

# Vegetation Management and Other Legislation Amendment Bill 2018

## Explanatory Notes

### Short title

The short title of the Bill is the Vegetation Management and Other Legislation Amendment Bill 2018.

### Policy objectives and the reasons for them

The policy objective of the Bill is to amend the *Vegetation Management Act 1999*, *Planning Act 2016*, Planning Regulation 2017 and *Water Act 2000* to reinstate responsible clearing laws.

In 2015, the Queensland Government made election commitments to:

- protect the Great Barrier Reef by strengthening vegetation management laws to protect remnant and high value regrowth native vegetation (including in riparian zones);
- reduce Queensland's carbon emissions by re-instating vegetation protection laws repealed by the previous government;
- retain existing self-assessable codes as long as they provide appropriate protection; and
- re-introduce riverine protection permits to guard against excessive clearing of riparian vegetation.

In November 2015, the government introduced legislation to Parliament to reinstate a responsible vegetation management framework. These laws were defeated in the Legislative Assembly in 2016.

Election commitments were made in the Labor Party 2017 Policy Document '*Saving Habitat, Protecting Wildlife and Restoring Land: ending broadscale tree clearing in Queensland (again)*'. The Amendment Bill delivers the Government's 2017 election commitments to protect remnant and high conservation value non-remnant vegetation; amend the accepted development vegetation clearing codes to ensure they are providing appropriate protections based on Queensland Herbarium advice; and align the definition of high value regrowth vegetation with the international definition of High Conservation Value.

The Bill will:

- extend the protection of high value regrowth vegetation to align with High Conservation Values by:
  - Increasing the land types on which high value regrowth is regulated (as category C) to include freehold land, indigenous land and occupational licences; and
  - amend the definition of high value regrowth to be vegetation that has not been cleared for 15 years;
- remove high value agriculture and irrigated high value agriculture as a relevant purpose under the *Vegetation Management Act 1999*. This will remove the ability to apply for a development approval for clearing for high-value and irrigated high value agriculture, and removing supporting provisions such as relevant purpose decision making criteria;
- provide consistent protection to regrowth vegetation near watercourses in all Great Barrier Reef catchments, by extending category R to include regrowth vegetation in watercourse and drainage feature areas in three additional Great Barrier Reef catchments—Eastern Cape York, Fitzroy and Burnett-Mary catchments;
- reintroduce provisions in the *Water Act 2000* to require landholders to obtain riverine protection permits for clearing vegetation in a watercourse;
- provide enhanced compliance measures that will assist with enforcement of vegetation management laws consistent with other similar contemporary natural resource legislation;
- provide an option to landholders to request an area mapped as a category X area to be converted to a category A area, where the area contains remnant vegetation or high value regrowth vegetation on the ground; and
- support the implementation of the revised accepted development vegetation clearing codes (accepted development codes) including changes to area management plans.

Unlike the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016, this Bill does not propose to reinstate the reverse onus of proof offence provision nor does it propose to remove application of the mistake of fact defence provisions under the Criminal Code 1899 from the *Vegetation Management Act 1999*.

The Department of Natural Resources, Mines and Energy has made widely available, at no, or little charge, all the information required by landholders to ensure they undertake clearing in accordance with the amended vegetation management laws. New tools and products have been developed to further assist landholders in applying the laws correctly.

## **Achievement of policy objectives**

***Extend the protection of high value regrowth vegetation by regulating it on freehold and indigenous land, and occupation licences under the Land Act 1994; and aligning high value regrowth with High Conservation Values***

High value regrowth vegetation is defined as native woody vegetation that has not been cleared since 31 December 1989, and forms an endangered, of concern or least concern regional ecosystem. High value regrowth vegetation is shown as a category C area on the regulated vegetation management map.

Prior to 2009, only leaseholders for agriculture and grazing leases under the *Land Act 1994* needed permits to clear regrowth vegetation that had not been re-cleared since 31 December 1989. All regrowth on freehold and indigenous land was exempt under the *Vegetation Management Act 1999*. In 2009, protection of high value regrowth was extended to freehold and indigenous land, and aligned with protections applying on agriculture and grazing leases. As a consequence of the 2013 amendments to the *Vegetation Management Act 1999*, legislative protections for regrowth on freehold and indigenous land were removed.

The Bill will achieve the objective of protecting high value regrowth vegetation and aligning it to High Conservation Values by:

- re-defining 'high value regrowth vegetation' to mean native woody vegetation that has not been cleared for 15 years, and forms an Endangered, Of Concern or Least Concern regional ecosystem; and
- further amending the definition to include high value regrowth vegetation on freehold land, Indigenous land, and land which is the subject of an occupation licence under the *Land Act 1994*.

While many High Conservation Values are afforded protection under Queensland legislation, some categories are not comprehensively considered via the assessment framework for clearing regulated vegetation. The Queensland Government intends to further align high value regrowth with High Conservation Values by amending the definition of protected wildlife for the regulation of essential habitat to include habitat for near-threatened wildlife species, for both remnant and high value regrowth vegetation.

The Bill will also make transitional provisions for retrospective regulation of essential habitat for near threatened wildlife on the proposed essential habitat map.

***Removing the ability to apply for a development approval for clearing for high-value and irrigated high value agriculture***

In December 2013, high value agriculture and irrigated high value agriculture were introduced as relevant purposes for clearing under the *Vegetation Management Act 1999*.

High value agricultural clearing is defined as clearing carried out to establish, cultivate and harvest crops, other than clearing for grazing activities or plantation forestry. Irrigated high value agricultural clearing is defined as clearing carried out to establish, cultivate and harvest crops, or pasture, other than clearing for plantation forestry, that will be supplied with water by artificial means.

The 2013 amendments to the *Vegetation Management Act 1999* allowed a landholder to apply for a development approval to broadscale clear remnant vegetation for high value agriculture or irrigated high value agriculture.

This Bill will remove high value agriculture and irrigated high value agriculture as relevant purposes for clearing under the *Vegetation Management Act 1999*, and will include consequential amendments to the Planning Regulation 2017 and the State Development Assessment Provisions (SDAP). It is anticipated this amendment will reduce clearing rates and subsequent carbon emissions in Queensland.

Any existing development applications for clearing of high value agriculture or irrigated high value agriculture that are considered to be a properly made application under the *Planning Act 2016*, prior to the commencement of the retrospective provisions of the Amendment Bill, will continue to be assessed under the current legislation.

***Provide consistent protection to regrowth vegetation in all Great Barrier Reef catchments, by extending category R areas to include regrowth vegetation in watercourse and drainage feature areas in three additional reef catchments—Eastern Cape York, Fitzroy and Burnett-Mary catchments***

Since 2009, native regrowth within 50 metres of watercourses in the Burdekin, Mackay Whitsunday and Wet Tropics Great Barrier Reef catchments has been regulated to protect Reef water quality. This regulation applies across freehold, indigenous and leasehold land. This area is mapped as a Category R area on the Regulated Vegetation Management Maps, and vegetation in this area can only be cleared for limited purposes in accordance with clearing exemptions or the 'Managing Category R regrowth vegetation' accepted development vegetation clearing code.

