of the Bill:

- Department of the Premier and Cabinet
- Office of Queensland Parliamentary Counsel
- Department of Local Government and Planning
- Queensland Police Service

NOTES ON CLAUSES

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 2 of the Bill provides that Part 2 of the Bill amends the *Environmental Protection Act 1994.*

Clause 3 of the Bill inserts new section 290A into the *Environmental Protection Act 1994.* This new section provides the administering authority (the Environmental Protection Agency) with the power to amend a granted environmental authority for a mining tenement to ensure compliance with

any conditions that might be included in the determination made by the National Native Title Tribunal under a right to negotiate process for that mining tenement. This power is only exercisable by the administering authority after written notice of the amendment has been provided to the holder of the environmental authority.

Clause 4 of the Bill amends section 294 of the *Environmental Protection Act 1994* by inserting a new section 294(a)(ii). Existing section 294(a)(ii) is renumbered as section 294(a)(iii). This amendment provides that the procedures under division 2 of Part 12 of the *Environmental Protection Act 1994* do not apply where the administering authority amends an environmental authority under new section 290A. These procedures are instead set out in new section 299A (see *clause 5*).

Clause 5 of the Bill inserts new section 299A into the *Environmental Protection Act 1994.* Section 299A sets out the steps that the administering authority must follow where it amends an environmental authority under section 290A.

Clause 6 of the Bill inserts a definition of Commonwealth *Native Title Act* and *NNTT* into the Dictionary at Schedule 3 of the *Environmental Protection Act 1994.*

Clause 7 of the Bill provides that Part 3 of the Bill amends the *Integrated Planning Act 1997.*

Clause 8 amends s 3.2.1 by inserting a new subsection (10) which removes the requirement for the land owners consent to an application for building or operational work on land over which there is an existing public utility easement in favour of a public sector entity and the applicant is the public sector entity. Subsections (1) to (9) are unchanged.

The IPA brings together many different legislative approvals into a single development assessment system — IDAS. In bringing these approvals together it is necessary to ensure that all parties participating in the system are treated equally and fairly.

This amendment removes the requirement for public sector entities (such as electricity providers) to obtain owners consent to making a development application, if the application is merely for giving effect to their existing rights under public utility easements. The amendment is consistent with broader reforms to the owners consent provisions for IDAS under the (as yet uncommenced) *Integrated Planning and Other Legislation Amendment Act 2001*

Clause 9 replaces existing subsection (2) by including an additional requirement that an owner of land can only cancel a development approval on the land that is subject to a public utility easement, if consent is given by of the public sector entity in whose favour the easement is given. This amendment prevents an approval lawfully given to the public sector entity from being cancelled without their knowledge. Subsections (1) and (3) to (6) are unchanged.

Clause 10 amends schedule 8, part 1, item 3A (c) by defines areas of unlawfully cleared vegetation as assessable development. The clause also defines areas of unlawfully cleared vegetation. Cleared vegetation cannot be classified as remnant vegetation. Non-remnant vegetation is normally unregulated by the State on freehold land. This clause enables maps to show areas that are illegally cleared, differentiating them from non-remnant areas, and means that illegally cleared areas cannot be cleared again without obtaining an approval. In addition the clause omits the definitions of "regional ecosystems" and "remnant map" from Schedule 8 part 4.

Clause 11 provides that part 4 of the Bill amends the *Integrated Planning Act and other Legislation Act 2001.*

Clause 12 amends s 27 by inserting a new subsection (10) which removes the requirement for the land owners consent to an application for building or operational work on land over which there is an existing public utility easement in favour of a public sector entity and the applicant is the public sector entity.

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The clause also provides an additional requirement that an owner of land can only cancel a development approval on the land that is subject to a public utility easement, if consent is given by of the public sector entity in whose favour the easement is given. This amendment prevents an approval

lawfully given to the public sector entity from being cancelled without their knowledge.

Clause 13 amends schedule 8, part 1, item 3A (c) by defines areas of unlawfully cleared vegetation as assessable development. Cleared vegetation cannot be classified as remnant vegetation and non-remnant vegetation is normally unregulated by the State on freehold land. This clause enables maps to show areas that are illegally cleared, differentiating them from non-remnant areas, and means that illegally cleared areas cannot be cleared again without obtaining an approval.

