Vegetation Management and Other Legislation Amendment Bill 2009

Explanatory Notes

General Outline

Policy Objectives

The main purpose of the Bill is to amend the *Vegetation Management Act 1999* (VMA) and *Integrated Planning Act 1997* (the Planning Act) to provide a new legislative framework for the protection of important regrowth vegetation. This legislation has arisen from an election commitment on 15 March 2009 by the Premier which included a temporary moratorium on clearing of endangered regrowth vegetation and regrowth vegetation adjacent to priority Great Barrier Reef watercourses while the State Government consulted with stakeholders about the best way to manage clearing of regrowth vegetation under the VMA.

As a result of consultation, this Bill will protect mature regrowth vegetation that has not been cleared since 31 December 1989 on leasehold land for agricultural and grazing purposes, freehold land and indigenous land. This is the regrowth with the highest biodiversity value and that is least likely to occur on productive lands. The Bill also maintains the protection of regrowth vegetation adjacent to watercourses in the priority Great Barrier Reef catchments of the Burdekin, Mackay-Whitsundays and the Wet Tropics. Protection of these watercourses will assist in protecting Queensland's iconic Great Barrier Reef.

The Bill also incorporates a range of streamlining amendments to the vegetation management framework, derived from reviews of the framework and experience in implementing the framework that have highlighted areas for improvement. Specific matters addressed include clarifying the power of the chief executive to make vegetation management offset and concurrence agency policies, specifying the chief executive's constraints and responsibilities when assessing concurrence agency applications, improving the efficiency of the vegetation mapping process

and providing clear review and appeal rights for vegetation mapping decisions.

The Bill also makes necessary operational amendments to the *Land Act 1994* (Land Act) and *Land Title Act 1994* (Land Title Act) to extend the stay (halt) on registration of tidal boundary survey plans.

Reason for the Policy Objectives

The new regrowth vegetation legislative framework delivers on Government commitments to protect regrowth vegetation and landscapes that badly need trees to perform their ecological function and address tree clearing impacts on the Great Barrier Reef. The protection of regrowth vegetation was in response to the level of regrowth clearing in the 2006/07 Statewide Landcover and Tree Study (SLATS) Report, as well as the need to protect Queensland's Great Barrier Reef

The protection of mature regrowth ensures that threatened ecosystems will be protected and will assist in protecting sensitive areas such as steep slopes, wetlands, watercourses and habitat for threatened species. This Bill strikes the balance of assisting to achieve the purpose of the VMA while maintaining productive land.

The retention of vegetation either side of watercourses in priority reef catchments can assist with improving bank stability and reduce pollutants within a water system. A vegetation buffer of 50 metres of native vegetation either side of priority reef catchment watercourses will provide for improved bank stability and reduce the level of pollutants such as sediments and chemicals entering the reef, as well as enhanced biodiversity benefits. The protection of regrowth watercourse vegetation under this Bill will improve the quality of water entering the Great Barrier Reef and will assist in delivering the Government's commitment to reduce the level of pesticides and fertilisers reaching the reef by 50 per cent within four years.

The provisions to streamline the administration of the vegetation management framework ensure continuous improvement of the framework and the efficient use of public funds.

The Bill also contains amendments of the Land Act and the Land Title Act to extend by six months the current stay (halt) on registration of tidal boundary plans. In November 2005, the government stopped the registration of tidal boundary plans of subdivision until November 2008, and this was extended until 8 November 2009. The stay was introduced after concerns were raised about beaches becoming private property, and

that, as a consequence, public access could be restricted and fragile dune areas could be damaged. The stay operates only where a boundary change is proposed and only where the public interest is affected. The extension of the stay will enable the Government to complete new legislative arrangements following stakeholder consultation and feedback.

How the Policy Objectives will be achieved

The policy objectives will be achieved by:

- Repealing the *Vegetation Management (Regrowth Clearing Moratorium) Act 2009* and providing for the long-term regulation of regrowth vegetation on agricultural and grazing leasehold land and non-urban freehold and indigenous land through a performance based compliance code. The code specifies the minimum clearing requirements which must be met and voluntary best management practice criteria for landholders willing to apply a higher standard of regrowth vegetation management.
- Commencing the parts of the Bill covering new regrowth vegetation regulations retrospectively from the end of the moratorium, to prevent pre-emptive clearing. Criminal liability will not apply during the period of retrospectivity, although landholders who commit an offence may be required to let vegetation regrow to ensure that the regrowth vegetation regulation objectives are not undermined.
- Mapping and regulating areas of regrowth vegetation which are woody vegetation that is of forest quality (a minimum of 11 percent foliage projective cover), has not been re-cleared since 31 December 1989 (i.e. is at least 20 years old) and is either an *endangered*, *of concern* or *least concern, (*previously known as *not of concern)* regional ecosystem; and regulating native vegetation 50 metres either side of regrowth watercourses in the Burdekin, Mackay-Whitsunday and Wet Tropics priority reef catchments.The classes of regional ecosystem are explained in the schedule (Dictionary).
- Excluding regulation of regrowth vegetation less than 20 years old, to avoid impact on the most productive primary production lands, while at the same time protecting regrowth vegetation that is likely to be a functioning ecosystem.
- Implementing a partnership between industry and Government to co-deliver training and information on the new regrowth vegetation

regulations which will assist landholder understanding of the new arrangements and how to apply them at a property level.

- Providing a range of amendments to the VMA, *State Development and Public Works Organisation Act 1971*, Planning Act and *Sustainable Planning Act 2009* that streamline the existing framework and provide more transparency and clarity for landholders.
- Extending the stay on the registration of tidal boundary plans by six months, to 8 April, to enable the Government to complete legislative arrangement for tidal boundaries.

Alternatives to the Bill

There are no viable alternatives that would achieve the policy objectives.

Estimated administrative cost to the Government for implementation

The financial cost of implementing the new laws for regrowth vegetation clearing and streamlining the administration of the vegetation management framework is within resources allocated to the Department of Environment and Resource Management (the department).

Consistency with Fundamental Legislative Principles

Does the legislation have sufficient regard to the rights and liberties of individuals—*Legislative Standards Act 1992*, section 4(2)(a).

Clause 32 of the Bill proposes that an official may give a person a stop work notice or restoration notice (known in the unamended VMA as compliance notices) if they believe a vegetation clearing offence has been committed or is being committed. The penalty for failing to comply with such a notice is a maximum of 1665 penalty units. This penalty is appropriate as it is the same as the existing penalty in the unamended VMA for a compliance notice.

Also, an official may use reasonable force or take any other reasonable action to stop a person doing an act or omission that is in contravention of a stop work or restoration notice. This power is justified because situations have arisen as to where the use of reasonable force would be the only means of ensuring an offence in progress is stopped. For example an official may stop a bulldozer by placing an obstruction in its way, or organise weed control of a remediated area to be undertaken. However, this

provision does not extend the powers officials currently have under the unamended VMA.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively—*Legislative Standards Act 1992*, section 4(3)(g).

The regrowth vegetation clearing provisions in the Bill will commence retrospectively from 8 October 2009, the day after the moratorium on regrowth vegetation clearing ends. The proposed Bill may adversely impact on the right to clear particular vegetation within the period between 8 October 2009 and the date of assent for the legislation. A person clearing particular vegetation in the retrospective period is not subject to criminal liability but may be given a restoration notice which may require the person to prepare and implement a restoration plan. Failure to comply with the restoration notice attracts a penalty under the new provisions. Further, land that has been subject to a restoration notice will be shown as category A on a property map of assessable vegetation (PMAV) which means that the area will be subject to the greatest restrictions with regard to clearing under the amended VMA.

The retrospective application of the Bill arguably offends section 4(3)(g) of the *Legislative Standards Act 1992* which requires that legislation has sufficient regard to the rights and liberties of individuals and consequently not adversely affect rights and liberties, or impose obligations, retrospectively.

In this instance, retrospectivity is justified. The introduction of the regrowth vegetation regulations ahead of the legislation is necessary to ensure that high value regrowth vegetation and native vegetation adjacent to regrowth watercourses is not cleared pre-emptively while the Bill is considered by Parliament.

The effects of the retrospective application of the Bill have been mitigated as much as possible by:

- the Government announcing the introduction of this Bill prior to its introduction , the reasons for the regulations, the impact of the Bill on landholders and where further information could be obtained;
- keeping the period of retrospectivity as short as possible; and
- excluding criminal liability during the retrospective period for clearing regrowth vegetation protected under the new laws.

While retrospective legislation which disadvantages individuals is a breach of fundamental legislative principles and generally objectionable it has been accepted that retrospectivity is justified where the interests of the public as a whole outweigh the interests of an individual.

There may be some detrimental effect on individual rights however individual rights are outweighed by the public interest in ensuring that high value regrowth vegetation and regrowth watercourse vegetation are protected.

Does the legislation provide for the compulsory acquisition of property only with fair compensation—Legislative Standards Act 1992, section 4(4)(b).

Clause 46 of the Bill provides that vegetation planted on leasehold land to comply with a restoration notice, a Land Act notice given for a tree clearing offence or a trespass notice under the Land Act is not and never has been a natural resource owned by the lessee as an improvement. While it is generally acknowledged that compulsory acquisition of property may be made only with compensation, in this circumstance it would be inappropriate for a person who has committed an offence to enrich themselves as a result.

Does the legislation have sufficient regard to the institution of Parliament, in particular, does the legislation sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative

Assembly—*Legislative Standards Act 1992*, section 4(4)(b).

Clause 16 (20AB) – What is the regrowth vegetation map

Clause 16 will identify areas where particular regrowth vegetation will be subject to the regrowth vegetation code by reference to a map certified by the chief executive. Any amendments of the map are also certified by the chief executive. It is arguable that this provision may be considered a Henry VIII clause because it will effectively allow the original application of the VMA to be governed by executive action and for the chief executive to amend the operation of the VMA.

The process established for the regrowth vegetation map is consistent with the existing process for certification of a regional ecosystem or remnant map for the purpose of regulating clearing. The map certification process has been a part of the VMA since its commencement in 2000. Chief executive certification allows for timely amendment of mapping to correct errors and has not been challenged in that time.

The effect of this clause has also been mitigated as subsequent amendments do not take effect until it has been approved by a regulation which is subject to Parliamentary scrutiny.

The regrowth vegetation map was developed using rigorous scientific methodologies as well as satellite imagery used by the Queensland Herbarium and in the SLATS reports. Measurements of foliage projective cover have been used to identify regrowth vegetation as being of a type likely to have the qualities of a functioning ecosystem and able to make a significant contribution to biodiversity and recovery of regional ecosystems. The standard for foliage projective cover used for the regrowth vegetation map is equivalent to the standards used in the Australia National Forestry Inventory to define a forest, and the National Carbon Accounting System, and would likely align with Kyoto carbon accounting principles. Although the mapping will identify some areas that are not native vegetation, like woody weeds, clearing in these areas is generally exempt from the effects of the Bill.

Does the legislation make rights and liberties, or obligations,dependent on administrative power only if subject to appropriate review—*Legislative Standards Act 1992*, section 4(3)(a)(second limb).

Clause 43 (68CB) – Non-application of Judicial Review Act 1991

Clause 43 prevents a person exercising a right of review under the *Judicial Review Act 1991* in relation to:

(a) applications for a property map of assessable vegetation (PMAV) that are not decided during the retrospective period between 8 October 2009 and the Assent of the Bill; or

(b) certification or amendment of the regional ecosystem, remnant and regrowth vegetation maps by the chief executive.

The removal of normal rights of review in relation to PMAV applications is justified for the limited period of retrospectivity by the potential for these, if decided following review, to result in clearing of vegetation intended to be protected.

The removal of normal rights of review for decisions related to the regrowth vegetation, regional ecosystem and remnant maps is justified because challenge to their validity may degrade the effectiveness of the vegetation management laws. To mitigate the effect of the removal of this right, amendment of the map only has effect from the day the Governor in

Council approved the map through a regulation. This allows the amended map to be made publicly available.

Clause 43 (68CC) – No appeals about relevant vegetation management maps and particular PMAV applications

Clause 43 provides that a person can not appeal under any Act or other law about:

(a) a delay in agreeing to make a PMAV during the retrospective period between 8 October and the Assent of the Bill; or

(b) certification or amendment of a regional ecosystem, remnant and regrowth vegetation map by the chief executive.

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The removal of normal rights of review for decisions related to the regrowth vegetation, regional ecosystem and remnant maps is justified for the limited period of retrospectivity because challenge to their validity may degrade the effectiveness of the vegetation management laws. To mitigate the effect of the removal of this right, amendment of the map only has effect from the day the Governor in Council approved the map through a regulation. This allows for the amended map to be made publicly available.

Consultation

Community and industry stakeholders

In relation to the parts of the Bill that regulate regrowth vegetation clearing, stakeholders were invited to make written submissions before 15 May 2009. The Minister for Natural Resources, Mines and Energy and Minister for Trade held key stakeholder round table meetings on 1 April 2009 and 5 June 2009. The department also met individually with key stakeholders, such as industry and conservation groups, the extractive, forestry and urban development industries and financial institutions, to clarify concerns about the regulatory options.

In relation to the streamlining parts of the Bill, the community and stakeholders were consulted through reviews of the implementation of the administration of the VMA and feedback provided by stakeholders.

Government

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

- Department of the Premier and Cabinet
- Department of Justice and the Attorney General
- Queensland Treasury
- Department of Employment, Economic Development and Innovation
- Queensland Transport
- Department of Infrastructure and Planning.

Results of consultation

Community and industry stakeholders

In relation to the parts of the Bill that regulate regrowth vegetation clearing, a range of views or recommendations emerged in consultation. Stakeholders sought a range of policy responses including increased and broadened regulatory controls for the clearing of regrowth vegetation, the voluntary assessment of clearing, and exemptions for particular industry groups.

In relation to the streamlining reforms in the Bill, community and industry groups supported the legislative changes.

Government

The State agencies supported its introduction.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 states that this Bill may be cited as the *Vegetation Management and Other Legislation Amendment Act 2009*.

Commencement

Clause 2 of the Bill specifies that sections 31, 39, 40(2) and (3), and 47, parts 4 to 7, schedule - amendment of the Land Act, schedule - amendment of the VMA amendments 1, 2, 11 and 15 will commence on the day of Assent. All remaining sections will commence from 8 October 2009.

The Bill provides for the retrospective application of the provisions that support the new regrowth vegetation clearing laws from the day after the moratorium on clearing regrowth vegetation ends (7 October 2009) until the date of the Bill's Assent, the retrospective period. This will affect rights of landholders to clear vegetation during this short period of time. This is necessary to prevent pre-emptive panic clearing of regrowth vegetation to be regulated under the new provisions between the time of their announcement and the Bill's Assent to law.

Although other provisions of the Bill will also retrospectively commence, they will not be implemented until associated amendments to the Vegetation Management Regulation 2000 and the Integrated Planning Regulation 1998 are made.

Part 2 Amendment of Vegetation Management Act 1999

'Act amendeed in pt 2 and schedule'

Clause 3 specifies that the contents of part 2 and the schedule amend the VMA.