Currently there is no regulation of clearing regrowth near watercourses in the remainder of the Great Barrier Reef catchments—Eastern Cape York, Fitzroy and Burnett-Mary rivers catchments. Expanding the regulation of riverine regrowth to include these catchments will increase the protection for the Great Barrier Reef from sediment run-off and other impacts of clearing.

The Bill will amend the *Vegetation Management Act 1999* to expand the definition of a Category R area to include these additional Reef catchments, and make transitional provisions for application of the proposed Regulated Vegetation Management Map.

***Reintroducing provisions in the Water Act 2000 to require landholders to obtain riverine protection permits for clearing vegetation in a watercourse***

The Bill achieves the objective of reinstating the application of the riverine protection permit framework to include the destruction of vegetation in a watercourse, lake or spring by amending the provisions of the *Water Act 2000*. Reinstating the application of these riverine protection permit provisions will ensure appropriate management of the risks associated with riverine activities to prevent adverse impacts to the integrity of the watercourse and the environment.

The current provisions only apply to activities that involve the excavation or placing of fill in a watercourse, lake or spring. The amendments proposed by the Bill will reinstate the provisions for destruction of vegetation as they were prior to the amendments made by the *Land, Water and Other Legislation Amendment Act 2013*.

***Improving the ability to undertake compliance action where unlawful clearing has been undertaken, or where there is suspicion it is occurring***

A range of amendments are proposed to update and modernise the vegetation management compliance framework. The Bill will amend the *Vegetation Management Act 1999* to ensure the framework can be more effectively enforced, and is consistent with other contemporary natural resource compliance frameworks. These amendments include:

- increasing the penalty units for offence provisions. This achieves a more appropriate level of deterrence, and consistently aligns maximum penalty units for the same offences under the *Planning Act 2016* and the *Water Act 2000*;
- introducing enforceable undertakings: this provides a new compliance tool (an enforceable undertaking) to expand the options available under the *Vegetation Management Act 1999* and the *Planning Act 2016* to address unlawful clearing events. It is a voluntary tool, whereby a person can request the chief executive to enter into a written agreement in relation to a penalty or remedy for a contravention or alleged contravention by the person under the *Vegetation Management Act 1999* or *Planning Act 2016*. Enforceable undertakings commit the alleged offender to deliver on agreed environmental outcomes, for example revegetating an area connecting a strategic environmental corridor. These enforceable undertakings can be used as an alternative to prosecution or a remedial tool (for example where the giving of a restoration notice is not practical or appropriate);
- amending provisions for stop work notices to broaden their use to include instances where there is a reasonable belief that a clearing offence has occurred. The amendment will create consistency with the comparable enforcement notice tools under the *Planning Act 2016*;
- clarifying that property maps of assessable vegetation can be issued for multiple purposes over the same area or different areas;
- expanding powers of entry: this will allow an authorised officer to enter a place to monitor compliance for clearing of vegetation under an accepted development vegetation clearing code or an area management plan; or where an authorised officer believes on reasonable grounds that a vegetation clearing offence is happening, or has happened. This power is consistent with other natural resource legislation. It is necessary to ensure effective and proactive enforcement of vegetation clearing legislation, and to prevent serious and often irreversible impacts on biodiversity and land degradation in imminent circumstances;
- clarify an area can only be made category X area on a Property Map of Assessable Vegetation in accordance with section 20CA of the *Vegetation Management Act 1999* where the area has been lawfully cleared; and
- providing for exemption under the Planning Regulation 2017 for clearing in accordance with a restoration notice or an enforcement notice. This will remove doubt that any clearing directed under a restoration notice or an enforcement notice is exempt and does not require any further approvals under the *Planning Act 2016*. For example, clearing native vegetation for weed management.

The approach adopted in the Bill balances the government's commitment to reduce carbon emissions and protect the Great Barrier Reef with landholders' ability to responsibly manage vegetation on their properties.

***Allow vegetation mapped as a category X area in a Property Map of Assessable Vegetation (PMAV) to be converted to category A area with the landholders agreement***

An amendment to the *Vegetation Management Act 1999* will allow vegetation mapped as a category X area on a Property Map of Assessable Vegetation (PMAV) to be converted to a category A area with the landholders' agreement. This implements an election commitment and assists landholders who wish to protect remnant or high value regrowth vegetation on their land.

The Bill further amends the *Vegetation Management Act 1999* to clarify that a PMAV can be made for multiples areas or for multiple circumstances on a single lot. This amendment removes any doubt that a PMAV made to made for one or more circumstances on the same area or a different area.

***Providing flexibility in provision of accepted development vegetation clearing codes***

The *Vegetation Management Act 1999* requires the Minister to make accepted development vegetation clearing codes for a number of activities, as well as providing the ability to make accepted development vegetation clearing codes for other activities. To increase flexibility and advance the purpose of the *Vegetation Management Act 1999*, the power to make an accepted development vegetation clearing code will be made discretionary for all activities.

## **Alternative ways of achieving policy objectives**

To fulfil the Government's election commitment, and commitments under the Reef 2050 Plan, the *Vegetation Management Act 1999*, the *Planning Act 2016*, and the *Water Act 2000* must be amended. There is no alternative way to achieve the policy objective.

## **Estimated cost for government implementation**

There will be an increased number of landholder notifications for clearing high value regrowth vegetation on freehold land, Indigenous land, and occupational licences, and regrowth vegetation along watercourses in the additional Great Barrier Reef catchments, in accordance with the accepted development vegetation clearing codes. However, this is largely managed through an automated electronic data system that captures and stores the notifications.

Implementation of the Bill will result in additional administrative, auditing and compliance activities by the Department of Natural Resources, Mines and Energy.

There will be an increase of riverine protection permits under the *Water Act 2000* for the destruction of vegetation that may result in increased assessment costs for the Department of Natural Resource, Mines and Energy.

There will be a reduction in resources required to assess vegetation clearing applications for high value agriculture and irrigated high value agriculture.

Overall, the financial cost of administering the legislation is expected to be cost neutral or covered by prioritising existing resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. The Bill potentially breaches fundamental legislative principles (FLPs) as outlined in section 4 of the *Legislative Standards Act 1992*. The inconsistencies only occur in order to achieve the policy objective of enforcing a balanced vegetation management framework. Justification for these potential breaches of FLPs is outlined below.

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

The proposed Bill may adversely affect the following rights retrospectively:

- the right to clear particular vegetation within the period between the date of introduction and the date of assent for the legislation; and
- the right to have certain applications considered or amended.