Clause 14 omits the definitions of "regional ecosystem" and "remnant map" from in Section 85 replaced schedule 10. The clause also defines areas of unlawfully cleared vegetation.

Clause 15 provides that part 5 of the Bill amends the Land Act

Clause 16 inserts a new division heading , "Grounds for Forfeiture"

Clause 17 inserts an additional reason when a lease may be forfeited (234(e)). In order to ensure that lessees convicted of tree clearing offences do not benefit from the illegal clearing, this clause serves to identify that a lease may be forfeited if a lessee has more than one conviction for a tree clearing offence

Clause 18 inserts a new heading and explains that new division 2 does not apply to leases forfeited for repeated contravention of a tree clearing provision. Division 2 describes the process for forfeiting leases for reasons other than the new 234(e).

Clause 19 inserts a new subdivision related to forfeiture of leases due to repeated convictions for tree clearing offences.

The clause provides for the lessee to show cause as to why the lease should not be forfeited. The clause outlines what must be stated within the show cause notice.

In deciding whether or not to forfeit the lease, the Minister must consider any written representation made by the lessee within the show cause period, notify the lessee within five days of making a decision by form of a written notice and if deciding to forfeit the lease, include the explanation of the decision within the notice.

This clause provides for the lessees right of appeal against the Minister's decision. The Minister must not act to forfeit the lease until all appeal and review procedures are completed or expired.

If the Minister forfeits the lease, the forfeiture must be made public through a notification in writing to the lessee and published in the gazette. The forfeiture only takes effect on the day of gazettal. The Minister must then ensure that the notice of forfeiture is registered in the appropriate register. The effects of the forfeiture due to repeated convictions for tree clearing offences are the same as for forfeiture for other reasons identified in 234.

Clause 20 inserts a new part 2 of s 255, indicating that section 24 of the criminal code does not apply in proceedings against a person for a tree clearing offence. This clause in effect removes the defence of "an honest and reasonable, but mistaken belief". It now requires a person to exercise due care before taking action in relation to tree clearing.

Clause 21 renumbers Section 262 and inserts a section allowing the chief executive to consider previous convictions for illegally clearing within five years of the application when issuing a permit for tree clearing. The policy intent is to not allow those who have convictions for illegal clearing to obtain a permit for five years. The inclusion of the provisions in issues that the chief executive may consider allow for the decision to be appealed.

Clause 22 inserts a new division regarding enforcing compliance and inserts similar provisions to those in VMA.

An authorised officer may give a person a compliance notice requiring the person to stop committing an offence under the Act and rectify the matter if reasonably able to be rectified. It also clarifies what must be stated in compliance notice. Maximum fines for not compiling with the compliance notice are 100 penalty units.

The clause provides that a person must comply with the compliance notice, and that the official may use reasonable force and take reasonable action to stop a contravention of the compliance notice. For example an official may stop a bulldozer by placing an obstruction in its way, or organise weed control of a remediated area to be undertaken.

Any reasonable costs associated or incurred in taking the action to stop the contravention may be recovered as a debt owing to the State. This may include the costs for the weed control as outlined above.

The clause also provides that a compliance notice attaches to the land and binds any successors in title. When a person with interest in the land subject to a compliance notice transfers the land, the transferee is then required to fulfil the requirements of the compliance notice.

The transferee may ask the chief executive to extend the time specified for completing the requirements of the compliance notice.

The new owner of the land is not criminally liable for action of the original owner, and it is made quite clear that the initial owner is not criminally liable for any contravention of the compliance notice following transfer of the land.

The provisions apply to each successor in title to the transferee's interest.

An individual has the right to appeal the compliance notice.

Where a compliance notice requires a person to rectify a matter, the chief executive must provide written notice of the giving of the compliance notice, to the registrar of title, who must keep records of the giving of the notice in such a manner as to be detected in a search under any act relating to title to the land.

When the compliance notice has been complied with, withdrawn or terminated written notice must be given to the registrar of titles and removed from the registrar's records.

Clause 23 shortens the time period after ceasing to be an authorised officer, in which a person must return their identity card to the Chief Executive. The clause provides greater control and security over instruments of authority issued by the Department and ensures consistency with the VMA.

Clause 24 identifies that the general powers under s400 do not apply for the purposes of monitoring or enforcing compliance with a tree clearing provision.

