

Vegetation Management Framework Amendment Bill 2013

Explanatory Notes

Short title of the Bill

The short title of the Bill is the *Vegetation Management Framework Amendment Bill 2013*.

Policy objectives and the reasons for them

The policy objectives of the Vegetation Management Framework Amendment Bill 2013 are to amend the vegetation management framework, *Land Act 1994*, *Sustainable Planning Act 2009*, and *Wild Rivers Act 2005* to:

- Reduce red tape and regulatory burden on landholders, business and government.
- Support the four pillar economy – construction, resources, agriculture and tourism.
- Maintain protection and management of Queensland's native vegetation resources.

The vegetation management framework consists of the *Vegetation Management Act 1999* (VMA) and the *Sustainable Planning Act 2009* and their regulations. Since its introduction in 2000, the framework has been criticised by landholders, developers, local government and other stakeholders as not only constraining development but being confusing and complicated to operate under.

A review completed by the Office of Best Practice Regulation (OBPR) supported these views. The OBPR recommended in their interim report to Queensland Government in November 2012 that the vegetation management framework be reviewed immediately. This Bill aligns with the objectives of OBPR to reduce the regulatory burden on business, community and government. The OBPR's final report was released on 8 March 2013.

The government has committed to growing a four pillar economy based on construction, resources, agriculture and tourism development. Amending the vegetation management framework will support economic growth and the four pillar economy, particularly in the areas of agriculture and construction while maintaining protections for our important native vegetation.

Achievement of policy objectives

To achieve the policy objectives the Bill introduces a number of legislative changes including:

- Amendment of the Purpose of the VMA to regulate clearing in a way that 'allows for sustainable land use'.
- Repealing regrowth regulations on freehold and indigenous lands for clearing high value regrowth.
- Creation of new clearing purposes for 'high value agriculture clearing', 'irrigated high value agriculture clearing' and 'necessary environmental clearing'.

- Creation of a new head of power under the VMA to allow for the development of self-assessable vegetation clearing codes. Activities which will be self-assessable are clearing for pests and weeds; fodder harvesting; encroachment; necessary environmental clearing; relevant infrastructure; a Category C area; a Category R area; and clearing for extractive industries.
- Streamlining current mapping and creating a single ‘regulated vegetation management map’, with only essential information concerning assessable and non-assessable areas of vegetation, making it easier to understand.
- Removing section 60B sentencing guide from the VMA which will allow a Court to apply the *Penalties and Sentencing Act 1992*, providing a more equitable and consistent approach to sentencing.
- Removing unfair enforcement and compliance provisions such as the ‘reversal of the onus of proof’ provisions in section 67A of the VMA so that standard prosecution principles apply and landholders aren’t automatically held responsible for clearing on their land without evidence; reinstating the ‘mistake of fact’ defence under the Criminal Code by removing section 67B; and reinstating ‘self-incrimination’ as a reasonable excuse for not providing information.
- Removing the VMA’s interaction with the *Wild Rivers Act 2005* to reduce regulatory duplication for landholders while still maintaining river protection.
- Other minor amendments, including amendments to Area Management Plans to gain efficiencies, making it easier to remove irrelevant land title advice, streamlining amendments to the VMA to reduce duplication of provisions and consequential amendments to the *Sustainable Planning Act 2009*.

Alternative ways of achieving policy objectives

The proposed reforms provide a balance between the conservation of vegetation and biodiversity values and the economic development of the State. A suite of approaches were assessed and these recommended reforms represent the best ways to meet the policy objectives of the Vegetation Management Framework Amendment Bill 2013.

Estimated cost for government implementation

The costs for government implementation of the Bill will be assessed following the outcome of the parliamentary committee process for examination of the policies the Bill seeks to give effect to.

Consistency with fundamental legislative principles

The Office of the Queensland Parliamentary Counsel did not identify any breaches of the fundamental legislative principles.

Consultation

Consultation with external stakeholders and the community has not occurred. Consultation will occur once the Bill is introduced into Parliament.

Consultation across government has occurred and has been integral in developing the regulatory parameters for the new relevant clearing purposes under the VMA – clearing for ‘high value agriculture clearing’, ‘irrigated high value agriculture clearing’ and ‘necessary environmental clearing’. This is also the case for proposed reforms to vegetation mapping. Consultation will continue with departments to support implementation.

Consistency with legislation of other jurisdictions

The Vegetation Management Framework Amendment Bill 2013 is specific to Queensland and is not intended to be uniform with or complimentary to Commonwealth or other State or Territory legislation. For noting however, New South Wales and Victoria are also moving to reform their native vegetation management frameworks to reduce regulatory burden and improve flexibility.

Notes on provisions

Part 1 Preliminary

Division 1 Short title

Clause 1 provides for the short title of the Act as the *Vegetation Management Framework Amendment Act 2013*.

Commencement

Clause 2 specifies that the Act is to commence on a day to be fixed by proclamation.

Part 2 Amendment of Vegetation Management Act 1999

Act amended

Clause 3 specifies that Part 2 amends the *Vegetation Management Act 1999* (VMA).

Amendment of s 3 (Purpose of Act)

Clause 4 adds an additional purpose to the VMA, that being to regulate clearing of vegetation in a way that ‘allows for sustainable land use’. This provision is similar to the provision contained in the Act on its commencement in 2000 which was removed in 2004. This provision provides for the clearing of native vegetation for sustainable development.

Amendment of s 11 (Minister must make regional vegetation management codes)

Clause 5 removes reference to near threatened species in section 11(2)(a) to be consistent with those matters identified as ‘matters of state environmental significance’ (MSES) approved in December 2012 by the Government. Near threatened species will continue to be regulated under the *Nature Conservation Act 1992*.

Amendment of s 16 (Preparing declaration)

Clause 6 removes section 16(8). This is to remove unnecessary interactions between the VMA and *Wild Rivers Act 2005* and reduce regulatory burden on landholders. The Wild Rivers Code is a declared area code against which applications for relevant purposes permitted in a high preservation area are assessed. However, using the Wild Rivers Code is essentially duplication of the existing regional vegetation management codes under the VMA and therefore unnecessary.