Arguably these amendments offend section 4(3)(g) of the *Legislative Standards Act 1992* which provides that legislation have sufficient regard to the rights and liberties of individuals and consequently should not adversely affect rights and liberties, or impose obligations, retrospectively.

Pre-emptive clearing or submission of applications ahead of Parliament enacting reforms to the vegetation management framework can cause significant negative impacts on the environment, business and the community. An increase in certain development applications and requests for maps has already been recorded since media articles alerted the public to potential changes to the vegetation management laws. While the Bill is before Parliament, retrospectivity is necessary to ensure pre-emptive clearing and increases in certain applications do not render the reforms less effective.

There may be some detrimental effects on individual rights in relation to these applications; however the impacts on individual rights are outweighed by the public interest in protecting the long-term health of our biologically diverse State and our world heritage listed Great Barrier Reef, and reducing carbon emissions from vegetation clearing.

The following parts of the Bill have retrospective commencement, from the date the Bill was introduced in Parliament:

- amendment of the *Vegetation Management Act 1999* to regulate and restrict clearing of native vegetation that is:
  - high value regrowth vegetation on freehold land, Indigenous land and occupational licences across the State (similar to restrictions which already apply on leasehold land under the *Land Act 1994* for agriculture and grazing purposes);
  - regrowth vegetation within 50 metres of certain watercourses and drainage features in the Burnett-Mary, Eastern Cape York and Fitzroy Great Barrier Reef catchments (similar to current restrictions applying in priority Great Barrier Reef catchments—Burdekin, Mackay Whitsunday and Wet Tropics); and
  - essential habitat for protected wildlife that is near threatened wildlife;
- amendment of the *Planning Act 2016* to make development for high value agriculture or irrigated high value agriculture prohibited development across the state; and
- amendment of the *Vegetation Management Act 1999* to remove the effect of any decision of the chief executive on applications to approve a landholder's draft area management plan, or accredit an existing planning document as an area management plan.

Any existing applications for clearing of high value agriculture or irrigated high value agriculture that are considered to be a properly made application under the *Planning Act 2016*, prior to the commencement of the retrospective provisions of the Amendment Bill, will continue to be assessed under the current legislation.

Similarly, any Property Map of Assessable Vegetation applications, and any application for approval or amendment of a draft area management plan or existing planning document as an area management plan, that are considered to have been made in accordance with application requirements under the *Vegetation Management Act 1999*, prior to the commencement of the retrospective provisions of the Amendment Bill, will continue to be assessed under the current legislation.

**Does the legislation confer power to enter premises, and search for or seize documents or other property, with a warrant issued by a judge or other judicial officer—*Legislative Standards Act 1992*, section 4(3)(e)?**

The proposed Bill amends the *Vegetation Management Act 1999* to provide a new power of entry that will allow an authorised officer to enter a place where the authorised officer believes on reasonable grounds that a vegetation clearing offence is happening, or has happened. This will allow the authorised officer to enter and re-enter a property without the occupier's consent or a warrant to investigate whether a vegetation clearing offence has happened or is happening at the place. Subsection 30A(4) however requires the authorised officer must, prior to entering the place, provide the occupier with 24 hours written notice of the proposed entry. The provision also requires the authorised officer to cause as little inconvenience and damage as is practicable in the circumstances. This power of entry does not extend to entry of a building used for residential purposes.

This power of entry is necessary to ensure effective and proactive enforcement of vegetation clearing legislation and to prevent serious and often irreversible impacts on biodiversity and land degradation in imminent circumstances, or where obtaining the consent of the occupier to enter the place is not practicable or possible.

Section 30A is consistent with other natural resource legislation in Queensland and other States, including the *Water Act 2000*, the *Land Act 1994*, the *Environmental Protection Act 1994* and the *Local Land Services Act 2013* (New South Wales) to ensure the power can only be used in a way that does not amount to an intrusion on a person's rights which have been granted under an existing right to occupy the land.

**Is the legislation unambiguous and drafted in a sufficiently clear and precise way—*Legislative Standards Act 1992*, section 4(3)(k)?**

The application of restoration notices under clause 134 of the Bill arguably offends section 4(3)(k) of the *Legislative Standards Act 1992* by remaining unclear about the scope of a restoration notice. This is unavoidable due to the nature of the content of restoration notices, which are case specific and in response to a particular instance of unlawful clearing.

Landholders are sufficiently informed in advance of the possibility of receiving a restoration notice as a result of retrospective unlawful clearing resulting from the Bill and will also be aware that the restoration requirements will aim to negate the damage caused by the clearing. Landholders will be informed of the legislative changes to the vegetation management framework, which negates any ambiguity and inconsistency with the fundamental legislative principles.

## **Consultation**

Stakeholders have not been consulted specifically on the Amendment Bill. The aim of the Amendment Bill is to implement the election commitments and reinstate a more sustainable vegetation management framework for Queensland. Throughout 2015, the then Department of Natural Resources and Mines held discussions with key stakeholders including: Queensland Farmers' Federation, AgForce, Canegrowers, World Wildlife Fund, The Wilderness Society and Environmental Defenders Office.

Stakeholders are divided on the treatment of high value agriculture and irrigated high value agriculture. AgForce, Queensland Farmers' Federation are concerned about how the government will support development of the industry. The conservation sector wants an end to broadscale clearing and has been critical of high value agriculture and irrigated high value agriculture clearing projects, especially in northern Queensland.

## **Consistency with legislation of other jurisdictions**

While this Bill is specific to Queensland, all jurisdictions regulate clearing of native vegetation.

For example, the Australian Government regulates actions (including clearing) that will have a significant impact on nine matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999*. Matters of national environmental significance include the Great Barrier Reef Marine Park and listed threatened species and ecological communities.

The New South Wales Government regulates clearing of remnant and protected regrowth vegetation under the *Biodiversity Conservation Act 2016 and Local Land Services Act 2013*. Similar to Queensland, the New South Wales legislation has particular exemptions where approval is not required, and self-assessable codes for low risk activities and activities where approval is required.

All jurisdictions support vegetation clearing regulations with mapping and compliance frameworks.

## Notes on provisions

### Part 1 Preliminary

#### Short title

*Clause 1* states that this Act may be cited as the *Vegetation Management and Other Legislation Amendment Act 2018*.

#### Commencement

*Clause 2* provides for when particular provisions of the Bill will commence.

Clauses 6, 14, 16(11), 37 (other than inserted section 144) and 45 commence on 8 March 2018 when the Bill was introduced to Parliament. Commencing these provisions retrospectively from the date of introduction aims to prevent pre-emptive clearing and deter increases in applications for clearing during the period following introduction of the Bill until its assent. Clearing during this period would significantly reduce the effectiveness of the proposed reforms, allowing continued clearing for agriculture, causing damage to high conservation values, and potentially causing irreversible impacts on wildlife, the Great Barrier Reef and the climate.