Clause 25 inserts two new divisions that cover monitoring and enforcement provisions for tree clearing provisions, and other provisions about authorised officers**.** The provisions are consistent with amended Vegetation Management Act.

The clause

- identifies that an authorised officer may enter a place if:
    - the occupier consents to the entry;
    - it is a public place, when the place is open to the public; or
    - the place is subject of a lease, licence or permit, or a compliance notice and entered during the day
    - the entry is authorised by a warrant.

- identifies that the authorised may not enter a place where a person resides without a warrant
- outlines the procedures an authorised officer must follow when seeking consent to enter premise;
- 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;
- sets out the conditions under which a Magistrate may issue a warrant and specifies the information that must be stated in a warrant;
- 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;
- outlines the procedures that must be followed by an authorised officer prior to entering a place under a warrant;
- specifies what powers are available to an authorised officer who has entered a place for the purposes of monitoring and enforcing compliance with the legislation;
- makes it an offence for a person to fail to give reasonable help to an authorised officer under 400G (3)f unless the person has a reasonable excuse;
- makes it an offence for a person to fail to comply with a requirement made by an authorised officer under clause 400G(3)f unless the person has a reasonable excuse;
- 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:
    - 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

  - If the entry was authorised by a warrant, seize the evidence for which the warrant was issued.
- enables an authorised officer to take the following actions in relation to a thing which is seized
  - 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
- 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;
- 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 400M, unless the person has a reasonable excuse;
- 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;
- 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;
- 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;
- 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;
- 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;

- 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;
- 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;
- makes it an offence to fail to comply with a requirement made under 400T, 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;
- 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. However where the person is an individual, the information cannot be used in evidence against them. This is to protect individuals from self incrimination
- 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;
- makes it an offence not to comply with a request under 400W to certify that a copy of the document or an entry in a document is a true copy. However where the person is an individual, the

document cannot be used in evidence against them. This is to protect individuals from self incrimination;

- makes it an offence to fail to produce a document in accordance with a requirement under 400W, unless the person has a reasonable excuse;
- inserts a subdivision to assist in deciding whether or not unaccompanied entry of land or premises would create an unacceptable risk. It allows for:
    - the chief executive to obtain advice as to the criminal history of a person that the authorised person suspects may be at a place;
    - the chief executive may pass on information concerning violence or firearms offences to assist an authorised office in determining if unaccompanied entry to a place is an unacceptable risk and
    - that the criminal history advice is confidential .

Clause 26 makes it an offence for a person to state anything to an authorised officer that the person knows is false or misleading, and 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. This clause provides equivalent provisions as those that currently exist under the VMA.

Clause 27 inserts a new section dealing with proceedings generally. The clause provides that a certificate summarising the evidence that could otherwise be provided by an expert is conclusive in the absence evidence to the contrary. In this regard the clause specifies those matters, which may be stated in the certificate.

The clause provides that an instrument, equipment or installation prescribed under a regulation is taken to be precise, accurate and to have been used by an appropriately qualified person, unless evidence is provided to the contrary.

Similarly, a report about a remotely sensed image that is signed by an appropriately qualified person is taken to be evidence of the matters stated in the report, unless evidence is provided to the contrary.

In all the above cases, where a defendant intends to challenge the conclusiveness of the certificate, instruments, equipment or reports about remotely sensed images, 28 days notice must be given of a party's intention

to produce relevant evidence. The provisions are similar to those used for red light cameras and speeding offences

In addition this clause states that unauthorised clearing of vegetation on land is taken to have been done by the occupier of the land, in the absence of evidence to the contrary.

This clause clarifies what information is to be supplied with the complaint.

An executive officer of a corporation must ensure the corporation complies with the Act and failure to do so will constitute an offence under the Act as if a corporation commits and offence, its executive officers are deemed to have committed an offence, and any evidence that the corporation committed an offence will be evidence that the executive officers committed an offence, unless the executive officer can proved that they exercised reasonable diligence or were not in a position to influence the conduct of the corporation in relation to the offence;

The clause provides a guide to the penalty that it is appropriate for a court to impose on a person for a vegetation clearing offence in the absence of mitigating circumstances. This guide is based on the number of hectares of unlawfully cleared vegetation in a regional ecosystem, the status of that regional ecosystem, and whether the area cleared was part of a declared area;

The court may order a person it convicts of a vegetation clearing offence to pay the department's reasonable costs of investigating and preparing for prosecution of the offence.

