VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2004

EXPLANATORY NOTES

General Outline

Short title

The Act will be known as the *Vegetation Management and Other Legislation Amendment Act 2004*.

Objective of the Bill

The purpose of the Bill is to phase out broadscale clearing of remnant vegetation in Queensland by 31 December 2006 under a transitional clearing cap, and to protect "of concern" regional ecosystems, whilst allowing clearing for necessary ongoing purposes and management activities.

The Bill provides for the amendment of the *Vegetation Management Act 1999* to enable assessment of the clearing of remnant vegetation on freehold and State land under the one Act. The tree clearing provisions in the *Land Act 1994* are repealed. Amendments to the vegetation clearing provisions in the *Integrated Planning Act 1997* are also made.

Reasons for the Bill

A package of measures to phase out broadscale clearing of remnant vegetation by December 2006 was a key election commitment made by the Government. Major elements of this commitment include the protection of "of concern" vegetation on freehold land, and to reduce greenhouse gas emissions by 20-25 megatonnes per annum.

The scientific arguments supporting this move have been overwhelming and clearly show that inappropriate land clearing poses a threat to Australia's environment through its contribution to species extinctions,

salinity, declining water quality, land degradation, damage to coastal marine zones, and greenhouse gas emissions. The Government's election commitment includes a cap on clearing during the phase out, the ability to clear most regrowth vegetation, the ability to clear for some ongoing purposes such as fodder and thinning, and the retention of existing exemptions.

Clearing has been regulated under a complex framework that applies inconsistently to freehold and State lands. There are benefits for landholders and government in simplifying the framework and, as far as possible, providing a consistent approach across all land tenures.

Ways in which the policy objectives are to be achieved

The objectives will be achieved by:

- Phasing out broadscale clearing of remnant vegetation by 31 December 2006;
- Protecting "of concern" remnant vegetation on freehold land;
- Providing a ballot for broadscale clearing applications to receive an allocation under a transitional cap as part of the phase out process;
- Allowing applications for clearing for particular but limited purposes to be considered outside the cap;
- Permitting clearing of most regrowth vegetation;
- Providing the opportunity for greater certainty to landholders through creating property maps of assessable vegetation, which delineate assessable and non-assessable vegetation at the property scale;
- Declaring areas;
- Clarifying the exemptions from the need for a permit; and
- Combining vegetation clearing provisions previously under the *Land Act 1994* and *Vegetation Management Act 1999* under the one Act.

Alternative ways of achieving the objectives

There is no alternative to introducing legislation to meet the election commitments.

Administrative cost to government of implementation

The Government has committed $150 million to assist landholders who are significantly affected by the legislation.

Compliance with fundamental legislation principles

The Bill has been drafted with due regard to the fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992*.

For ballot applications appeals will be restricted to negotiated decision notices followed by appeal to a tribunal. This will provide a low cost, efficient and timely appeal mechanism that is necessary for the broadscale clearing approved under the cap to be completed by December 2006. In addition, for these broadscale clearing approvals, some decisions that are fundamental to achieving the Bill's purposes will not be open to appeal. These are to refuse applications once the area available under the cap is fully allocated, and to require all clearing to be completed by December 2006. Also, for these broadscale clearing applications, appeals about the currency period and decisions of the tribunal are not permitted, to ensure that all clearing can be completed by December 2006.

Consultation

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

- Department of the Premier and Cabinet
- Office of the Queensland Parliamentary Counsel
- Department of Local Government and Planning
- Department of Primary Industries
- Department of Main Roads
- Department of Aboriginal and Torres Strait Islander Policy
- Environmental Protection Agency

PART 1—PRELIMINARY

Clause 1 states that the Bill may be cited as the *Vegetation Management and Other Legislation Amendment Act 2004* (the Act).

Clause 2 of the Bill provides that the Act will commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF VEGETATION MANAGEMENT ACT 1999

Clause 3 identifies that part 2 of the Act amends the *Vegetation Management Act 1999* (the Act).

Clause 4 amends the long title of the Act by omitting reference to freehold land. The amended Act will regulate vegetation clearing on freehold and most State lands.

Clause 5 omits section 2 of the Act as it deals with the Act's original commencement and is now redundant.

Clause 6 replaces section 3, and revises the purposes of the Act. The purposes are amended to include conserving remnant of concern and remnant not of concern regional ecosystems, and reducing greenhouse gas emissions. The new purposes also allow the Act to be applied to freehold land and tenures previously regulated under the tree clearing provisions of the *Land Act 1994*. The Bill allows regulation of clearing to also manage the environmental effects of clearing. The clause provides a definition of "environment" taken from the *Integrated Planning Act 1994*.

The replacement of the word 'preserve' in section 3(1)(a) in the current Act with 'conserve' allows for clearing to be approved in limited circumstances. The purpose to maintain or increase biodiversity has been replaced with a purpose to prevent loss of biodiversity to make the purpose more achievable.

Clause 6 introduces new measures by which the Act's purpose will be achieved. In addition to existing measures, the purpose is to be achieved by phasing out broadscale clearing of remnant vegetation by December 2006, and by providing a framework for decision making that applies the precautionary principle. Declared areas, although not new to the Act, are now recognised as a measure for achieving the Act's purpose.

Clause 7 amends section 7 of the Act by providing that the Act applies to all clearing of vegetation, except for vegetation that is on a forest reserve or a protected area of Crown tenure under the *Nature Conservation Act 1992*, a State forest or timber reserve under the *Forestry Act 1959*, or a forest entitlement area established under the *Land Act 1994.* Vegetation on these areas is excluded from regulation under the Act because it is adequately regulated and subject to equivalent levels of protection under the aforementioned statutes. The clause also omits section 7(8) because, with the extension of the Act to apply to most State lands, the subsection becomes redundant.

Clause 8 amends the definition of what is vegetation. This includes all native trees and native plants, with three exceptions. The first exception, for grass, is carried forward from the current Act but clarification is added that this includes non-woody herbage, as well as plants identified botanically as true grasses. The second exception, for plants within a grassland regional ecosystem prescribed under a regulation, provides the Government with the ability to identify, in a regulation, certain regional ecosystems that are dominated by grasses. The third exemption, of mangroves, is carried forward from the current Act and recognises that mangroves are adequately protected under the *Fisheries Act 1994.*

Clause 9 amends section 10 of the Act to provide that the State policy for vegetation management prepared by the Minister is not restricted to freehold land. The clause also amends section 10 to omit the requirement for the State policy to include a code for the clearing of vegetation. It is intended that the State policy will set the objectives and outcomes for vegetation management in Queensland, which will be achieved by the regional vegetation management codes.

Clause 10 replaces Part 2, Division 3 of the Act (dealing with regional vegetation management plans), with a new Part 2, Division 3, which deals with the content and process for making the regional vegetation management codes.

Clause 10 creates section 11 of the Act to provide that the Minister must approve regional vegetation management codes for regions of the State and

that the codes must not be inconsistent with the State policy for vegetation management. This retains the ability of the State to define the State interests in vegetation while allowing for regional definition of the measures required to achieve or protect these interests.

The process used to make the regional vegetation management codes, outlined in sections 12 to 15, is based on the process previously used under the *Land Act 1994* to make local tree clearing guidelines. Section 12 provides that the Minister is able to seek public input in preparing a draft code, and that the Minister must advertise the draft code and seek submissions. Section 13 requires the Minister to consider public submissions before finalising and approving the code. The approved code is not required to be the same as the draft code to allow for changes as a result of considering submissions. Section 14 provides that the chief executive must advertise the code and make the code available for public inspection, purchase, or viewing on the website of the Department of Natural Resources, Mines and Energy (the Department). Section 15 deals with minor amendments to the code. Minor amendments can be made under this section, but only if the amendment is to correct a minor error, or is of no substance, or is of a type that the code states can be made in this way. By way of example, a code might state that further species can be added to a list of acceptable fodder species for the region, contained within the code. The code could later be amended to add species to this list.

Clause 11 replaces section 16 of the Act to recognise that any person can initiate the process to make a declared area, and to improve the process for consultation on proposals to declare areas of high nature conservation value and areas vulnerable to land degradation. As well as the consultation with landowners, advisory committees and local government previously provided in the Act, there is now a requirement to advertise the proposed declaration and to call for public submissions.

Clause 12 amends section 17 of the Act to omit a provision for a code for a declared area to amend the regional vegetation management plan. This provision is redundant as regional vegetation management plans are replaced by the regional vegetation management codes. The interaction between regional vegetation management codes and codes for declared areas is dealt with in clause 14. Clause 12 also identifies the term "declared area code" as meaning a code for a declared area.

Clause 13 amends section 19 of the Act to use the term "make an interim declaration, or prepare" a declaration, consistent with the terms used in previous sections. The clause also amends the criteria for what may be

declared, clarifying that regrowth vegetation may be declared if it meets the criteria outlined.

Clause 14 replaces the title of Part 2, Division 5, amends the existing section 20 and inserts a new section 20A about forest practice codes. It then creates a new Division 5A – Property Map of Assessable Vegetation with sections 20B to 20G.

Section 20 of the Act is amended to replace references to the regional vegetation management plans with references to the regional vegetation management codes. It also provides that for any matters in which the code for a declared area conflicts with the relevant regional vegetation management code, the code for the declared area prevails.

The new section 20A about forest practice codes relates to the exemption for clearing as part of a forest practice. The definition of forest practice in a native forest contains reference both to a code and to a set of principles. Section 20A provides that if the Minister has approved a code applying to native forest practice, the forest practice must be conducted in accordance with the code. In addition, section 20A requires a person conducting the practice to notify the chief executive before starting the activity. Persons conducting a native forest practice have until the end of 2004 to notify the chief executive. If a person intends to undertake a native forest practice after 2004, they must notify the chief executive before they start the activity.

The new Division 5A provides for the creation of property maps of assessable vegetation (PMAVs). A PMAV will map vegetation in a similar way to regional ecosystem maps but at a finer scale. In conjunction with schedule 8 of the *Integrated Planning Act 1997*, it will show what vegetation can be cleared without a permit on a property (non-assessable vegetation defined as category X) and depending on the clearing activity, what vegetation can only be cleared under a permit. Where a PMAV exists, it replaces the remnant and regional ecosystem maps for the purposes of determining when an exemption from the requirement to obtain a permit for clearing under schedule 8 of the *Integrated Planning Act 1997* applies for particular activities.

It will provide landholders with clarity because it will be able to map the boundary between assessable and exempt vegetation at a property scale. It will also provide certainty, because it can only be made in certain circumstances and once made may only be changed (by replacing the map with a new one) in certain ways. In particular, a PMAV cannot be changed in a way that alters an agreed boundary between non-assessable vegetation

(category X) and other vegetation shown on the map without agreement of the landowner. PMAVs will be made by certification by the chief executive and will be maintained by the Department.

Section 20B describes the circumstances in which the chief executive may make a PMAV. Firstly, a PMAV may be made where approval is given for clearing that is for the ongoing purposes of fodder harvesting, thinning, clearing of encroachment, or control of non-native plants or declared pests. A PMAV may also be made where the chief executive is notified of a native forest practice. These activities may from time to time reduce vegetation below remnant condition for a period. As it is intended that the vegetation should be retained and allowed to regenerate to remnant condition, the PMAV will identify the cleared area as assessable to prevent it being further cleared under exemptions ordinarily applying to non-remnant vegetation. A PMAV may also be made where approval is given for clearing of regrowth on leases used for agriculture or grazing. The PMAV in this instance will define the areas that will be non-assessable (category X) and assessable (category 4).