'Amend section 3 - purpose of Act'

Clause 4 amends section 3 (Purpose of Act) and replaces section 3(1)(a) of the VMA in order to exclude the current references to remnant regional ecosystems, e.g. remnant endangered regional ecosystems. This amendment separates the concept of remnant vegetation from that of regional ecosystems. The term remnant vegetation has been amended to reflect specific criteria of vegetation on the ground.

This clause also inserts the regulation of particular regrowth vegetation into section 3 as a means of achieving the purpose of the VMA, reflecting the commitment by Government to regulate important regrowth vegetation which is a major component of this amendment Bill.

'Amend section 10 - State Policy for Vegetation Management'

Clause 5 amends section 10 (State policy for vegetation management)(the State policy) and clarifies that the State policy can provide special considerations for significant community projects. Significant community projects means projects the chief executive considers have an aesthetic, conservation, cultural or economic benefit to a local or regional community or the State. This may include a project that serves an essential need of the community, such as essential infrastructure or school, or a project that significantly improves the community's access to services, such as a hospital, State or local government library or a museum. Generally a significant community project does not include activities with relatively few locational requirements such as a residential development or shopping centre, where the benefits of the project are speculative, or a golf course.

This amendment will allow the State policy to identify the special consideration to be given to development that is in the community interest. These special considerations will, as a consequence, be reflected in the VMA's codes and policies. Previously, the term significant community

project had only been defined in the department's concurrence agency policies for material change of use and reconfiguring a lot.

This clause also removes provisions from section 10 relating to the availability of the State policy for inspection and purchase, and consolidates them in a new section 70AB to be inserted into the VMA. Section 10 is renumbered to accommodate the deletion of these provisions.

Insertion of new pt 2, div 2A - Other policies for vegetation management

Clause 6 inserts a new division 2A that outlines the range of policies, other than the State policy, which are used in the vegetation management framework.

Section 3.1.8 of the Planning Act and schedule 2 of the Integrated Planning Regulation 1998 make the chief executive of the VMA a concurrence agency for the assessment of material change of use and reconfiguring a lot in certain circumstances defined by the regulation.

Schedule 2 of the Integrated Planning Regulation 1998 identifies the referral jurisdiction of the chief executive as the purpose of the VMA. Prior to this Bill, the department's concurrence agency policies were identified in the State policy but not in the VMA. This amendment provides the head of power for the concurrence agency policies and the considerations of the chief executive for assessing development applications.

Similarly, the Policy for Vegetation Management Offsets, mentioned in the State policy and called up in the regional vegetation management codes, was not previously reflected in the VMA. This Bill provides the head of power for the Policy for Vegetation Management Offsets, and the considerations of the chief executive about the requirements for an offset as a condition of a development approval necessary for achieving the purpose of the VMA.

This clause also makes standard provisions relating to amendment or replacement of a policy, and the requirement for policies to not be inconsistent with the State policy.

New pt 2, div 2A, sdiv 1 - Concurrence agency policies

New section 10A – Types of concurrence agency policies

Section 10A identifies the 'Concurrence Agency Policy for Material Change of Use (MCU)' as the *MCU policy*, and the 'Concurrence Agency Policy for Reconfiguring a Lot (RaL)' as the *RaL policy*. These policies were made by the chief executive on 23 August 2007 and are called *concurrence agency policies*.

This section provides for the amendment or replacement of the concurrence agency policy. It also provides that any reference to a concurrence agency policy includes any amendment or replacement of that document. The concurrence agency policies do not have effect until approved by regulation.

New section 10B - Content of concurrence agency policy

Section 10B inserts provisions relating to the content of a concurrence agency policy. A concurrence agency policy may provide for any matter the chief executive considers necessary or desirable for achieving the purpose of the VMA in making a referral agency response to a MCU or RaL development application.

One matter a concurrence agency policy may specify would be the assessment criteria the chief executive may use to assess vegetation clearing that is a necessary and ordinary consequence of the development which is the subject of the application. For example:

- a material change of use development application that includes the building of a shed in remnant vegetation would involve clearing of the site for the shed; or
- one lot with an existing residence is subdivided into 10 lots. Should the subdivision be approved, each of the new lots would be eligible for the single residence exemption for operational works after the application is approved. The clearing for those single residences would be assessed under the concurrence agency policy.

The content of the concurrence agency policy reflects the same assessment process that is currently undertaken by the chief executive as a concurrence agency.

A concurrence agency policy may also specify the circumstances in which a referral agency response must direct the assessment manager to refuse a development application. For example, the new provisions relating to

concurrence agency assessment directs the chief executive to refuse an application because the area is subject to a restoration notice.

This section also directs that the concurrence agency policy must not be inconsistent with the State policy.

New pt 2, div2A, sdiv 2 - Offsets policy

New section 10C - What is the *offsets policy*

This section provides for the Policy for Vegetation Management Offsets, or *offsets policy*, made on 28 September 2007 by the chief executive.

This section provides for the amendment or replacement of the offsets policy. Any reference to the offsets policy includes any amendment or replacement of that document. The amendments do not have effect until approved by regulation.

New section 10D - Contents of offsets policy

This section establishes that the offset policy may provide for any matter about the requirements for an offset as a condition of a development approval that the chief executive considers necessary or desirable for achieving the purpose of the VMA.

The offsets policy may set out the characteristics of a suitable offset area, including the location and size of the area, the remnant status or current level of protection of the vegetation, and the ecological equivalence of the vegetation to the vegetation earmarked for clearing. The offsets policy may also set out the arrangements for on-going management and monitoring of the vegetation in the offset area including reporting.

The offsets policy can specify a range of ways to legally secure an offset area, such as through a covenant under the Land Title Act. The agreement itself may include a deed of agreement, letter of obligation or an offset obligation transfer. The agreement may require financial assurance or a financial contribution to secure the outcomes sought under the agreement.

The offsets policy can also specify the circumstances in which the chief executive may enter into an agreement, or in which an applicant for a development approval may provide an offset area and the period within which the offset area is provided.

This section directs that the offsets policy must not be inconsistent with the State policy.

Amendment of section 11 - Minister must approve regional vegetation management codes

Clause 7 amends section 11 to replace the word 'approve' with the word 'make' in relation to regional vegetation management codes (codes). This amendment ensures that the Minister's power to make these codes is unambiguous. This clause also renumbers subsection 11(2) as 11(4), due to the insertion of new subsections 11(2) and (3), below.

Clause 7 also establishes that a regional vegetation management code can provide for the protection of the habitat of protected wildlife. Protected wildlife is endangered, vulnerable, rare or near threatened native wildlife, as prescribed under the *Nature Conservation Act 1992* (the NCA). The Nature Conservation (Wildlife) Regulation 2006 contains species lists of each class of protected wildlife. Areas of habitat for protected wildlife are mapped as essential habitat and referred to in the regional vegetation management codes.

Amendment of section 12 - Preparing codes

Clause 8 amends section 12 by replacing the word 'approving' with the word 'making', to be consistent with the amendment made to section 11.

Amendment of section 13 - Minister must consider all properly made submissions

Clause 9 amends section 13 by replacing the word 'approving' with the word 'making', to be consistent with the amendment made to sections 11 and 12.

Replacement of section 14 - Publication of codes with new section 14 - When regional vegetation management codes take effect

Clause 10 replaces the previous requirements for publication of codes with a new section which establishes that a code does not take effect until it has been approved under a regulation. This is consistent with the MCU and RaL concurrence agency policies and the offset policy.

This clause also states that the term regional vegetation management code includes an amendment or replacement of a code that has taken effect.

The publication requirements for the regional vegetation management codes have been consolidated into a new section 70BA to be inserted into the VMA.

Amendment of section 15 - Minor or stated amendments of regional vegetation management code

Clause 11 amends section 15 to clarify the minor amendments that can be made to the regional vegetation management codes without the codes being subject to public consultation as outlined in sections 12 and 13 of the VMA. Additional permitted amendments that can be made to a regional vegetation management code can be either amendments to provisions of a code about a suggested way of achieving a required outcome under the code (i.e. the acceptable solutions in the codes), or to make the regional vegetation management code consistent with the State policy.

A permitted amendment of a code means an amendment of a provision of a code about a suggested way of achieving a required outcome under the code, or to make it consistent with the State policy.

The previous provision did not allow flexibility to make relatively minor changes to the codes where the intent of the code did not change as a result of the amendment. For example, the insertion of a new acceptable solution where it can be demonstrated that the acceptable solution meets the relevant performance requirement in a code.

Amendment of section 17 - Making declaration

Clause 12 amends section 17 to remove subsections 17(3) to (5) and consolidates them into new section 70AB (Copies of documents to be available for inspection and purchase). It also renumbers subsection 17(6) as 17(3) due to the removal of subsections 17(3) to (5).

Amendment of section 19B - Approving amendment of declared area code

Clause 13 amends section 19B to remove subsections 19B(2) to (4) and consolidates them into new section 70AB (Copies of documents to be available for inspection and purchase). It also renumbers subsection 19B(5) as 19B(2) due to the removal of subsections 19B(2) to (4).

Amendment of section 19M - Information to be available for inspection

Clause 14 removes section 19M as it is now consolidated in new section 70AB (Copies of documents to be available for inspection and purchase).

Insertion of new pt 2, div 4B and 4C

Clause 15 inserts a new division 4B for the other codes used to regulate vegetation clearing under the vegetation management laws. This new

division clarifies the head of power for the native forest practice code and inserts a new head of power for the regrowth vegetation code.

'Clause 15 inserts a new division 4C for Authorisation to clear regulated regrowth vegetation other than under the regrowth vegetation code. This new division sets out who may apply to clear regulated regrowth due to financial hardship caused by the new regrowth vegetation laws, and the process for applying and deciding applications.'

'New pt 2, div 4B - other codes for vegetation management'

New pt 2, div 4B, sdiv 1 - Conducting a native forest practice

New subdivision 1 has been inserted to establish a head of power for the Minister to make a native forest practice code. It also expands on the existing requirements for people conducting a native forest practice (NFP) on their land, and clarifies what the NFP code is and what the code may provide for.

This subdivision expands on the provisions in section 20A of the unamended VMA, which is removed by Clause 16.

New section 19O – Native forest practice code

Section 19O identifies that the NFP code is the document called 'The Code applying to a Native Forest Practice on Freehold Land'. It establishes that the Minister may amend or replace the document under this section from time to time however any such amendment or replacement only takes effect once it has been approved under a regulation. Any reference to the NFP code is taken to be any amendment or replacement that has taken effect.

These changes align the NFP code with other codes and policies under the VMA, with the intent of ensuring consistency in interpretation and application.

New section 19P – Content of native forest practice code

Section 19P provides that the NFP code may include any matter about carrying out a NFP that the Minister considers necessary or desirable for achieving the purpose of the VMA. It may require outcomes and practices for producing, managing and removing commercial timber in native forests. The NFP code must not be inconsistent with the State policy.

New section 19Q – Offence to conduct native forest practice without giving notice

Section 19Q replaces subsection 20A(2) and states that a person must not conduct a NFP in an area of remnant vegetation or regulated regrowth vegetation unless the person has given the chief executive a notice in the approved form, stating the location of the proposed NFP. Further, this section stipulates that if this notification does not occur, a new penalty of a maximum of 50 penalty units may be imposed. The transitional provisions for this Bill provide that the penalty for conducting a NFP in regulated regrowth vegetation has been waived for 12 months. During this time a person conducting a NFP in regulated regrowth vegetation should notify the chief executive of their activities. Another transitional provision for this Bill also states that the penalty does not apply where a person begins a NFP during the retrospective period but fails to notify the department. However, a person must 20 business days after the Assent of the Bill have notified the department of their activity or the penalty will apply.

New section 19R – Offence to conduct particular native forest practice other than under native forest practice code

Section 19R replaces subsection 20A(1) and stipulates that persons undertaking a NFP must ensure they conduct it in such a way that complies with the NFP code. While this was an existing requirement of the unamended VMA, the wording of the new section heading makes the development offence under the Planning Act more visible.

The Planning Act, section 4.3.1 and schedule 8, table 4, item 1A and 1B provides the penalty for carrying out a NPF other than under the NFP code.

New pt 2, div 4B, sdiv 2 - Clearing regulated regrowth vegetation under the regrowth vegetation code

The VMA regulates the clearing of native vegetation on freehold and state land tenures. Prior to the moratorium on clearing of regrowth vegetation and this Bill, only regrowth vegetation on agricultural and grazing leasehold land that had not been re-cleared since 31 December 1989 was protected. Regrowth vegetation on freehold land was not protected.

New subdivision 2 provides a new framework for regulating regrowth vegetation across both freehold and leasehold land via a new performance based compliance code.

New section 19S - Making regrowth vegetation code

New section 19S inserts provisions for the Minister to make the regrowth vegetation code that will regulate the clearing of certain types of regrowth vegetation. The regrowth vegetation covered by the regrowth vegetation code is:

- regrowth vegetation which is woody vegetation that is of forest quality (a minimum of 11 percent foliage projective cover), has not been re-cleared since 31 December 1989 (i.e. is at least 20 years old) and is either an *endangered*, *of concern* or *least concern* regional ecosystem; or
- native vegetation 50 metres either side of watercourses in the Burdekin, Mackay-Whitsunday and Wet Tropics priority reef catchments.

The regrowth vegetation code may provide for any matter about clearing regulated regrowth vegetation the Minister considers is necessary or desirable for achieving the purpose of the VMA.

This section specifies what the regrowth vegetation code may contain, including required outcomes and practices, and voluntary best practice activities for clearing regulated regrowth vegetation in compliance with the code.

The regrowth vegetation code may also provide for the protection of habitat for protected wildlife (as shown on an essential habitat map) and restrict the clearing of regulated regrowth vegetation for commercial timber on State land. The code may also identify the circumstances in which an exchange area must be provided. An exchange area is an area of vegetation that must be protected in the way provided under the regrowth vegetation code in exchange for the clearing of regulated regrowth vegetation.

The regrowth vegetation code must not be inconsistent with the State policy.

New section 19T - When regrowth vegetation code takes effect

New section 19T states that the regrowth vegetation code, or any amendment or replacement, does not take effect until it is approved under a regulation.

New section 19U - Requirement and process for giving notice of clearing regulated regrowth vegetation

New section 19U sets out the process and responsibilities of landowners wishing to clear regulated regrowth vegetation. Under the regrowth vegetation code, landowners are required to notify the department in the approved form of their intention to clear regulated regrowth vegetation. The landowner's notification must include a description of their property, the location and extent of both the clearing area and any exchange area, and the purpose of the clearing the landowner wishes to undertake.

Upon receiving a notification the chief executive has 5 business days in which to give the person a notice that their notification has been received stating that enough information has been included to identify the area of regulated regrowth to be cleared or ask the person for additional information. The chief executive may request the additional information either orally or in writing. If the request is oral then a written request must be given to the person within 5 business days of making the request. A person has 10 business days after the chief executive gives the written request to provide the additional information. If a person does not provide the additional information the clearing notification is still valid and the person has met the obligation to notify the chief executive.

New section 19V – Offence to clear regulated regrowth vegetation under regrowth vegetation code without notification

New section 19V establishes that a person must not clear regulated regrowth vegetation under the regrowth vegetation code unless the person has given the chief executive notification for the clearing. If notification has not been given to the chief executive, a maximum of 50 penalty units may be imposed. This penalty is in line with the new penalty for conducting a NFP without notification (19Q).