The clause allows any departmental officer to appear for and represent another departmental officer in a Magistrates Court for proceedings brought by the other officer.

The clause clarifies that nothing in the Land Act prevents a person from prosecution for any tree clearing offence under other relevant Acts.

Clause 28 changes the statutory timelimit for offences under the Land Act from two years to five years in line with the VMA. The clause also allows for the extension of a time set under this section, if a court considers it just and equitable. The clause also defines terms used in the clause. This is required as the timeframes involved with monitoring vegetation clearing, potential offences often do not come to the attention of the Department until they are time expired

Clause 29 inserts forfeiting a lease and giving a compliance notice into schedule 2 as original decisions, and provides that the decision may be appealed or reviewed by the Minister.

Clause 30 inserts 14 new definitions to the dictionary.

Clause 31 of the Bill provides that Part 6 of the Bill amends the *Mineral Resources Act 1989.*

Clause 32 of the Bill inserts new section 25AA into the *Mineral Resources Act* 1989. This section provides that such other conditions, as determined by the Mining Registrar under section 25(2) to which a prospecting permit will be subject to, may include conditions known as native title protection conditions so that the grant of the prospecting permit can be an act that attracts the expedited procedure under section 237 of the Commonwealth *Native Title Act 1993*.

Clause 33 of the Bill inserts new section 141AA into the *Mineral Resources Act* 1989. This section provides that such other conditions, as determined by the Minister under section 141(1)(j), to which an exploration permit will be subject to, may include conditions known as native title protection conditions so that the grant of the exploration permit can be an act that attracts the expedited procedure under section 237 of the Commonwealth *Native Title Act 1993*.

Clause 34 of the Bill inserts new section 194AAA into the *Mineral Resources Act 1989*. This section provides that such other conditions as determined by the Minister under section 194(1)(j) to which a mineral development licence will be subject to, may include conditions known as native title protection conditions so that the grant of the mineral development licence can be an act that attracts the expedited procedure under section 237 of the Commonwealth *Native Title Act 1993.*

Clause 35 of the Bill inserts new section 426(1)(ab) into the *Mineral Resources Act 1989*. This new section limits the application of Part 13 (prospecting permits) to permit applications lodged on or before 31 March 2003. This allows applications made under section 21 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions as set out in Part 13 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth right to negotiate process will apply as Part 13 of the *Mineral Resources Act 1989* will not apply to these applications.

Clause 36 of the Bill inserts new section 462(1)(a) into the *Mineral Resources Act 19*89. This new section limits the application of Part 14, Division 4 (mining claims) to applications lodged on or before 31 March

2003. This allows applications made under section 61 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions as set out in Part 14, Division 4, of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth right to negotiate process will apply as Part 14, Division 4 will not apply to these applications.

Clause 37 of the Bill inserts new section 465(5)(a) into the *Mineral Resources Act 19*89. This new section limits the application of Part 14, Division 5 (mining claim renewals) to applications lodged on or before 31 March 2003. This allows applications made under section 93 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions set out in Part 14, Division 5 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth right to negotiate process will apply as Part 14, Division 5, will not apply to these applications.

Clause 38 of the Bill inserts new section 472(5)(c) into the *Mineral Resources Act 19*89. This new section limits the application of Part 14, Division 6 (mining claims – addition of specified minerals) to applications lodged on or before 31 March 2003. This allows applications made under section 105 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions as set out in Part 14, Division 6 of the *Mineral Resources Act 1989.* For applications made after 31 March 2003, the Commonwealth right to negotiate process will apply as Part 14, Division 6 will not apply to these applications.

Clause 39 of the Bill inserts new section 484(1)(ab) into the *Mineral Resources Act 19*89. This new section limits the application of Part 15, Division 2 (low impact exploration permits) to permit applications lodged on or before 31 March 2003. This allows applications made under section 133 (1)(f) of the *Mineral Resources Act 1989* on or before 31 March 2003 to continue to fruition under the Alternative State Provisions as set out in Part 15, Division 2 of the *Mineral Resources Act 19*89. For applications made after 31 March 2003 the Commonwealth right to negotiate process will apply as Part 15, Division 2 will not apply to these applications.