The clause also provides that section 35 is to commence on a day to be fixed by proclamation. The remaining provisions of the *Vegetation Management and Other Legislation Amendment Act 2018* will commence on assent.

### Part 2 Amendment of Vegetation Management Act 1999

#### Act amended

*Clause 3* provides that the part amends the *Vegetation Management Act 1999*.

### **Amendment of s19O (Accepted development vegetation clearing code)**

*Clause 4* removes the mandatory requirement on the Minister to make certain accepted development vegetation clearing codes. The clause replaces the specific activities listed in subsections 19O(1)(a) and (b) with more references which cover broad clearing purposes and activities. For example, the reference to sustainable land use includes fodder harvesting.

### **Amendment of s19Q (When code compliant clearing and conduct of native forest practices are accepted development, assessable development or prohibited development for Planning Act)**

*Clause 5* amends section 19Q to ensure consistency of terminology with the *Planning Act 2016*, and to accurately reflect that the development (the subject of a vegetation clearing application) must be for a relevant purpose, as opposed to the application.

### **Insertion of new s19S**

*Clause 6* inserts a new section 19S into part 2, division 4B. The new section provides that if the Minister revokes or replaces an accepted development vegetation clearing code, a notice given under the revoked or replaced accepted development clearing code ceases to be valid, and the activity cannot continue to be carried out under the replaced or revoked code. If the code is replaced, a notification must be made under the replacement code before the activity can be carried out under the replacement code.

### **Amendment of s20AH (Deciding to show particular areas as category B areas)**

*Clause 7* amends section 20AH to correct inconsistencies in terminology between, and the application of, sections 20AH, 20AI and 20CA that align to apply in conjunction. These sections ensure clearing for purposes that aim to retain the remnant status of the regional ecosystem, will continue to be mapped as a remnant regional ecosystem (category B area) on the regulated vegetation management map following clearing.

### **Amendment of s20AI (Deciding to show particular areas as category C areas)**

*Clause 8* amends section 20AI to correct inconsistencies in terminology between, and the application of, sections 20AH, 20AI and 20CA that align to apply in conjunction. These sections ensure areas that undergo clearing for purposes that aim to retain the high value regrowth vegetation status of the regional ecosystem, will continue to be mapped as high value regrowth (a category C area) on the regulated vegetation management map following clearing.

Amendments to clause 8 also insert native forest practice due to the re-regulation of high value regrowth (category C areas) on freehold and Indigenous land.

### **Amendment of s20AL (What is a category A area)**

*Clause 9* inserts a new subsection (f) into section 20AL, which enables the chief executive under section 20C(3) of the *Vegetation Management Act 1999* to make an area a category A area on a Property Map of Assessable Vegetation (PMAV) if the chief executive and the landholder agree to the area being made a category A area, and prior to the chief executive making the area a category A area, the area is a category X area on a PMAV which contains remnant vegetation or high value regrowth vegetation.

#### **Amendment of s20AO (What is a category X area)**

*Clause 10* amends section 20AO to clarify that an area cannot be made a category X area on a Property Map of Assessable Vegetation unless the area is an area where clearing of vegetation has happened.

#### **Amendment of s20B (When chief executive may make PMAV)**

*Clause 11* inserts a new sub section (3) to clarify that the chief executive can make a Property Map of Assessable Vegetation (PMAV) for more than one circumstance listed in subsection (1)(a) to (i), over the same area or different areas. For example, the chief executive may make a PMAV for an area where the area becomes a declared area, while also making a PMAV over part of the same area where the area is subject to a restoration notice.

#### **Amendment of s20CA (Process before making PMAV)**

*Clause 12* amends subsections 20CA(2)(a) to (e) to reorder and correct subsections (2)(a) to (e) to clarify that clearing under an accepted development vegetation clearing code or an area management plan for purposes that aim to retain the remnant status of the regional ecosystem, cannot be made a category X area on a Property Map of Assessable Vegetation (PMAV).

These amendments to subsections (2)(a) to (e) also correct alignment errors with the application of sections 20AH and 20AI. For example, native forest practice has been inserted into the reordered subsection relating to accepted development vegetation clearing codes to ensure areas where clearing for native forest practice has occurred remain regulated as a category B area or a category C area on the regulated vegetation management map.

Subsection 20CA(3) has been amended to clarify that the chief executive cannot make an area a category X area on a PMAV if the clearing event which is the subject of the applicant's request to make the area a category X area on a PMAV, was not lawfully carried out. Subsection 20CA(3) applies to the clearing of vegetation after 29 November 2013 to align with the version map updates on that date. 'Lawfully carried out' has been defined in subsection 20CA(9) to include all lawful clearing under the vegetation management framework.

#### **Amendment of s20D (When PMAV may be replaced)**

*Clause 13* inserts a new subsection reordered as subsection 20D(3)(c). This new subsection allows for a replacement Property Map of Assessable Vegetation (PMAV)

to be made to change a category A area mentioned in subsection 20AL(f) (an area made a category A area by agreement between the chief executive and the landholder) to be either a category B area, category C area or category X area on a PMAV if each of the affected owners agrees to the replacement PMAV.

### **Replacement of pt 2, div 5B (Area management plans)**

*Clause 14* replaces Part 2, division 5B with a new division 5B. The new division does not include the ability for an entity to apply for an area management plan or have an existing planning document accredited as an area management plan. It retains the ability of the chief executive to make area management plans that are for one or more of the purposes / activities listed in subsection 21B(2)(c) provided the area management plan is consistent with the State Policy.

Area management plans are approved for single areas or contiguous areas and are suitable for large areas with similar vegetation management issues (e.g. regional council areas). Area management plans can be approved for a maximum period of 10 years. The ability to apply for an area management plan was introduced in 2011 prior to the introduction of accepted development vegetation clearing codes, to enable landholders to undertake management activities such as fodder harvesting, under a self-assessable framework that included a notification process.

The self-assessable model for area management plans is similar to that of accepted development vegetation clearing codes. Removing the ability for a landholder to apply for an area management plan, or accredit an existing planning document as an area management plan, reinforces the role and function of accepted development vegetation clearing codes being the supported mechanism in which low-risk clearing activities are undertaken. By retaining the ability for the chief executive to make an area management plan, any low risk small scale vegetation management issues outside the scope of an accepted development vegetation clearing code that are necessary or desirable for achieving the purposes of the Act, may still be addressed in a self-assessable framework.

### **Omission of pt 2, div 6, sdiv 1, hdg (Relevant purposes)**

*Clause 15* omits the heading of part 2, division 6, subdivision 1.

### **Amendment of s22A (Particular vegetation clearing applications may be assessed)**

*Clause 16* amends the heading of, and subsections within, section 22A to align with the planning framework terminology and to clarify that it is the development (the subject of the vegetation clearing application) which must be for a relevant purpose, not the vegetation clearing application.