A PMAV may be made for a declared area, in which case the status of the vegetation on the PMAV will be elevated to that equivalent to a remnant endangered regional ecosystem. A PMAV can also be made for areas with commercial timber values on State land to ensure the vegetation remains assessable in these areas despite any timber harvesting operation undertaken under the *Forestry Act 1959*.

A PMAV may also be made for an area of vegetation that has been unlawfully cleared, or is subject to a compliance notice or enforcement notice that requires vegetation to be restored. If unlawful clearing has reduced vegetation below remnant condition and it is intended that the vegetation should regenerate, then the PMAV is necessary to ensure that clearing under exemptions ordinarily applying to non-remnant vegetation does not prevent the regeneration. This applies whether a conviction for a clearing-related offence occurred under the *Vegetation Management Act 1999, Forestry Act 1959, Nature Conservation Act 1992* or *Environmental Protection Act 1994*. Acts other than the *Vegetation Management Act 1999* are included because in some cases a prosecution under one of these Acts involves native vegetation clearing which should remain assessable and requires restoration (for example, taking a forest product under the *Forestry Act 1959*).

Section 20C provides that an owner of land may also initiate the making of a PMAV. An owner (including the holder of a lease, licence or permit

under the *Land Act 1994)* may request a PMAV, and the chief executive must make the map if the owner and chief executive agree to the making of the map. The owner is obliged to provide adequate information to support the request and enable the Department to prepare the PMAV, with these information requirements to be prescribed under a regulation.

Section 20D describes when PMAVs may be replaced. A PMAV may be replaced in order to record a change in a matter mentioned in 20B. The PMAV may also be replaced if the conservation status of one or more of the regional ecosystems in the area changes in a way that would affect the exemptions that should apply to the area, for example, if an of concern regional ecosystem is re-classified as not of concern. A PMAV made under 20C may also be replaced with a new PMAV, including one with different boundaries if the owner agrees to the replacement. It is intended that there will be only one PMAV per property.

Section 20E specifies the circumstances in which a PMAV can be revoked. A PMAV may not be revoked outside the circumstances in which it was created. For an area being used for one of the ongoing purposes of fodder harvesting, thinning, clearing of encroachment, or control of non-native plants or declared pests, or used for a native forest practice, the PMAV may be revoked once the use has ceased (evidenced by the expiry of the permit for the approved activities, and by notification for the native forest practice). However revocation may only occur once the area is mapped as remnant vegetation, because at this point clearing of the vegetation will remain assessable.

Similarly, for an area found to be unlawfully cleared or subject to a compliance or enforcement notice, the PMAV may be revoked once the area is mapped as remnant vegetation. A PMAV made because the area was identified as having commercial timber values of State interest may be revoked if the State no longer has an interest. A PMAV made at the request of the owner may be revoked if the owner agrees to the revocation.

Finally, sections 20F and 20G provide for notification of affected landholders and public access to PMAVs. They require that the owner of land included in a PMAV must be given a copy of the PMAV when it is made or replaced, and must be given a notice of a revocation including reasons for the revocation. Section 20F also requires the chief executive to make PMAVs available to any person on payment of a fee.

Clause 15 replaces section 22A (Refusing development application after conviction for vegetation clearing offence) with a new section 22A in order to move the existing section, which is now located at section 22M. Clause

15 also inserts new sections 22B – 22D into Division 6, and creates a new Division 7 – (Broadscale applications and ballots), containing sections 22E - 22L. Clause 15 also inserts a new Division 8 (Miscellaneous) containing the relocated section 22A.

In summary, clause 15 introduces the phasing out of broadscale clearing, by prohibiting applications for broadscale clearing outside of a ballot process. The ballot applies to broadscale applications in order to allocate the area available for permits under a cap on the clearing of vegetation. The clause also outlines a number of exceptions where particular vegetation clearing applications (ongoing applications) may be assessed outside of the cap and the ballot process. Modification to appeal rights and application processes under IDAS are also outlined.

The clause creates section 22A(1) which specifies that despite the *Integrated Planning Act 1997* a vegetation clearing application (triggered as assessable clearing by schedule 8, part 1) cannot be accepted and must be refused to be received by the assessment manager unless it is for one of the ongoing purposes outlined in section 22A(2). This occurs whether the assessment manager is the chief executive, or another assessment manager.

Section 22A(2) outlines a number of exceptions where applications for vegetation clearing (ongoing applications) will continue to be accepted, provided the chief executive is satisfied the clearing is for that purpose. These applications will be assessed outside the cap on clearing vegetation. They include: declared significant projects under the *State Development and Public Works Organisation Act 1997*, clearing of native vegetation necessary for the control of non-native plants or declared pests (for example, weeds and rabbit warrens) and clearing to ensure public safety. Applications for fodder harvesting, thinning of thickened vegetation, and clearing of encroachment will also be accepted.

Under this section applications will also be accepted for clearing required for establishing a necessary road, fence, firebreak or other built infrastructure, if there is no suitable alternative site available and where the amount of clearing required is greater than that allowed without a permit under the exemptions in the *Integrated Planning Act 1997* schedule 8, part 1. Applications may also be made for clearing that is the natural and ordinary consequence of other assessable development for which a development approval has been given or a development application has been made, under the *Integrated Planning Act 1997* before 16 May 2003 (the date the halt on accepting clearing applications came into effect through *Vegetation (Application for Clearing) Act 2003*). This does not

include material change of use and reconfiguration of a lot applications because there is no clearing that is a natural and ordinary consequence of such development. Applications for extractive industry (for existing and new operations) can also be accepted.

On leases used for agriculture or grazing, applications for clearing regrowth vegetation that has emerged following clearing undertaken on or before 31 December 1989 and that is not remnant vegetation will also be accepted. The intent of this exception is to transfer the regulation of non-remnant vegetation from the *Land Act 1994* to the *Vegetation Management Act 1999*. Regrowth vegetation that has emerged following clearing undertaken after 31 December 1989 on these leases can be cleared under an exemption.

New sections 22B to 22D deal with modifications to appeal processes. It is intended that appeals on applications that are for vegetation clearing alone will be made to a tribunal rather than the Planning and Environment Court. The *Integrated Planning Act 1997* provides for the Minister and chief executive under that Act to action the establishment and running of a building and development tribunal (see IPA, sections 4.2.36(1) and 5.8.1A, and Chapter 4, Part 2 respectively). Section 22B transfers these respective powers to the Minister and chief executive under this Act for the purpose of establishing a tribunal to hear appeals for applications involving vegetation clearing only.

Section 22C provides that appeals for ongoing applications outlined in section 22A (2) where the application is for clearing alone may only be made to a tribunal. However an applicant may appeal the decision of the tribunal to the Planning and Environment Court on a matter of law. Section 22C(3) provides that an applicant will not be able to appeal a matter, including a refusal of the application, to the tribunal unless they have sought a negotiated decision on that matter. The intent of this section is to effectively carry forward the internal review process under the *Land Act 1994*. A review need not be made for a deemed refusal and an applicant may go directly to the appeal process in this instance.

Section 22D modifies the appeal rights for ongoing applications that involve other development and for which the chief executive is a concurrence agency. It specifies that an applicant will not be able to appeal a matter to the Planning and Environment Court unless they have made representation on the matter under the IPA, s.3.5.9.

Clause 15 then creates Division 7 – Broadscale Applications and Ballots.

Section 22E specifies that Division 7 applies only to broadscale applications. A broadscale application is defined as a vegetation clearing application that does not include other development and is not for an ongoing purpose mentioned in section 22A(2). The intent of only accepting vegetation clearing applications that do not include other development into the ballot, is to prevent the modified timeframes established under the ballot process from having any impact on local governments' decision-making.

Section 22F(1) specifies that a broadscale application can be accepted if it is only for a single region and is properly made during the ballot application period. The ballot application period will be set by the Minister in a gazette notice. If a property or parcel of land lies across two regions, two applications for land in the respective regions must be made.

Section 22F(2) provides that the chief executive must for each region, conduct a ballot for all broadscale applications that are properly made, under subsection (1). Note a person is not prevented from lodging an ongoing application under 22A if they are also lodging a broadscale application under 22F and 22G or visa versa, even if it is for the same area. For example an existing application or approval for fodder or thinning can be applied for outside the ballot.

Section 22F(3) requires that only one application can be made for a parcel of land and if more than one application is made affecting the same parcel of land, that parcel of land will be discounted from one of the applications. The intention is to ensure a fair process so that all applicants have the same chance of their parcel of land being successful in the ballot. However, by way of example, an applicant with four parcels of land may choose to put in one application or more applications (up to four) into the ballot provided the same parcel of land is not included more than once.

Section 22G(1) provides a head of power for a regulation stating the regions of the State where the ballots will take place, the way in which the ballot must be conducted and the allocation under the cap for each region.

There will be some upgraded standards that will apply to both ballot applications and applications outside the ballot for example, clarification of the level and type of information required in a property vegetation management plan. Section 22G(1)(d) enables additional requirements to be specified for ballot applications.

Sections 22G(2) – (4) specify that the ballot will determine the priority in which applications will be assessed in each region. Applications will be assessed in order of their ballot number within each region against the regional vegetation management codes. Following assessment and the outcome of any appeal process on the first set of applications, the area approved to be cleared will be deducted from the region's allocation until all of the region's allocation has been approved for clearing. Once a region's allocation has been fully allocated any remaining applications in that region must be refused and need not be assessed. However, the refused applications may be considered for the purpose of determining their eligibility for financial assistance.

Section 22H requires that after the end of the ballot application period, an application cannot be changed to increase the area proposed to be cleared. This prevents a landholder from increasing the area of land applied for once they have been successful in the ballot. However, changes to the application, other than for increasing the area applied for, can be made up to 20 business days after an information request is made of the applicant. This enables landholders to refine their property plans after making the application.

Section 22I modifies the assessment process for properly made broadscale applications accepted during the ballot application period. This section removes the assessment manager's time limit under the *Integrated Planning Act 1997* for requesting further information and the time limit in which the assessment manager must make the decision. This is required because applications will be made during the ballot application period but assessment cannot begin until after the ballot. Assessment will then take place progressively according to the ballot order rather than the date of the application.

Section 22I also places some time limits on the applicant because the assessment process and any appeals need to be finalised in sufficient time for the clearing to be completed by December 2006. The December 2006 endpoint is constrained by the requirements of the Kyoto Protocol reporting arrangements. Section 22I(b) modifies the *Integrated Planning Act 1997* so that if no response is received to an information request within the 20 business days the assessment manager may assess the application as if the applicant had sent a notice under section 3.3.8(1)(c) of the *Integrated Planning Act 1997* stating the applicant does not intend to supply the information and requesting the authority proceed with assessing the application. This effectively changes the time available to respond to an information request from 12 months to 20 business days. It is anticipated

that the ballot applications will be assessed within 12 months of the ballot being conducted.

Section 22I paragraphs (d) and (e) limit firstly the suspension of the applicant's appeal period and then the applicant's appeal period to 10 business days, respectively as opposed to the normal 20 working days. This is to ensure the applications can be finalised in a timely manner to allow clearing to be completed by December 2006.

Section 22J prevents the extension of the period in which the clearing under a broadscale approval must be completed, in order to meet the requirements of the Kyoto Protocol reporting arrangements.