Clause 40 of the Bill amends section 486(2)(a) of the *Mineral Resources Act 19*89. The amendment extends the current period of 7 days to instead be 14 days within which the applicant for a low impact exploration permit must inform the native title notification party for the land the subject of their permit of their application.

Clause 41 of the Bill amends section 487 of the *Mineral Resources Act 1989.* The amendment extends the currently 2 day period to instead be a 7 day period in which the applicant for a low impact exploration permit has to inform the mining registrar that the notification under section 486 has been sent.

Clause 42 of the Bill inserts new sections 522(1)(ab) into the *Mineral Resources Act 19*89. This new section limits the application of Part 15, Division 4 (exploration permits) to applications lodged on or before 31 March 2003. This allows applications under section 133 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions as set out in Part 15, Division 4 of the *Mineral Resources Act 1989.* For applications made after 31 March 2003, the Commonwealth right to negotiate process will apply as Part 15, Division 4 will not apply to these applications.

Clause 43 of the Bill amends section 524(3) of the *Mineral Resources Act 1989.* It has become apparent that the end of the advertisement period for a high impact exploration permit, which is currently 14 days from the Minister's decision about the amount to be deposited by the holder as security, may be too short to be complied with easily. Any difficulty is compounded by the commercially imposed pre-lodgment requirements for advertisements in the relevant special interest publication, The Koori Mail, which publishes only once a fortnight. The Bill amends the period to make it the same as that currently provided for mining leases and mining claims, namely 28 days.

Clause 44 of the Bill inserts new sections 525(1)(ab) and 525(5)(ab) into the *Mineral Resources Act 19*89. These new sections limit the application of Part 15, Division 5 (renewal of low impact exploration permits and renewal of high impact exploration permits) to renewal applications lodged on or before 31 March 2003. This allows applications under section 147 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions as set out in Part 15, Division 5 of the *Mineral Resources Act 1989.* For applications made after 31 March 2003, the Commonwealth right to negotiate process will apply as Part 15, Division 5 will not apply to these applications.

Clause 45 of the Bill inserts new section 531(2)(aa) into the *Mineral Resources Act 19*89. This new section limits the application of Part 15, Division 6 (variation of the conditions of low impact exploration permits over non-exclusive land to allow for activities not limited to low impact activities; the variation of conditions of exploration permits granted on land where native title has been extinguished to include non-exclusive land; and

the addition, under section 176A of land to an exploration permit granted over land when native title has been extinguished to include non-exclusive land). This allows applications made under section 141C or section 176A of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions set out in Part 15, Division 6 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth Right to Negotiate process will apply as Part 15, Division 6 will not apply to these applications.

Clause 46 of the Bill inserts new section 540(1)(ab) into the *Mineral Resources Act 19*89. This new section limits the application of Part 15, Division 2 (mineral development licence applications) lodged on or before 31 March 2003. This allows applications made under section 183(1)(l) of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions set out in Part 16, Division 2 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth Right to Negotiate process will apply. as Part 16, Division 2 will not apply to these applications.

Clause 47 of the Bill amends section 542(2)(a) of the *Mineral Resources Act 19*89. The amendment extends the current period of 7 days to instead be 14 days within which the applicant for a low impact mineral development licence must inform native title notification party for the land the subject of the licence of their application.

Clause 48 of the Bill amends section 543 of the *Mineral Resources Act 1989.* The amendment extends the currently 2 day period to instead be a 7 day period in which the applicant for a low impact mineral development licence has to inform the mining registrar that the notification under section 542 has been sent.

Clause 49 of the Bill inserts new section 579(1)(ab) into the *Mineral Resources Act 19*89. This new section limits the application of Part 16, Division 4 (high impact mineral development licences) to licence applications lodged on or before 31 March 2003. This allows applications made under section 183 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions set out in Part 16, Division 4 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth Right to Negotiate process will apply as Part 16, Division 4 will not apply to these applications.

Clause 50 of the Bill amends section 581(3) of the *Mineral Resources Act 1989.* It has also become apparent that the end of the advertisement period for a high impact mineral development licence, which is currently

14 days from the Minister decision about the amount to be deposited by the holder as security, may be too short to be complied with easily. Any difficulty is compounded by the commercially imposed pre-lodgment requirements for advertisements in the relevant special interest publication, The Koori Mail, which publishes only once a fortnight. The Bill amends the period to make it the same as that currently provided for mining leases and mining claims, namely 28 days.