Subsections 22A(2)(k) and (l) are omitted to remove high value agriculture clearing and irrigated high value agriculture clearing as relevant purposes under the *Vegetation Management Act 1999* for which a development application can be made under the *Planning Act 2016*.

The clause amends subsection 22A(2)(g) to change the reference to the activity 'thinning' to 'managing thickened vegetation'. This change in terminology better describes the intent of the activity under the *Vegetation Management Act 1999*.

Subsection 22A(2B)(a) has been amended to insert the land tenures associated with category C areas, including the re-regulation of category C areas on freehold land and Indigenous land, and the regulation of category C areas on land subject to an occupation licence under the *Land Act 1994*.

### **Insertion of new s22B**

*Clause 17* inserts a new section 22B into part 2, division 6 which provides the requirements applicants must demonstrate when submitting an application to manage thickened vegetation.

These requirements include demonstrating the proposed location and extent of the proposed clearing, the proposed methods, evidence the regional ecosystem has thickened, and limitations based on regional ecosystems and clearing restrictions prescribed under a regulation. These requirements ensure areas where managing thickened vegetation is proposed are appropriate for the activity because they have thickened for the particular regional ecosystem. The requirements also ensure that the proposed methods and clearing will result in the restoration of the regional ecosystem to the floristic composition and densities typical of the regional ecosystem in the bioregion.

### **Omission of pt 2, div 6, sdiv 1A (Particular vegetation clearing applications)**

*Clause 18* omits Part 2, Division 6, Subdivision 1A. The subdivision provided the requirements and considerations for applications for high value agriculture clearing and irrigated high value agriculture clearing. This omission reflects amendments under Clause 16 which omitted high value agriculture clearing and irrigated high value agriculture clearing as being relevant purposes under subsection 22A(2).

### **Amendment of s28 (Failure to return identity card)**

*Clause 19* changes the maximum penalty units for failing to return an identity card where a person ceases to be an authorised officer, from 10 to 50 penalty units. This brings the maximum penalty in line with other natural resource legislation, such as the *Water Act 2000*.

### **Amendment of s30 (Power to enter places)**

*Clause 20* amends section 30(1)(c)(i) to provide a power for an authorised officer to enter a place to monitor compliance with development that is the clearing of vegetation under an enforceable undertaking, an accepted development vegetation clearing code or an area management plan.

This amendment also reflects amendments under Clauses 21 and 35 by including entry authorised under section 30A (Power to enter place on reasonable belief of

unlawful clearing), and enabling an authorised officer to enter a place to monitor activities associated with an enforceable undertaking.

### **Insertion of new s30A**

*Clause 21* inserts a new section 30A in part 3, division 1, subdivision 2 which enables an authorised officer who believes on reasonable grounds that a vegetation clearing offence is happening at a place, or has happened at a place, to enter and re-enter a property without the occupier's consent or a warrant to investigate. Subsection 30A(4) however requires the authorised officer must, prior to entering the place, provide the occupier with 24 hours written notice of the proposed entry. The provision also requires the authorised officer to cause as little inconvenience and damage as is practicable in the circumstances. This power of entry does not extend to entry of a building used for residential purposes.

This power of entry is necessary to ensure effective and proactive enforcement of vegetation clearing legislation and to prevent serious and often irreversible impacts on biodiversity and land degradation in imminent circumstances, or where obtaining the consent of the occupier to enter the place is not practicable or possible.

Section 30A is consistent with other natural resource legislation in Queensland and other States, including the *Water Act 2000*, the *Land Act 1994*, the *Environmental Protection Act 1994* and the *Local Land Services Act 2013* (New South Wales) to ensure the power can only be used in a way that does not amount to an intrusion on a person's rights which have been granted under an existing right to occupy the land.

### **Amendment of s37 (Failure to help authorised officer)**

*Clause 22* changes the maximum penalty units where a person fails to give reasonable help to an authorised officer, from 50 to 200 penalty units. This brings the maximum penalty in line with other natural resource legislation, such as the *Water Act 2000*.

### **Amendment of s38 (Failure to give information)**

*Clause 23* changes the maximum penalty units where a person fails to comply with a requirement from an authorised officer and does not have a reasonable excuse, from 50 to 200 penalty units. This brings the maximum penalty in line with other natural resource legislation, such as the *Water Act 2000*.

### **Amendment of s39 (Seizing evidence)**

*Clause 24* amends section 39 to reflect the amendments under Clause 21. This amendment provides an authorised officer entering a place under section 30A with the power to seize evidence consistent with the purpose of the entry stated in the written notice to the occupier.

### **Amendment of s51 (Power to require information)**

*Clause 25* changes the maximum penalty units for failing to give information to an authorised officer about a vegetation clearing offence, from 50 to 200 penalty units.

This creates a more appropriate level of deterrence for non-compliance and also aligns the *Vegetation Management Act 1999* with other Queensland natural resources legislation, such as the *Water Act 2000*.

#### **Amendment of s53 (Failure to certify copy of document)**

*Clause 26* changes the maximum penalty units for a person failing to comply with a document certification requirement, unless the person has a reasonable excuse, from 50 to 200 penalty units. This brings the maximum penalty in line with other natural resource legislation, such as the *Water Act 2000*.

#### **Amendment of s54 (Failure to produce document)**

*Clause 27* changes the maximum penalty for a person failing to comply with a document production requirement, unless the person has a reasonable excuse, from 50 to 200 penalty units. This brings the maximum penalty in line with other natural resource legislation, such as the *Water Act 2000*.

#### **Amendment of s54A (Stop work notice)**

*Clause 28* amends section 54A to make it clear that a stop work notice may be issued in situations where a person is either currently committing, or has committed a vegetation clearing offence, and there is a reasonable belief that further clearing will continue or that evidence of the clearing will be destroyed if a stop work notice is not issued.

Where relevant, these amendments reflect section 168 (Enforcement Notices) of the *Planning Act 2016*. The amendments will provide for more timely and effective compliance action, and enforcement of vegetation management laws.

The clause amends the maximum penalty for failing to comply with a stop work notice, from 1665 to 4500 penalty units. This creates a more appropriate level of deterrence for recidivist behaviour in circumstances where a person continues to ignore the direction and continues to commit the offence. It also aligns the *Vegetation Management Act 1999* with the penalty level for contravening an enforcement notice under the *Planning Act 2016*, which serves the same purpose for stopping the continuance of a development offence for the clearing of native vegetation.

#### **Amendment of s54B (Restoration notice)**

*Clause 29* changes the maximum penalty for failing to comply with a restoration notice, from 1665 to 4500 penalty units. This creates a more appropriate level of deterrence for aggravated non-compliance, in circumstances where a person continues to ignore the direction to remedy the original clearing offence. This increase of the maximum penalty units ensures the *Vegetation Management Act 1999* is consistent with the penalty units for contravening an enforcement notice under the *Planning Act 2016*, particularly given both restoration notices under the *Vegetation Management Act 1999* and enforcement notices under the *Planning Act 2016* serve the same purpose.