Section 22K modifies the appeal rights for a broadscale application. To expedite the appeals and reduce costs for applicants and Government, appeals against a decision notice or a negotiated decision notice for ballot applications will only be to a building and development tribunal established under the *Integrated Planning Act 1997*. However, an appeal will not be allowed unless a person has made representation to the assessment manager. This allows for a review of the decision prior to appeal. The section also overrides the *Integrated Planning Act 1997* to allow representation about a refusal.

Section 22L prohibits an appeal to any court under any Act against the ballot process or result, a refusal of an unsuccessful ballot application or the length of the currency period. Appeals may still be made for balloted applications based on the merits of the decision on the application but not against the way the ballot is conducted or the resulting ballot order. This section also prohibits any appeal of a decision made by a tribunal in relation to a broadscale clearing application.

Clause 15 now inserts a new Division 8 (Miscellaneous), and relocates existing section 22A to this division and renumbers the section as 22M. Section 22M provides that an assessment manager may refuse a vegetation clearing application where an applicant or owner of land has been convicted of a vegetation clearing offence within the previous five years, but not before the original commencement of this provision, on 28 March 2003. The section is amended to include all land tenures previously dealt with under the *Land Act 1994*. Also, a definition of "vegetation clearing offence" is included for the section to enable an assessment manager to refuse an application where an applicant or owner of land has been convicted of a tree clearing offence under the *Land Act 1994*.

Clauses 16 to 23 make a number of amendments to the enforcement and investigation provisions of the *Vegetation Management Act 1999* to apply to freehold land and State lands, and carry forward specific enforcement provisions under the *Land Act 1994* relating to State lands, where no equivalent power exists under the *Vegetation Management Act 1999*.

Clause 16 amends section 30(1) of the Act by carrying forward the existing power under section 400A(1) of the *Land Act 1994* to enter a place that is subject to a lease, licence or permit under that Act without a warrant during daylight hours. However, entry under this section does not allow an authorised officer to enter a place where a person resides.

Clause 17 amends section 33 of the Act to enable a magistrate to issue a warrant to any authorised officer, or specify a particular officer by name in the warrant. Currently a warrant can only be issued to and exercised by the authorised officer named in the warrant. This change gives discretion to the magistrate to issue a warrant that may be exercised by any authorised officer or to a specified officer. Subclauses (3) and (4) provides that a warrant may not only authorise entry of a place but also re-entry as authorised under the warrant.

Clause 18 amends section 35 of the Act to refer in the section to an authorised officer rather than an officer named in the warrant. This change is needed because of the amendment to section 33 of the Act enabling a magistrate to issue a warrant to an authorised officer or to specify a particular officer by name in the warrant.

Clause 19 amends section 55(4) of the Act to increase the maximum penalty for non-compliance with a compliance notice to 1 665 penalty units. The current maximum penalty, of 100 penalty units, equates to $7 500. Restoring an area that has been cleared can cost anywhere between $500 and $15 000 per hectare. In many cases, it is less onerous for a landholder to pay the penalty for non-compliance, rather than to comply with the notice and revegetate the land. The increase brings the penalty for non-compliance with a compliance notice into line with the penalty for non-compliance with an enforcement notice under the *Integrated Planning Act 1997*.

Clause 20 inserts a new section 59A into the Act to provide an offence for impersonating an authorised officer with a maximum penalty of 50 penalty units. This is a standard provision contained within many Acts. An equivalent offence exists under the *Land Act 1994* for impersonating an authorised person.

Clause 21 amends section 62 of the Act to specify an appeal against the issue of a compliance notice must be made within 20 business days of the compliance notice being issued. Currently there is no restriction on when an appeal can be started. The amendment brings the timeframe for appeal against the issue of a compliance notice into line with the timeframe for appeal against an enforcement notice under the *Integrated Planning Act 1997*.

Clause 22 amends section 67 of the Act. This section provides that a certificate summarising the evidence that could otherwise be provided by an expert may be tendered as evidence in a court. The section is amended to include a property map of assessable vegetation in the matters listed, which the chief executive may certify as being evidence of the stated matter. A property map of assessable vegetation is a map prepared under the Act that delineates, at a property level, vegetation that is assessable and vegetation that can be cleared without a permit.

Clause 23 amends section 67A of the Act to replace the definition of "occupier" for the section to reflect the inclusion of land tenures previously regulated under the *Land Act 1994*.

Clause 24 inserts a new section 68D to provide that the chief executive may approve forms for use under the Act. This section is needed by the inclusion of provisions requiring the notification of a native forest practice and providing for applications for property maps of assessable vegetation, both of which must be in the approved form.

Clause 25 inserts new section 70A (Application of development approvals and exemptions for Forestry Act). The *Forestry Act 1959* reserves as the absolute property of the Crown all forest products on a range of land tenures including Crown Land and Crown holdings and prohibits the interference with and sale or use of such forest products without an authority under the *Forestry Act 1959* or another Act. Sections 70A(1) and (2) provide that a development approval under the *Integrated Planning Act 1997,* for clearing native vegetation is taken to be an approval to interfere with forest products under sections 53 and 54 of the *Forestry Act 1959* respectively.

Section 70A(3) provides that clearing of remnant vegetation done under an exemption under the *Integrated Planning Act 1997* schedule 8, part 1, is also an authority to interfere with forest products under sections 53 and 54 of the *Forestry Act 1959* unless it also involves the clearing of species prescribed under regulation. This section allows the removal of native remnant vegetation, other than commercial species prescribed under a

regulation without a further approval under the *Forestry Act 1959*. Under the current arrangements, landholders clearing under exemptions under the *Land Act 1994* are required to notify the Department before removing any commercial species mentioned in schedule 1C of the *Land Regulation 1995*. The changes here mean that landholders will be required to obtain an authority under the *Forestry Act 1959* to interfere with commercial species within remnant vegetation despite an exemption under schedule 8, part 1 of the *Integrated Planning Act 1997* for the clearing.

Section 70A(4) provides that an exemption for clearing vegetation that is not remnant vegetation under the *Integrated Planning Act 1997* schedule 8, part 1, including commercial species, is taken to be an approval to interfere with forest products under sections 53 and 54 of the *Forestry Act 1959*. This section allows the removal of non-remnant native vegetation, including commercial species in non-remnant vegetation without having to obtain an approval under the *Forestry Act 1959*.

These provisions are required to remove the need for approvals under both Acts to clear vegetation on land to which the *Forestry Act 19*59 applies. However, to remove doubt, section 70A(5) states that subsections (3) and (4) authorise the use of any forest products that are cleared only on leases used for agriculture and grazing and only for the immediate repair of infrastructure on the property. This means that clearing under a development approval or an exemption only authorises the clearing of forest products under the *Forestry Act 1959*. Landholders cannot use as construction material (other than in the case stated above) or sell any forest products without a further approval under the *Forestry Act 1959*.

Clause 25 also inserts new section 70B (Record of development approvals and property maps of assessable vegetation). Section 70B requires the recording of development approvals and property maps of assessable vegetation in the Land Registry. Prospective purchasers will be advised through the title search of a development approval to clear land or that a property map of assessable vegetation has been issued for a property. This information is deemed to be of importance to the property market.

Clause 26 inserts a new division heading to distinguish between the transitional provisions for the *Vegetation Management Act 1999* and transitional provisions for this Act.

Clause 27 inserts a new division heading for transitional provisions for this Act and inserts new sections 75 to 80.

Section 75 provides for the Minister to approve regional vegetation management codes based on draft regional vegetation management plans that have been prepared under the current provisions of the *Vegetation Management Act 1999*. Over an extended period, 23 draft regional vegetation management plans were prepared under the auspices of the regional vegetation management committees. The work undertaken in preparing the draft plans will form the basis of the regional vegetation management codes mentioned in clause 10. Extensive consultation was undertaken on the draft regional vegetation management plans. Further limited consultation will be undertaken prior to them being made as regional codes. Section 75 allows the Minister to make the codes without the requirement of further consultation.

Section 76 deals with existing applications to clear native vegetation on freehold land. These applications were received before the *Vegetation (Application for Clearing) Act 2003* (VACA) commenced and include applications for broadscale clearing. Because all broadscale clearing must be completed by 31 December 2006, these applications cannot be changed in a way that increases the area to be cleared or extends the currency period. These applications will be assessed against the existing State Policy for Vegetation Management on Freehold Land. All existing applications will be assessed and the area approved for clearing will be deducted from the allocation that will be available under the ballot.

Section 77 deals with existing applications to clear trees under the *Land Act 1994* that were received before the VACA commenced. These applications are also broadscale applications. The applications and tree clearing permits approved for an application received before the VACA commenced cannot be changed in any way that increases the area approved or the term of the permit. These applications will be assessed against the existing Broadscale Tree Clearing Policy for State Lands and as with existing applications for freehold land, the area approved for clearing will be deducted from the allocation under the ballot. Also, section 77 preserves the repealed provisions of the *Land Act 1994* so that the assessment process and any appeals against assessment decisions can be dealt with as if there had been no change to the current processes.

Section 78 deals with applications to clear trees under the *Land Act 1994* that have been received after the VACA commenced. These are for purposes other than broadscale clearing and as such there is no limitation on changing these applications or a permit that arises from such an application. These applications will also be assessed against the existing Broadscale Tree Clearing Policy for State Lands. However the area

approved to be cleared will not be deducted from the allocation under the ballot. Also, section 78 preserves the repealed provisions of the *Land Act 1994* so that the assessment process and any appeals against assessment decisions can be dealt with as if there had been no change to the current processes.

Section 79(1) preserves the provisions of the *Land Act 1994* that are repealed by this Act so that existing tree clearing permits and any tree clearing permits issued for applications under new sections 77 and 78 are dealt with under the *Land Act 1994* as if the repeal had not occurred. This means that an existing tree clearing permit can be transferred under section 267 under the *Land Act 1994* despite its repeal. Similarly, a tree clearing permit could be cancelled under the repealed section 266. Section 79(2) provides that the repealed provisions of the *Land Act 1994* also continue to apply for monitoring, enforcing compliance with and prosecution of an offence against the tree clearing provisions.

Section 80 is a transitional provision that provides a definition of “owner” for vegetation clearing applications to meet the requirement of owner’s consent on a development application under section 3.2.1(3)(a)(ii) of the *Integrated Planning Act 1997.* However the *Integrated Planning and Other Legislation Amendment Act 2003,* section 49, removes the requirement for owner’s consent on development applications for operational works and therefore the definition will not be needed once this section commences.

Clause 28 amends a number of terms in the Dictionary in the schedule. Subclause 66(1) omits the following definitions: “area of unlawfully cleared vegetation”, “clear”, “destroy”, “development application”, “development approval”, “forest practice”, “freeholding lease”, “freehold land”, “regional vegetation management plan” and “vegetation clearing provision”.

Subclause (2) inserts the following definitions: “approved form”, “ballot application period”, “broadscale application”, “category 1 area”, “category 2 area”, “category 3 area”, “category 4 area”, “category X area”, “clear”, “clearing allocation”, “currency period”, “declared area”, “declared area code”, “declared pest”, “deemed refusal”, “development approval”, “encroachment”, “forest practice”, “freehold land”, “grassland regional ecosystem”, “indigenous land”, “information request”, “native forest practice”, “ongoing application”, “owner”, “property map of assessable vegetation”, “regional vegetation management code”, “thinning”,

"unlawfully cleared", "vegetation clearing application" and "vegetation clearing provision".

Most of these definitions are self explanatory, however the definitions of clear, forest practices, owner, thinning and property map of assessable development should be noted.

"Clear" has been amended so that it no longer excludes a forest practice. However, native forest practices on freehold land will still be exempt from the need for a development approval, because the exemption is relocated to the *Integrated Planning Act 1997,* schedule 8, part 1.