New section 19W – Offence to clear regulated regrowth vegetation other than under the regrowth vegetation code

New section 19W stipulates that regulated regrowth vegetation must only be cleared in a way that complies with the code. However, new section 19ZF also allows clearing of regulated regrowth vegetation under a regrowth clearing authorisation.

The Planning Act, section 4.3.1 and schedule 8, table 4, item 1A and 1B establishes the penalty for clearing regulated regrowth vegetation other

than under the regrowth vegetation code or a regrowth clearing authorisation.

New section 19X – Register of notifications

New section 19X requires the chief executive to maintain a register of notifications. The register must include the person's name, property description, location and extent of the clearing area and any exchange area, the purpose of the clearing and the day the chief executive received the notification. The register may also contain other information about a notification given to the chief executive under clause 15, section 19U.

However, the person's name for each notification must not be contained in the publicly available part of the register. The chief executive must publish details of the publicly available part of the notification register on the department's website.

The register allows the chief executive to monitor the effectiveness of the new regrowth vegetation clearing laws.

New div 4C - Authorisation to clear regulated regrowth vegetation other than under regrowth vegetation code.

This division enables primary producers who, if required to clear regulated regrowth vegetation in accordance with the regrowth vegetation code, would suffer financial hardship to the extent that the primary production business would stop operating to apply to the chief executive for an authorisation to clear regulated regrowth vegetation not in compliance with the regrowth vegetation code.

New section 19Y – Definitions for div 4C

This section inserts definitions for *primary producer*, *primary production business*, *primary production entity* and the *relevant entity* who can apply for authorisation under this division.

New section 19Z – Application of div 4C

Section 19Z limits applications for financial hardship to primary production businesses that existed prior to 8 October 2009 and where clearing regulated regrowth vegetation in accordance with the regrowth vegetation code would cause the business to stop operating. Applications for financial hardship cannot be made for primary production businesses proposed to be carried out on or after 8 October 2009. For example, a primary production entity that is undertaking a cattle grazing business in regulated regrowth vegetation that proposes a cropping business in that

vegetation after 8 October 2009 then the entity would not be eligible for a regrowth clearing authorisation.

New section 19ZA – Applying for authorisation

Applications for a *regrowth clearing authorisation* to clear regulated regrowth due to financial hardship caused by the new regrowth vegetation laws can be made to the chief executive administering the VMA.

Subsection (2) outlines the criteria that are required for an application for a regrowth clearing authorisation including the real property description of the land (lot and plan numbers), the location and extent of the area proposed to be cleared, and relevant financial information to demonstrate that complying with the regrowth vegetation code would stop the primary production business from operating.

Subsection (3) allows applications for a regrowth clearing authorisation to be made up to 2 years after commencement of this provision.

New section 19ZB – Chief executive to consider application

Subsection (1) provides the power for the chief executive to decide to approve or refuse applications for regrowth clearing authorisations.

Subsections (2) and (3) allow the chief executive to consult with QRAA in assessing if complying with the regrowth vegetation code would stop a primary production business from operating. QRAA is an authority established under the *Rural and Regional Adjustment Act 1994*, and was formerly known as the Queensland Rural Adjustment Authority. QRAA has relevant experience and has administered previous financial assistance and exit assistance programs associated with the VMA. These subsections do not limit the chief executive from consulting with other people or organisations in considering applications under this division.

New section 19ZC – Criteria for granting application

The chief executive may only grant an application for a regrowth clearing authorisation if relevant entities are carrying on a primary production business and clearing regulated regrowth vegetation other than in compliance with the regrowth vegetation code is required to ensure that the business does not stop operating.

New section 19ZD – Deciding application

If an application is approved, the chief executive must give the entity a regrowth clearing authorisation. Subsection (2) allows the chief executive to impose conditions on the regrowth clearing authorisation, including how

and where the clearing of regulated regrowth can occur and an expiry date for the authorisation, for example a maximum of 5 years.

If the chief executive approves an application with conditions or refuses an application, subsection (3) requires the chief executive to give an information notice about the decision. This allows applicants to seek an internal review of the decision under section 63 of the amended VMA and if dissatisfied with the result of the internal review to apply to the Queensland Civil and Administrative Tribunal (QCAT) to review the decision.

New section 19ZE – Expiry of regrowth clearing authorisation on transfer of land

This section ensures that a regrowth clearing authorisation expires if land is transferred from one entity to another regardless of a condition in the authorisation stating an expiry date. This is to ensure that the regrowth clearing authorisation is used to ensure an entity carrying on an existing primary production business continues operating, rather than seeking to gain from the sale or transfer of a property with a regrowth clearing authorisation.

New section 19ZF – Clearing regulated regrowth vegetation under authorisation

This section requires that if a regrowth clearing authorisation is granted, clearing of regulated regrowth vegetation may only be carried out in compliance with the authorisation. Clearing regulated regrowth that does not comply with the regrowth vegetation code or a regrowth clearing authorisation is an offence (refer to new section 19W).

New section 19ZG – Register of regrowth clearing authorisations

This section requires the chief executive to keep a register of regrowth clearing authorisations with particular information. This section also ensures that the register is not made publicly available due to the sensitive nature of information that could be contained in the register.

Omission of s 20A - Forest practice codes and insertion of new pt 2, div 5AA - Vegetation management maps

Clause 16 removes section 20A (Forest practice codes) as the provisions in this section have been incorporated into the new part 2, division 4B, subdivision 1 - Conducting a native forest practice.

Clause 16 also inserts a new division 5AA – Vegetation management maps, with new sections 20A to 20AJ.

The new division 5AA consolidates the description, definition and process for amending each vegetation management map administered under the VMA into one division. This includes the regional ecosystem map, remnant map, regrowth vegetation map, essential habitat map and registered area of agriculture map. Previously, these maps were defined in various sections of the VMA and the regional vegetation management codes, which made it difficult to understand how the maps interacted with each other.

The new division will assist people in understanding the purpose of individual vegetation management maps by creating a uniform structure that clearly sets out the contents of each map, the process for certifying and amending each map and when each map takes effect.

Division 5AA also introduces the new regrowth vegetation map—created to identify areas of high value regrowth vegetation and regrowth vegetation watercourses—associated with the new arrangements for regulating regrowth vegetation.

This division also introduces the ability for the chief executive to keep an area mapped as remnant vegetation on a regional ecosystem map or remnant map, or regrowth vegetation on a regrowth vegetation map, where it does not meet the definition of such vegetation in particular circumstances.

New pt 2, div 5AA - Vegetation management maps

New section 20A – What is the regional ecosystem map

Section 20A defines the regional ecosystem map. It also provides for the certification of the regional ecosystem map by the chief executive. Under the unamended VMA the certified map took effect from the day the chief executive certified the map, however section 20AG specifies that the certified map only takes effect when the map is approved through a regulation. This definition has moved from the dictionary into the body of the amended VMA.

The definition of regional ecosystem map has also been amended to reflect the two-part process for determining if clearing of native vegetation is assessable development. Under this process, regional ecosystem maps will identify areas of remnant vegetation and be used to trigger vegetation clearing activities as assessable development. The on-ground vegetation is

then considered to determine the conservation status of the vegetation. This creates a more accurate and responsible approach than relying solely on the regional ecosystem map, which may be based on historic information or may not be able to represent individual regional ecosystems due to the broad scale at which it is compiled. This does not prevent using the regional ecosystem mapping as the primary source to identify regional ecosystems. It simply provides more flexibility, allowing consideration of on-ground vegetation.

Subsection 20A(c) has been added to the definition of regional ecosystem map. This subsection introduces a new ability for the chief executive to keep an area mapped as remnant vegetation where it does not meet the definition of remnant vegetation, in particular circumstances. The new section 20AH lists the circumstances under which this can occur, including areas where approval is given for particular purposes, such as fodder harvesting or thinning, or where notification of native forest practice has been received. These clearing activities may result in vegetation falling below the definition of remnant vegetation, however it is intended that this vegetation should still remain assessable under the vegetation management framework, allowing it to regenerate back to being remnant vegetation. Section 20AH also includes areas that have been unlawfully cleared, declared areas, offset areas and areas with commercial timber value on State land.

New section 20AA – What is the remnant map

Section 20AA moves the definition for the remnant map from the dictionary into the body of the amended VMA. Remnant maps are made for areas where regional ecosystems have not been delineated and identified on a regional ecosystem map. Consistent with the previous definition section 20AA allows the chief executive to certify the remnant map. Under the unamended VMA the certified map took effect from the day the chief executive certified the map, however section 20AG specifies that the certified map only takes effect when the map is approved through a regulation.

Subsection 20AA(b) has been added to the definition of remnant map. This subsection introduces a new ability for the chief executive to keep an area mapped as remnant vegetation where it does not meet the definition of remnant vegetation, but it is subject to certain activities and provisions (as listed in the new section 20AH). The intent of this new subsection is the same as that of new subsection 20A(c) which is explained in section 20A.

New section 20AB – What is the regrowth vegetation map

Section 20AB defines the new regrowth vegetation map. The regrowth vegetation map must be certified by the chief executive. The map shows high value regrowth vegetation across Queensland and regrowth watercourses in the priority reef catchments of the Burdekin, Mackay Whitsunday and Wet Tropics. Under section 20AG the regrowth map only takes effect when the map is approved through a regulation, however this Bill also amends the Vegetation Management Regulation 2000 to give retrospective effect to the first version of the regrowth vegetation map from 8 October 2009.

High value regrowth vegetation has been identified on the regrowth vegetation map using satellite imagery to locate areas of regrowth vegetation that have not been cleared since 31 December 1989 and are not already mapped as remnant vegetation. However, under subsection 20AB(c), high value regrowth vegetation can also include areas the chief executive decides to show as high value regrowth vegetation under section 20AI. This subsection introduces the ability for the chief executive to keep an area mapped as high value regrowth vegetation where it does not meet the criteria for high value regrowth vegetation, but it is subject to certain activities and provisions where it is desirable for the chief executive to keep the area assessable. This includes areas where vegetation clearing under the thinning, encroachment or weeds part of the regrowth vegetation code is being undertaken, or where notification of native forest practice has been received. It is intended that this vegetation should still remain assessable under the vegetation management framework. This subsection also includes areas that have been unlawfully cleared, exchange areas and areas with commercial timber value on State land.

This Bill extends the existing protection of regrowth vegetation that has not been cleared since 31 December 1989 on leasehold land for agricultural and grazing purposes to include freehold and indigenous land. As this type of regrowth vegetation in most circumstances represents areas of vegetation that are functioning ecosystems, the protection afforded under this Bill will assist threatened regional ecosystems to mature and return to remnant vegetation across Queensland.

Regrowth watercourses were mapped based on the Geoscience Australia 1:100,000 scale mapping information for the Burdekin, Mackay-Whitsunday and Wet Tropics catchments. This scale is mapped consistently across all three catchments and provides a uniform basis for protecting riparian vegetation in these areas.

New section 20AC – What is the essential habitat map

Section 20AC defines the essential habitat map. The essential habitat map is certified by the chief executive of the VMA.

Previously, this map was defined in the dictionary section of the regional vegetation management codes. Placing the definition into the body of the VMA, will assist people in understanding the purpose of the map and how it interacts with relevant codes and policies and other maps administered under the VMA.

The map identifies essential habitat and essential regrowth habitat for protected wildlife. Protected wildlife is defined in the amended section 11. The definition of essential habitat map includes essential regrowth habitat for protected wildlife in areas of regrowth vegetation. This extends the existing protection of essential habitat within remnant vegetation to include areas that are considered to be essential habitat for protected wildlife within regrowth vegetation (known as essential regrowth habitat).

Essential habitat for an individual species of protected wildlife is defined as an area of remnant vegetation that contains at least three essential habitat factors for the protected wildlife, which must include any essential habitat factors that are stated as mandatory in the essential habitat database; or an area of remnant vegetation in which the protected wildlife is located, at any stage of its life cycle. Essential habitat factors and essential habitat database are also defined. These definitions provide a mechanism to determine if essential habitat is present on the ground.

Essential regrowth habitat for an individual species of protected wildlife is defined as an area of regrowth vegetation that contains at least three essential habitat factors for the protected wildlife, which must include any essential habitat factors that are stated as mandatory in the essential regrowth habitat database; or an area of regrowth vegetation in which the protected wildlife is located, at any stage of its life cycle. The definition of essential regrowth habitat database is also provided. These definitions provide a mechanism to determine if essential regrowth habitat is present on the ground.

New section 20AD – What is the registered area of agriculture map

Section 20AD defines a registered area of agriculture map. This map must be certified by the chief executive and identifies registered areas of agriculture within wild river areas. The definition was in section 22A of the unamended VMA and has now been consolidated into the division for

vegetation management maps. Under the unamended VMA, landholders in a wild river high preservation area on agricultural and grazing leasehold land and freehold land may only apply for a development approval to clear regrowth vegetation if the property is within an area shown on a registered area of agriculture map. This Bill does not change the effect of applying to clear regrowth vegetation in a wild river high preservation area.

New section 20AE – Certifying vegetation management map

Section 20AE specifies the process for the chief executive to certify a vegetation management map. This section allows the chief executive to certify a hard copy of a map or a digital electronic form of the map (for example the chief executive may certify a CD or DVD that contains the digital data for the map).

New section 20AF – Amending vegetation management map

Section 20AF clarifies that the chief executive can amend a vegetation management map by replacing the map and certifying the replacement.

A vegetation management map can only be amended by the chief executive replacing the entire map and certifying the replacement. Previously, the chief executive could certify amendments to part of a regional ecosystem map, remnant map or an essential habitat map without replacing the entire map. This caused confusion for landholders wanting to determine which map applied to an area at a particular point in time. The new section 20AF will simplify the framework by making it clear which version of a vegetation management map is applicable to an area at any point in time.

If a landholder wants to amend the boundaries, classification or remnant status of the vegetation on their property, rather than amending the regional ecosystem or remnant map landholders will need to apply for a PMAV. The PMAV will then override the regional ecosystem or remnant map to the extent of any inconsistency. Further, landholders will now have a clear review process if they do not agree with the decision to make the PMAV (apart from during the retrospective period of this Bill).

New section 20AG – When vegetation management map takes effect

Section 20AG describes when a vegetation management map takes effect. This section explains that a vegetation management map, or a replacement of a vegetation management map, takes effect on the date prescribed in a regulation. Making vegetation management maps through a regulation will clearly indicate which version of a vegetation management map is in force and the date from which it takes effect. This also ensures that information

regarding version number and enforcement date for each vegetation management map is easily located within a regulation.

Previously, amendments to vegetation management maps did not require a regulation to prescribe when the amendment took effect, except when a new version of the regional ecosystem map was released for the State. Under the superseded framework, information regarding map versions and property-level map amendments was not easily accessible to members of the public. It was therefore difficult for people to determine which version of a map or which certified amendment to a map applied to an area. The new section 20AG, along with new section 20AF will ensure that it is easy for landholders and the department to identify which vegetation management map applies to an area at a particular point in time.

Subsection 20AG(3) validates any replacements of a vegetation management map that have been certified and have taken effect under the regulation.