**Amendment of s58 (False or misleading statements)**

*Clause 30* changes the maximum penalty for giving a false or misleading statement to an authorised officer, from 50 to 500 penalty units. This creates a more appropriate level of deterrence for non-compliance and also aligns the *Vegetation Management Act 1999* with other Queensland natural resources legislation, such as the *Water Act 2000*. The substantive increase of penalty units for this offence reflects the nature of this offence being an offence involving fraudulent or deceptive behaviour.

**Amendment of s59 (False or misleading documents)**

*Clause 31* changes the maximum penalty for giving a false or misleading document to an authorised officer, from 50 to 500 penalty units. This creates a more appropriate level of deterrence for non-compliance and also aligns the *Vegetation Management Act 1999* with other Queensland natural resources legislation, such as the *Water Act 2000*. The substantive increase of penalty units for this offence reflects the nature of this offence being an offence involving fraudulent or deceptive behaviour.

**Amendment of s59A (Impersonation of authorised officer)**

*Clause 32* changes the maximum penalty for pretending to be an authorised officer, from 50 to 200 penalty units. This creates a more appropriate level of deterrence for non-compliance and also aligns the *Vegetation Management Act 1999* with other Queensland natural resources legislation, such as the *Water Act 2000*.

**Amendment of s60 (Obstructing an authorised officer)**

*Clause 33* changes the maximum penalty for obstructing an authorised officer in the exercise of a power, from 100 to 500 penalty units. This creates a more appropriate level of deterrence for non-compliance and also aligns the *Vegetation Management Act 1999* with other Queensland natural resources legislation, such as the *Water Act 2000*.

**Amendment of s63A (Review decision)**

*Clause 34* amends section 63A(3) to align with the replacement of Part 2, division 5B under clause 14.

**Insertion of new pt 4, div 5**

*Clause 35* inserts a new part 4, division 5 to provide for enforceable undertakings.

**New section 68CC Chief executive may accept enforceable undertakings**

New section 68CC provides a new compliance tool (an enforceable undertaking) to expand the compliance options available under the *Vegetation Management Act 1999* and the *Planning Act 2016* to address unlawful clearing. It is a voluntary tool whereby a person can request the chief executive enter into a written agreement in relation to a contravention, or alleged contravention, by the person under the *Vegetation Management Act 1999* or *Planning Act 2016*. Enforceable undertakings commit the

alleged offender to deliver on agreed environmental outcomes, for example: revegetating an area connecting a strategic environmental corridor; contributing to environmental research; or implementing education strategies to improve a broader understanding of the vegetation management framework and better land management practices.

These enforceable undertakings can be used as an alternative to prosecution or a remedial tool (for example where a restoration notice is not practical or appropriate). Section 68CC provides that an enforceable undertaking must only be accepted by the chief executive if the enforceable undertaking secures compliance with, or advances the purposes of, the *Vegetation Management Act 1999*. An enforceable undertaking can be accepted by the chief executive at any time before or during proceedings in relation to the alleged contravention. If proceedings have started when the chief executive accepts the enforceable undertaking, the chief executive will take all reasonable steps to discontinue the proceedings noting the State is bound by model litigant principles.

If an enforceable undertaking is accepted by the chief executive, the chief executive must publish the details of the undertaking the chief executive considers appropriate on the department's website. All material published will be compliant with the *Information Privacy Act 2009*.

### **New section 68CD Effect of enforceable undertakings**

New section 68CD specifies the effect of an accepted enforceable undertaking. An undertaking only takes effect once the administering authority has given the person who made the undertaking the notice of the decision to accept the undertaking.

Subsection 68CD(2) provides that no proceedings for contravention or alleged contravention may be brought in relation to the contravention or the alleged contravention which is the subject of the enforceable undertaking if the person is complying or has complied with the enforceable undertaking.

If however the person does not comply with the enforceable undertaking, section 68CD does not prevent the chief executive from commencing proceedings for the original offence (the contravention or alleged contravention the subject of the enforceable undertaking), and the contravention of the enforceable undertaking.

Subsection 68CD(3) confirms the making of an enforceable undertaking does not constitute admission of guilt in relation to the contravention or alleged contravention which is the subject of the enforceable undertaking.

### **New section 68CE Withdrawal or variation of enforceable undertakings**

New section 68CE provides for withdrawal or variation of an enforceable undertaking. The person who has made the enforceable undertaking may at any time withdraw or vary the enforceable undertaking with the written agreement of the chief executive. This however does not extend to a variation of the enforceable undertaking to provide for a different contravention or alleged contravention.

**New section 68CF Amending enforceable undertaking-with agreement**

New section 68CF provides that the chief executive may amend an enforceable undertaking only with the written agreement of the person who made the undertaking.

**New section 68CG Amending enforceable undertaking-clerical or formal errors**

New section 68CG provides that the chief executive may only amend an enforceable undertaking to correct a clerical or formal error if the amendment does not adversely affect the interests of the person who made the undertaking or anyone else, and the person has been given written notice of the amendment.

**New section 68CH Amending or suspending enforceable undertaking-after show cause process**

New section 68CH enables the chief executive to amend or suspend an enforceable undertaking for one of the circumstances listed in subsection 68CH1(a) to (d). For example, the enforceable undertaking was accepted relying on a representation or declaration that was materially false or misleading.

The chief executive must first afford the person who made the undertaking with natural justice by providing the person with a notice that allows the person to make written representations to show why the action should not be taken. The chief executive must give the person 20 business days to make the representations, and must consider any written representations made during this time. If after considering all the written representations the chief executive still believes a ground exists to take the action, the chief executive may take the action. Within 10 days after making a decision to take the action, the chief executive must give the person an information notice about the decision. By the giving of an information notice, the decision is then subject to review under Part 4, Divisions 1 (Internal reviews by chief executive) and 1A (External review by Queensland Civil and Administrative Tribunal) of the *Vegetation Management Act 1999*.

If at any stage the chief executive decides to not take the action, the chief executive must promptly give the person written notice of the decision.

**New section 68CI Contravention of enforceable undertaking**

New section 68CI applies if a person contravenes an enforceable undertaking. It provides that the maximum penalty for wilfully contravening an undertaking is 6,250 penalty units, otherwise the maximum penalty is 4,500 penalty units. The maximum penalty units are reflective of the offence being an aggravation of the original non-compliance, or alleged non-compliance, of the substantive offence.

Under s68CI(2) the chief executive may apply to a Magistrates Court for an order if a person contravenes an enforceable undertaking regardless of whether the person is prosecuted for the offence of contravening the enforceable undertaking. This means that the chief executive may seek an order from the Magistrates Court sitting in criminal jurisdiction to make an order directing the person to comply with the enforceable undertaking, or discharging the undertaking. Also the court may make any other order

the court considers just and appropriate, including orders for the person to comply with the enforceable undertaking, or cost orders relating to investigating the contravention of the enforceable undertaking, and monitoring compliance with the enforceable undertaking in the future.