Amendment of pt 2, div 4 hdg (Declaration of areas of high nature conservation value and areas vulnerable to land degradation)

Clause 7 amends the heading of part 2 division 4. The division has been broadened to now say ‘Declaration of particular areas’. This is due to the inclusion of subdivision 1A in clause 10, whereby the Minister can declare a restricted high value agriculture area.

Amendment of s 17 (Making declaration)

Clause 8 removes sections 17(1A), (2A) and (4). This is to remove unnecessary interactions between the VMA and *Wild Rivers Act 2005* and reduce regulatory burden on landholders (see clause 6).

Omission of s 19D (Application of ss 19A–19C to wild rivers code)

Clause 9 removes section 19D. This is to remove duplication of assessment criteria in the VMA and *Wild Rivers Act 2005* (see clause 6).

Insertion of new pt 2, div 4, sdiv 1A

Clause 10 inserts a new Part 2, division 4, subdivision 1A, Declarations by Minister. This new provision provides the Minister with the head of power to declare a ‘high value area declaration’ where it is necessary to manage high value agricultural clearing. This insertion links to clauses 46 and 47 and defines requirements for high value agriculture clearing applications that occur within a restricted agriculture area. These restrictions may include, but are not limited to, the type of crop or the size of the land for which an application may be made.

A restricted high value area declaration must be declared by gazetted notice and must identify the land to which it relates.

Replacement of pt 2, divs 4B and 4C

Clause 11 replaces Part 2, divisions 4B, Other codes for vegetation management, and 4C, Authorisation to clear regulated regrowth vegetation other than under the regrowth vegetation code with division 4B, Self-assessable codes.

Division 4B provides the head of power for the Minister to make self-assessable vegetation clearing codes. This amendment streamlines existing provisions by compiling requirements for conducting a native forest practice and clearing regulated regrowth vegetation into one section as these requirements are similar. This amendment also introduces new provisions in this section for making self-assessable clearing codes for relevant purposes under section 22A. Compiling three similar requirements into one section within the Act removes unnecessary duplication.

New section 190 — Self-assessable vegetation clearing code

New section 190 provides the Minister with the head of power to make self-assessable vegetation clearing codes.

Section 19O(1) requires the Minister to make self-assessable vegetation clearing codes for particular vegetation clearing activities, for example, fodder harvesting, thinning, encroachment and native forest practice.

Section 19O(2) specifies that the Minister may make a self-assessable vegetation clearing code for any matter about clearing the Minister considers is necessary or desirable for achieving the purposes of the Act. The intent of this subsection is to provide the Minister flexibility in the making of any additional self-assessable vegetation clearing codes as required.

Section 19O(3) identifies the matters a self-assessable vegetation clearing code may address. This includes any requirements for landholders to notify the chief executive of intended clearing to be carried out under the code.

Section 19O(4) states that a self-assessable vegetation clearing code must not be inconsistent with the VMA or the State Policy for Vegetation Management (the State Policy). This requirement previously applied to both the code for conducting a native forest practice and the regrowth vegetation code.

New section 19P — When self-assessable vegetation clearing code takes effect

Section 19P clarifies that all self-assessable vegetation clearing code does not take effect until they have been approved under a regulation. This approach is consistent with existing provisions for the code for conducting a native forest practice and the regrowth vegetation code, which this new subdivision combines.

New section 19Q — Code compliant clearing and native forest practices self-assessable

Section 19Q clarifies that it is an offence under the *Sustainable Planning Act 2009* for a person to clear vegetation or conduct a native forest practice under a self-assessable vegetation clearing code without complying with the code. This approach is consistent with existing provisions of the code for conducting a native forest practice and the regrowth vegetation code, which this new subdivision combines.

New section 19R — Register of self-assessable notices given under code

Section 19R specifies that the chief executive must keep a register of self-assessable vegetation clearing notices. Parts of the information kept in the register must be publically available including the real property description, but must not contain the name of the person who has given the notice.

Replacement of ss 20A-20AB

Clause 12 replaces sections 20A-20AB. The replacement of sections 20A-20AB provides for a number of changes to vegetation management mapping, including the creation of a new regulated vegetation management map, which replaces the previous regional ecosystem,

remnant, and regrowth vegetation maps. This division also provides for the certification of a vegetation management wetlands map and a vegetation management watercourse map. These mapping reforms have been developed to make it easier for clients to understand and apply vegetation management regulations on the ground, as well as providing landholder certainty when managing their property.

New section 20A – What is a regulated vegetation management map

Section 20A provides the chief executive with the head of power to certify a ‘regulated vegetation management map’.

To assist with easier interpretation, the new map incorporates information, or mapping layers, which were previously located on three separate maps – the regional ecosystem map, the remnant vegetation map, and the regrowth vegetation map. The map also incorporates property maps of assessable vegetation (PMAV) into the stand along map, as these will continue to be used to amend the regulated vegetation management map.

All areas of the State are assigned a vegetation category area, which aligns with pre-existing PMAV vegetation categories for consistency. As outlined in clauses 21 to 25, the regulated vegetation management map consists of five different vegetation category areas:

- Category A—vegetation subject to compliance notices, offsets, exchange areas, and voluntary declarations.
- Category B—remnant vegetation with no differentiation between VMA conservation status (including cleared areas the chief executive decides to show as category B under section 20AH of the VMA).
- Category C—high value regrowth vegetation (only on leasehold land for agriculture and grazing) with no differentiation between VMA conservation status (including cleared areas the chief executive decides to show as category C under section 20AI of the VMA).
- Category R—regrowth watercourse areas.
- Category X—areas not assessable, or not regulated under the vegetation management framework and are ‘locked in’ as such.

A key change to the mapping framework is the ‘locking in’ of all non-assessable vegetation as category X at the commencement of the Bill. This means that these areas will not be ‘clawed back’ over time and be remapped as remnant vegetation, unless the areas are involved in offsetting or subject to restoration/enforcement notices or unlawful clearing. This provides greater certainty for clients when undertaking property planning. Category X areas may expand on the map subject to PMAVs to amend the regulated vegetation management map being certified were agreed to by landholders.

The regulated vegetation management map does not display the vegetation management regional ecosystem conservation status of remnant and high value regrowth (i.e. endangered, of concern, and least concern regional ecosystems). The regional ecosystem descriptions and conservation status still form a regulatory part of the vegetation management framework through the *Vegetation Management Regulation 2012*, but for simplicity of display, this information is not part of the regulated vegetation management map.