Clause 51 of the Bill inserts new sections 582(1)(ab) and 582(5)(ab) into the *Mineral Resources Act 19*89. These new sections limit the application of Part 16, Division 5 (renewals of low impact mineral development licence and renewal of high impact mineral development licence) to renewal applications lodged on or before 31 March 2003. This allows applications made under section 197 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions set out in Part 16, Division 5 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth Right to Negotiate process will apply as Part 16, Division 5 will not apply to these applications.

Clause 52 of the Bill inserts new section 588(2)(aa) into the *Mineral Resources Act 19*89. This new section limits the application of Part 16, Division 6 (variation of the conditions of a low impact mineral development licence to allow for activities not limited to low impact activities; the variation and conditions of the mineral development licence granted on land where native title has been extinguished to include non-exclusive land; the addition under section 208 of stated minerals to the mineral development licence; and the addition under section 226AA of land to a mineral development licence granted over land where native title has been extinguished to include non-exclusive land) to applications to vary conditions, applications to add stated minerals, or the addition of land lodged on or before 31 March 2003. This allows applications made under section 194AC, section 218 and section 226AA of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions set out in Part 16, Division 6 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth Right to Negotiate process will apply as Part 16, Division 6 will not apply to these applications.

Clause 53 of the Bill inserts new section 650(1)(a) into the *Mineral Resources Act 19*89. This new section limits the application of Part 17, Division 4 (mining leases) to mining lease applications lodged on or before 31 March 2003. This allows applications made under section 245(1)(m) of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to

continue to fruition under the Alternative State Provisions set out in Part 17, Division 5 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth Right to Negotiate process will apply as Part 17, Division 4 will not apply to these applications.

Clause 54 of the Bill inserts new section 689(5)(a) into the *Mineral Resources Act 19*89. This new section limits the application of Part 17, Division 5 (renewal of mining leases) to mining lease renewal applications lodged on or before 31 March 2003. This allows applications made under section 286 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions set out in Part 17, Division 4 of the *Mineral Resources Act 1989*. For applications made after the 31 March 2003 the Commonwealth Right to Negotiate process will apply as Part 17, Division 5 will not apply to these applications.

Clause 55 of the Bill inserts new section 697(5)(ab) into the *Mineral Resources Act 19*89. This new section limits the application of Part 17, Division 6 (mining lease approvals: the approval under section 237 to conduct drilling and other activities on land not included in the surface area covered under a mining lease; the grant of an application under section 275 of an additional area of surface land be included in the mining lease; and the approval under section 298 of the holder of a mining lease to mine specified minerals, or for the additional or other purpose to a mining lease) to applications for approval lodged on or before 31 March 2003. This allows applications made under sections 237, 275 and 298 of the *Mineral Resources Act 1989* lodged on or before 31 March 2003 to continue to fruition under the Alternative State Provisions set out in Part 17, Division 6 of the *Mineral Resources Act 1989*. For applications made after 31 March 2003, the Commonwealth Right to Negotiate Process will apply as Part 17, Division 6 will not apply to these applications.

Clause 56 of the Bill inserts new Division 5 into Part 19 of the *Mineral Resources Act 1989*. This new division provides the transitional provisions for the Bill.

New section 737 of the *Mineral Resources Act 19*89 provides that where a notice was to be given under section 727 and no notification commencement date for the application is given on or before 31 March 2003, the obligation on the Mining Registrar and the Chief Executive to give such a notice is withdrawn. The section then deems for the purposes of the Alternative State Provisions that these applications are taken to have been lodged after 31 March 2003. The effect of this section is that the Alternative State Provisions do not apply to these applications and instead

the Commonwealth Right to Negotiate process will apply to process these applications.

New section 738 of the *Mineral Resources Act 19*89 provides that where the period of time in sections 486(2)(a), 487(1), 524(3), 542(2)(a), 543(1) and 581(3) has been extended by the Act then in determining whether a person has complied after the Act with the requirement set out in the relevant section then the extended period of time is used.