### **Renumbering of pt 6, div 13 and ss 133-135**

*Clause 36* renumbers part 6, division 13 as division 12 and also renumbers sections 133 to 135 as 125 to 127.

### **Insertion of new pt 6, div 13**

*Clause 37* inserts a new division 13 into part 6 to provide a number of transitional provisions for the amendment Act.

## **Division 13 Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2018**

### **New section 128 definitions for division**

A new section provides a definition of 'area management plan', 'date of assent', 'interim period', 'near threatened wildlife' and 'unlawful clearing' for the purposes of the division.

'Area management plan' is an area management plan that was in force immediately before 8 March 2018.

'Date of assent' is the date of assent of the *Vegetation Management and Other Legislation Amendment Act 2018*.

'Interim period' defines the period starting 8 March 2018 and ending immediately before the date of assent.

'Near threatened wildlife' is as defined in the *Nature Conservation Act 1992*, schedule.

'Unlawful clearing' is development during the interim period that has become unlawful as a result of the *Vegetation Management and Other Legislation Amendment Act 2018* commencing.

### **New section 129 Applications under s20C made but not decided before 8 March 2018**

New section 129 provides that applications for a Property Map of Assessable Vegetation (PMAV) made but not decided before 8 March 2018, must be dealt with and decided by the chief executive as if the *Vegetation Management and Other Legislation Amendment Act 2018* had not commenced.

### **New section 130 Applications under s20C made during the interim period**

New section 130 requires that if the chief executive receives a Property Map of Assessable Vegetation (PMAV) application during the interim period that requests an area be made a category X area on a PMAV, which would, after 8 March 2018, become a category C area or category R area and the chief executive makes a decision to show that area as a category X area on a PMAV during the interim period, then the decision will have no effect once the *Vegetation Management and Other Legislation Amendment Act 2018* commences. In these circumstances, the chief executive may reconsider and decide the application, and remake the PMAV after the date of assent.

### **New section 131 Proposed regulated vegetation management map**

New section 131 requires the chief executive to publish a map during the interim period—a proposed regulated vegetation management map, on the Department of Natural Resources, Mines and Energy website. The map shows proposed category C areas and proposed category R areas. The chief executive may also republish the map during the interim period.

On the 8 March 2018, the proposed regulated vegetation management map is taken to be the regulated vegetation management map.

The map will assist landholders to determine what new requirements (including any retrospective requirements) may apply to their property during the interim period and on the commencement of the *Vegetation Management and Other Legislation Amendment Act 2018*.

### **New section 132 How definition *high value regrowth vegetation* and codes apply during and after interim period**

New section 132 provides that during the interim period, the definition of high value regrowth vegetation is taken to include a reference to freehold land, indigenous land or land which is the subject of an occupation licence under the *Land Act 1994*.

It also provides that from 8 March 2018, the ‘Managing category C regrowth vegetation’ accepted development vegetation clearing code applies to high value regrowth vegetation on freehold land, Indigenous land and occupational licences under the *Land Act 1994* in the same way it applies to vegetation located on a lease issued under the *Land Act 1994* for agriculture and grazing purposes. This extended application of this code applies until the Minister remakes the code under section 190 of the *Vegetation Management Act 1999* after the assent of the *Vegetation Management and Other Legislation Amendment Act 2018*.

Similarly, from 8 March 2018, the ‘Managing a native forest practice’ accepted development vegetation clearing code” applies to high value regrowth vegetation on freehold land and indigenous land in the same way it applies to remnant vegetation on freehold land and indigenous land until the Minister remakes the code under section 190 of the *Vegetation Management Act 1999* following assent of the *Vegetation Management and Other Legislation Amendment Act 2018*.

The section also provides that from 8 March 2018, an area management plan is taken to apply to high value regrowth vegetation on freehold land and Indigenous land in the same way it applies to high value regrowth vegetation located on a lease issued under the *Land Act 1994* for agriculture and grazing purposes until the end of the plan period for the plan.

**New section 133 How definition *regrowth watercourse and drainage feature area* applies during and after the interim period**

This new section provides that during the interim period, the definition of regrowth watercourse and drainage feature area is also taken to include an area located within 50 metres of a watercourse or drainage feature located in the Burnett-Mary, Eastern Cape York and Fitzroy Great Barrier Reef catchments identified on the vegetation management watercourse and drainage feature map.

It also provides that from 8 March 2018, the 'Managing category R regrowth vegetation' accepted development vegetation clearing code applies to the Burnett-Mary, Eastern Cape York and Fitzroy catchments in the same way it applies to the catchments in the definition regrowth watercourse and drainage feature area, until the Minister remakes the code under section 190 *Vegetation Management Act 1999* following assent of the *Vegetation Management and Other Legislation Amendment Act 2018*.

The section also provides that an area management plan will apply to the Burnett-Mary, Eastern Cape York and Fitzroy catchments in the same way it applies to the catchments mentioned in the definition of regrowth watercourse and drainage feature area until the end of the plan period for the plan.

**New section 134 Restoration and other requirements after unlawful clearing**

This new section states that the chief executive may give a person a restoration notice in relation to unlawful clearing that has occurred during the interim period, which is the period between introduction and immediately before the date of assent of the *Vegetation Management and Other Legislation Amendment Act 2018*. Additional requirements may be applied to the restoration notice, over and above the requirements contained in subsection 54B(3), which may include the restoration of additional land that was not the land subject of the unlawful clearing. The chief executive must have regard to the environmental offsets policy under the *Environmental Offsets Act 2014* when deciding the additional requirements of the restoration notice.

For the purposes of this section, 'unlawful clearing' is clearing that becomes a development offence under the *Planning Act 2016* because of an amendment to the *Vegetation Management Act 1999* or the *Planning Act 2016* by the *Vegetation Management and Other Legislation Amendment Act 2018*. New section 332 provides that unlawful clearing is not an offence under the *Planning Act 2016* during the interim period.

### **New section 135 No compensation payable**

New section establishes that no compensation will be payable by the State as a consequence of any of the provisions in this division that applies in relation to the interim period.

### **New section 136 Area management plans that are to remain in force for 2 years**

New section 136 commences the phasing out of landholder-driven area management plans as a mechanism for managing low-risk clearing that is or may be managed by the accepted development vegetation clearing codes.

This new section provides that an area management plan relating to the clearing for encroachment, thinning or fodder harvesting, remains in force until 8 March 2020 only. This means that despite any end of the plan period mentioned in an area management plan, these area management plans will cease on 8 March 2020. Section 136 does not however apply to an area management plan made by the chief executive under section 20UA of the *Vegetation Management Act 1999*. Thinning has the meaning given by the *Vegetation Management Act 1999* immediately before 8 March 2018.