New section 20AA — What is the *vegetation management wetlands map*

Section 20AA provides the chief executive with the head of power to certify a vegetation management wetlands map. Previously, to determine the presence of a wetland under the vegetation management framework, a landholder had to refer to a number of maps, tables and databases. Certification of a wetland map that captures these different elements in one location will mean only one point of reference for clients and departmental staff.

New section 20AB — What is the *vegetation management watercourse map*

Section 20AB provides the chief executive with the head of power to certify a vegetation management watercourse map. Previously, to determine the presence of a watercourse under the vegetation management framework, a landholder had to reference multiple maps which created uncertainty about which map was correct for use. This section provides certainty by a creating a single state-wide watercourse map, representing particular watercourse data at scales from 1:25,000 in South East Queensland and 100,000 and 1:250 000 in the remaining areas of the state. The result of this will be one point of reference and ease of use for clients and departmental staff.

Amendment of s 20AC (What is the *essential habitat map*)

Clause 13 amends section 20AC to align with changes made in section 20A, which implements the new regulated vegetation management map. This requires references to the regional ecosystem map, remnant map and regrowth vegetation map be replaced with the regulated vegetation management map. It also removes duplication between essential habitat and essential regrowth habitat by combining previous provisions into one essential habitat map and essential habitat database for Category B and Category C vegetation category areas.

Omission of ss 20AD to 20AG

Clause 14 removes section 20AD because it is no longer relevant due to the removal of the interactions between the *Wild River Act 2005* and VMA (see clause 6). Sections 20AE, 20AF and 20AG are removed, however similar provisions are inserted into sections 20HA, 20HB, and 20HC.

Amendment of s 20AH (Deciding to show particular areas as remnant vegetation)

Clause 15 amends section 20AH to:

- Align with the regulated vegetation management map.
- Allow the chief executive to show particular areas as category B on the regulated vegetation map.
- Add additional circumstances to which section 20AH chief executive powers may be applied.

The intention of Section 20AH is to ensure that certain areas that have been cleared, or have potential to be cleared, remain regulated as if they were remnant vegetation. This includes circumstances such as offsets, exchange areas, native forest practices, compliance issues, and for areas subject to a vegetation clearing permit for ‘remnant retained’ clearing purposes (clearing for purposes that will not intended to permanently remove the vegetation, but allow it to regenerate back to remnant vegetation, such as fodder harvesting thinning or weed management). Previously this was achieved by allowing the chief executive to show particular areas as remnant vegetation on the regional ecosystem map or remnant map.

The new regulated vegetation management map shows remnant vegetation as category B. To align with mapping reforms and continue to achieve the intention of section 20AH, this section is amended to allow the chief executive to show particular areas as category B on the regulated vegetation management map.

Section 20AH is amended to also allow the chief executive to apply section 20AH power in situations where a client has given notice under a self-assessable vegetation clearing code.

Additionally, Area Management Plans (AMPs) that have been approved for remnant retained clearing purposes are added to the list of circumstances where the chief executive may decide to show an area on the regulated vegetation management map as a category B area.

To align with the ‘remnant retained’ intent of the new clearing purpose, ‘necessary environmental clearing’ has been added to the list of circumstances where the chief executive may decide to show an area on the regulated vegetation management map as category B area where a development approval has been given, or an AMP has been approved.

Exchange areas are another circumstance in which an area may be shown as a category B area.

Amendment of s 20AI (Deciding to show particular areas as high value regrowth vegetation)

Clause 16 amends section 20AI to:

- Align with the regulated vegetation management map.
- Allow the chief executive to show particular areas as Category C on the regulated vegetation map.
- Add additional circumstances to which section 20AI chief executive powers may be applied.

The intention of section 20AI is to ensure that certain areas that have been cleared, or have potential to be cleared, remain regulated as if they were high value regrowth vegetation. This includes for circumstances such as exchange areas, compliance issues, and for areas subject to a clearing notification under a self-assessable vegetation clearing code for a ‘high value regrowth retained’ clearing purpose (clearing that is not intended to permanently remove the vegetation, such as thinning or weed management).

The new regulated vegetation management map shows high value regrowth vegetation as category C. To align with mapping reforms and continue to achieve section 20AI’s intention, section 20AI is amended to allow the chief executive to show particular areas as category C

on the regulated vegetation management map, even when the vegetation is not high value regrowth vegetation on the ground.

In line with new self-assessable vegetation clearing codes mentioned in clause 11, Section 20AI is amended to allow the chief executive to show an area as category C where notice has been given that clearing of category C will be done in accordance with a self-assessable vegetation clearing code. The instances where this may occur has been amended to include necessary environmental clearing that is not the diverting of existing natural channels.

Replacement of s 20AJ (Application to make PMAV before amending particular vegetation management maps)

Clause 17 replaces section 20AJ with references consistent with the regulated vegetation management map. The original intention of section 20AJ remains the same, which is to allow a client to apply to change the vegetation category area that applies to the area.

Omission of pt 2, div 5A, hdg (Property map of assessable vegetation)

Clause 18 removes the heading for part 2, division 5A, which previously lead into provisions for PMAVs. This omission brings PMAV provisions under Part 2, Division 5AA Vegetation Management Maps. This change reflects other reforms in the Bill, where a PMAV is used to amend the regulated vegetation management map which is reflected directly in the regulated vegetation management map.

Amendment of s 20AK (What is a property map of assessable vegetation (or PMAV))

Clause 19 amends section 20AK. Section 20AK (1) defines a PMAV and what it shows. Section 20AK (3) is removed given new section 20AKA defines what a vegetation category area is. Section 20AK (4) is removed because the PMAV certification process becomes part of the regulated vegetation management map amendment and certification process (new sections 20HA and HB respectively).

Insertion of new s 20AKA

Clause 20 is a new section that identifies what a vegetation category area is. Previously, vegetation category areas were identified in section 20AK(3). This amendment separates vegetation category areas from section 20AK 'What is a property map of assessable vegetation (or PMAV)' for clarity.