"Forest practice" is amended to ensure it applies only to freehold land, and to clarify that the term includes road construction and maintenance among the limited associated works permitted under the exemption.

"Owner" for land is given a meaning for the purposes of this Act that includes the holder of a lease, licence or permit under the *Land Act 1994.* This does not in any way infer the recognition of rights or entitlements not specified in the lease, licence or permit, or to infer any effect on native title not effected by the lease, licence or permit.

"Thinning" is defined as selective clearing and specifically excludes the use of a chain or cable linked between traction vehicles. This limitation on the method of clearing only applies to thinning and not to the clearing of encroachment, regrowth or control of non-native plants.

"Property map of assessable vegetation" is a map made by the chief executive showing, at a suitable scale for the property, the boundary between assessable and non-assessable vegetation and between areas of vegetation to which different exemptions apply.

Subclauses (3) and (4) amend the definition of "regional ecosystem map" and "remnant map" respectively. "Regional ecosystem map" and "remnant map" are amended to remove reference to declared areas and unlawfully cleared vegetation. These matters do not need to be shown on these maps as they will be recorded where appropriate by property maps of assessable vegetation, which replace the "regional ecosystem map" and "remnant map" as triggers for assessment in the areas to which they apply.

PART 3—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Clause 29 states that part 3 amends the *Integrated Planning Act 1997* (IPA).

Clause 30 amends the definition of operational work provided by the IPA*,* section 1.3.5, paragraphs (e) and (f) to incorporate all vegetation to which the *Vegetation Management Act 1999* now applies. This enables IDAS processes to be used to assess applications for clearing on State lands (other than those identified by clause 7) in addition to clearing on freehold land.

Clause 31 inserts a new Part 3 in Chapter 6 of the IPA for transitional provisions for the *Vegetation Management and Other Legislation Amendment Act 2004*. Clause 31 inserts new section 6.3.1, which provides an exemption from the need to obtain a development permit to clear native vegetation on freehold land for a mining activity or a petroleum activity under the *Environmental Protection Act 1994.* This section is taken to have commenced on 15 September 2000 when the *Vegetation Management Act 1999* commenced. It was intended that mining and petroleum activities be exempted from the need to obtain permits to clear on freehold land when the *Vegetation Management Act 1999* was enacted, however amendments to the *IPA* at this time only provided an exemption from such activities being made assessable under a planning scheme. This provision is needed to clarify the legal situation with regard to mining and petroleum activities on freehold land. The new section 6.3.1 has effect only until the commencement of this Act.

Clause 32 amends the *Integrated Planning Act 1997* schedule 8 (Assessable, self-assessable and exempt development). Subclause (1) amends Part 1, item 3A of the schedule that defines what clearing the State has made assessable. The amendment replaces the existing item 3A with seven new items, 3AA to 3AG relating to vegetation clearing on the different land tenures to which the *Vegetation Management Act 1999* now applies. There is no overlap between the items. The paragraphs within each item outline the specific clearing activities that are exempt from the trigger for when vegetation clearing is assessable.

Item 3AA—This item continues to make operational work that is the clearing of native vegetation on freehold land assessable, subject to the exemptions listed in paragraphs (a) to (j). It also makes operational work

that is the clearing of native vegetation on indigenous land assessable development. Indigenous land is defined as land held under a following Act by, or on behalf of or for the benefit of, Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes—

(a) the *Local Government (Aboriginal Lands) Act 1978*;

(b) the *Aborigines and Torres Strait Islanders (Land Holding) Act1985*;

(c) the *Aboriginal Land Act 1991*;

(d) the *Torres Strait Islander Land Act 1991*;

(e) the *Land Act 1994*.

Paragraph 3AA(a) excludes land tenures the *Vegetation Management Act 1999* does not apply to. This includes clearing in a forest reserve under the *Nature Conservation Act 1992;* a protected area under the *Nature Conservation Act 1992*, section 28; an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or a forest entitlement area under the *Land Act 1994*.

Paragraph 3AA(b) provides for the existing exemption for clearing associated with a native forest practice to be an exemption under schedule 8 other than on indigenous land on which the State owns the trees. This provides greater clarity and transparency for how forest practice activities are treated. Clearing as part of a native forest practice was previously exempt due to its exclusion from the definition of "clear". The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

The exemption for a native forest practice does not apply on indigenous land on which the State owns the trees. On most indigenous land tenures, the State owns or has reserved rights to forest products on the land. However, on some indigenous land, ownership of the trees is effectively transferred from the State to the owners of the indigenous land. An example is the Gurridi Traditional Land Trust, which was granted title to land on 21 September 1994 under the *Aboriginal Land Act 1991*. The instrument (deed of grant) granting the land reserves to the Crown all rights to minerals and petroleum and search rights in relation to minerals and petroleum, but no reservation was made for forest products. As such, the Gurridi Traditional Land Trust owns the forest products on the granted land (in the same way that any other freehold land owners own the trees on their land) and could therefore undertake a native forest practice on the land under the exemption.

Paragraph 3AA(c) is an amendment of the exemption for clearing to build a single residence. It has been amended to clarify that the exemption only applies to a residence for which a building approval has been given to construct the residence and that the exemption for a residence applies to each lot of land. Reasonably associated buildings or structures must be in association with residing on the property and not for another reason such as a commercial activity. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 3AA(d) provides for the existing exemption for essential management activities. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt. Note the definition of essential management has also been amended. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 3AA(e) is a new exemption for clearing vegetation in an area that is shown on a property map of assessable vegetation as a category X area.

Paragraph 3AA(f) provides for the existing exemption for the clearing of vegetation that is shown on the regional ecosystem maps as vegetation that is not remnant vegetation. This was previously contained within the exemption for routine management. The exemption has been amended so that it only applies when there is no property map of assessable vegetation for the area. This is because a property map of assessable vegetation takes precedence over a regional ecosystem map for showing what vegetation clearing is effectively assessable and non-assessable for a particular area.

Paragraph 3AA(g) is an amendment of the exemption for clearing within an urban area. The exemption has been amended to only apply to clearing within an urban area when the clearing itself is for urban purposes. This addresses the current anomaly where broadscale clearing can occur in an area defined as an urban area without a permit, even if the clearing activity is wholly unrelated to giving effect to an urban use. Note the definition of an urban area has also been amended.

The application of the exemption is equivalent to the existing exemption for clearing in an urban area, but has been amended to reflect the creation of property maps of assessable vegetation. Consequently, the exemption only applies for clearing vegetation in an area that is a category 2 or 3 area shown on a property map of assessable vegetation; or where no such map

has been prepared, a remnant of concern regional ecosystem or remnant not of concern regional ecosystem shown on a regional ecosystem map. Clearing within a category 1 area shown on a property map of assessable vegetation including a declared area or an area that has been illegally cleared, and clearing a remnant endangered regional ecosystem in an area where there is no property map of assessable vegetation remains assessable.

Paragraph 3AA(h) provides for the existing exemption for routine management activities. The application of the exemption has been amended to reflect the creation of property maps of assessable vegetation and the protection of remnant of concern regional ecosystems. The exemption no longer relates to declared areas or areas of unlawfully cleared vegetation as these areas are now dealt with by the creation of a property map of assessable vegetation. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake routine management as defined is exempt. Note the definition of routine management has also been amended.

Paragraph 3AA(i) is a new exemption that recognises approvals to take forest products that exist under the *Local Government (Aboriginal Lands) Act 1984, Community Services (Aborigines) Act 1984,* and the *Community Services (Torres Strait) Act 1984.* On most indigenous land tenures, the State owns the trees, and consequently no exemption for clearing as part of a native forest practice is provided for. However an exemption is provided for activities that are authorised under the above Acts.

Paragraph 3AA(j) provides for the existing exemptions under the definition of specified activities for activities undertaken as authorised under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959.*

A number of new activities are provided for under this exemption including clearing for traditional Aboriginal and Torres Strait Islander cultural activities. However, this exemption does not include clearing for commercial activities.

Paragraph 3AA(j) also provides an exemption for when clearing relates to a development approval for a material change of use or a reconfiguration of a lot for which the chief executive administering the *Vegetation Management Act 1999* has acted as a concurrence agency. As the clearing

will now be considered at an earlier stage, it will not need to be reconsidered at the operational works stage. This exemption assists to address the current situation where the consideration of clearing at the operational works stage can effectively prevent the development from going ahead if the clearing is not approved, despite the previous stages of the development being approved.

The previous exemption for clearing in a non-urban area that is the natural and ordinary consequence of other assessable development and the total area of the part of the land on which the development occurs is less than five hectares has been removed. This is because it was misleading and unnecessary.

The *Integrated Planning and Other Legislation Amendment Act 2003* clarified that the use of land did not include the clearing of native vegetation. Consequently, clearing could never constitute a natural and ordinary consequence of a material change in use. In addition, no clearing is the natural and ordinary consequence of a reconfiguration of a lot. Instead, the clearing is a result of undertaking other activities on the land following a reconfiguration such as building roads, installing sewerage infrastructure and constructing buildings. Clearing that is the natural and ordinary consequence of building, plumbing or drainage work is already exempt under routine management. Clearing to give effect to an operational works permit will be assessable.

The previous exemption for clearing for the conservation or restoration of natural areas has been removed to ensure the exemption is not used as a potential loophole.

Item 3AB – This is a new item that makes operational work that is clearing of native vegetation on leasehold land under the *Land Act 1994* used for agriculture or grazing assessable development. This is in place of the existing permit requirements under the tree management part of the *Land Act 1994* relating to clearing on these leases that are being repealed.

Paragraph 3AB(a) excludes land tenures the *Vegetation Management Act 1999* does not apply to. This includes clearing in a forest reserve under the *Nature Conservation Act 1992;* a protected area under the *Nature Conservation Act 1992*, section 28; an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or a forest entitlement area under the *Land Act 1994*.

Paragraph 3AB(b) provides a new exemption for agriculture and grazing leases to clear to build a single residence per lot where the structure has

building approval. Reasonably associated buildings or structures must be in association with residing on the property and not for another reason such as a commercial activity. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 3AB(c) provides an exemption for essential management activities. The exemption replaces the routine management and routine rural management exemptions under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* that relate to the maintenance of firebreaks, infrastructure and gardens. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 3AB(d) is an exemption for clearing vegetation in an area that is shown on a property map of assessable vegetation as a category X area.

Paragraph 3AB(e) is in place of part of the routine rural management exemption under the *Land Act 1994* and *Land Regulation 1995* that exempts the clearing of regrowth vegetation that has emerged following clearing under a permit given after 31 December 1989. However, the exemption only applies if there is no property map of assessable vegetation for the area and the vegetation is not remnant vegetation on the regional ecosystem or remnant maps. Note that if in time the vegetation regenerates and is remapped as remnant on the regional ecosystem or remnant maps, it will become assessable unless a PMAV has been made that identifies it as non-assessable (category X).

Note also that, as under the previous provisions for leasehold land under the *Land Act 1994*, re-clearing an area of vegetation that was cleared previously under a permit given before 1 January 1990 is assessable.

Paragraph 3AB(f) replaces parts of the routine rural management exemption under the *Land Act 1994* and *Land Regulation 1995* that relate to making and maintaining fences, roads and facilities. It enables clearing for routine management purposes in a not of concern regional ecosystem or of regrowth vegetation cleared on or before 31 December 1989. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake routine management as defined is exempt. The application of the exemption reflects the creation of property maps of assessable vegetation, and the protection of remnant of concern regional ecosystems. Clearing vegetation for routine management

in an area shown on a property map of assessable vegetation as a category1 or 2 area will remain assessable as will clearing within a remnant endangered regional ecosystem or remnant of concern regional ecosystem shown on a regional ecosystem map.