Clause 57 of the Bill provides that Part 7 of the Bill amends the *Vegetation Management Act 1999.*

Clause 58 modifies the effect of the VMA on the Integrated Planning Act in relation to making applications for approval of the clearing of vegetation. The assessment manager may refuse the application if either the applicant or the owner of the land has been convicted of a vegetation clearing offence in the relevant period. The relevant period is defined as 5 years immediately before the application is made.

Clause 59 clarifies that an authorised officer has the function of issuing compliance notices, in addition to the existing functions of conducting investigations and inspections to monitor and enforce compliance.

Clause 60 authorises warrantless entry during the day if the place is subject of a development approval involving vegetation clearing, a compliance notice or an enforcement notice made under IPA. Subject to limitations, it authorises warrantless entry in order to give the occupier a compliance notice requiring immediate cessation of a vegetation clearing offence.

The officer may only enter land around premises to the extent that is reasonable to contact an occupier, and only enter those parts of the place that members of the public are allowed to enter to contact an occupier. However, an authorised officer may not enter an occupier's residence without consent.

This amendment provides greater legal certainty on the power to enter places and enables timely action to be taken against alleged illegal clearing.

Clause 61 clarifies the procedures that an authorised officer must follow before entering a place under a warrant, if the place is vacant or no person is present at the place. The authorised officer must, in this circumstance, make reasonable attempts to contact an owner or occupier of the place. If the owner is able to be contacted, they must tell the owner or occupier that the officer is permitted by the warrant to enter, and give the owner or occupier the opportunity to allow the officer immediate entry without using

force. This amendment provides greater legal certainty on the power to enter places and enables timely action to be taken against alleged illegal clearing.

Clause 62 limits the powers of an authorised officer who has entered a place without consent in order to give an occupier a compliance notice. The officer may only give an occupier the compliance notice, and take into or onto the place any person the officer reasonably requires for doing this.

Clause 6*3* identifies that the section applies if an authorised officer enters a place after obtaining the consent of an occupier or a warrant

Clause 64 provides that where an authorised officer has required a person to give them information about a suspected offence, and the person does not comply with the requirement, it is not a reasonable excuse if giving the information might tend to incriminate the person.

However, where the person is an individual (as opposed to a corporation) evidence that is derived from the information is not admissible in evidence against that individual, with the exception of proceedings for an offence about the falsity of information.

The clause further provides that if the person (including corporations) is convicted for not complying with a requirement to give information, the court may order the person to comply as well as imposing a penalty. This clause ensures that an employee of a corporation fully cooperates with any investigations.

Clause 65 provides that where an authorised officer has required a person to provide a document relating to a suspected offence, and the person does not comply with the requirement, it is not a reasonable excuse if information in the document might tend to incriminate the person.

However, where the person is an individual, evidence that is derived from the document is not admissible in evidence against that person, with the exception of proceedings for an offence about false documents.

The clause further provides that if the person (including corporations) is convicted of not complying with a requirement to give information, the court may order the person to comply as well as imposing a penalty. This clause ensures that an employee of a corporation fully cooperates with any investigations.

Clause 66 provides that the official may use reasonable force and take reasonable action to stop a contravention of the compliance notice. Situations have arisen as to where the use of reasonable force would be the only means of ensuring an offence in progress is stopped. However current

wording is unclear concerning the authority to use reasonable force. Amending this section ensures no doubt in the matter should similar situations arise in future. For example an official may stop a bulldozer by placing an obstruction in its way, or organise weed control of a remediated area to be undertaken.

The clause also removes a provision that prevents a person from being prosecuted for an offence if they comply with a compliance notice relating to the offence. The original offence and the failure to meet the requirements of a compliance notice are two separate issues. The prosecution is the punishment for committing an offence. The compliance notice is used to require remediation to enable areas of significant vegetation to be recovered. Consequently, there should be no constraint on being able to prosecute for an offence if a compliance notice is given.

The clause also provides that a compliance notice attaches to the land and binds any successors in title. When a person with interest in the land subject to a compliance notice transfers the land, the transferee is then required to fulfil the requirements of the compliance notice.

The transferee may ask the chief executive to extend the time specified for completing the requirements of the compliance notice.

The new owner of the land is not criminally liable for action of the original owner, and it is made quite clear that the initial owner is not criminally liable for any contravention of the compliance notice following transfer of the land.

The provisions apply to each successor in title to the transferee's interest.