Amendment of s 20AL (What is a category A area)

Clause 21 amends section 20AL by inserting a new provision which states that a category A area is an area other than category B area, category C area, category R area or category X area and shown on the regulated vegetation management map. The definition still retains reference to the types of areas to be captured under category A, ie declared areas, offset areas, exchange areas, areas subject to unlawful clearing or restoration or enforcement notices. The

new definition of category A ensures that there is no overlap in vegetation category areas on the regulated vegetation management map, but still allows transition to occur between vegetation categories where circumstances require it. For example, if an area contained vegetation that met the category C definition, it could be mapped as category A if an exchange area was identified over the area because the definition of category A specifically highlights exchange areas in its definition.

Replacement of s 20AM (What is a category B area)

Clause 22 replaces section 20AM, and describes what a category B area is on the regulated vegetation management map.

A new provision is inserted which states that a category B area is an area other than category A area, category C area, category R area or category X area shown on the regulated vegetation management map and contains remnant vegetation or an area the Chief Executive wants to show as category B. This is to ensure that there is no overlap in vegetation category areas on the regulated vegetation management map, but still allows transition to occur between vegetation categories.. This transition is allowed by including in the definition that the mapped category B area contains remnant vegetation (which is further defined in the Act). This is best demonstrated where a category B area identified on the regulated vegetation management map does not contain remnant vegetation (as per the Act's definition) on the ground. This area could be amended to be a category X area as the area does not meet the definition of category B.

Section 20AM also amends references to the regional ecosystem map and remnant map to be consistent with the regulated vegetation management map which replaces these maps.

Section 20AM(a) also inserts a note which states that the chief executive can decide under section 20AH to show an area on the regulated vegetation management map as a category B area. Section 20AH areas are generally non-remnant areas which are required to return to a remnant status such as fodder harvesting and thinning. This ensures that areas made under section 20AH can suitably be mapped as a category B area on the regulated vegetation management map.

The category B definition still retains the ability for an area that is an immature regrowth regional ecosystem to be mapped as category B if tenure conversion is to occur under the *Land Act 1994*.

Replacement of s 20AN (What is a category C area)

Clause 23 replaces section 20AN and describes what a category C area is on the regulated vegetation management map. A new provision is inserted which states that a category C area is an area other than category A area, category B area, category R area or category X area and shown on the regulated vegetation management map. This is to ensure that there is no overlap in vegetation category areas on the regulated vegetation management map, while still allowing transition between categories to occur. This transition is allowed by including in the definition that the mapped category C area contains high value regrowth (which is further defined in the Act). This is best demonstrated where a category C area identified on the regulated vegetation management map does not contain high value regrowth (as per the Act's

definition) on the ground. This area could be amended to be a category X area as the area does not meet the definition of category C.

Section 20AN inserts a note which states that the chief executive can decide under section 20AI to show an area on the regulated vegetation management map as a category C area. Section 20AI areas are generally non-remnant areas which are required to return to high value regrowth vegetation status. This ensures that areas made under section 20AI are able to maintain their category C area status on the regulated vegetation management map.

Insertion of new s 20ANA

Clause 24 inserts section 20ANA to describe what a category R area is on the regulated vegetation management map. Section 20ANA describes that a category R area is an area shown on the regulated vegetation management map, other than a category A area, category B area, category C area or a category X area that is a regrowth watercourse area. By linking the definition of a regrowth watercourse area, this section will mean that category R areas are areas within 50 metres of a watercourse shown on the vegetation management watercourse map in the Burdekin, Mackay Whitsunday and Wet Tropics catchments and cannot be made category X.

Amendment of s 20AO (What is a category X area)

Clause 25 amends section 20AO to define a category X area as an area, other than a category A area, category B area, category C area or category R area and shown on the regulated vegetation management map as a category X area. This is to ensure there is no overlapping vegetation category areas on the regulated vegetation management map, ensuring consistency and certainty within the framework. Subject to existing section 20CA, an area can be made category X if it does not meet the criteria of any other category.

This amendment updates the section to include reference to the regulated vegetation management map, rather than on the regional ecosystem or remnant map. This is consistent with the streamlining reforms in the Bill concerning vegetation mapping.

Amendment of s 20B (When chief executive may make PMAV)

Clause 26 amends the ‘regrowth vegetation map’ with ‘regulated vegetation management map’ to be consistent with the streamlining reforms in the Bill concerning vegetation mapping.

Amendment of s 20CA (Process before making PMAV)

Clause 27 amends section 20CA, which lists the things which must be considered before making an area of land category X on the regulated vegetation management map. This section has been updated to reflect changes in mapping notification and relevant purposes.

In section 20CA(2)(d) and (e) the reference to ‘clearing notification’ is replaced by ‘notice’ to reflect the new terminology provided for in section 19R. Also, in sections 20CA(2)(c) and (d), ‘necessary environmental clearing’ is added to the list of development approval and clearing purposes where following clearing, the area cannot be made category X on the

regulated vegetation management map. Environmental clearing is similar to the other listed clearing purposes such as fodder harvesting, and thinning, whereby, the aim is to maintain the status of vegetation as either category B or C.

This clause also removes section 20CA(3)(b) as the under the new vegetation categories, an area within 50m of regrowth watercourses cannot be made category X.

Amendment of s 20D (When PMAV may be replaced)

Clause 28 amends the wording concerning self-assessable vegetation clearing codes and vegetation mapping, consistent with the streamlining reforms in the Bill. It also adds an existing revoking provision from section 20D which clarifies in what circumstances that a PMAV may be replaced.

Omission of s 20E (When PMAV may be revoked)

Clause 29 removes section 20E and consolidates these revoking provisions into section 20D which identifies when a PMAV may be replaced. Consolidation of the revoking provisions into the replacement provisions is consistent with the new streamlined mapping reforms.

Omission of s 20G (Owners to be advised of revocation of PMAV)

Clause 30 removes section 20G and places these provisions into section 20D(3A) which identifies when a PMAV may be replaced by the chief executive. PMAVs will no longer be revoked in favour of the PMAV being replaced. This is as a result of the new mapping reforms where by all areas of the State will be reflected as a vegetation management category on the regulated vegetation management map. For example, previously if an area subject to a declaration came to an end, the landholder could have the PMAV revoked. At that stage the area would have been reflected as being remnant on the regional ecosystem map or remnant map. Under the reforms, the PMAV with another PMAV that amends the regulated vegetation management map amended to reflect the area as a vegetation management category, e.g. category B.