New section 20AH – Deciding particular areas of remnant vegetation

Section 20AH lists the circumstances in which the chief executive may decide to show an area on the regional ecosystem or remnant map as remnant vegetation, even where the area does not meet the definition of remnant vegetation. The inclusion of areas under 20AH in the definition of the regional ecosystem map or the remnant map is provided for in new subsections 20A(c) and 20AA(b) respectively. This is a new provision that has been introduced to align with, and in some circumstances replace, the chief executive's ability to make a PMAV under section 20B to keep areas of vegetation assessable. This will ensure that regional ecosystem maps, remnant maps and PMAVs are applied consistently and ease confusion about the interaction between these maps.

The circumstances listed in this section include areas where approval is given for particular purposes, such as fodder harvesting or thinning, or where notification of native forest practice has been received. These clearing activities may result in vegetation falling below the definition of remnant vegetation, however it is intended that this vegetation should still remain assessable under the vegetation management framework, allowing it to regenerate back to being remnant vegetation. The new section 20AH also includes areas that have been unlawfully cleared, declared areas, offsets and areas with commercial timber value on State land.

Also included is the ability for the chief executive to keep areas mapped as remnant vegetation that are grassland regional ecosystems not dominated

by woody vegetation. The criteria for defining remnant vegetation ('the 50/70 rule') can only be applied to regional ecosystems dominated by woody vegetation. Therefore to keep non-woody dominated grassland regional ecosystems part of the regional ecosystem and remnant mapping, the criteria for defining a remnant grassland regional ecosystem has been added to this section.

New section 20AI – Deciding particular areas of high value regrowth vegetation

Section 20AI has a similar purpose to section 20AH, providing the circumstances for the chief executive to keep an area mapped as high value regrowth vegetation where it does not meet the criteria for high value regrowth vegetation, but it is subject to certain activities and provisions where it is desirable for the chief executive to keep the area assessable. This includes areas where vegetation clearing under the thinning, encroachment or weeds part of the regrowth vegetation code is being undertaken, or where notification of native forest practice has been received. It is intended that this vegetation should still remain assessable under the vegetation management framework. This subsection also includes areas that have been unlawfully cleared, exchange areas and areas with commercial timber value on State land.

The inclusion of areas under 20AI in the definition of the regrowth vegetation map is provided for in new subsection 20AB(c).

New section 20AJ – Application to amend particular vegetation management maps

Section 20AJ explains the process for a landholder wishing to amend a regional ecosystem map, remnant map or regrowth vegetation map. This new section states that if an owner of land wants the chief executive to amend one of these maps, they must apply for a PMAV for the area under section 20C of the amended VMA. This means that PMAVs become the sole mechanism for landholders wanting to refine a vegetation management map at a property scale. By creating one amendment process for the majority of vegetation management maps, the previous duplication of map amendments between regional ecosystem map amendments and PMAVs is removed. The reason for choosing PMAVs as the sole amendment mechanism is that this map product has been well received and taken up by landholders since its introduction in 2004. Further, PMAVs will continue to provide certainty to landholders regarding areas mapped as category X.

PMAVs also allow for landholders to refine the mapping at a finer scale to that currently provided in regional ecosystem and remnant mapping.

New sections 20AK-20AO

Clause 17 inserts new sections 20AK to 20AO under part 2, division 5A. These sections consolidate the definitions relating to PMAVs into the body of the VMA, whereas previously the definitions were contained in the dictionary. Sections 20AL, 20AM and 20AN also introduce the new PMAV categories A, B and C, which replace the former categories 1, 2, 3 and 4. Categories A, B, C, together with the unchanged category X, are called *vegetation category areas.* A transitional provision, new section 94, has been inserted to ensure existing PMAVs showing former categories 1, 2, 3 and 4 remain valid and which vegetation category area they become as a result of the amendments to the category definitions. Clause 17 also refines the terminology used throughout sections 20AK to 20AO by replacing references to 'property maps of assessable vegetation' and 'maps' with 'PMAV' to ensure consistency.

New section 20AK – What is a *property map of assessable vegetation* (or *PMAV*)

Section 20AK defines a PMAV, which is a map certified by the chief executive for an area. Subsection 20AK(2) has been inserted into the PMAV definition to allow PMAVs to show the boundaries of, and regional ecosystem number for, each regional ecosystem within an area. This is so PMAVs can be used as a tool to show regional ecosystems at a scale finer that the regional ecosystem maps. This is particularly useful in splitting heterogeneous or mixed polygons (areas shown on a vegetation management map that indicate the presence of more than one regional ecosystem and which have not yet been distinguished as separate areas on the vegetation management map). By showing the regional ecosystem number, landholders can then check the Vegetation Management Regulation 2000 and the Regional Ecosystem Description Database (REDD) to determine the conservation class of the regional ecosystem.

Subsection 20AK(3) has also been inserted into the PMAV definition to clarify that there cannot be any overlap between vegetation category areas shown over an area. Previously, the legislation did not specify that only one PMAV could exist over an area of land at any point in time, which resulted in more than one PMAV being made over an area in some instances. This caused confusion in determining which PMAV applied to an area.

New section 20AL – What is a category A area

Section 20AL introduces the new category A area definition. Category A has been created to identify areas that require particular management. These areas include declared areas, offset areas, exchange areas, areas subject to a restoration notice or enforcement notice, and other areas the chief executive decides should be category A under section 20BA. A transitional provision, new section 94, has been inserted to ensure existing PMAVs remain valid. For this transitional provision, certain category 1 areas are now Category A areas.

New section 20AM – What is a category B area

Section 20AM introduces the new category B area definition. Category B areas are areas that contain remnant vegetation and are shown on the regional ecosystem map or remnant map. Category B also include areas that may not contain remnant vegetation but meet one of the criteria listed in section 20AH. This section also clarifies that if an area meets one of the criteria in the definition of category A, it cannot be shown as category B on a PMAV and instead must be shown as category A.

Unlike the previous categories 1, 2 and 3 (which reflected 'endangered' 'of concern' and 'least concern' regional ecosystems, respectively), category B does not discriminate between the conservation class of regional ecosystems. To identify the regional ecosystem and its conservation class, landholders can use the regional ecosystem mapping or can assess the regional ecosystem based on on-ground assessment of the vegetation. Where the department or a landholder wishes to identify individual regional ecosystems within a category B area, the boundaries can be delineated and the regional ecosystem numbers for each regional ecosystem shown on the PMAV. The conservation status applicable to a regional ecosystem within the PMAV is then determined by referring to the Vegetation Management Regulation 2000.

Category B can also be used to show on a PMAV areas of vegetation that are either an endangered, of concern or least concern regional ecosystem if the land is subject to tenure conversion under the Land Act and if the vegetation does not meet the definition of category C area.

A transitional provision, new section 94, has been inserted to ensure existing PMAVs remain valid. For this transitional provision, certain category 1 areas and all category 2 and 3 areas on existing PMAVs are now Category A areas.

New section 20AN – What is a category C area

Section 20AN introduces the new category C area definition. Category C has been created to identify areas of regulated regrowth vegetation. Category C replaces the former category 4 area definition. However it has been amended to be consistent with the criteria for high value regrowth vegetation listed in section 20AB. There is also a requirement that the area must be mapped on either the remnant map or regional ecosystem map as remnant vegetation, or high value regrowth vegetation on the regrowth vegetation map. This is to provide certainty to landholders by limiting the impact of the new regrowth vegetation clearing regulations only to mapped areas. Reference to the regional ecosystem and remnant mapping is intended to allow category C areas to be made where the onground vegetation does not meet the definition of remnant vegetation but contains high value regrowth vegetation. Any area that does not contain high value regrowth vegetation could then be considered against the definition of a Category X area.

A transitional provision, new section 94, has been inserted to ensure existing PMAVs remain valid. For this transitional provision, a category 4 area on an existing PMAV is now a category C area.

Clearing in areas that are mapped as a category C area will be required to be consistent with the regrowth vegetation code or another exemption under the Planning Act.

New section 20AO – What is a category X area

Section 20AO defines category X, which identifies areas of vegetation that can be cleared without a permit on common tenures such as freehold and leasehold land. The definition of category X has been amended to ensure that category X is not given over areas in certain circumstances. This is provided for in subsection 20AO(2) which allows the chief executive to decide that an area is not a category X area subject to the provisions under section 20CA. This is to ensure areas are kept assessable in certain circumstances.

Replacement of section 20B - When chief executive may make property map of assessable vegetation and insertion of section 20BA - Chief executive may make decision about category A area

Clause 18 replaces the former section 20B to amend the circumstances in which the chief executive may make a PMAV for an area, and inserts a new section 20BA.

New section 20B - when chief executive may make PMAV

A number of new circumstances have been added to section 20B including offset areas, exchange areas and areas where the chief executive reasonably believes a vegetation clearing offence has occurred. These areas can be shown as category A areas on a PMAV. The ability to make a PMAV for an area subject to a tenure conversion has also been added. These areas can be shown as either category B or C areas on a PMAV. These activities have been included to ensure that the chief executive's ability to make a PMAV reflects the new regulatory provisions introduced under this Bill.

Conversely, the following circumstances have been removed from the new section 20B: areas where approval has been given for clearing that is for the purposes of fodder harvesting, thinning, clearing of encroachment, or control of non-native plants or declared pests; areas where the chief executive is notified of a native forest practice; and areas with commercial timber values on State land. A PMAV will no longer be required to identify these areas as the chief executive can instead use the regional ecosystem or remnant map to keep the area assessable under the new section 20AH. Furthermore, a category X area cannot be made over these areas as per section 20CA. The chief executive's ability to make a PMAV where approval is given for clearing of regrowth vegetation on leases used for agriculture or grazing has also been removed, as permits for clearing regrowth are no longer required.

Subsection 20B(2) requires the chief executive to give the owner an information notice about the decision to make a PMAV. This information notice is a trigger for the new internal review provisions in part 4, division 1 - Internal reviews by chief executive.

New section 20BA - chief executive may make decision about category A area

The new section 20BA has been inserted to clarify that the chief executive may show an area as category A where the chief executive reasonably believes a vegetation clearing offence, a contravention of a tree clearing provision under the Land Act, or prohibited development under the Moratorium Act has been carried out.

Amendment of section 20C - When owner may apply for property map of assessable vegetation

Clause 19 amends section 20C to clarify that the chief executive must make a PMAV when agreement is reached with the owner, rather than the

applicant, of the land. Subsection 20C(4) has been inserted under section 20C to allow the chief executive to waive the fee for making a PMAV where it is in the interests of the State and the owner of the land.

Subsection 20C(5) has also been inserted, which requires the chief executive to give an information notice to an owner of land where the chief executive refuses to make a PMAV for an area. This information notice is a trigger for the new internal review provisions in part 4, division 1 - Internal reviews by chief executive.

New section 20CA - Process before making PMAV

Clause 20 inserts a new section 20CA, which describes the process to be followed when a landholder applies for a PMAV showing an area as category X. This section clarifies that the chief executive must not show an area as category X on a PMAV if any of the circumstances listed in section 20AH or 20AI have occurred in relation to the area. The exception is where an area has later been cleared and meets the criteria listed in subsection 20CA(2)(a) to 20CA(2)(d). Also, subsection 20CA(3) provides that an area cannot be shown as Category X if it is not remnant vegetation due to burning, flooding or natural causes. This section is taken from the previous definition of category X area in the unamended VMA. A new provision has been added to state that an area located within 50m of a watercourse identified on the regrowth vegetation map as a regrowth watercourse can also not be shown as Category X.

Subsections 20CA(4) and (5) introduce a new requirement for the chief executive to give the owner of land a notice prior to making a PMAV in the circumstances when the chief executive is directed to not show an area as category X due to the provisions of subsections 20CA(2) and (3). The notice must state the reason why the chief executive believes an area is not category X, provide evidence on which this belief is based, and specify the proposed categories and boundaries for the PMAV. The notice must also invite the owner to show why an area should be mapped as category X, how the owner can make a properly made submission, and the period for making a submission. .

Subsection 20CA(7) allows the chief executive to show an area as a category other than a category X area where a properly made submission has not been made in the prescribed period or where the properly made submission did not provide sufficient evidence to show why the area should be category X. Under subsection 20CA(7), the chief executive must give the person an information notice advising them of this outcome. This

information notice is a trigger for the new internal review provisions in part 4, division 1 - Internal reviews by chief executive.

Amendment of section 20D - When maps may be replaced

Clause 21 provides minor amendments to section 20D to clarify how a PMAV may be replaced and to refine the terminology used. It specifies that the chief executive may replace a PMAV for an area with one or more PMAVs. The section also clarifies which owners need to agree with the replacement of a PMAV under subsection 20D(3)(c)—being each of the affected owners. However, the owners of a property the subject of the PMAV application will be able to nominate one person to act on behalf of the other owners.

New subsection 20D(4) clarifies that a PMAV made under section 20B or 20C is taken to include its replacement made under section 20D. Subsection 20D(5) provides the definition for *affected owner.* Affected owner includes an owner of land proposed to be included in a new PMAV where the owner applied under section 20C for the new PMAV; their land, or part of their land, did not previously have a PMAV; or their land, or part of their land, will be affected by a change to the boundary of vegetation category area in the new PMAV.

Amendment of section 20E - When maps may be revoked

Clause 22 amends section 20E to update the circumstances when a PMAV may be revoked in line with other changes in the Bill. The amendments delete some of the circumstances when a PMAV may be revoked, as the ability to make a PMAV in these instances no longer exists under section 20B. PMAVs made under these provisions may still be revoked as long as they are shown as remnant vegetation on a regional ecosystem or remnant map, as provided for by new section 95.

The amendments also insert new circumstances when a PMAV may be revoked. This reflects the new abilities of the chief executive to make a PMAV under section 20B to identify an offset area, exchange area, or an area of Land Act tenure subject to tenure conversion, and to fix errors in the regrowth vegetation map. This will allow PMAVs to be revoked when they are no longer required, for example after a vegetation management map has been amended, an offset expires, or an exchange area is no longer required.

Amendment of section 20F - Copies of maps to be available

Clause 23 amends section 20F by amending the heading and allowing the chief executive to send a copy of a PMAV to two or more owners jointly where the owners reside at the same address. Previously, the legislation required that a copy of a PMAV be sent to each owner of land included in the map, even where multiple owners resided at the same address, which created unnecessary duplication of administrative process.

The provision requiring the chief executive to provide copies upon payment of a fee has been transferred into new section 70AA which consolidates the requirement to make documents available into a single provision under the amended VMA.

New section 20H - Inconsistency between PMAV and particular vegetation management maps

Clause 24 inserts a new section 20H to clarify that where there is an inconsistency between boundaries shown on a PMAV and boundaries shown on a regional ecosystem map, remnant map or regrowth vegetation map, the boundary on the PMAV prevails. This is because PMAVs can be produced at a finer mapping scale and would generally involve more detailed mapping than other maps.

Replacement of pt2, div 6, hdg - Modifying effect of Planning Act with new hdg - Relationship with Planning Act

Clause 25 amends the division 6 heading to reflect the broader relationship of this division with the Planning Act generally, and introduces two new subdivisions.