Paragraph 3AB(g) replaces the exemption under the *Land Act 1994* for clearing authorised under another Act. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Item 3AC – This is a new item that makes operational work that is clearing of native vegetation on land subject to a lease under the *Land Act 1994* used for purposes other than agriculture or grazing assessable development. This is in place of the previous permit requirements under the tree management part of the *Land Act 1994*. The exemptions for when a clearing activity is not assessable only apply if the clearing activity is consistent with the purpose of the lease.

Paragraph 3AC(a) excludes land tenures the *Vegetation Management Act 1999* does not apply to. This includes clearing in a forest reserve under the *Nature Conservation Act 1992;* a protected area under the *Nature Conservation Act 1992*, section 28; an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or a forest entitlement area under the *Land Act 1994*.

Paragraph 3AC(b) provides a new exemption for lessees to clear to build a single residence per lot where the structure has building approval. This exemption has been provided in recognition of those leases that are to be used solely for a single dwelling house. Reasonably associated buildings or structures must be in association with residing on the property and not for another reason such as a commercial activity. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 3AC(c) provides a new exemption for clearing for essential management activities. The exemption is similar to the routine management exemption under the tree management parts of the *Land Act 1994* and *Land Regulation 1995*. This is in recognition that limited

amounts of clearing will need to be undertaken to maintain existing infrastructure, remove dangerous or damaging vegetation and manage the risk of wildfire. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 3AC(d) provides an exemption in an area that is shown on a property map of assessable vegetation as a category X area.

Paragraph 3AC(e) is in place of the existing routine management exemption for clearing regrowth vegetation on rental category 3.1, 3.2, 4, 5, 8.2, 9.1, 9.2 leases. The exemption only applies if there is no property map of assessable vegetation for the area and the vegetation is not remnant vegetation on the regional ecosystem or remnant maps.

Paragraph 3AC(f) replaces the exemption under the *Land Act 1994* for clearing authorised under another Act. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Item 3AD – This is a new item that makes operational work that is clearing of native vegetation on land that is a road under the *Land Act 1994* assessable development. This is in place of the previous permit requirements under the tree management part of the *Land Act 1994* for clearing roads. Vegetation on roads is often highly valuable in terms of providing wildlife habitat and movement corridors between patches of remnant vegetation, particularly in areas where the remaining land has been largely cleared of native vegetation. Consequently, there are fewer exemptions applicable for clearing activities on roads.

Paragraph 3AD(a) provides exemptions that are only applicable for clearing by a local government. Local governments currently have control of all roads within their area under section 901 of the *Local Government Act 1993*. Previously, it was unclear to the extent this section provided an authority under the *Land Act 1994* for clearing trees. These provisions

clarify what types of clearing a local government can do on a road without having to obtain a permit for clearing.

Generally, local governments will be able to clear roads only for the purpose of constructing and maintaining road carriageways and associated roadway infrastructure. The exemption local governments currently have to source forest products regulated under the *Forestry Act 1959* for road construction purposes has been preserved. In addition, within an urban area, local government will be able to clear roads for any purpose including purposes unrelated to road construction and maintenance if the vegetation is not remnant vegetation or is a remnant not of concern regional ecosystem. The last exemption that is specific to local governments allows the chief executive to approve a routine clearing activity not otherwise provided for within the list of exemptions, if it is consistent with achieving the purposes of the *Vegetation Management Act 1999*.

Local government will also be able to clear without a permit if the activity is for any of the other listed exemptions under 3AD(b) to (g).

Paragraph 3AD(b) replaces the routine management exemption under the tree management part of the *Land Act 1994* that relates to the clearing of vegetation in an emergency. It is broader than the previous exemption in that it does not require an emergency to be occurring in order to remove dangerous vegetation. For example, a tree would not need to be in the process of falling or be just about to fall for the exemption to apply for removing it, there need only be a risk of this occurring. This exemption may apply if a tree's roots are damaging infrastructure such as sewerage pipes or a tree is diseased and could fall on a nearby house or driveway causing serious damage to the house. The exemption is not intended to apply if a tree is merely causing a nuisance due to the dropping of leaves.

Paragraph 3AD(c) replaces the routine management exemption under the tree management part of the *Land Act 1994* that relates to reducing combustible material by controlled burning. A person who holds a permit under the *Fire and Rescue Service Act 1990* to undertake a controlled burn to reduce hazardous fuel load can clear without a permit under this exemption. Hazardous fuel load refers to a build up of dead grass and leaves, branches and other vegetable matter on the ground.

Paragraph 3AD(d) is a new exemption that allows clearing to be undertaken without a permit if it is to maintain existing infrastructure that has been placed on the road or under the ground within the road. This exemption is in recognition that infrastructure such as electricity cables and sewerage pipes are often located within the road and clearing may be

required in order to maintain this infrastructure. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake the maintenance is exempt.

Paragraph 3AD(e) replaces the existing routine management exemption under the tree management part of the *Land Act 1994* that relates to clearing to maintain an existing boundary fence. The exemption has been restricted such that clearing must not extend on to the road further than a maximum width of 1.5 metres. This limit recognises that the strips of vegetation remaining on roads adjacent to the road carriageway are often already narrow and at risk from losing their habitat values if further cleared. Despite the maximum prescribed width, clearing must be restricted to the minimum extent necessary to maintain the fence, which may be less than 1.5 metres. Clearing can occur on the inside of the fence on the property adjacent to the road to maintain the fence without a permit under the essential management exemption provided under other land tenures.

Paragraph 3AD(f) is a new exemption that allows a limited amount of clearing to be undertaken on a road in order to provide access from an adjacent property to the road carriageway such as a driveway. Despite the maximum prescribed distances and widths, clearing must be restricted to the minimum extent required to provide access, which may be less than the distances prescribed. Clearing to construct a single residence and any other reasonably associated structure such as a driveway on adjacent property is already exempt from the requirement for a permit in most cases.

Paragraph 3AD(g) replaces the existing routine management exemption under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* related to maintaining gardens and firebreaks. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to maintain the firebreak or garden is exempt.

Paragraph 3AD(h) provides for the existing exemptions for activities undertaken as authorised under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a

reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Note that as local governments have control of roads, a person will still require the authority of the relevant local government to clear on a road despite the above exemptions from the requirement to obtain a permit.

Item 3AE – This is a new item that makes operational work that is clearing of native vegetation on trust land under the *Land Act 1994* (other than indigenous land) assessable development. This is in place of the previous permit requirements under the tree management part of the *Land Act 1994* for trust land.

Paragraph 3AE(a) provides exemptions that are only applicable for clearing by the trustee for the land. The trustee will be able to clear for essential management activities without a permit. This exemption replaces the routine management and authorised activities exemptions under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* that relate to the maintenance of firebreaks, infrastructure and gardens. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt.

A new exemption has been provided for trustees to clear category X vegetation shown on a property map of assessable vegetation or vegetation that is not remnant vegetation as shown on an applicable regional ecosystem map. Trustees will be able to maintain these areas as cleared without the requirement for a further permit.

The fourth exemption provided replaces the existing authorised activities exemption under the tree management parts of the *Land Act 1994* and *Land Regulation 1995*. The intention is to allow for on-going routine clearing activities undertaken by the trustee to maintain the trust land or reserve for the purpose it was granted if the clearing is consistent with the purposes of the *Vegetation Management Act 1999*. It is not intended that this exemption provide for an alternative approval process if the clearing is actually to develop the trust land or reserve, or part of it, even if the development would be consistent with the purpose for which the trust land or reserve was granted.

Paragraph 3AE(b) provides for the existing exemptions for activities undertaken as authorised under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In

addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Item 3AF – This is a new item that makes operational work that is clearing of native vegetation on unallocated State land under the *Land Act 1994* assessable development. This is in place of the previous permit requirements under the tree management part of the *Land Act 1994* for unallocated State land.

Paragraph 3AF(a) is a new exemption that allows the chief executive administering the *Land Act 1994* to undertake clearing for essential management activities without a permit. The chief executive can also undertake clearing for the control of non-native plants or declared pests. This has been provided because the chief executive has land management responsibilities for unallocated State land until the land becomes allocated as another tenure. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined or to control non-native plants or declared pests is exempt.

Paragraph 3AF(b) provides for the existing exemptions for activities undertaken as authorised under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Item 3AG – This is a new item that makes operational work that is clearing of native vegetation on land subject to a licence or permit under the *Land Act 1994* assessable development. This is in place of the existing permit requirements under the tree management part of the *Land Act 1994* for licensed or permitted land that are being repealed.

Paragraph 3AG(a) is a new exemption that allows the licensee or permittee for the *Land Act 1994* to undertake clearing for essential management activities without a permit. This has been provided because

the licensee or permittee has land management responsibilities for land. It replaces the existing routine management exemption for licensees and permittees under the tree management parts of the *Land Act 1994* and *Land Regulation 1995*. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt.

Paragraph 3AG(b) provides for the existing exemptions for activities undertaken as authorised under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Clause 32(2) removes the reference to freehold land from the description of the application type in schedule 8, part 3, item 13(a)(i), which describes the types of operational work associated with the conduct of an agricultural use, or weed and pest control that may be regulated by a local government. This allows local governments to regulate vegetation clearing on lands other than freehold through their planning schemes, to the same extent that they can do on freehold land.

Clause 32(3) deletes the words “item 3A” from schedule 8, part 3, item 13 (b), which restricts local governments from regulating through the planning scheme, works for weed control other than clearing vegetation. It will now refer to 3AA – 3AG.

Most of the definitions in this section are self-explanatory, however changes to the definitions of essential management, routine management, and urban area should be noted.

The following amendments have occurred to the previous definition of essential management:

Paragraph (a) amends the existing provision relating to exempting clearing for the construction and maintenance of firebreaks to protect buildings. It has been amended to prescribe maximum clearing widths and to allow a firebreak to be constructed to protect infrastructure, which includes but is not limited to buildings.

Paragraph (b) replaces the existing provision relating to exempting clearing for the construction and maintenance of firebreaks to protect property boundaries or paddocks. It refers to a fire management line rather than a firebreak, as it is intended only to provide for the management and control of fire on a property including wild fire and hazard reduction control burns. Clearing to establish a fire management line is not limited to the property boundaries or paddocks. However, it must be necessary clearing to manage fire and is not intended to allow additional clearing if sufficient firebreaks and access roads already exist on the property for this. It prescribes maximum widths for clearing for a fire management line of 10 metres. This is sufficient to enable vehicles passing points and turn around areas where required. Despite the prescribed maximum width, clearing must be restricted to what is necessary, which may be less than 10 metres.

Paragraph (c) replaces the existing provision relating to clearing vegetation that is likely to endanger the safety of a person or property on the land because the vegetation is likely to fall. It is also in place of the routine management exemption under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* to ensure the safety of persons or property in an emergency.

It is broader than both previous exemptions in that it does not only relate to vegetation that is threatening to fall. It allows a person to clear a tree in order to address the risk the vegetation may fall and injure persons or damage infrastructure. It is intended to apply if a tree's roots are damaging infrastructure such as sewerage pipes or a tree is diseased and could fall on a nearby house or driveway and if it did would cause serious damage to the house or may injure a person using the driveway. The exemption is not intended to apply if a tree is merely causing a nuisance due to the dropping of limbs or leaves.