Replacement of s 20H (Inconsistency between PMAV and particular vegetation management maps)

Clause 31 amends the current wording concerning vegetation mapping, consistent with the streamlining reforms in the Bill. The previous intent of 20H remains.

Insertion new ss20HA to 20HC

Clause 32 inserts three new provisions which provide the requirements for the certification and amendment of a vegetation management map, and for a vegetation management map to take effect.

New section 20HA — Certifying vegetation management map

New section 20HA replicates the requirements for the certification and amendment of vegetation management maps in the former section 20AE and 20AF. That is, a vegetation

management map may be certified by either certifying a hard copy of the map or a digital electronic form of the map. A vegetation management map is defined as an essential habitat map, regulated vegetation management map, vegetation management watercourse map, vegetation management wetlands map or PMAV.

New section 20HB — Amending vegetation management map

New section 20HB requires the chief executive to update the regulated vegetation management map to reflect a certified or amended PMAV. This ensures that the regulated vegetation management map reflects any changes to a vegetation management category made as a result of making or amending a PMAV.

New section 20HC — When vegetation management map takes effect

New section 20HC amends when a vegetation management map takes effect. Previously under the former section 20AG, a vegetation management map did not take effect until a regulation approved the map. Additionally the regulation had to state the day on which the map was certified. This new section removes these previous requirements and provides for the certification of a vegetation management map by the chief executive only. This means a vegetation management map takes effect once it is certified by the chief executive. The efficiency gain of this amendment is through the regular updating of the regulated vegetation management map.

Amendment of s 20J (What is an area management plan)

Clause 33 amends section 20J which identifies what an area management plan is. The amendment adds in section 20J(1)(c) which provides for area management plans made by the chief executive under subdivision 2A.

Amendment of s 20M (Application for approval of draft plan or accreditation of planning document)

Clause 34 amends section 20M which details the requirements for approval of a draft plan or accreditation of planning document. Previously, section 20M(2)(c) required that an area management plan must be contiguous, in other words, all properties covered must adjoin each other. This provision was unnecessarily restrictive and hence has been replaced by requirements which allow greater flexibility relative to the purpose of the area management plan.

Amendment of s 20P (Criteria for approving draft plan or accrediting planning document)

Clause 35 amends section 20P(d)(iii) to replace the current reference to ‘to establish a necessary fence, firebreak, road or vehicular traffic with ‘relevant infrastructure activities’. The intent of this provision generally remains the same, however, the definition of relevant infrastructure now includes reference to not only establishing a necessary fence, firebreak, road or vehicular track, but also maintaining such infrastructure. Additionally it has been

broadened to include constructing and maintaining necessary built infrastructure. This is consistent with self-assessable vegetation clearing codes in section 19O, and area management plans made by the chief executive in section 20UA.

Section 20P(d) has also been amended to allow an area management plan to be made for necessary environmental clearing, a relevant purpose under section 22A.

Amendment of s 20Q (Mandatory condition on approval of draft plan or accreditation of planning document)

Clause 36 amends section 20Q which details the mandatory conditions which apply to an area management plan. Section 20Q(2) is simplified by referring to relevant infrastructure activities, which was previously referred to and defined in this section as prescribed infrastructure, of which is now defined in the dictionary. The intent of this provision remains the same, however, the definition of relevant infrastructure now includes reference to not only establishing a necessary fence, firebreak, road or vehicular track, but also maintaining such infrastructure. Additionally it has been broadened to include constructing and maintaining necessary built infrastructure. This is consistent with self-assessable vegetation clearing codes in section 190, and area management plans in section 20P and 20UA.

Amendment of s 20R (Imposing additional condition on approval of draft plan)

Clause 37 amends section 20R which details when the chief executive may impose additional conditions on an area management plan. The previous section 20W, which required an owner to notify the chief executive if the owner proposed to clear vegetation under an area management plan, has been removed. However, section 20W has been replaced by 20R(3)(d) which allows the chief executive to impose a condition requiring the owner to give notice of any intended clearing.

Insertion of new pt 2, div 5B, sdiv 2A — Plans made by chief executive

Clause 38 inserts a new subdivision to establish a head of power for the chief executive to make area management plans. Previously the chief executive could not initiate the development of an area management plan. This new section will expand the current framework by allowing the chief executive the flexibility to develop an area management plan which responds to emerging land management issues where it is in the interest of the State.

New section 20UA – Chief executive may make area management plans

New section 20 UA(1) provides for the chief executive to make an area management plan, now referred to as an ‘area plan (chief executive)’. Section 20UA(2) outlines the information requirements for the area plan (chief executive) including enough information to be able to map the boundary of the area plan and zones within the boundary area if applicable. This section also requires that the area plan states the management intent, management outcomes

and conditions or restrictions on clearing to meet the intent or outcomes of the plan. Also, an area plan (chief executive) can only provide for limited purposes identified in section 20UA(2)(c) and must be consistent with the State policy and regional vegetation management code for the plan area. This section also makes it clear that an area management plan made under this section is not subordinate legislation.

New section 20UB – Plan period for area management plan

New section 20UB provides for the plan period which an area plan (chief executive) is in force for. This provision requires that the plan must state the period and be in force no longer than 10 years. This is to ensure that the plan period is clear and the plan is in force for a maximum of 10 years to maintain currency.

New section 20UC – Mandatory conditions for area management plan

New section 20UC identifies two mandatory conditions that an area plan (chief executive) is subject to. These mandatory conditions include that clearing vegetation for infrastructure activities cannot reasonably be avoided or minimised. This ensures that clearing is only undertaken if it is necessary and cannot be avoided and minimised. Also, if the plan area includes restricted (fodder harvesting) land that it cannot be cleared for fodder harvesting.

The inclusion of this section does not prevent additional conditions being imposed by the chief executive. Section 20UA allows the chief executive to make a plan. Because the chief executive can make a plan, conditions in addition to the mandatory conditions can be imposed as the chief executive sees fit as part of making the plan.