The effectiveness of remediation orders are enhanced with this provision, and it overcomes the possibility of a offender selling the land to circumvent the compliance notice

Clause 67 requires the chief executive and the registrar of titles to ensure that a compliance notice is recorded so that a search of the register relating to the subject land will show the compliance notice, until the compliance notice has been complied with, withdrawn or otherwise terminated. This requirement ensures that anyone searching the records of the Registrar of Title will identify the compliance notice attached to the land. This will ensure prospective purchasers are aware of the compliance notice. The transferee has the ability to negotiate the timeframes associated with the compliance notice, and are not liable for criminal prosecution.

Clause 68 inserts a new subdivision regarding obtaining criminal history report. The clause allows for the chief executive to obtain advice as to the

criminal history of a person that the authorised person suspects may be at a place. The criminal history advice is confidential and information concerning violence or firearms offences may assist in deciding whether or not unaccompanied entry of land or premises would create an unacceptable risk to authorised officers. The Chief executive

Clause 69 requires executive officers to ensure that the corporation complies with the Act. Evidence that the corporation has been convicted of an offence under the Act is evidence that each executive officer has committed the offence of failing to ensure that the corporation complies; however it is a defence to show that the executive officer exercised reasonable diligence. This clause brings the VMA into line with IPA.

This clause also provides a guide to the penalty that it is appropriate for a court to impose on a person for a vegetation clearing offence in the absence of mitigating circumstances. This guide is based on the number of hectares of unlawfully cleared vegetation in a regional ecosystem, the status of that regional ecosystem, and whether the area cleared was part of a declared area.

Clause 70 provides that an instrument, equipment or installation prescribed under a regulation is taken to be precise, accurate and to have been used by an appropriately qualified person, unless evidence is provided to the contrary.

Similarly, a report about a remotely sensed image that is signed by an appropriately qualified person is taken to be evidence of the matters stated in the report, unless evidence is provided to the contrary.

The clause provides that a certificate summarising the evidence that could otherwise be provided by an expert is conclusive in the absence evidence to the contrary. In this regard the clause specifies those matters, which may be stated in the certificate.

In all the above cases, where a defendant intends to challenge the conclusiveness of the certificate, 28 days notice must be given of a party's intention to produce relevant evidence. The provisions are similar to those used for red light cameras and speeding offences.

Clause 71 states that illegal clearing of vegetation on land is taken to have been done by the owner of the land (or the leaseholder for a freeholding lease), in the absence of evidence to the contrary.

Clause 72 states that section 24 of the criminal code does not apply in proceedings against a person for a vegetation clearing offence. This clause removes the defence of "an honest and reasonable, but mistaken belief". It

now requires a person to exercise due care before taking action in relation to tree clearing.

Clause 73 allows a Magistrates Court to extend the time in which proceedings must start for a vegetation clearing offence under this Act or under the IPA This is required as currently many of the notifications are received simultaneously (through SLATS data) and it is difficult to investigate and process all notifications within the one year period.. This applies to offences committed before and after commencement of this subsection, provided that the time for starting a proceeding has not expired at the commencement of this subsection

The clause also clarifies that receipt of a remotely sensed image that may provide evidence of a vegetation clearing offence, is not in itself sufficient to bring the offence to the complainant's knowledge.

Clause 74 specifies and limits the particulars that must be stated in a complaint for a proceeding for a vegetation clearing offence. The particulars are the number of hectares of vegetation unlawfully cleared, its location, whether the vegetation was in a regional ecosystem and if so its status, and whether the vegetation was in a declared area.

Frequently, situations arise where the complainant (an authorised officer) cannot attend court a court mention due to illness, leave or other court commitments. In such cases it is normal for another authorised officer to represent the complainant. The authority of the other departmental officer to prosecute on behalf of the complainant have been questioned in the past and in order to clarify this, the clause also allows any departmental officer to appear for and represent another departmental officer in a Magistrates Court for proceedings brought by the other officer.

Vegetation clearing offences are expensive to investigate. Provisions within the Integrated Planning Act currently limit the recovery of costs. The clause further provides that the court may order a person it convicts of a vegetation clearing offence to pay the department's full but reasonable costs of investigating and preparing for prosecution of the offence.

Clause 75 inserts a number of definitions into the schedule (dictionary).

Clause 76 of the Bill provides that Part 8 of the Bill amends the Acts mentioned in the schedule