New pt 2, div 6, sdiv 1 - Modifying effect of Planning Act

Amendment of section 22 - Declarations for the Planning Act

Clause 26 clarifies the powers of the chief executive as assessment manager of a vegetation clearing application over land that the chief executive is satisfied contains commercial timber. Subsection 22(3) of the unamended VMA allowed the chief executive to refuse such an application. The subsection has been amended to direct that the chief executive may either refuse an application to the extent that the development will affect the commercial timber, or grant the application but impose conditions on the development approval in relation to the commercial timber.

Amendment of s 22A - Particular vegetation clearing applications may be assessed

Clause 27 updates and amends various sections within section 22A to ensure consistency with the new regrowth vegetation provisions, the exempt status of development under the *Urban Land Development Authority Act 2007*, and the Queensland Government Environmental Offsets Policy.

Section 22A(2)(d) replaces reference to 'no suitable alternative site relating to the fence, firebreak, road, track or infrastructure', with reference to, 'for each relevant infrastructure, that the clearing can not reasonably be avoided or minimised'. This change reflects the principles of the Queensland Government's Environmental Offsets Policy, which provides the overarching framework and principles for detailed specific-issue policies such as the offsets policy for vegetation management recognised by this Bill in section 10C. Principal two of the Environmental Offsets Policy directs that environmental impacts must first be avoided, then minimised before considering an offset for any remaining impact, where it is possible to do so under a relevant offsets policy.

Avoiding impacts may involve the project's design and location whereby the need for the clearing vegetation is avoided through locating in existing cleared areas and limiting the development's footprint. Minimising impacts may include only clearing vegetation to the extent that does not impact on the structure and function of the regional ecosystem.

If offsetting is possible under a relevant regional vegetation management code or concurrence agency policy, the development application must demonstrate how the application has reasonably avoided and minimised impacts on vegetation. Clause 29, new section 22DH, reflects this hierarchy of avoid, minimise and offsetting.

Subsections 22A(2)(j) and (k) in the unamended VMA have been omitted to reflect new arrangements for the clearing of regulated regrowth vegetation. Subsection 22A(2B) in the unamended VMA has been renumbered as subsection 22A(2)(j), but there is no change to requirements for clearing regrowth vegetation in wild river high preservation areas.

Subsection 22A(l) in the unamended VMA, which relates to an urban development area under the *Urban Land Development Authority Act 2007*, has been omitted to reflect schedule 8, table 4, 1(k) of the Planning Act which makes development that is in an urban development area exempt or not assessable development. It is therefore unnecessary to have a provision in section 22A of the VMA allowing an application to be made for clearing in an urban development.

New section 22A(2B) provides that vegetation clearing applications for clearing regulated regrowth vegetation are not for a relevant purpose under the amended VMA. This clarifies that applications to clear regulated regrowth vegetation cannot be accepted as properly made applications under the Planning Act, and that regulated regrowth can only be cleared under the new regrowth vegetation management code or vegetation clearing authorisation.

Subsection 22A(3) amends the definition of extractive industry to clarify that infrastructure associated with extractive industry is part of the development and not a separate operational works component of the extractive activities. Examples of the type of work that is commonly associated with extractive industry may include constructing roads, buildings and other infrastructure.

New pt 2, div 6, sdiv 2 - Referral agency assessment and responses

Clause 28 inserts a new subdivision 2 Referral agency assessment and responses.

New section 22DA - Requirement for property vegetation management plan

Section 22DA requires an applicant for a concurrence agency application to provide the chief executive with a property vegetation management plan for the area to which the application relates. This is in addition to those matters stated in the Planning Act section 3.3.3(1) which an applicant must provide a referral agency. Section 22DA expands the current requirements in section 21 requiring the provision of a property vegetation management plan where the chief executive is the assessment manager to also require a property vegetation management plan for a concurrence agency application.

New section 22DB - Compliance with concurrence agency policy

This section establishes that the chief executive must, when assessing a concurrence agency application, comply with the applicable concurrence agency policy or policies.

New section 22DC - Refusal of particular concurrence agency application

This section provides for the chief executive, in a referral agency response to a concurrence agency application, to tell the assessment manager to refuse an application or impose a condition in particular situations.

It provides the chief executive the ability to not approve an application, or otherwise restrict clearing, where the concurrence agency application is inconsistent with the outcomes sought through a PMAV under section 20B, restoration notice, Land Act notice, trespass notice associated with the clearing of vegetation under the Land Act, enforcement notice under the Planning Act issued for a clearing offence, or an offset or another agreement related to an offset.

For this section, the meaning of relevant land is defined to mean land to which the concurrence agency application relates.

New section 22DD - Commercial timber on State land

This section establishes that the chief executive, in its referral agency response to a concurrence application for a MCU of premises on State land, may tell the assessment manager to either refuse the application, to the extent that the development affects commercial timber on the land, or any conditions in relation to the commercial timber that must attach to the development approval.

The department is responsible for managing native forest timber production on a range of State-controlled land tenures including State forests, timber reserves, forest entitlement areas, leasehold land and native forest buffers intruding into State plantation forests managed by Forestry Plantations Queensland. This section ensures that the State's interest in commercial production of timber on State land is considered for an application involving State land and that the commercial resource is conserved for the benefit of future generations, particularly where the chief executive is a referral agency for a concurrence agency application.

New section 22DE - Development not for a relevant purpose under s 22A

This section establishes that a concurrency agency application must be for a relevant purpose under section 22A for the chief executive to assess and where appropriate, approve the application. This section applies where the chief executive is not satisfied the development applied for under a

concurrence agency application is for a relevant purpose under section 22A.

It clarifies that for applying under section 22A, a reference to a vegetation clearing application is taken to be a reference to a concurrence agency application. This section also establishes that the chief executive, in its referral agency's response to a concurrence agency application, must tell the assessment manager to refuse the application where the chief executive is not satisfied that the development applied for is for a relevant purpose under section 22A.

New section 22DF - Clearing vegetation on adjoining lot for firebreaks and fire management lines

This section applies where the location of proposed infrastructure for a concurrence agency application would enable the application to clear vegetation on adjoining land under the Planning Act, schedule 10, definition 'essential management', paragraphs (a) or (b), being 'clearing native vegetation—

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

(b) for establishing a necessary fire management line if the maximum width of the clearing for the fire management line'.

This section also determines that in assessing and responding to that part giving rise to the referral, the chief executive must consider any clearing that may be required on the adjoining land for establishing or maintaining a necessary firebreak to protect the infrastructure, or for establishing a necessary fire management line. This provision is in addition to and does not limit the Planning Act, section 3.3.15 (which outlines how each referral agency must, within the limits of its jurisdiction, assess the application) and chapter 3, part 5, division 2 - Assessment process.

The meaning of *infrastructure*, being infrastructure other than a fence, road or vehicular track, is defined.

These new provisions reflect the same assessment process of development applications that is currently undertaken by the chief executive as a concurrence agency

Insertion of new pt 2, div 6A - Vegetation management offsets

Clause 29 inserts a new division 6A concerning vegetation management offsets

New pt 2, div 6A, sdiv 1 - Preliminary

New section 22DG - What are *vegetation management offsets* (or *offsets*) and *offset areas*

This section defines *vegetation management offset* (an *offset*) as an agreement to carry out works or activities to conserve, enhance, maintain, monitor or rehabilitate an area of vegetation.

An *offset area* is defined as the area to be conserved, enhanced, maintained, monitored or rehabilitated.

New pt 2, div 6A, sdiv 2 Imposing offsets

New section 22DH - Application of sdiv 2

This subdivision applies to applications for a development approval if the relevant regional vegetation management code applies, and a required outcome in the code is to maintain the current extent of a particular regional ecosystem. This required outcome reflects a hierarchical approach consistent with principal two of the Environmental Offsets Policy which directs that environmental impacts must first be avoided, then minimised before considering an offset for any remaining impact – where it is possible to do so under a relevant offsets policy.

This subdivision stipulates that maintaining the current extent should firstly involve not clearing the regional ecosystem. Avoiding clearing may involve the project's design and location whereby the need for the clearing vegetation may be avoided through locating the development in existing cleared areas and limiting the extent of the development's footprint.

However, where it is not reasonably practicable to avoid clearing, the development should minimise the impact on the regional ecosystem by ensuring the structure and function of the regional ecosystem is maintained. Where it is not reasonably practicable to do so, an offset may be proposed by the applicant.

The development application should demonstrate how it has reasonably avoided, and, if avoidance is not feasible, how the impacts on vegetation have been minimised.

A relevant regional vegetation management code is taken to mean for this section, the regional vegetation management code for the region of the

State in which the area proposed to be cleared under the vegetation application is situated.

The Environmental Offsets Policy referenced above provides the overarching framework and principles for detailed specific-issue policies such as the offsets policy for vegetation management recognised by this Bill in section 10C and referred to in section 22DI below.

New section 22DI - Compliance with offsets policy

This section establishes that the chief executive must comply with the offsets policy when assessing a development application. Further, the chief executive may also impose the offset as a condition of the development approval.

New section 22DJ - Criteria for decision about offset

This section provides that in deciding whether to impose the proposed offset as a condition of the development approval, the chief executive may refuse to impose the proposed offset as a condition of the development approval to satisfy a required outcome under the relevant regional vegetation management code if an applicant has not complied with a condition of another development approval where an offset was imposed as a condition.

This section may be taken to mean that where an applicant has failed to provide an offset required as a condition of a previous development approval, the chief executive may decide to not impose a condition relating to an offset under the current development application. This may result in the application being refused if the applicant is unable to avoid the clearing of values requiring offsetting.

New section 22DK - When offset ends

This section clarifies that an offset area remains in effect until the offset area ends under its terms. The terms may include any requirements associated with an agreement between an applicant, the chief executive and/or third party, or a covenant or voluntary declaration and management plan.

New pt 2, div 6A, sdiv 3 - Register of offsets

New section 22DL - Chief executive must keep a register of offsets

This section requires the chief executive to maintain a register of offsets imposed as a condition of a development approval. The register must include the name of the applicant of the development approval, the name of

the owner of the land in which the offset area is located, information on the development approval, real property description of the development land and offset area and description of the vegetation cleared under the development approval and of the offset area. Other information may also be kept on the register about the development, as determined by the chief executive.

The chief executive must also place the register on the department's website. The name of the applicant and the offset provider will not be reflected on the publically available part of the register.Amendment of section 30 - Power to enter places

Clause 30 amends section 30 to provide powers of entry for an authorised officer to enter a place if a person is proposing to conduct a native forest practice and the person has given notice on the approved form. An authorised officer may also enter a place if a person is proposing to clear regulated regrowth vegetation and the person has given the chief executive a properly made notification. This clause has also replaced the term *compliance notice* with new terms *stop work notice* and *restoration notice* which are established in new sections 54A and 54B.

Amendment of section 49 - Power to require name and address

Clause 31 amends section 49, splitting the previous subsection 1(b) into two sections to more clearly identify the circumstances for an authorised officer to require the name and address of a person. These are when an authorised officer reasonably believes a vegetation clearing offence is being committed if they find a person in certain circumstances and when an authorised officer has a reasonable suspicion of a person committing a vegetation clearing offence based on information at hand. This amendment updates the provision in line with the latest drafting standards.

Insertion of new sections 54A-54C

Clause 32 inserts new provisions that clarify the type of compliance notices that can be issued under the amended VMA. Currently, the department can issue a compliance notice for two purposes - to stop an action that is an offence and to restore the vegetation. As a result the previous section 55 has been split to clearly identify the difference between a stop work and a restoration notice. No new powers are introduced in these provisions.

New section 54A – Stop work notice

New section 54A enables an official to give a person a stop work notice based on a reasonable belief of an offence. The stop work notice must state

the vegetation clearing offence that the official believes is being committed. The stop work notice is accompanied by an information notice that explains the appeal provisions and the decisions and reasons for the notice. This information notice is a trigger for the new internal review provisions in part 4, division 1 (Internal reviews by chief executive). Failure to comply with the notice, unless the person has a reasonable excuse, is an offence.

New section 54B – Restoration notice

New section 54B provides the process for an official to issue a restoration notice for a vegetation clearing offence committed either before or after the commencement of section 54B, that is capable of being rectified. The process for issuing a restoration notice includes the ability for the notice to require a range of steps that the person must carry out. These steps can vary from prohibitive actions such as no further clearing to positive steps such as planting the area with native vegetation. The steps may also require the development of a restoration plan that can be used in cases where detailed management requirements exist. This notice must include the details of the offence and the steps the person must take to rectify the matter. An information notice must accompany the restoration notice outlining the decision and the reasons as well as the appeal provisions. This information notice is a trigger for the new internal review provisions in part 4, division 1 (Internal reviews by chief executive). It is an offence not to comply with the notice unless the person has a reasonable excuse.

New section 54C – Contravention of stop work notices and restoration notices

New section 54C provides the ability for an official to use reasonable force or take any other reasonable action to stop the contravention of a stop work notice or a restoration notice. If there is any cost associated with a reasonable action to stop the contravention, the cost may be recovered as a debt owing to the State. This provision has been taken from the previous section 55.

Amendment of section 55 - Compliance notice

Clause 33 amends section 55 to remove previous subsections (1) to (6) which have been transferred to the new sections 54A to 54C. The heading has been amended to Transfer of land the subject of restoration notice, to more appropriately reflect the remaining subsections which focus on the transfer of land to subject to a restoration notice. Other amendments include inserting the new restoration notice and updating the numbering

and the dates included in the example. This provision has been simplified to specify that a restoration notice attaches to the land and binds any successors in title. When a person with interest in the land subject to a compliance notice transfers the land, the transferee is then required to fulfil the requirements of the compliance notice.

Amendment of section 55A - Record of compliance notice in land registry

Clause 34 amends section 55A to reflect the new restoration notice. As a result of the new restoration notice process, subsection 1 is also no longer required and it is removed. This is because all restoration notices require a person to rectify a matter.

Insertion of new pt 3, div 1, sdiv 8 - Restoration plans

Clause 35 inserts a new subdivision which outlines the processes involved in the preparing and approving of restoration plans required under the new restoration notice section 54B.

New section 55AA - Application of sdiv8

New section 55AA provides that this subdivision only applies if a restoration notice requires that a restoration plan be developed to restore vegetation on the land. A restoration plan can be a required step as part of a restoration notice.

New section 55AB - Preparing restoration

New section 55AB provides the process for the development of a restoration plan. This section outlines how the plan must be developed within a nominated timeframe that is stated in the restoration notice and how the plan must include the matters that are stated in the restoration notice. Matters that may be included in the plan include but are not limited to the establishment and protection of native vegetation, weed, fire and grazing management and a mechanism to report on the status of the restoration.

However as part of the development of a restoration plan, the owner can choose for the department to prepare the restoration plan. The owner must choose for the department to do this within 28 days after the restoration notice is given and must pay a fee no more than what is prescribed in the regulation. This process allows the person to be involved in the development of the plan or if they choose, the department can develop the plan for a fee.

New section 55AC - Approving restoration plan

New section 55AC provides the process for the chief executive to approve a restoration plan that is provided by an owner. The chief executive after reviewing the plan may approve the plan or ask the person to make amendments if the plan is not found to be adequate. Any request for amendments to the restoration plan by the chief executive must be made within 28 days after the request is made.