Replacement of s 20V (Register of area management plans)

Clause 39 streamlines section 20V by removing unnecessary information. It does not change the requirement to maintain a register of area management plans including any appropriate information relating to clearing notices.

Omission of pt 2, div 5B, sdiv 4 (Notifying clearing under plans)

Clause 40 removes the requirement to notify the chief executive of clearing under an area management plan. It has been replaced by section 20R(3)(d) providing the chief executive with the ability to place a condition on an area management plan requiring the owner to give notice of any intended clearing.

Amendment of s 20Z (When an area management plan ends)

Clause 41 amends subsection 20Z(1) to include area management plans made by the chief executive.

Amendment of pt 2, div 5B, sdiv 6 hdg (Amending plans)

Clause 42 adds ‘particular’ to the heading of part 2, division 5B, subdivision 6 to provide for area management plans made by the chief executive.

Replacement of s 20ZA (Definition for sdiv 6)

Clause 43 removes the definition for subdivision 6 in section 20ZA, and clarifies that subdivision 6 applies to area management plans made under 20J(1)(a) or (b).

Amendment of s 20ZB (Amendment by chief executive)

Clause 44 moves the definition of applicant from the old section 20ZA to new section 20ZB.

Amendment of s 20ZC (Amendment application for particular plans)

Clause 45 amends section 20ZC, which deals with situations in which amendments can be made to area management plans by including a situation where an owner of land applies under this section to include land into the area management plan. This amendment provides flexibility to allow an owner of land outside of the original area management plan area to apply to have their land included into the area management plan. This is subject to the original applicant agreeing to the inclusion, and if the land has similar vegetation types and characteristics to other landholders covered by the plan.

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

Clause 46 amends section 22A(2) to modify the necessary infrastructure clearing purpose, and to provide for three new clearing purposes – necessary environmental clearing, high value agriculture clearing and irrigated high value agriculture clearing.

Section 22A(2)(d) has been amended to refer to relevant infrastructure activities which is now defined. The term is also used in self-assessable vegetation clearing codes and area management plans.

Subclause (2) inserts three new clearing purposes

- Section 22A(2)(j) - Necessary environmental clearing is intended to assist landowners and land managers to undertake necessary clearing to restore the ecological or environmental condition of the land, to divert existing natural channels in a way which replicates the existing form, to prepare for natural disasters which have a high likelihood of occurring, and for the removal of contaminants on the land. Contaminants may include a gas, liquid, solid or energy source including radioactivity and electromagnetic radiation.
- Section 22A(2)(k) - High value agriculture clearing includes clearing for annual and perennial horticulture and broadacre cropping. It does not include clearing to establish and cultivate native or introduced pastures for the grazing of livestock, or for establishing plantation forestry.
- Section 22A(2)(l) - Irrigated high value agriculture clearing includes clearing for annual and perennial horticulture and broadacre cropping, in addition to pasture (for example, pasture-based dairy farms), which requires irrigation. It does not include clearing to establish plantation forestry.

Subclause (3) omits Section 22A(2A) in line with the reforms to remove the interactions between the VMA and the *Wild Rivers Act 2005* (see clause 6).

Subclause (4) amends and combines the former 22A(2B) and 22A(2C) consistent with the reforms. That is, an application is not a relevant purpose where it consists of clearing in a category C area (high value regrowth vegetation), clearing in a category R area (regrowth watercourse area) on freehold or indigenous land, or a lease issued under the *Land Act 1994* for agriculture or grazing purposes, or, where the land has been declared by the chief executive under division 4, subdivision 2, and the application relates to 22A(2)(e), (f), (i), or subsection (2AA).

Subclause (5) makes minor amendment to the introduction of 22A(2C) replace in addition, with the word also.

Insertion of new pt 2, div 6, sdiv 1A — Particular vegetation clearing applications

Clause 47 inserts new subdivision 1A into division 6. The new subdivision contains provisions associated with the high value agriculture clearing and irrigated high value clearing purposes.

New section 22DAA — Application of subdivision

New section 22DAA describes the application of subdivision 1A.

New section 22DAB — Requirements for making application

New section 22DAB identifies the requirements for an application under this section. An applicant must provide a development plan to demonstrate to the chief executive that the application is for high value agriculture clearing or irrigated high value agriculture clearing.

The development plan must include:

1. the extent and location of the proposed clearing;
2. particulars of the clearing, including when it is expected the clearing will be completed;
3. evidence that the land is suitable for agriculture having regard to topography, climate and soil attributes;
4. evidence that there is no suitable alternative site on the land the subject of the application for the clearing. That is, the applicant must demonstrate how the clearing will be avoided, where possible, in the first instance;
5. details about how adverse impacts of the clearing will be minimised or mitigated;
6. details of a business plan, for activities related to the clearing, showing information about the economic viability of the activities;
7. if the clearing will involve irrigated high value agriculture clearing, evidence that the owner of the land is an ‘eligible owner’ who has, or may have, access to enough water for establishing, cultivating and harvesting the crops to which the clearing relates.

‘Eligible owner’ is defined in new section 22DAC as an owner of land who:

- (a) is authorised under the *Water Act 2000*, section 20(6) to take water; or
- (b) holds a water entitlement for the taking of water under the *Water Act 2000*; or

- (c) holds an existing authority for the taking of water under the *Water Act 2000*, section 1089; or
 - (d) was, when the application was made, eligible to participate:
 - in a process for a water entitlement. A process under the *Water Act 2000* can be a public auction, public ballot or public tender that may have eligibility requirements; or
 - in a process included in a wild river declaration under the *Wild Rivers Act 2005*. A wild river declaration may include a process for granting, reserving or otherwise dealing with unallocated water in the wild river area.
 - (e) is a customer of a water service provider under the *Water Supply (Safety and Reliability) Act 2008*; or
 - (f) holds an approval under the *Waste Reduction and Recycling Act 2011*, chapter 8 and the resource to which the approval relates is water; or
 - (g) has applied for a water licence under the *Water Act 2000*, section 206; or
 - (h) holds, or has a right to be supplied water under, an environmental authority under the *Environmental Protection Act 1994*.
8. if the land is in a 'restricted high value agriculture area', details about how the clearing will comply with any restriction included in a declaration made under new section 19D, as outlined in clause 10; and
9. evidence that the application does not involve the clearing of native vegetation to plant a high risk species. A high risk species is one which is declared a pest plant under the *Land Protection (Pest and Stock Route Management) Act 2002*, or listed in a regional vegetation management code as a high risk species.