Paragraph (d) replaces the existing provision relating to clearing by fire. The reference to the *Fire and Rescue Service Act 1990* has been amended to reflect its correct title and the clearing under the exemption has been restricted to that associated with hazard reduction control burns.

Paragraph (e) replaces the existing provision relating to clearing vegetation to maintain an existing fence, stockyard, shed, road or other built infrastructure. The list of infrastructure has been broadened to clarify that it includes watering facilities such as dams as well as constructed drains, helipads and airstrips, regardless of whether they constitute being "built" infrastructure. The exemption does not apply to maintaining contour banks or to sourcing construction material to maintain the

infrastructure. Sourcing construction material is now dealt separately under paragraphs (g) and (h).

Paragraph (f) replaces the existing exemption for clearing to maintain a garden or orchard. It has been amended to clarify that the exemption does not apply to clearing of canopy trees in order to maintain garden plants or orchard trees that were planted within remnant vegetation.

Paragraph (g) replaces the previous routine rural management exemption under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* on leases for agriculture or grazing only, to obtain replacement fence, yard or rail posts when required for immediate repair works. The exemption has been broadened to apply to any existing infrastructure on the property. However, it only applies to clearing to obtain construction material that will be used for repair rather than the routine replacement of the infrastructure. To qualify for the exemption, the clearing must also not cause land degradation such as stream bank instability and the landholder must ensure that restoration of a similar type and to the extent of the removed vegetation occurs.

Paragraph (h) is in place of the current implicit exemption under essential management to obtain the construction material needed to maintain existing infrastructure. It is broader than the exemption provided for leasehold land used for agriculture or grazing, as the timber is privately owned on freehold land. The exemption does allow timber to be cleared on a property if it is to maintain infrastructure on another property owned by the same person. The exemption only applies when the clearing will not cause land degradation such as stream bank instability and the landholder must ensure that restoration of a similar type and to the extent of the removed vegetation occurs.

The following amendments have occurred to the previous definition of routine management:

Paragraph (a) replaces the current routine management exemption for clearing to establish a necessary fence or road. It separates clearing for fences and roads from clearing for infrastructure and prescribes a maximum width for the clearing for the fence or road of 10 metres. It also provides for the routine rural management exemptions under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* relating to the establishment of fences and roads to access facilities. Despite the prescribed maximum width, clearing must be restricted to what is necessary, which may be less than 10 metres.

Paragraph (b) replaces the routine management exemption relating to clearing to establish necessary infrastructure. It excludes clearing to source construction material which was previously implicit within the original exemption as this activity is now provided for in paragraph (c). Clearing is only exempt if the extent of the clearing is less than two hectares in size and the size of the infrastructure on the land is also less than two hectares.

Paragraph (c) replaces the implicit exemption relating to clearing to obtain timber for constructing the infrastructure mentioned in (b). The exemption does allow timber to be cleared on a property if it is to establish new infrastructure on another property owned by the same person. The exemption only applies when the clearing will not cause land degradation such as stream bank instability and the landholder must ensure that restoration of a similar type and to the extent of the removed vegetation occurs.

Paragraph (d) amends the freehold routine management exemption relating to clearing for fodder for stock in drought conditions. The fodder exemption previously available on freehold land is being replaced with the requirement to apply for clearing for fodder harvesting. However, to enable landholders affected by the current drought to have adequate time to prepare an application to clear for fodder harvesting, the exemption will continue until 30 June 2004.

The following amendments have occurred to the previous definition of urban area:

The urban area definition has been amended to reflect the derivation of priority infrastructure areas within priority infrastructure plans. These new plans will be required to be prepared by local governments by 2005. Where no plans have been derived, areas within planning schemes can be defined as urban or non-urban by gazette notice. This will be used where it would otherwise be difficult to determine whether an area is urban or non-urban because of the descriptive terminology used in the planning scheme. If neither of these definitions applies, urban areas are defined according to the current definition minus rural residential areas and future rural residential areas. Rural residential has been omitted, as these areas are more like rural areas than urban areas in terms of how they are managed by local government. Rural residential will also be omitted from a priority infrastructure area unless a local government decides to include it. The gazettal of areas within a planning scheme as urban will be done in consultation with local government and will only occur where the current zoning is ambiguous and requires clarification.

Clause 32(4) omits schedule 8, part 4 definitions for "area of high nature conservation value", "area of unlawfully cleared vegetation", "area vulnerable to land degradation", "essential management", "non-urban area", "routine management" and "urban area".

Clause 32(5) inserts new or amended definitions into the schedule 8 dictionary including definitions for: "category 2 area", "category 3 area", "category 4 area", "category X area", "declared pest", "essential management", "freehold land", "indigenous land", "property map of assessable vegetation", "remnant not of concern regional ecosystem", "remnant of concern regional ecosystem", "routine management", "specified activity", "trust land", "urban area", "urban purposes" and "VMA".

Clause 33 amends schedule 10 (Dictionary) for the *Integrated Planning Act 1997*. In particular, the definition of "clear" has been amended to amalgamate the existing definitions under the *Land Act 1994* and the *Vegetation Management Act 1999* and to remove reference to forest practices. The definition of a "forest practice" has also been amended to specify that 1(b)(ii) only applies if no code has been approved by the Minister and a definition for "native forest practice" is included. The definition of "native vegetation" has been amended to be consistent with the meaning of "vegetation" under the *Vegetation Management Act 1999*.

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

Clause 34 states that part 4 amends the *Integrated Planning and Other Legislation Amendment Act 2003* (IPOLA). Most of the provisions of IPOLA, which amends the *Integrated Planning Act 1997*, have not commenced and consequently IPOLA must also be amended in addition to the *Integrated Planning Act 1997*.

Clause 35 amends section 36(2) of IPOLA to amend the inserted definition of "operational work". Subclause (1) amends the definition of operational work, item 1(f), to incorporate the vegetation to which the *Vegetation Management Act 1999* now applies. Subclause (2) amends item 2(b) to clarify that the meaning of operational work does not include clearing of vegetation to which the *Vegetation Management Act 1999* does

not apply. See explanation of clause 7 for what vegetation clearing the Act does not apply to.

Clause 36 amends section 109 of IPOLA. Subclause (1) amends item 1 of Table 4 within schedule 8, part 1 that defines what clearing the State has made assessable. The amendment replaces the existing item 1 with seven new items, 1A to 1G relating to vegetation clearing on the different land tenures to which the *Vegetation Management Act 1999* now applies. There is no overlap between the items. The paragraphs within each item outline the specific clearing activities that are exempt from the trigger for when vegetation clearing is assessable.

Item 1A—This item continues to provide a trigger that makes operational work that is the clearing of native vegetation on freehold land assessable, subject to the exemptions listed in paragraphs (a) to (j). It also makes operational work that is the clearing of native vegetation on indigenous land assessable development. Indigenous land is defined as land held under a following Act by, or on behalf of or for the benefit of, Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purposes—

(a) the *Local Government (Aboriginal Lands) Act 1978*;

(b) the *Aborigines and Torres Strait Islanders (Land Holding) Act1985*;

(c) the *Aboriginal Land Act 1991*;

(d) the *Torres Strait Islander Land Act 1991*;

(e) the *Land Act 1994*.

Paragraph 1A(a) excludes land tenures the *Vegetation Management Act 1999* does not apply to. This includes clearing in a forest reserve under the *Nature Conservation Act 1992;* a protected area under the *Nature Conservation Act 1992*, section 28; an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or a forest entitlement area under the *Land Act 1994*.

Paragraph 1A(b) provides for the existing exemption for clearing associated with a "native forest practice" to be an exemption under schedule 8 other than on indigenous land on which the State owns the trees. This provides greater clarity and transparency for how forest practice activities are treated. Clearing as part of a native forest practice was previously exempt due to its exclusion from the definition of "clear". The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

The exemption for a native forest practice does not apply on indigenous land on which the State owns the trees. On most indigenous land tenures, the State owns or has reserved rights to forest products on the land. However, on some indigenous land, ownership of the trees is effectively transferred from the State to the owners of the indigenous land. An example is the Gurridi Traditional Land Trust, which was granted title to land on 21 September 1994 under the *Aboriginal Land Act 1991*. The instrument (deed of grant) granting the land reserves to the Crown all rights to minerals and petroleum and search rights in relation to minerals and petroleum, but no reservation was made for forest products. As such, the Gurridi Traditional Land Trust owns the forest products on the granted land (in the same way that any other freehold land owners own the trees on their land) and could therefore undertake a native forest practice on the land under the exemption.

Paragraph 1A(c) is an amendment of the exemption for clearing to build a single residence. It has been amended to clarify that the exemption only applies to a residence for which a building approval has been given to construct the residence and that the exemption for a residence applies to each lot of land. Reasonably associated buildings or structures must be in association with residing on the property and not for another reason such as a commercial activity. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 1A(d) provides for the existing exemption for essential management activities. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt. Note the definition of essential management has also been amended. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 1A(e) is a new exemption for clearing vegetation in an area that is shown on a property map of assessable vegetation as a category X area.

Paragraph 1A(f) provides for the existing exemption for the clearing of vegetation that is shown on the regional ecosystem maps as vegetation that is not remnant vegetation. This was previously contained within the exemption for routine management. The exemption has been amended so that it only applies when there is no property map of assessable vegetation for the area. This is because a property map of assessable vegetation takes

precedence over a regional ecosystem map for showing what vegetation clearing is effectively assessable and non-assessable for a particular area.

Paragraph 1A(g) is an amendment of the exemption for clearing within an urban area. The exemption has been amended to only apply to clearing within an urban area when the clearing itself is for an urban purpose. This addresses the current anomaly where broadscale clearing can occur in an area defined as an urban area without a permit, even if the clearing activity is wholly unrelated to giving effect to an urban use. Note the definition of an urban area has also been amended.

The application of the exemption is equivalent to the existing exemption for clearing in an urban area, but has been amended to reflect the creation of property maps of assessable vegetation. Consequently, the exemption only applies for clearing vegetation in an area that is a category 2 or 3 area shown on a property map of assessable vegetation; or where no such map has been prepared, a remnant of concern regional ecosystem or remnant not of concern regional ecosystem shown on a regional ecosystem map. Clearing within a category 1 area shown on a property map of assessable vegetation including a declared area or an area that has been illegally cleared, and clearing a remnant endangered regional ecosystem in an area where there is no property map of assessable vegetation remains assessable.

Paragraph 1A(h) provides for the existing exemption for routine management activities. The application of the exemption has been amended to reflect the creation of property maps of assessable vegetation and the protection of remnant of concern regional ecosystems. The exemption no longer relates to declared areas or areas of unlawfully cleared vegetation as these areas are now dealt with by the creation of a property map of assessable vegetation. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake routine management as defined is exempt. Note the definition of routine management has also been amended.

Paragraph 1A(i) is a new exemption that recognises approvals to take forest products that exist under the *Local Government (Aboriginal Lands) Act 1984, Community Services (Aborigines) Act 1984,* and the *Community Services (Torres Strait) Act 1984.* On most indigenous land tenures, the State owns the trees, and consequently no exemption for clearing as part of a native forest practice is provided for. However an exemption is provided for activities that are authorised under the above Acts.

Paragraph 1A(j) provides for the existing exemptions for activities undertaken as authorised under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*.

A number of new activities are provided for under this exemption including clearing for traditional Aboriginal and Torres Strait Islander cultural activities. However, this exemption does not include clearing for commercial activities.