If, following a review of the amendments, the chief executive is still not satisfied, a notice of refusal must be given that is accompanied by an information notice outlining the decision to refuse to approve the plan. This information notice is a trigger for the new internal review provisions in part 4, division 1 (Internal reviews by chief executive). If the chief executive approves the plan, the person will be notified and the plan becomes the approved restoration plan. If the person chooses for the chief executive to prepare the restoration plan, the plan that is prepared by the chief executive becomes the approved restoration plan.

New section 55AD - Chief executive may amend approved restoration plan

To allow for the restoration plan to be adaptive, the chief executive may amend the approved restoration plan. The amendments may cater for changes to the restoration requirements as a result of natural events such as storms or fire. It may also be amended if non-compliance with the plan has occurred and the plan needs to change to allow the non-compliance to be remedied. If amendments are proposed, the chief executive must give a notice stating the grounds for the amendments and how the person can make submissions. Any submission period must be made at least 20 business days after the notice is given. The chief executive will consider any properly made submission prior to the decision about whether the amendments will be made.

New section 55AE - Steps after, and taking effect of, decision

New section 55AE provides that if the chief executive decides to amend the approved restoration plan, an information notice about the decision must be given to the person. This information notice is a trigger for the new internal review provisions in part 4, division 1 (Internal reviews by chief executive). Once an amendment is made, the amended plan becomes the approved restoration plan but does not take effect until the end of the review period for the decision. If the chief executive decides to not amend the approved

restoration plan, the chief executive must give the person notice of the decision.

New section 55AF - Failure to comply with restoration notice

New section 55AF provides the detail of when a person is taken to not comply with the restoration notice. Failure to comply with the restoration notice includes when the person does not give the restoration plan or any required amendments to the restoration plan within the required time period or if the chief executive fails to approve the restoration plan. Also if the person does not comply with an approved restoration plan, it is taken that the person has failed to comply with the restoration notice. However subsection 1 does not apply if the person has asked the chief executive to prepare a restoration plan of the land under new section 55AB(3).

Amendment of section 60B - Guide for deciding penalty for vegetation clearing offence

Clause 36 amends section 60B to align with changes in definitions in this Bill and replace references to remnant regional ecosystems with the separate considerations of regional ecosystem and remnant vegetation shown on a regional ecosystem map or remnant map. This is part of the consideration for deciding penalties for vegetation clearing offences and by referencing regional ecosystems, the vegetation unlawfully cleared can be more precisely considered, being based on the on-ground vegetation. The definition of 'not of concern' has also changed to 'least concern'. This amendment has also introduced a suggested maximum 12 penalty units for each hectare of regulated regrowth vegetation or vegetation in an exchange area that is unlawfully cleared.

Amendment of pt 4, hdg - Appeals and legal proceedings to hdg - Reviews and legal proceedings

Clause 37 amends the heading of part 4, to replace 'Appeals' with 'Reviews', to reflect the insertion of new internal review requirements in division 1.

Replacement of pt 4, div 1 - Appeals with new pt 4 div 1 - Internal reviews by chief executive

Clause 38 replaces part 4, division 1 – Appeals' with new 'division 1 – Internal reviews by chief executive', including new sections 62 to 63A and new 'division 1A – External reviews by QCAT', including new section 63B.

The new division 1 establishes a new internal review process for reviewable decisions made under the VMA. It allows for people who have, or should have, received an information notice under the amended VMA, to apply for an internal review of the decision. This new division sets out what an applicant must do to apply for an internal review and what the internal review decision can be.

New division 1A allows for a person who is unhappy with their internal review decision to apply for their internal review decision to be reviewed externally by the Queensland Civil and Administrative Tribunal (QCAT).

These new divisions will give people affected by certain decisions the ability to have the decision formally reviewed. It also replaces the provisions under the unamended VMA for appealing a compliance notice to the Magistrates Court. This will allow for greater transparency in decision making for certain decisions made under the amended VMA.

New pt 4 div 1 - Internal reviews by chief executive

New section 62 - Internal review process before external review

Section 62 provides that every review of an original decision must first be done through an application for internal review.

New section 63 - How to apply for internal review

Section 63 sets out the process involved in applying for an internal review. It states who may make an application for an internal review of a decision and on what decisions an internal review can be applied for. For this section, an information notice will be given for particular decisions including making PMAVs and giving restoration and stop work notices.

The section describes the internal review application, which must be made in the approved form to the chief executive administering the VMA, and must be supported by enough information to enable a decision to be made on the application. It also prescribes the timeframes for making an internal review application.

The section allows for the chief executive to extend the time for an internal review application to be made. It also provides that even though an internal review application has been made, the original decision is not stayed, meaning it is still in effect.

New section 63A - Review decision

Section 63A sets out what the review decision can be and what must be done if the decision is not what the applicant was seeking. It details that,

within 30 business days of receiving the internal review application, the chief executive must review the original decision, make a decision on the application and give the applicant notice of the decision. The section also prescribes what review decision the chief executive can make. It also links the review decision to section 157 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act), which outlines the information which must be included in the review notice given under this section.

New pt 4 div1A – External reviews by QCAT

New section 63B - Who may apply for external review

Section 63B allows for anyone who is not satisfied with a review decision to make an application to the QCAT for a review of the review decision. The application should be made as described in the QCAT Act.

Amendment of section 66A - Instruments, equipment and installations

Clause 39 amends section 66A to provide clarification on when a party to a proceeding is intending to challenge any instrument, equipment or installation to be used in the proceeding. This amendment is required to more clearly identify when the challenging evidence will be presented and specifically outline to all other parties the grounds on which a party wishes to challenge the instrument, equipment or installation. This allows appropriate disclosure that will enable all parties to target their efforts to the specific grounds identified, saving time and expense in the court process.

Amendment of section 66B - Certificate or report about remotely sensed image

Clause 40 amends section 66B in relation to certificates or reports about remotely sensed images to give clarity about the timeframe required for a party to challenge the statement. This amendment—similar to the amendment of section 66A—is required to more clearly identify when the challenging evidence will be presented and specifically outline to all other parties the grounds to which a party wishes to challenge the statement. This allows appropriate disclosure that will enable all parties to target their efforts to the specific grounds identified, saving time and expense in the court process.

Amendment of section 67 - Evidentiary aids

Clause 41 amends section 67 to simplify and update the range of evidentiary aids that can be used as part of a proceeding. It now includes

documents that have been certified and maintained under the VMA or the Planning Act, including apportionments, approvals, decisions, codes, maps, plans or policies. Additions to this document list— such as a policy—are due to the inclusion of new documents into the amended VMA.

Amendment of section 68A - Particulars to be stated for complaint for vegetation clearing offences

Clause 42 amends section 68A to allow for more information about the type of vegetation subject to the complaint to be provided. This section was previously limited to describing the regional ecosystem and its status however it is desirable to be able to provide other information about the vegetation. An updated example has been provided that describes the vegetation as remnant vegetation that is an endangered regional ecosystem and essential habitat for protected wildlife.

Insertion of new pt 4, div 4 - Restrictions on legal proceedings

Clause 43 inserts a new division 4 including new sections 68CA, 68CB and 68CC. This division provides that the *Judicial Review Act 1991* does not apply to certain matters under the amended VMA and also does not allow for appeals to be made about certain things.

New pt 4, div 4 - Restrictions on legal proceedings

New section 68CA - Definitions for div 4

This section provides the definitions for terms used in division 4. These definitions are *decision, PMAV application, relevant PMAV application* and *relevant vegetation map*.

New section 68CB - Non-application of Judicial Review Act 1991

Section 68CB provides that the *Judicial Review Act 1991* does not apply to specific matters under the amended VMA. These include conduct engaged in when making a relevant decision; conduct engaged in relating to the making of a relevant decision; the making of, or failure to make, a relevant decision; or a relevant decision.

The section states that for the matters mentioned above, the Supreme Court does not have the jurisdiction to hear or determine judicial review applications made to it under parts 3 (Statutory orders of review) and 5 (Prerogative orders and injunctions) of the *Judicial Review Act 1991*.

It defines what a relevant decision is and what a relevant vegetation map is for this section. A relevant decision means the certifying by the chief

executive or the approval of a relevant vegetation map or an amendment or replacement of a relevant vegetation map; or a decision to agree to make a PMAV the subject of a relevant PMAV application during the retrospective period.

Although there is no judicial review on the approval of relevant vegetation management maps, PMAVs are the prescribed mechanism to change the effect of the maps. Adequate review mechanisms have been included into the VMA in relation to amendment of vegetation mapping by a PMAV. PMAV decisions can be reviewed both by the chief executive as an internal review and then by external review with the new QCAT. These provisions will adequately deal with any situations where a person does not agree with a decision made.

New section 68CC - No appeals about relevant vegetation maps and particular PMAV applications

Section 68CC prescribes the circumstances where a person cannot appeal the certification or approval of relevant vegetation maps or the delay in the chief executive agreeing to make a PMAV during the retrospective period. This section, which is similar in intent to 68CB, ensures vegetation maps that are certified, amended and approved and delays in making a PMAV during the retrospective period are secure from appeal. This is necessary to allow for the ordinary operation and administration of the vegetation management framework. Adequate review mechanisms have been included into the VMA in relation to amendment of vegetation mapping by a PMAV. PMAV decisions not in the retrospective period can be reviewed both by the chief executive as an internal review and then by external review with the new QCAT. These provisions will adequately deal with any situations where a person does not agree with a decision made.

New sections 70AA and AB

Clause 44 inserts new sections ss70AA and AB concerning the availability and purchase of vegetation management maps, PMAVs and other documents.

New section 70AA - Copies of vegetation management maps and PMAVs to be available for inspection and purchase

Section 70AA requires that the digital electronic form of vegetation management maps and PMAVs be available for inspection, free of charge, by members of the public at particular regional offices; and that the department published the digital electronic form of the vegetation

management maps and PMAVs on the department's website. These provisions include the removed section 20F(2) division 5A. These amendments provide clear rules and instructions regarding how vegetation management maps and PMAVs are to be presented and made available to the public. They include the requirement to make the maps available on the internet and to also make the digital data available for purchase.

This section also states that the chief executive may publish 2 or more maps as a single map in electronic form on the department's website. This is to allow the department to publish a more user friendly map based on multiple map sources and ensure greater clarity and certainty for landholders.

This section also clarifies that the boundary of the vegetation management map and PMAV area—in digital electronic form—is the exact location of that boundary, which can be reduced or enlarged to show the details of the boundaries and applied literally. This gives landholders legal certainty about where the exact boundary applies to a given area of land, overcoming previous uncertainty associated with map and scale issues.

It also states that a person may purchase a copy, or part, of a vegetation management map or PMAV for a fee (which must not be more than the reasonable cost of publishing the copy).

New section 70AB - Copies of document to be available for inspection and purchase

This section prescribes the rules for making documents available under the vegetation management framework. This provision has a streamlining effect which consolidates the identification of these documents into a single provision under the VMA. Previously, these provisions were located in different sections throughout the VMA.

It requires that a copy of documents be available for inspection, free of charge, by members of the public at particular regional offices; and the department publish the digital electronic form of the documents on the department's website.

The section states that a person may purchase a copy of the document for a fee (which must not be more than the reasonable cost of publishing the copy).

The requirement to place a document on the department's website does not apply to a declaration made under section 19F, being a declaration made by

the chief executive at the request of the owner of the land. This is due to privacy reasons.

Amendment of section 70B - Record of development approvals and property maps of assessable vegetation in land registry

Clause 45 contains minor amendments to section 70B and expands development approvals to include referral agency development approvals and concurrence agency conditions. This will ensure that all relevant development approvals under the vegetation management framework are listed on title providing interested parties with additional certainty and information about encumbrances over a property.

New section 70C - Particular vegetation not natural resource owned by person as improvement on leasehold land.

Clause 46 clarifies whether trees planted by a lessee are a natural resource owned by a person as improvement on leasehold land. This section prevents lessees who have planted trees as a requirement of a Land Act notice, a compliance notice or a restoration notice from owning them as an improvement to the property, thereby preventing the trees from becoming the subject of a profit a prendre and thereby profiting from the illegal clearing.

Amendment of section 74 - Explain development control plans and special facilities zones

Clause 47 reflects minor amendments to section 74 to clarify the definition of special facilities zone, which is a specific planning designations in which particular development can occur without a development approval. By more clearly defining special facilities zone, it allows for a clearer interpretation of this transitional provision.

Insertion of new pt 6, div 7 - Transitional provisions for Vegetation Management and Other Legislation Act 2009

Clause 48 inserts a new division heading for transitional provisions under this Bill and includes three new subdivisions and new sections 88 to 107. It specifies transitional rules for various applications, decisions, appeals and other dealings made under the previous VMA and the *Vegetation Management and Other Legislation Amendment Act 2009.*

Standard transitional arrangements provided under the *Acts Interpretation Act 1954* will prevail for most dealings. These amendments provide rules for specific circumstances to ensure continuity for existing maps, codes, policies, applications, approvals, compliance notices and appeal rights.

New pt 6, div 7, sdiv 1 Preliminary

New section 88 – Definitions for div 7

This section provides the definitions of *amending act, commencement, moratorium period, retrospective period* and *unamended Act*, which are relevant within this division.

New section 89 – References to unamended Act

This section clarifies that provisions of the unamended Act continue to apply if a transitional provisions from this division provides for this continuation.

New pt 6, div 7, sdiv 2 - Transitional provisions for amendments of Vegetation Management Act 1999

Sections 90 through to 93 ensure that codes and maps approved under the unamended VMA are taken to be valid codes and maps under the amended VMA. This provides certainty for landholders and the government by ensuring certain codes and maps will continue to apply despite the changes to the VMA.

New section 90 - Existing regional vegetation management codes approved by the Minister

This transitional provision clarifies that the existing regional vegetation management codes approved under section 11 or section 75(2) of the unamended Act will continue to be in effect and furthermore will be taken to be approved under a regulation under the new section 14. This ensures these codes—which are used in assessment of development applications for vegetation clearing—will continue to be valid. However amendments can be made to these existing approved codes as permitted under amended section 15.

New section 91 - Native forest practice code

This transitional provision clarifies that the existing native forest practice code in force before commencement of new section 19O will continue to be in effect. This ensures this code—which is used by landholders conducting a native forest practice—will continue to be valid. The transitional provision also clarifies that any previous reference to a code applying to native forest practice in the unamended VMA or the Planning Act is a reference to the native forest practice code. This avoids any confusion as to whether any other code applies.

New section 92 - Existing regional ecosystems maps and remnant maps

This transitional provision ensures that regional ecosystem maps certified under section 20A and remnant maps certified under section 20AA which are certified prior to commencement of the amended VMA, are the maps in force even though they have not been approved under new section 20AG. This transitional provision is necessary to ensure that the release of approved and updated maps coincides with the commencement of the amended VMA.

New section 93 - Certifying vegetation management maps in retrospective period

This retrospective provision is required to ensure the vegetation maps subject to division 5AA can be prepared and certified by the chief executive prior to the commencement of this provision. This is necessary to ensure implementation of the amendments includes new versions of vegetation maps that have been prepared in accordance with the relevant mapping provisions outlined in division 5AA, including section 20AH and 20AI.