Also, if the application involves the clearing of native vegetation in an endangered or of concern regional ecosystem, the plan must contain information on proposed actions which will result in a significant beneficial impact to the biodiversity values located on the land which is the subject of the application.

New section 22DAC — Matters for deciding application

New section 22DAC outlines the criteria for when the chief executive may be satisfied that an application is for either high value agriculture clearing or irrigated high value agriculture clearing.

Amendment of s 22DA (Requirement for property vegetation management plan)

Clause 48 amends section 22DA to replace the reference to the now repealed *Integrated Planning Act 1997* (Section 3.3.3(1)), with an updated reference to the Planning Act in force (*Sustainable Planning Act 2009*—section 272(1)).

Amendment of s 22DC (Refusal of particular concurrence agency application)

Clause 49 amends PMAV terminology in section 22DC from 'revoked' to 'replaced' to align with mapping reforms.

Amendment of s 22DF (Clearing vegetation on adjoining lot for firebreaks and fire management lines)

Clause 50 amends section 22DF to clarify that the section is linked to the definition of ‘essential management’ under the *Sustainable Planning Act 2009*, as well as corrects the references from the *Integrated Planning Act 1997* to the *Sustainable Planning Act 2009*. These amendments ensure that a stakeholder or client is directed to the right place, namely the *Sustainable Planning Act 2009*.

Amendment of s 30 (Power to enter places)

Clause 51 removes sections 30(1)(f),(g) and (h) which allowed an authorised officer to enter a place if a notification had been received for a native forest practice, clearing regrowth or an area management plan. This provision now relies on the consent of the occupier for an authorised officer to enter the place.

Amendment of s 51 (Power to require information)

Clause 52 amends section 51 to reduce the amount of information the chief executive can require for enforcement, investigations and offences.

Amendment of s 53 (Failure to certify copy of document)

Clause 53 amends section 53 to provide a person with the power not to comply with a document certification requirement if complying would incriminate the person (a ‘reasonable excuse’). This amendment supports amendments in clause 52 for provisions which involve a reasonable excuse.

Amendment of s 54 (Failure to produce document)

Clause 54 amends section 54 to reduce requirements for a person to produce a document. Also a new section 54 (2) has been added to provide a person with the power not to comply with a document production requirement if complying would incriminate the person (a ‘reasonable excuse’).

Omission of s 60B (Guide for deciding penalty for vegetation clearing offence)

Clause 55 removes section 60B from the VMA. This amendment is consistent with a recommendation made by Crown Law, following their independent review in 2012, which identified that there were issues with section 60B being applied in an equitable and consistent manner. Removing section 60B will provide a positive benefit to the community by providing a more equitable and consistent approach to the sentencing of unlawful clearing by reverting to the existing *Penalties and Sentences Act 1992*.

Omission of s 67A and pt 4, div 2A

Clause 56 removes section 67A from the VMA. Section 67A, in the absence of evidence to the contrary, places responsibility for unlawful clearing with the ‘occupier’ of the land, which

includes the owner, lessee or title holder depending on the tenure. The presumption of guilt (or reversal of the onus of proof) raises issues with fundamental legislative principles, and has the potential to see landholders wrongly accused of unlawful clearing where there is no evidence to suggest that it was not their fault.

This clause also removes section 67B (under part 4, division 2A) to ensure that individuals who make an honest mistake in accordance with section 24 of the Criminal Code cannot be charged with an offence, as they are not seen to be criminally responsible for their acts.

Replacement of s 68CA (Definitions for div 4)

Clause 57 amends section 68CA to update the definitions used in this division consistent with the streamlining reforms in the Bill concerning vegetation mapping.

Replacement of s 68CB (Non-application of Judicial Review Act 1991)

Clause 58 amends section 68CB to limit the review and appeal rights for decisions made by the chief executive to those decisions affected by jurisdictional error as determined by the Supreme Court.

Omission of s 68CC (No appeals about relevant vegetation maps and particular PMAV applications)

Clause 59 omits section 68CC. Appeals, generally, been addressed within the amendment of section 68CB(2)(b) in clause 58, and as such the amendment does not specifically refer to relevant vegetation maps or PMAV applications.

Amendment of s 70AA (Copies of vegetation management maps and PMAVs to be available for inspection and purchase)

Clause 60 amends section 70AA (heading and section 70AA(1)(b)) to remove specific reference to PMAVs. These sections now only refer to vegetation management maps. This is because, as defined, vegetation management maps includes PMAVs. The editor's note in section 70AA(2) has been updated with the department's web address from the former Department of Environment and Resource Management address to the current Department of Natural Resources and Mines address.

Amendment of s 70A (Application of development approvals and exemptions for Forestry Act)

Clause 61 amends the references to the regional ecosystem map and remnant map in section 70A, updating them to refer to the regulated vegetation management map and category B area. This is consistent with the streamlining reforms to vegetation mapping.

Amendment of s 70B (Record of particular matters in land registry)

Clause 62 amends section 70B(1) to clarify that the section only applies if a development approval or referral agency development approval is issued or when a PMAV is made and it

contains a category A area. Other amendments include removing reference to revoking in section 70B(5). This reflects the removal of section 20E from the Act under clause 29. Also, a new (5A) will be inserted to provide the chief executive the power to ask the registrar to remove information relating to an approval or PMAV where it is no longer relevant.

Amendment of s 72 (Regulation-making power)

Clause 63 amends section 72 to establish a head of power for the Governor in Council to prescribe fees that are payable under this Act or to the chief executive in relation to the chief executive's functions under the Planning Act, as assessment manager or a concurrence agency. It clarifies that fees for activities under the *Sustainable Planning Act 2009*, can be made by Governor in Council under the VMA.

Insertion of new pt 6, div 9

Clause 64 inserts a new Part 6, Division 9 which puts in place transitional arrangements to enact the Vegetation Management Framework Amendment Bill 2013.

New Division 9 Transitional provisions for Vegetation Management Framework Amendment Act 2013

New section 110 — Definitions for div 9

New section 110 defines specific terms which are only relevant to the transitional provisions.