Paragraph 1A(j) also provides an exemption for when clearing relates to a development approval for a material change of use or a reconfiguration of a lot for which the chief executive administering the *Vegetation Management Act 1999* has acted as a concurrence agency. As the clearing will now be considered at an earlier stage, it will not need to be reconsidered at the operational works stage. This exemption assists to address the current situation where the consideration of clearing at the operational works stage can effectively prevent the development from going ahead if the clearing is not approved, despite the previous stages of the development being approved.

The previous exemption for clearing in a non-urban area that is the natural and ordinary consequence of other assessable development and the total area of the part of the land on which the development occurs is less than five hectares has been removed. This is because it was misleading and unnecessary.

The *Integrated Planning and Other Legislation Amendment Act 2003* clarified that the use of land did not include the clearing of native vegetation. Consequently, clearing could never constitute a natural and ordinary consequence of a material change in use. In addition, no clearing is the natural and ordinary consequence of a reconfiguration of a lot. Instead, the clearing is a result of undertaking other activities on the land following a reconfiguration such as building roads, installing sewerage infrastructure and constructing buildings. Clearing that is the natural and ordinary consequence of building, plumbing or drainage work is already exempt under routine management. Clearing to give effect to an operational works permit will be assessable.

The previous exemption for clearing for the conservation or restoration of natural areas has been removed to ensure the exemption not used as a potential loophole.

Item 1B – This is a new item that makes operational work that is clearing of native vegetation on leasehold land under the *Land Act 1994* used for agriculture and grazing purposes assessable development. This is in place of the existing permit requirements under the tree management part of the *Land Act 1994* relating to clearing on these leases that are being repealed.

Paragraph 1B(a) excludes land tenures the *Vegetation Management Act 1999* does not apply to. This includes clearing in a forest reserve under the *Nature Conservation Act 1992;* a protected area under the *Nature Conservation Act 1992*, section 28; an area declared as a state forest or timber reserve under the *Forestry Act 1959*; or a forest entitlement area under the *Land Act 1994*.

Paragraph 1B(b) provides a new exemption for agriculture and grazing leases to clear to build a single residence per lot where the structure has building approval. Reasonably associated buildings or structures must be in association with residing on the property and not for another reason such as a commercial activity. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 1B(c) provides an exemption for essential management activities. The exemption replaces the routine management and routine rural management exemptions under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* that relate to the maintenance of firebreaks, infrastructure and gardens. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 1B(d) is an exemption for clearing vegetation in an area that is shown on a property map of assessable vegetation as a category X area.

Paragraph 1B(e) is in place of part of the routine rural management exemption under the *Land Act 1994* and *Land Regulation 1995* that exempts the clearing of regrowth vegetation that has emerged following clearing under a permit given after 31 December 1989. However, the exemption only applies if there is no property map of assessable vegetation for the area and the vegetation is not remnant vegetation on the regional ecosystem or remnant maps. Note that if in time the vegetation regenerates and is remapped as remnant on the regional ecosystem or remnant maps, it

will become assessable unless a PMAV has been made that identifies it as non-assessable (category X).

Note also that, as under the previous provisions for leasehold land under the *Land Act 1994*, re-clearing an area of vegetation that was cleared previously under a permit given before 1 January 1990 is assessable.

Paragraph 1B(f) replaces parts of the routine rural management exemption under the *Land Act 1994* and *Land Regulation 1995* that relate to making and maintaining fences, roads and facilities. It enables clearing for routine management purposes in a not of concern regional ecosystem or of regrowth vegetation cleared on or before 31 December 1989. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake routine management as defined is exempt. The application of the exemption reflects the creation of property maps of assessable vegetation, and the protection of remnant of concern regional ecosystems. Clearing vegetation for routine management in an area shown on a property map of assessable vegetation as a category 1 or 2 area will remain assessable as will clearing within a remnant endangered regional ecosystem or remnant of concern regional ecosystem shown on a regional ecosystem map.

Paragraph 1B(g) replaces the exemption under the *Land Act 1994* for clearing authorised under another Act. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Item 1C – This is a new item that makes operational work that is clearing of native vegetation on land subject to a lease under the *Land Act 1994* used for purposes other than agriculture and grazing purposes assessable development. This is in place of the existing permit requirements under the tree management part of the *Land Act 1994* that are being repealed. The exemptions for when a clearing activity is not assessable only apply if the clearing activity is consistent with the purpose of the lease.

Paragraph 1C(a) excludes land tenures the *Vegetation Management Act 1999* does not apply to. This includes clearing in a forest reserve under the

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

Paragraph 1C(b) provides a new exemption for lessees to clear to build a single residence per lot where the structure has building approval. This exemption has been provided in recognition of those leases that are to be used solely for a single dwelling house. Reasonably associated buildings or structures must be in association with residing on the property and not for another reason such as a commercial activity. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 1C(c) provides a new exemption for clearing for essential management activities. The exemption is similar to but broader than the routine management exemption under the tree management parts of the *Land Act 1994* and *Land Regulation 1995*. This is in recognition that limited amounts of clearing will need to be undertaken on any leased property to maintain existing infrastructure, remove dangerous or damaging vegetation and manage the risk of wildfire. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt. The exemption will apply regardless of what the vegetation is mapped as on a property map of assessable vegetation or the regional ecosystem maps.

Paragraph 1C(d) is a new exemption which provides for clearing vegetation in an area that is shown on a property map of assessable vegetation as a category X area.

Paragraph 1C(e) is in place of the existing routine management exemption for clearing regrowth vegetation on rental category 3.1, 3.2, 4, 5, 8.2, 9.1, 9.2 leases. The exemption only applies if there is no property map of assessable vegetation for the area and the vegetation is not remnant vegetation on the regional ecosystem or remnant maps.

Paragraph 1C(f) replaces the exemption under the *Land Act 1994* for clearing authorised under another Act. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a

development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Item 1D – This is a new item that makes operational work that is clearing of native vegetation on land that is a road under the *Land Act 1994* assessable development. This is in place of the existing permit requirements under the tree management part of the *Land Act 1994* for clearing roads that are being repealed. Vegetation on roads is often highly valuable in terms of providing wildlife habitat and movement corridors between patches of remnant vegetation, particularly in areas where the remaining land has been largely cleared of native vegetation. Consequently, there are fewer exemptions applicable for clearing activities on roads.

Paragraph 1D(a) provides exemptions that are only applicable for clearing by a local government. Local governments currently have control of all roads within their area under section 901 of the *Local Government Act 1993*. Previously, it was unclear to the extent this section provided an authority under the *Land Act 1994* for clearing trees. These provisions clarify what types of clearing a local government can do on a road without having to obtain a permit for clearing.

Generally, local governments will be restricted to clearing roads for the purpose of constructing and maintaining road carriageways and associated road way infrastructure. The exemption local governments currently have to source forest products regulated under the *Forestry Act 1959* for road construction purposes has been preserved. In addition, within an urban area, local government will be able to clear roads for any purpose including purposes unrelated to road construction and maintenance if the vegetation is not remnant vegetation or is a remnant not of concern regional ecosystem. The third exemption that is specific to local governments allows the chief executive to approve a routine clearing activity not otherwise provided for within the list of exemptions, if it is consistent with achieving the purposes of the *Vegetation Management Act 1999*.

Local government will also be able to clear without a permit if the activity is for any of the other listed exemptions under 1D(b) to (g).

Paragraph 1D(b) replaces the routine management exemption under the tree management part of the *Land Act 1994* that relates to the clearing of vegetation in an emergency. It is broader than the previous exemption in that it does not require an emergency to be occurring in order to remove dangerous vegetation. For example, a tree would not need to be in the

process of falling or be just about to fall for the exemption to apply for removing it, there need only be a risk of this occurring. The exemption may apply if a tree's roots are damaging infrastructure such as sewerage pipes or a tree is diseased and could fall on a nearby house or driveway and if it did would cause serious damage to the house. The exemption is not intended to apply if a tree is merely causing a nuisance due to the dropping or leaves.

Paragraph 1D(c) replaces the routine management exemption under the tree management part of the *Land Act 1994* that relates to reducing combustible material by controlled burning. A person will require a permit under the *Fire and Rescue Service Act 1990* to undertake a controlled burn to reduce hazardous fuel load before they can clear without a permit under this exemption. Hazardous fuel load refers to a build up of dead grass and leaves, branches and other vegetable matter on the ground.

Paragraph 1D(d) is a new exemption that allows clearing to be undertaken without a permit if it is to maintain existing infrastructure that has been placed on the road or under the ground within the road. This exemption is in recognition that infrastructure such as electricity cables and sewerage pipes are often located within the road and clearing may be required in order to maintain this infrastructure. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake the maintenance is exempt.

Paragraph 1D(e) replaces the existing routine management exemption under the tree management part of the *Land Act 1994* that relates to clearing to maintain an existing boundary fence. The exemption has been restricted such that clearing must not extend on to the road further than a maximum width of 1.5 metres. This limit recognises that the strips of vegetation remaining on roads adjacent to the road carriageway are often already narrow and at risk from losing their habitat values if further cleared. Despite the maximum prescribed width, clearing must be restricted to the minimum extent necessary to maintain the fence, which may be less than 1.5 metres. Clearing can occur on the inside of the fence on the property adjacent to the road to maintain the fence without a permit under the essential management exemption provided under other land tenures.

Paragraph 1D(f) is a new exemption that allows a limited amount of clearing to be undertaken on a road in order to provide access from an adjacent property to the road carriageway such as a driveway. Despite the maximum prescribed distances and widths, clearing must be restricted to

the minimum extent required to provide access, which may be less than the distances prescribed. Clearing to construct a single residence and any other reasonably associated structure such as a driveway is already exempt from the requirement for a permit on adjacent land in most cases.

Paragraph 1D(g) replaces the existing routine management exemption under the tree management part of the *Land Act 1994* and *Land Regulation 1995* related to maintaining gardens and firebreaks. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to maintain the firebreak or garden is exempt.

Paragraph 1D(h) provides an exemption for when clearing relates to authorities under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Note that as local governments have control of roads, a person will still require the authority of the relevant local government to clear on a road despite the above exemptions from the requirement to obtain a permit.

Item 1E – This is a new item that makes operational work that is clearing of native vegetation on trust land under the *Land Act 1994* (other than indigenous land) assessable development. This is in place of the existing permit requirements under the tree management part of the *Land Act 1994* for trust land.

Paragraph 1E(a) provides exemptions that are only applicable for clearing by the trustee for the land. The trustee will be able to clear for essential management activities without a permit. The exemption replaces the routine management and authorised activities exemptions under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* that relate to the maintenance of firebreaks, infrastructure and gardens. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt.

A new exemption has been provided for trustees to clear category X vegetation shown on a property map of assessable vegetation or vegetation

that is not remnant vegetation as shown on an applicable regional ecosystem map. Trustees will be able to maintain these areas as cleared without the requirement for a further permit.

The fourth exemption provided replaces the existing authorised activities exemption under the tree management parts of the *Land Act 1994* and *Land Regulation 1995*. The intention is to allow for on-going routine clearing activities undertaken by the trustee to maintain the trust land or reserve for the purpose it was granted if the clearing is consistent with the purposes of the *Vegetation Management Act 1999*. It is not intended that this exemption provide for an alternative approval process if the clearing is actually to develop the trust land or reserve, or part of it, even if the development would be consistent with the purpose for which the trust land or reserve was granted.