New section 94 - Changes to existing vegetation category areas

Section 94 specifies how Property Maps of Assessable Vegetation (PMAVs) made under the previous VMA are to be treated in the future. This ensures that existing PMAVs will generally provide the same rights to clear before and after the commencement of this provision. It will also ensure landholders and the department will not need to replace these PMAVs to reflect the new vegetation category areas. This is because, under this section, certain PMAV category areas under the unamended Act have been transitioned to a new vegetation category area. For example, any reference to a category C area in the amended Act will include any area shown as a category 4 area on an existing PMAV. This means existing PMAVs and their category areas remain valid and landholders will be able to continue to use their existing PMAVs to determine if an area contains assessable vegetation under the Planning Act. While not compulsory, replacement provisions have been provided to allow the chief executive to replace existing PMAVs to reflect the new vegetation category areas.

New section 95 - When particular PMAVs may be revoked

Section 95 provides rules for when a PMAV can be revoked if it was certified under section 20B of the VMA prior to amendment. These rules ensure that when a PMAV was certified in order to maintain the remnant

status of a cleared area, the PMAV is not revoked until the area in question is mapped as remnant vegetation on a regional ecosystem or remnant map.

New section 96 - Existing compliance notices

Section 96 (and section 97) provide for the continued operation of certain notices issued under the unamended VMA and unamended Land Act. Existing notices requiring a person to stop committing an offence are taken to be stop works notices under the amended Act. Existing notices requiring a person to rectify unlawful clearing are taken to be restoration notices under the amended Act.

New section 97 – Tree clearing provisions under unamended Land Act

This transitional provision explains that section 79(2) of the unamended Act continues to apply. It also links the new stop work notice and restoration notices to this provision. This ensures that a compliance measure previously involving a compliance notice will now involve either a stop work notice or a restoration notice.

New section 98 - Existing development approvals and development applications

Section 98 applies to development applications that were properly made under the Planning Act, but not decided at the date of commencement of this provision. Section 98 specifies that the assessment manager must decide the application as if the amendments of the amendment Bill have not occurred.

New section 99 - References to not of concern regional ecosystems

This transitional provision ensures any reference to the term *not of concern regional ecosystem* in any Act or document should from commencement of this amendment provision now be referred to as a *least concern regional ecosystem*. This provision corrects any misunderstanding that regional ecosystems of this conservation class are not considered of value to the State. This amendment also more clearly establishes the hierarchy of conservation class — from *endangered* to *of concern,* and finally *least concern*.

New section 100 - Clearing of regulated regrowth vegetation in retrospective period not an offence

Section 100 establishes that the Planning Act section 4.3.1(1) which stipulates that a person must not carry out assessable development unless there is an effective development permit for the development, to the extent

it relates to unauthorised development, does not apply to a person carrying out unauthorised development. However, where an official reasonably believes a person has carried out unauthorised development, the official may give the person a restoration notice. This provision prevents the imposition of criminal liability during the period that the Bill has retrospective effect.

New section 101 – Application of s 19Q

This section specifies that section 19Q does not apply to a person conducting a native forest practice in an area of regulated regrowth vegetation until 1 year after the commencement.

New section 102 - Not giving notice in retrospective period not an offence

This section clarifies that during the retrospective period, sections 19Q and 19V do not apply. This provision prevents the imposition of criminal liability during the period that the Bill has retrospective effect.

New section 103 - Delayed applications to QCAT

Section 103 relates to the review of decisions under the amended VMA to the QCAT. The QCAT will soon commence, however there is a possibility than an ability to apply to the QCAT for an external review under the VMA may expire prior to the QCAT being created. This section specifies that in those cases individuals will continue to be able to apply to the QCAT until 20 business days after the QCAT comes into existence.

New section 104 - Amendment of Vegetation Management Regulation

Section 104 clarifies that the amendment of the Vegetation Management Regulation 2000 by this Bill does not affect the power of the Governor in Council to further amend or repeal it at a later date.

New pt 6, div 7, sdiv 3 - Transitional Provisions for repeal of Vegetation Management (Regrowth Clearing Moratorium) Act 2009

The Moratorium Act included provisions for making and deciding applications under the VMA and the Planning Act. Subdivision 3 makes provision for certain applications and dealings made during the moratorium period.

New section 105 - Existing application for moratorium exemption

Section 105 provides for dealing with applications for exemptions made under section 14 of the Moratorium Act. Section 105 states that any applications made during the moratorium period that have not been decided should be dealt with and decided as if the Moratorium Act is still in force. If the application is approved, clearing can continue as exempt development under the terms of the approval.

New section 106 - Existing PMAV applications

Section 106 relates to outstanding applications for PMAVs made on or after 26 March 2009 and before the commencement of this provision. It requires that in deciding the PMAV application the chief executive may only agree to certify a PMAV if making it is consistent with the purpose of the Moratorium Act, or the amended VMA. This ensures landholders who have lodged a PMAV application in the relevant period will not be disadvantaged and the PMAV can show areas as Category X if they are consistent with either the Moratorium Act or the amended VMA. For example, a PMAV application made on 7 May 2009 and not yet decided at time of commencement, that contained an area of high value regrowth vegetation on the new regrowth vegetation map but was not shown on the moratorium map, can be shown as a Category X area on the PMAV.

New section 107 – Existing show cause notices and compliance notices

Section 107 allows for the continuation of the process of issuing a compliance notice for prohibited development under the Moratorium Act. This provides for situations where a show cause notice has been issued under section 24 of the Moratorium Act, but a compliance notice has not yet been issued to rectify the matter.

It provides that where a compliance notice has been issued under the Moratorium Act, the notice is taken to be a restoration notice for the purposes of the amended VMA.

New section 108 - Appeals

Section 108 applies for making of appeals in relation to decisions about applications for exemptions under the Moratorium Act. The section provides that in the case of making appeals against such decisions, the Moratorium Act continues to apply.

Amendment of schedule (Dictionary)

Clause 49 amends the schedule (Dictionary) to reflect amendments to streamline the administration of the vegetation management framework and to introduce the regulation of particular regrowth vegetation. It omits definitions from the schedule as a result of this Bill and allows for new and amended definitions to be inserted.

Omissions from the schedule are listed below:

Definitions for *category 1 area, category 2 area, category 3 area, category 4 area, category X area, compliance notice, not of concern regional ecosystem, property map of assessable vegetation, regional ecosystem map, remnant endangered regional ecosystem, remnant map, remnant not of concern regional ecosystem, remnant of concern regional ecosystem and remnant vegetation* are omitted. These definitions are no longer relevant or have been replaced with alternative definitions.

The following definitions have been inserted into the schedule:

Approved restoration plan is inserted to define a restoration plan approved by the chief executive under pt 3, div 1, sdiv 8

Category A area, category B area, category C area and ***category X*** area replace the previous category 1 area, category 2 area, category 3 area, category 4 area and category X area. Refer to sections 20AN, AO, AP, AQ.

Clearing area, see new section 19U(1).

Clearing notification, provides that a clearing notification for cleaning regulated under the regrowth vegetation code, see section 190(2).

Clearing offence means an offence under the *Forestry Act 1959*, the Nature Conservation Act or the *Environmental Protection Act 1994.*

Concurrence agency application means a development application for a material change of use of premises or reconfiguring a lot for which the chief executive is a concurrence agency, and the jurisdiction under the Planning Act, section 3.1.8 for the concurrence agency is the purpose of the amended VMA.

Concurrence agency policy, see new section 10A(3).

Decision, for part 4, division 4, see new section 68CA.

Development application means a development application under the Planning Act.

***Essential habitat*,** for protected wildlife, see new section 20AC(2).

Essential regrowth habitat, for protected wildlife, see new section 20AC(1).

Essential habitat map, see new section 20AC(1).

Exchange area means an area of vegetation that must be protected in the way provided under the regrowth vegetation code in exchange for clearing regulated regrowth vegetation.

Exempt development means exempt development under the Planning Act.

FA chief executive means the chief executive of the department that administers the *Forestry Act 1959*.

Fodder harvesting is inserted to state that the activity must be carried out sustainably, and to list the species that can be considered as fodder.

Information notice, about a decision, means a notice stating the decision, and the reasons for it, the rights of review under the amended VMA, the period which any review under the amended VMA must be stated, and how right of review under the amended VMA are to be exercised.

Land Act notice means a notice a compliance notice given for a tree clearing offence under the *Land Act 1994* as in force immediately before the commencement of the *Vegetation Management and Other Legislation Act 2004*, section 3.

Land Act tenure means unallocated State land, a road or an area subject to a lease under the *Land Act 1994*.

Least concern regional ecosystem replaces *not of concern regional ecosystem*. This amendment has occurred due to the old term causing confusion and the possibility that misunderstandings could lead to inadvertent unlawful clearing. The apparent low value implied by the old term has been noted in court decisions previously. The new term takes a plain English approach and better establishes the hierarchy of conservation status—*endangered, of concern*, and *least concern*.

Material change of use this definition means a material change of use is that which is defined under the Planning Act.

Moratorium exemption means an exemption under the repealed Moratorium Act.

Native forest practice code, see new section 19O.

Nature Conservation Act means the *Nature Conservation Act 1992*.

NCA chief executive means the chief executive of the department that administers the Nature Conservation Act.

Official means the chief executive, or an authorised officer.

Offset, see new section 22DG(1).

Offset area, see new section 22DG(2).

Offsets policy, see new section 10C(1).

Original decision, see section 63A(1)(a).

PMAV, see new section 20AM.

Primary producer, for part 2, division 4C, see new section 194.

Primary Production business, for part 2, division 4C, see new section 194.

Primary Production entity, for part 2, division 4C, see section 194.

Properly made notification, see new section 19U.

PMAV application, for part 4, division 4, see new section 68CA.

Property map of assessable vegetation, see new section 20AM.

Protected wildlife, see new section 11(2).

Reconfiguring a lot means reconfiguring a lot under the Planning Act.

Referral agency's response means an advice agency's response or a concurrence agency's response under the Planning Act.

Regional ecosystem map, see new section 20A.

Regional ecosystem number, for a regional ecosystem, means the regional ecosystem number that is established under the Regional Ecosystem Description Database. The definition identifies that the Regional Ecosystem Description Database is a database containing regional ecosystem numbers and descriptions of the regional ecosystems that is maintained by the Queensland Herbarium. The database is available on the department's website at www.derm.qld.gov.au.

Registered area of agriculture map, see new section 20AD.

Regrowth clearing authorisation, see new section 19ZA(1).

Regrowth vegetation code, see ne section 19(1).

Regrowth vegetation map, see new section 20AB.

Regulated regrowth vegetation is regrowth vegetation:

1.

(a) identified on the regrowth vegetation map as high value regrowth vegetation

(b) located within 50m of a watercourse identified on the regrowth vegetation map as a regrowth watercourse; or

(c) contained in a category C area

2. The exact location of a watercourse mentioned in paragraph 1(b) depends upon the location of the watercourse from time to time.

Relevant PMAV application, for part 4, division 4, see section 68CA.

Relevant vegetation map, for part 4, division 4, see section 68CA.

Remnant map, see section 20AA.

Remnant vegetation means vegetation that forms the predominant canopy of the vegetation—

(a covering more than 50% of the undisturbed predominant canopy; and

(b) averaging more than 70% of the vegetation's undisturbed height; and

(c) composed of species characteristic of the vegetation's undisturbed predominant canopy.

Repealed Moratorium Act means the *Vegetation Management (Regrowth Clearing Moratorium) Act 2009*.

Restoration notice, see new section 54B(2).

Restoration plan, see new section 55AA(b).

Review decision, see new section 63A(1)(b).

Stop work notice, see new section 54A(2

Trespass notice means a trespass notice under the *Land Act 1994*, section 406.

Vegetation category area, see new section 20AM(3).

Vegetation management map means each of the following—

(a) regional ecosystem map;

(b) remnant map;

(c) regrowth vegetation map;

(d) essential habitat map;

(e) registered area of agriculture map.

Vegetation management offset, see new section 22DG(1).

Clause 49 also amends the definition in the schedule for ***forest practice*** to clarify and remove any doubt that 'the code' in this definition refers to the document 'the native forest practice code'.

Part 3 Amendment of Integrated Planning Act 1997

Clauses 50-52 amends sections of the Planning Act. The amendments relate to streamlining the administration of the vegetation management framework, introduction of regulation for regulated regrowth vegetation, minor and inconsequential amendments and to ensure consistency with the VMA, Land Act and *State Development and Public Works Organisation Act 1971*.

Act amended

Clause 50 directs that this part of the Bill amends the Planning Act.

Amendment of sch 8 - Assessable development and self-assessable development

Clause 51 amends schedule 8 of the Planning Act. This section inserts regulated regrowth vegetation into the Planning Act, consistent with the introduction of regulations for particular regrowth vegetation, and amends terminology consistent with this Bill.

This section omits references to previous definitions of vegetation maps and categories while adding new definitions to schedule 8 of the Planning Act. These changes reflect amendments to the vegetation management maps and the introduction of regulation for particular regrowth vegetation.

It inserts regulatory provisions guiding how the newly introduced regulation of particular regrowth vegetation is to be administered within the

context of operational works. These amendments make particular operational works clearing under the regrowth vegetation code and clearing regulated regrowth for extractive industries and clearing for a significant community purpose on freehold and indigenous land and agricultural and grazing lease hold land exempt from the vegetation management framework.

Schedule 8, part 1, table 4, item 1A(f) reflects the new regrowth vegetation arrangements. The intent of the paragraph is to identify that clearing on freehold land and indigenous land where it is in an area for which there is no PMAV and the vegetation is not remnant vegetation shown on the regional ecosystem map or remnant map as remnant vegetation, or regulated regrowth vegetation, is not assessable development.

Schedule 8, part 1 table 4, item 1A(g) to (h) have been replaced with paragraphs to reflect changes in mapping terminology, and the replacement of the term *not of concern regional ecosystems* with the term *least concern regional ecosystems*. The changes also provide for regulated regrowth vegetation as not being assessable development for operational works when clearing native vegetation on freehold land and indigenous land for (1) urban purposes in an urban area, (2) for urban purposes in an urban area in a wild river high preservation area, and (3) necessary for routine management in an area of the land.

New paragraphs (m) and (n) have been inserted in schedule 8, part 1, table 4, item 1A. These paragraphs identify that clearing regulated regrowth vegetation on freehold land and indigenous land under the regrowth vegetation code or a regrowth clearing authorisation, other than if the vegetation is shown on a PMAV as a category A area, is not assessable development. It also identifies that development for extractive industry (section 22A(3)) which is a key resource area and development that is a significant community project is not assessable development to the extent that it involves clearing regulated regrowth vegetation other than if the vegetation is shown on a PMAV as a category A area.