New section 111 — Change to category C areas on freehold land or indigenous land

New section 111 puts in place provisions to make areas that were a category C area on freehold and indigenous land on a PMAV prior to the commencement of the amending Act, either a category X area, or if they are a regrowth watercourse area, a category R area.

New section 112 — Particular PMAV applications

New section 112 is only relevant to PMAVs that are made but not decided prior to the amending Act commencing. The provision allows for the chief executive to assess the applications against the regional ecosystem, remnant or regrowth vegetation map in place under the unamended Act, or the new regulated vegetation management map. This will allow landholders to have their application decided based on the most favourable version of mapping for their property.

New section 113 — Revocation of PMAVs for wild river areas

New section 113 removes all existing PMAVs over wild river areas. Removing PMAVs from these areas is consistent with the Bill's objective to remove all duplication between the VMA and the *Wild Rivers Act 2005* (see clause 6).

New section 114 — Vegetation category areas on existing PMAVs

New section 114 clarifies that a vegetation category area (category A, B, C or X area) on a PMAV under the unamended Act is taken to be the corresponding vegetation category area on the regulated vegetation management map under the amending Act. However, if a PMAV in place prior to the commencement of the amending Act shows a category C area on freehold or indigenous land, it is taken to be amended on the regulated vegetation management map and will be shown as a category X area or category R area, as appropriate.

New section 115 — Information on register of clearing notifications

New section 115 transitions registers kept under previous section 19X remain current for the purposes of new section 19R.

New section 116 — Particular notices

New section 116 clarifies that any notice of clearing associated with either a native forest practice code or regrowth vegetation code provided prior to the commencement the Bill is taken to be a notice under a self-assessable vegetation clearing code and will be included on the register of self-assessable notices given under a code under new section 19R.

New section 117 — Compliance with codes

New section 117 clarifies that upon commencement of the amending Act any activities undertaken under a relevant code applying immediately before the commencement of the amending Act, part 2, will be taken to be clearing vegetation or conducting a native forest practice under a self-assessable vegetation clearing code that applies to the activity.

New section 118 — Existing development approvals

New section 118 clarifies that a development approval given in relation to clearing vegetation before the commencement of the amending Act continues to have effect following the commencement of the amending Act. Further, any reference to a regional ecosystem map or remnant is taken to be a reference to the relevant map in place at the development approval was given.

New section 119 — Reference to particular maps

New section 119 confirms that a reference to the regional ecosystem map, remnant map, regrowth vegetation map or registered area of agriculture map in a relevant document is taken to be a reference, where the context permits, to the regulated vegetation management map.

New section 120 — Reference to relevant codes

New section 120 clarifies that, to the extent relevant, references to a native forest practice code or regrowth vegetation code in a document prior to the commencement of the amending Act are taken to be references to a self-assessable vegetation clearing code relating to the activity undertaken in the respective code.

New section 121 — Applying guide for deciding penalty

New section 121 clarifies that section 60B applies to any proceedings in relation to a vegetation clearing offence, which started prior to the commencement of the amending Act.

Amendment of schedule (Dictionary)

Clause 65 in subclause (1), omits definitions which are no longer accurate or relevant based on the Bill's reforms. A number of new definitions have been included in subclause (2).

PART 3 Amendment of Land Act 1994

Act amended

Clause 66 specifies that Part 3 amends the *Land Act 1994*.

Amendments of s 234 (When lease may be forfeited)

Clause 67 omits section 234(e)(i) to remove unfair forfeiture provisions relating to vegetation clearing under the *Land Act 1994*. This provision identifies that a lease may be forfeited when the lessee has one or more convictions for a vegetation clearing offence, regardless of whether the offences were committed on lease land.

Section 234(e)(ii) has also been omitted consistent with the Land, Water and Other Legislation Amendment Bill 2013, clause 88, which deleted section 234(e)(ii) to remove reference to section 198B due clause 86 repealing section 198A and 198B relating to future conservation areas on state rural leasehold land. This was in order to increase security of tenure for lessees over the future of their leases at lease renewal; and streamline rural lease renewal processes under the State Rural Leasehold Land Strategy.

Omission of ch 5, pt 4, div 3 (Forfeiture of leases on conviction)

Clause 68 omits sections 240A, 240B and 240C which solely apply to section 234(e) which was omitted in clause 67.

Amendment of sch 2 (Original decisions)

Clause 69 omits the reference to section 240C 'Forfeiting a lease' to be consistent with clause 67.

Amendment of sch 6 (Dictionary)

Clause 70 omits the definition of 'show cause period' as it only applies to part 4, division 3 'Forfeiture of leases on conviction', which is being removed.

Insertion of new ch 9, pt 1L

New Part 1L Transitional provision for Vegetation Management Framework Amendment Act 2013

Clause 71 inserts transitional provisions for managing forfeiture procedures under chapter 5, part 4, division 3 where forfeiture procedures had commenced immediately prior to the commencement of this Bill.

New section 521ZJ – Particular existing forfeiture procedures

New section 521ZJ specifies that the procedures in force relating to forfeiting a lease under chapter 5, part 4, division 3 still applies to the extent that the procedure had commenced before the commencement of this section.

PART 4 Amendment of Sustainable Planning Act 2009

Act Amended

Clause 72 specifies that Part 4 amends the *Sustainable Planning Act 2009*.

Amendment of sch 3 (Dictionary)

Clause 73 replaces the previous definition of native forest practice code in Schedule 3 of *Sustainable Planning Act 2009*. This reflects that a native forest practice code is now a self-assessable vegetation clearing code which applies to a native forest practice.

PART 5 Amendment of Wild Rivers Act 2005

Act amended

Clause 74 specifies that Part 5 amends the *Wild Rivers Act 2005*.

Amendment of s 10 (Application of moratorium)

Clause 75 omits section 10(3). This is consistent with the reform proposal to achieve regulatory simplification by removing unnecessary interactions between the VMA and *Wild Rivers Act 2005* and reduce regulatory burden on landholders.

Amendment of schedule (Dictionary)

Clause 76 amends the definition of agricultural activities in the Dictionary of the *Wild Rivers Act 2005* by replacing the current reference to PMAV with regulated vegetation map.