Paragraph 1E(b) provides an exemption for when clearing relates to authorities under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Item 1F – This is a new item that makes operational work that is clearing of native vegetation on unallocated State land under the *Land Act 1994* assessable development. This is in place of the previous permit requirements under the tree management part of the *Land Act 1994* for unallocated State land.

Paragraph 1F(a) is a new exemption that allows the chief executive administering the *Land Act 1994* to undertake clearing for essential management activities without a permit. The chief executive can also undertake clearing for the control of non-native plants or declared pests. This has been provided because the chief executive has land management responsibilities for unallocated State land until the land becomes allocated as another tenure. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined or to control non-native plants or declared pests is exempt.

Paragraph 1F(b) provides an exemption for when clearing relates to authorities under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Item 1G – This is a new item that makes operational work that is clearing of native vegetation on land subject to a licence or permit under the *Land Act 1994* assessable development. This is in place of the existing permit requirements under the tree management part of the *Land Act 1994* for licensed or permitted land that are being repealed.

Paragraph 1G(a) is a new exemption that allows the licensee or permittee for the *Land Act 1994* to undertake clearing for essential management activities without a permit. This is provided because the licensee or permittee has land management responsibilities for land. It replaces the existing routine management exemption for licensees and permittees under the tree management parts of the *Land Act 1994* and *Land Regulation 1995*. The extent of clearing must be restricted to what is necessary. That means only the minimum extent of clearing required to undertake essential management as defined is exempt.

Paragraph 1G(b) provides for the existing exemptions for activities as authorised under other legislation. This includes certain activities under the *Environmental Protection Act 1994*, the *Fire and Rescue Service Act 1990*, and the *Transport Infrastructure Act 1994*. In addition, it also provides exemptions for certain activities under the *Electricity Act 1994* and *Forestry Act 1959*. Clearing for a traditional non-commercial Aboriginal and Torres Strait Islander cultural activity, or clearing under a development approval for a material change of use or a reconfiguration of a lot, when the chief executive has acted as concurrence agency for the application is also included.

Clause 36(2) amends section 109 of IPOLA to remove the reference to freehold land in schedule 8A, table 3, item 2(a). Item 2 specifies the chief executive that administers the *Vegetation Management Act 1999* is the assessment manager for applications involving operational work that is the clearing of native vegetation if no other development is applied for.

Clause 36(3) amends section 109 of IPOLA to remove the reference to freehold land in schedule 9, table 4, item 9(a)(i) and (b). Schedule 9 prescribes development that may not be made assessable under a planning scheme. The change is necessary to include land tenures other than freehold land and will provide that local governments can regulate vegetation clearing on freehold land or other land to which the *Vegetation Management Act 1999* applies.

Clause 37 amends section 110 of IPOLA. Subclause (1) omits the following definitions: “area of high nature conservation value”, “area of unlawfully cleared vegetation”, “area vulnerable to land degradation”, “essential management”, “non-urban area”, “routine management” and “urban area”.

Subclause (2) inserts the following new or amended definitions: “category 2 area”, “category 3 area”, “category 4 area”, “category X area”, “declared pest”, “essential management”, “freehold land”, “indigenous land”, “property map of assessable vegetation”, remnant not of concern regional ecosystem”, “remnant of concern regional ecosystem”, “routine management”, “specified activity”, “trust land”, “urban area”, “urban purposes” and “VMA”.

Most of the definitions in this section are self-explanatory, however changes to the definitions of essential management, routine management and urban area should be noted.

The following amendments have occurred to the previous definition of essential management:

Paragraph (a) amends the existing provision relating to exempting clearing for the construction and maintenance of firebreaks to protect buildings. It has been amended to prescribe maximum clearing widths and to allow a firebreak to be constructed to protect infrastructure, which includes but is not limited to buildings.

Paragraph (b) replaces the existing provision relating to exempting clearing for the construction and maintenance of firebreaks to protect property boundaries or paddocks. It refers to a fire management line rather than a firebreak, as it is intended only to provide for the management and control of fire on a property including wild fire and hazard reduction control burns. Clearing to establish a fire management line is not limited to the property boundaries or paddocks. However, it must be necessary clearing to manage fire and is not intended to allow additional clearing if sufficient firebreaks and access roads already exist on the property for this.

It prescribes maximum widths for clearing for a fire management line of 10 metres. This is sufficient to enable vehicles passing points and turn around areas where required. Despite the prescribed maximum width, clearing must be restricted to what is necessary, which may be less than 10 metres.

Paragraph (c) replaces the existing provision relating to clearing vegetation that is likely to endanger the safety of a person or property on the land because the vegetation is likely to fall. It is also in place of the routine management exemption under the tree management part of the *Land Act 1994* and *Land Regulation 1995* to ensure the safety of persons or property in an emergency.

It is broader than both previous exemptions in that it does not only relate to vegetation that is threatening to fall. It allows a person to clear a tree in order to address the risk the vegetation may fall and injure persons or damage infrastructure. It is intended to apply if a tree's roots are damaging infrastructure such as sewerage pipes or a tree is diseased and could fall on a nearby house or driveway and if it did would cause serious damage to the house or may injure a person using the driveway. The exemption is not intended to apply if a tree is merely causing a nuisance due to the dropping of limbs or leaves.

Paragraph (d) replaces the existing provision relating to clearing by fire. The reference to the *Fire and Rescue Service Act 1990* has been amended to reflect its correct title and the clearing under the exemption has been restricted to that associated with hazard reduction control burns.

Paragraph (e) replaces the existing provision relating to clearing vegetation to maintain an existing fence, stockyard, shed, road or other built infrastructure. The list of infrastructure has been broadened to clarify that it includes watering facilities such as dams as well as constructed drains, helipads and airstrips, regardless of whether they constitute being "built" infrastructure. The exemption does not apply to maintaining contour banks or to sourcing construction material to maintain the infrastructure. Sourcing construction material is now dealt separately under paragraphs (g) and (h).

Paragraph (f) replaces the existing exemption for clearing to maintain a garden or orchard. It has been amended to clarify that the exemption does not apply to clearing of canopy trees in order to maintain garden plants or orchard trees that were planted within remnant vegetation.

Paragraph (g) replaces the existing routine rural management exemption under the tree management parts of the *Land Act 1994* and *Land*

Regulation 1995 leases used for agriculture and grazing only to obtain replacement fence, yard or rail posts when required for immediate repair works. The exemption has been broadened to apply to any existing infrastructure on the property. However, it only applies to clearing to obtain construction material that will be used for repair rather than the routine replacement of the infrastructure. To qualify for the exemption, the clearing must also not cause land degradation such as stream bank instability and the landholder must ensure that restoration of a similar type and to the extent of the removed vegetation occurs.

Paragraph (h) is in place of the current implicit exemption under essential management to obtain the construction material needed to maintain existing infrastructure. It is broader than the exemption provided for leasehold land used for agriculture or grazing, as the timber is privately owned on freehold land. The exemption does allow timber to be cleared on a property if it is to maintain infrastructure on another property owned by the same person. The exemption is only intended to apply when the clearing will not cause land degradation such as stream bank instability and the landholder must ensure that restoration of a similar type and to the extent of the removed vegetation occurs.

The following amendments have occurred to the previous definition of routine management:

Paragraph (a) replaces the current routine management exemption for clearing to establish a necessary fence or road. It separates clearing for fences and roads from clearing for infrastructure and prescribes a maximum width for the clearing for the fence or road of 10 metres. It also provides for the routine rural management exemptions under the tree management parts of the *Land Act 1994* and *Land Regulation 1995* relating to the establishment of fences and roads to access facilities. Despite the prescribed maximum width, clearing must be restricted to what is necessary, which may be less than 10 metres.

Paragraph (b) replaces the routine management exemption relating to clearing to establish necessary infrastructure. It excludes clearing to source construction material which was previously implicit within the original exemption as this activity is now provided for in paragraph (c). Clearing is only exempt if the extent of the clearing is less than two hectares in size and the size of the infrastructure on the land is also less than two hectares.

Paragraph (c) replaces the implicit exemption relating to clearing to obtain timber for constructing the infrastructure mentioned in paragraph (b). The exemption does allow timber to be cleared on a property if it is to

establish new infrastructure on another property owned by the same person. The exemption only applies when the clearing will not cause land degradation such as stream bank instability and the landholder must ensure that restoration of a similar type and to the extent of the removed vegetation occurs.

Paragraph (d) amends the freehold routine management exemption relating to clearing for fodder for stock in drought conditions. The fodder exemption previously available on freehold land is being replaced with the requirement to apply for clearing for fodder harvesting. However, to enable landholders affected by the current drought to have adequate time to prepare an application to clear for fodder harvesting, the exemption will continue until 30 June 2004.

The following amendments have occurred to the previous definition of urban area:

The urban area definition has been amended to reflect the derivation of priority infrastructure areas within priority infrastructure plans. These are a new plan that will be required to be prepared by local governments by 2005. Where no plans have been derived, areas within planning schemes can be defined as urban or non-urban by gazette notice. This will be used where it would otherwise be difficult to determine whether an area is urban or non-urban because of the descriptive terminology used in the planning scheme. If neither of these definitions applies, urban areas are defined according to the current definition minus rural residential areas and future rural residential areas. Rural residential has been omitted, as these areas are more like rural areas than urban areas in terms of how they are managed by local government. Rural residential will also be omitted from a priority infrastructure area unless a local government decides to include it. The gazettal of areas within a planning scheme as urban will be done in consultation with local government and will only occur where the current zoning is ambiguous and requires clarification

PART 5—AMENDMENT OF LAND ACT 1994

Clause 38 provides that part 5 amends the *Land Act 1994*.

Clause 39 omits Chapter 5, Part 6 of the *Land Act 1994*. Chapter 5, Part 6 (Tree Management) provides the framework for managing trees on

unallocated State land and reserves, deeds of grant in trust, roads, licences, permits and leases on which the State owns the trees. Clearing vegetation on these tenures will now be dealt with under the *Vegetation Management Act 1999* and the *Integrated Planning Act 1997*.

Clause 40 amends section 400 of the *Land Act 1994* to include the purposes of the *Vegetation Management Act 1999* as a purpose for which the section applies. Section 400 currently provides the power to enter land for the purposes of the *Land Act 1994* only. Removing the tree clearing provisions from the *Land Act 1994* removes a purpose for which the section can be exercised. By adding the *Vegetation Management Act 1999,* authorised officers will be able to continue to enter land to carry out work such as vegetation identification and mapping and ground-truthing for the State-wide Landcover and Trees Study (SLATS). The clause also omits section 400(1A) about entering land as the tree clearing enforcement provisions are omitted.

Clause 41 omits Chapter 7, Part 1, Division 4 (Monitoring and enforcement powers for tree clearing provisions).

Clause 42 amends section 431C of the *Land Act 1994* to remove items relating to tree clearing provisions.

PART 6—MISCELLANEOUS

Clause 43 repeals the *Vegetation (Application for Clearing) Act 2003* (VACA). The repeal of the VACA will coincide with the commencement of this Act.

SCHEDULE—MINOR AMENDMENTS

Clause 44 provides that schedules 1 and 2 amend the Acts mentioned.

Schedule 1 makes a number of minor amendments to the Acts mentioned for the purposes of this Act or to correct errors or omissions that have identified by the Office of the Queensland Parliamentary Counsel.

Schedule 2 contains minor amendments to the *Vegetation Management Act 1999* to update references to items within schedule 8 of the *Integrated Planning Act 1999*, once that Act is amended by the *Integrated Planning and Other Legislation Amendment Act 2003*.

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