Paragraphs (e) and (f) have been replaced with revised exemptions under schedule 8, part 1, table 4, item 1B - operational work that is the clearing of native vegetation on land subject to a lease issued under the Land Act for agriculture or grazing purposes (new paragraphs (e), (f) and (fa). The intent of amended paragraph (e) is to identify that clearing on leasehold land where it is in an area for which there is no PMAV and the vegetation is not remnant vegetation shown on the regional ecosystem map or remnant map as remnant vegetation, or regulated regrowth vegetation, is not assessable

development. Amended paragraph (f) identifies that clearing regulated regrowth vegetation on leasehold land, under the regrowth vegetation code or a regrowth clearing authorisation, other than if the vegetation is shown on a PMAV as a category A area, is not assessable development. New paragraph (fa) amends the routine management exemption to reflect the new mapping terminology and replacement of the term not of concern regional ecosystems with the term least concern regional ecosystems.

The changes also identifies that operational work that is the clearing of native vegetation on land subject to a lease issued under the Land Act for agriculture or grazing purposes and where the clearing involves regulated regrowth vegetation under the regrowth vegetation code, other than if the vegetation is shown on a PMAV as a category A area, or clearing is necessary for routine management and the vegetation is regulated regrowth vegetation, this clearing is not assessable development.

New paragraphs, (h) and (i), have been inserted to schedule 8, part 1, table 4. These new paragraphs make operational work for the clearing of native vegetation on leasehold land used for agriculture or grazing when it involves an extractive industry (section 22A(3)) in a key resource area or development which is a significant community project, to the extent it involves clearing regulated regrowth vegetation other than if the vegetation is shown on a PMAV for an area of land as a Category A area, as not being assessable development.

Schedule 8, part 1, table 4, item 1D, paragraph (a), after 'local government', insert 'or the department that administers the *Transport Infrastructure Act 1994'*. The explanatory notes for these operational works exemptions specified that road construction and maintenance activities were to be exempt from requiring vegetation clearing approvals. However, the legislation only provided an exemption for local government for road construction on local government roads (road under the Land Act) and not for the former Department of Main Roads, now Department of Transport and Main Roads (DTMR)) on State Controlled Roads.

Where the DTMR carries out activities on behalf of local government on local government roads or as part of a State Controlled Road infrastructure upgrade, those activities on the local government road currently must have a vegetation clearing approval. This amendment will exempt all vegetation clearing by DTMR and local government for road construction and maintenance activities on local government roads from requiring approval under the VMA.

This amendment to the exemption will make it consistent with the original intent.

Schedule 8, part 1, table 4, item 1D, paragraph (a)(ii) relates to clearing native vegetation associated with operational works on a road under the Land Act by local government.

This amendment does not change the intent of (a)(ii), rather updates this part consistent with relevant terminology and mapping changes resulting from this Bill.

Amendment of sch 10 (Dictionary)

Clause 52 amends schedule 10 (dictionary) of the Planning Act to reflect amendments to streamline the administration of the vegetation management framework and to introduce the regulation of particular regrowth vegetation. It omits definitions from the schedule (Dictionary) as a result of this Bill and allows for new and amended definitions to be inserted.

Clause 52(1) identifies omissions from schedule 10 for: *category 2 area, category 3 area, category 4 area, native vegetation, remnant endangered regional ecosystem, remnant not of concern regional ecosystem* and *remnant of concern regional ecosystem*. These definitions are no longer relevant or have been replaced with alternative definitions.

Clause 52 (2) identifies definitions that have been inserted within schedule 10:

Category A area means a category A area under VMA.

Category B area means a category B area under VMA.

Category C area means a category C area under VMA. .

Key resource area means an area identified as a key resource area in the document called 'State Planning Policy 2/07 – Protection of Extractive Resources', a State planning policy under the Planning Act that took effect on 3 September 2007. At the commencement of this definition, the document can be inspected on the Department of Infrastructure and Planning's website at <www.dip.qld.gov.au>.

Native forest practice code means the native forest practice code under VMA, section 19O(1).

Native vegetation means vegetation under VMA.

Significant community project means a significant community project under VMA, section 10(5).

Regrowth clearing authorisation means a regrowth clearing authorisation under VMA, section 19ZA(1).

Regrowth vegetation code means the regrowth vegetation code under VMA, section 19S(1).

Regrowth vegetation map means the regrowth map VMA, section 20AB.

Regulated regrowth vegetation means regulated regrowth vegetation under VMA.

The definition for ***Urban area*** has been amended to remove reference to priority infrastructure plans, and to clarify which maps are referred to by the term *a map in a planning scheme*. A map in a planning scheme must identify areas using cadastral boundaries (e.g. property boundaries) and be used exclusively or primarily to assess development applications, such as a zoning map or local area plan maps. These maps provide the most detailed information at an appropriate scale about the use of a particular lot. Some maps in planning schemes may not be suitable to determine whether an area is an urban area or not, such as strategic maps. Also, some zones in planning schemes allow for a broad range of uses—ranging from rural residential, commercial or industrial, to conservation—and require further assessment to determine the most suitable use. The amendment to the definition limits the exemption to areas identified specifically for urban purposes.

Clause 52(3) omits a section that refers to 'a code applying to a native forest practice'. The amendment changes this to state 'the native forest practice code' making it clear what code applies.

Clause 52(4) omits a section of the definition of a forest practice that states 'there is no code'. The amendment now reflects that 'the native forest practice code does not apply to the activities'.

Clause 52(5) inserts new sections (ca)(i)(ii) to the definition of routine management to enable lessees of agricultural and grazing leases to source construction timber (other than commercial timber species defined under the *Vegetation Management Regulation 2000*) for the purpose of making improvements to the property e.g. for yard rails, fences etc. and not just where such infrastructure is in need of immediate repair.

While lessees are able to obtain approval under the *Forestry Act 1959* for obtaining 'forest products', there are commercial and business requirements which can make obtaining such approvals difficult.

There is an argument that lessees of agricultural and grazing leases are entitled to 'quiet enjoyment' in a similar way as rights accrue to freehold landholders. At the least, lessees should not be unreasonably fettered in carrying out activities for which the State has leased the land.

Clause 52(6) replaces *specified activity* paragraph (ab) which relates to clearing an area of vegetation that is less than 0.125ha within a watercourse or lake for an activity (other than an activity relating to a material change of use of premises or the reconfiguring of a lot) that is subject to an approval process and is approved under this or another Act. The paragraph now reflects an increase in area limit from 0.125 hectares to 0.5 hectares for clearing within a watercourse or lake.

The addition of the document called 'Guideline Activities in a watercourse, lake or spring carried out by an entity' to the exemption in paragraph (ab) means that the exemption now applies where riverine protection permits are no longer required under the *Water Act 2000*. Previously entities such as local governments did not qualify for this exemption to clear vegetation as the guideline was not an approval process.

It also includes new specified activity exemptions to include clearing vegetation to comply with a land management agreement for a lease under the Land Act, or clearing in an area declared under the VMA under section 19F, if the clearing is carried out under the management plan for the area.

The Land Act provides for a land management agreement to specify certain measures to be undertaken to protect significant environmental values. Similarly, the VMA allows the chief executive to agree to a management plan specifying certain measures to be undertaken to protect significant environmental values associated with a voluntary declaration made under the VMA. Where these measures are specified in the agreement or management plan in a way that ensures that any related clearing is consistent with the applicable codes, this exemption provides more certainty and procedural efficiency while still meeting the purpose of the VMA.

Part 4 Amendment of the Land Act 1994

Act amended

Clause 53 states that this part and the schedule amends the Land Act.

Amendment of section 431NB - Application of pt 3B

Clause 54 amends section 431NB of the Land Act to extend the stay on the registration of survey plans with a tidal boundary, introduced in November 2005, by six months until 8 May 2010.

The stay protects the public interest in tidal lands by controlling the registration of survey plans with a tidal boundary. The extension of the stay will allow for finalisation of legislative amendments in relation to particular tidal land boundaries and enable subsequent implementation of such legislation.

Amendment of section 431NF - Limit on application of s 358 (Changing deeds of grant-change in description or boundary of land)

Clause 55 amends section 431NF of the Land Act to ensure that all resurveys of tidal boundies cannot be registered until 8 May 2010.

The stay protects the public interest in tidal lands by controlling the registration of survey plans with a tidal boundary. The extension of the stay will allow for finalisation of legislative amendments in relation to particular tidal land boundaries and enable subsequent implementation of such legislation.

Part 5 Amendment of the Land Title Act 1994

Act amended

Clause56 states that this part amends the Land Title Act.

Amendment of section 191B - Application of pt 10A

Clause 57 amends section 191B of the Land Title Act to extend the three year stay on the registration of particular survey plans with a tidal boundary, introduced in November 2005, until 8 May 2010.

The stay protects the public interest in tidal lands by controlling the registration of survey plans with a tidal boundary. The extension of the stay will allow for finalisation of legislative amendments in relation to particular tidal land boundaries and enable subsequent implementation of such legislation.

Part 6 Amendment of Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009

Act amended

Clause 58 states that this part amends the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009* (QCAT)

Clauses 59 remove amendments from the QCAT that change the VMA. The amendments in this Act are not required as this Bill incorporates the considerations and will commence prior to QCAT. These sections of the VMA will no longer require amendment. The amendments are due to the streamlining of the administration of the vegetation management framework and the introduction of regulation for particular regrowth vegetation.

Part 7 Amendment of Sustainable Planning Act 2009

Act amended

Clause 60 states that this part amends the *Sustainable Planning Act 2009*.

Amendment of sch3 - Dictonary

Clause 61 ensures amendments to the Planning Act are carried forward into the new sustainable planning framework by amending schedule 3 (Dictionary) of the *Sustainable Planning Act 2009.*

Part 8 Miscellaneous

Act amended

Clause 62 repeals the *Vegetation Management (Regrowth Clearing Moratorium) Act 2009*, No.6 as it is no longer required. New regulations for management of particular regrowth vegetation being introduced to the VMA will replace the Moratorium Act.

Law amended in the schedule

Clause 63 clarifies that the schedule amends all of the Acts it mentions.

Schedule Consequential and minor amendments

The schedule makes further minor and consequential amendments to the Acts contained in it.

Land Act 1994

Amendment of section 373F, definition natural resource, after 'notice'

Item 1 inserts 'given for a tree clearing offence under this Act as in force immediately before the commencement of the *Vegetation Management and Other Legislation Act 2004*, section 3'. This clarifies which compliance notice are referred to by the section as the compliance provisions for tree clearing provisions were removed from the Land Act in 2004.

This change supports amendments made to the VMA by new section 70C - Particular vegetation not natural resource owned by person as improvement on leasehold land.

State Development and Public Works Organisation Act 1971

Amendment of section 26(3)(b), from 'matter'

Item 1 replaces 'or purpose mentioned in the VMA, section 22A(2)(b) to (j)' with 'relevant purpose under the VMA, section 22A, other than subsection (2)(a) of that section' in section 26(3)(b) of the *State Development and Public Works Organisation Act 1971* (SDPWOA).

This amendment updates section 26(3)(b) of the SDPWOA to reflect all of the relevant purposes in section 22A(2) of the VMA other than section 22A(2)(a). A vegetation clearing application may be accepted if the application is for a relevant purpose under section 22A of the VMA. An application is for a relevant purpose if it is a project declared to be a state significant project under section 26 of the SDPWOA.

Section 26 of the SDPWOA allows the Coordinator General to declare a project to be a significant project for which an EIS is or is not required. However, the Coordinator General is not allowed to declare a significant project if it is a project that will result in broadscale clearing for agricultural purposes.

Section 26(3)(b) of the SDPWOA defines that a project that will result in broadscale clearing for agricultural purposes if the Coordinator General is satisfied that the clearing is not for a matter or purpose mentioned in section 22A(2)(b) to (j) of the VMA.

Previous amendments to the VMA resulting from the *Wild Rivers and Other Legislation Amendment Act 2007* and the *Urban Land Development Authority Act 2007* have resulted in further provisions 22A(2) (k) and (l) being inserted into section 22A(2) of the VMA. These provisions provide further relevant purposes under the VMA for which clearing applications for clearing native vegetation may be accepted by the department.

These further clearing purposes do not result in broadscale clearing, and for continuity, should be inserted into section 26(3)(b) of the SDPWOA.

Vegetation Management Act 1999

Omission of section 11(2), 'for vegetation management mentioned in section 10'—

Item 1 removes 'for vegetation management mentioned in section 10' from the VMA.

Renumbering of subsections 19(1)(e) and (f)—
Item 2 renumbers these as subsections 19(1)(d) and (e).

Amendment of section 20G, heading, 'maps'—

Item 3 replaces 'maps' with 'PMAV'.

Amendment of section 20G, 'property map of assessable vegetation'—

Item 4 replaces 'property map of assessable vegetation' with 'PMAV' in section 20G.

Amendment of section 22(4), 'under the Planning Act'—

Item 5 omits 'under the Planning Act' from section 22(4).

Amendment of section 22LC, heading, 'Not of concern'—

Item 6 replaces 'Not of concern' with 'least concern' in the heading of section 22LC.

Amendment of section 22LC(1), 'not of concern'—

Item 7 replaces 'not of concern' with 'least concern' in section 22LC(1).

Amendment of section 25(1)(b)—

Item 8 replaces section 25(1)(b) with '(b) giving stop work notices and restoration notices.'.

Amendment of section 30(1)(c)(i)(C), 'compliance'—

Item 9 replaces 'compliance' with 'stop work notice or restoration' in section 30(1)(c)(i)(C).

Amendment of section 30(1)(d), 'compliance'—

Item 10 replaces 'compliance' with 'stop work' in section 30(1)(d).

Amendment of section 30(3), 'Subsection (1)(ba)'—

Item 11 replaces 'Subsection (1)(ba)' with 'Subsection (1)(c)' in section 30(3).

Amendment of section 36(5), 'compliance'—

Item 12 replaces 'compliance' with 'stop work' in section 36(5).

Amendment of part 3, division 3, heading—

Item 13 replaces the heading of part 3, division 3 with 'General offences'.

Amendment of schedule, definition area of high nature conservation value, from 'under'—

Item 14 replaces the definition of area of high nature conservation value from 'under'—

(a) a declaration made by the Governor in Council under section 17; or

(b) an interim declaration made by the Minister under section 18; or

(c) a declaration made by the chief executive under section 19F.

Amendment of schedule, definition area vulnerable to land degradation,

from 'under'—

Item 15 replaces the definition of area vulnerable to land degradation, from 'under' to 'under—

(a) a declaration made by the Governor in Council under section 17; or

(b) an interim declaration made by the Minister under section 18; or

(c) a declaration made by the chief executive under section 19F.

Amendment of schedule, definition vegetation clearing application, 'as defined under the Planning Act'—

Item 16 omit 'as defined under the Planning Act' from the definition of vegetation clearing application.

Item 17 replaces 'that Act with the Planning Act' in the definition of vegetation clearing application.

Vegetation Management Regulation 2000

Item 1 adds two new sections after section 3.

New section 3A - Approval of regrowth vegetation code—Act, s 19T

This amendment approves a specific document as the regrowth vegetation code, to allow for the retrospective amendment of the Vegetation Management Regulation 2000 and the commencement of the regrowth vegetation code on 8 October 2009.

New section 3B - Approval of particular vegetation management maps—Act, s 20AG

This amendment approves specific versions of maps certified by the chief executive as the regrowth vegetation map and the essential habitat map, to allow for the retrospective amendment of the Vegetation Management Regulation 2000 and the commencement of the maps on 8 October 2009.