An entity who has provided notice of an intention to clear under a relevant area management plan prior to 8 March 2018 may continue to clear under the plan while it remains in force. However, no further notifications to clear can be made after 8 March 2018.

The two year period recognises that, in some instances, the clearing requirements for encroachment, thinning and fodder harvesting under current area management plans may not be consistent with the best available science. The two year period also recognises the longer-term security and business planning benefits for landholders provided by area management plans and as such, allows ongoing clearing to occur (consistent with the area management plan) for landholders actively using the area management plan.

### **New section 137 Area management plans that are to remain in force until the end of the plan period for the plan**

New section 137 enables landholders to continue to notify and to clear vegetation under an area management plan for the area management plan's stated period, where the area management plan relates to controlling non-native plants or declared pests; ensuring public safety; relevant infrastructure activities; and necessary environmental clearing.

This section supports the transition from having multiple mechanisms under which low-risk clearing may occur, to having one primary mechanism-the accepted development vegetation clearing codes.

### **New section 138 Amendment of area management plans**

New section 138 enables the chief executive to amend landholder-driven area management plans (area management plans made by the chief executive under

section 20UA of the *Vegetation Management Act 1999*) by agreement with the applicant. It also provides that the chief executive can amend an area management plan without the applicant's agreement if the chief executive considers the area management plan is not consistent with the State policy. Written notice must be provided to the applicant of the area management plan if the chief executive amends an area management plan due to inconsistency with the State policy.

### **New section 139 Revocation of particular area management plans**

New section 139 revokes the area management plan made by the chief executive under section 20UA of the *Vegetation Management Act 1999* called the 'Managing fodder harvesting Mulga Lands Fodder Area Management Plan' (the Mulga Lands Fodder AMP) effective 8 March 2018. A notice of intended clearing under the Mulga Lands Fodder Area Management Plan ceases to have effect on 8 March 2018, and no further clearing can be carried out under the Mulga Lands Fodder Area Management Plan from 8 March 2018.

The self-assessable model for area management plans is similar to that of accepted development vegetation clearing codes. Revoking the Mulga Lands Fodder Area Management Plan reinforces the role and function of the accepted development vegetation clearing code for fodder harvesting being the supported mechanism in which low-risk clearing activities are undertaken.

Landholders can continue to undertake self-assessable clearing under the accepted development vegetation clearing code for fodder harvesting, or alternatively, apply for a development permit under the *Planning Act 2016*.

### **New section 140 Applications under pt 2, div 5B, sdiv 2 made during the interim period**

New section 140 applies to applications made to the chief executive during the interim period to approve a landholder-driven draft area management plan, or accredit an existing planning document as an area management plan. Any decision by the chief executive on these applications during the interim period will have no effect on assent. The interim period is the period between commencing 8 March 2018 and ending immediately before the date of assent.

### **New section 141 Proposed map showing essential habitat**

This new section requires the chief executive to publish a map during the interim period showing areas of proposed essential habitat for protected wildlife and near threatened wildlife on the Department of Natural Resources, Mines and Energy website. The chief executive may republish the map during the interim period.

The section provides that for making the map showing areas of proposed essential habitat, protected wildlife under the *Vegetation Management Act 1999* is taken to include near threatened wildlife. The map will assist landholders to determine what new requirements may apply to their property on the commencement of the *Vegetation Management and Other Legislation Amendment Act 2018*, which in turn can help guide clearing to ensure it does not become unlawful following commencement.

The proposed map is taken to be the essential habitat map on 8 March 2018.

### **New section 142 Provision about essential habitat**

New section 142 provides that during the interim period a reference to essential habitat for protected wildlife in an accepted development vegetation clearing code or area management plan includes essential habitat for near threatened wildlife.

It also provides that until the accepted development vegetation clearing codes are remade following the date of assent of the *Vegetation Management and Other Legislation Amendment Act 2018*, an accepted development vegetation clearing code applies in relation to near threatened wildlife as if that wildlife were protected wildlife.

Similarly, an area management plan applies in relation to near threatened wildlife as if that wildlife were protected wildlife until the end of the plan period for the plan.

### **New section 143 Application of particular instruments**

New section 143 applies to development for which an environmental offset may be required under State Code 16: (Native vegetation clearing) of the State development assessment provisions under the *Planning Act 2016*.

The section also provides that the reference to an animal or a plant that is endangered wildlife or vulnerable wildlife includes near threatened wildlife under section (2)(3)(b), schedule 2 of the *Environmental Offsets Regulation 2014*.

Under subsection 143(4) of the new section, it is stated that the Queensland Environmental Offsets Policy prescribed under the *Environmental Offsets Act 2014*, section 12(1) applies as if section 4.3.6 of the policy provided for a multiplier of 4 for essential habitat for near threatened wildlife and table one, in section 4.3.13.2 of the policy applies to near threatened wildlife.

This new section also provides that a reference in the *Environmental Offsets Regulation 2014*, schedule 2, to the essential habitat map includes the map mentioned in new section 141 of the *Vegetation Management and Other Legislation Amendment Act 2018*.

Subsections 143(2) and (4) only apply until the provisions mentioned in each subsection are amended to provide for their application to near threatened wildlife.

### **New section 144 Transitional provision for ss 20AH and 20AI**

New section 144 enables the chief executive, in certifying the regulated vegetation management map under sections 20AH(c) and 20AI(a), to show an area as category B area or category C area respectively, if the areas have been subject to thinning under an accepted development vegetation clearing code. 'Thinning' has the meaning provided by the *Vegetation Management Act 1999* immediately before the date of assent of the *Vegetation Management and Other Legislation Amendment Act 2018*.

New section 144 also enables the chief executive to continue to consider thinning under section 20CA(2)(c), where ‘thinning’ has the meaning provided by the *Vegetation Management Act 1999* immediately before the date of assent of the *Vegetation Management and Other Legislation Amendment Act 2018*.

### **Amendment of schedule (Dictionary)**

Clause 38 makes a number of amendments to the dictionary of the *Vegetation Management Act 1999* to ensure it is consistent with the *Vegetation Management and Other Legislation Amendment Act 2018*.

The definitions for ‘high value agriculture clearing’ and ‘irrigated high value agriculture clearing’ are omitted as they are being removed as relevant clearing purposes under the *Vegetation Management Act 1999*.

The definition of ‘high value regrowth vegetation’ is amended to include vegetation located on freehold land, indigenous land, and land subject to an occupation licence under the *Land Act 1994*. These new areas are in addition to the existing leasehold land for leases issued under the *Land Act 1994* for agriculture or grazing purposes. This gives effect to the policy objective of re-regulating high value regrowth vegetation on freehold land, indigenous land and on occupation licences.

The definition of ‘high value regrowth vegetation’ is also amended from vegetation that has not been cleared since 31 December 1989, to vegetation that has not been cleared (other than for relevant clearing activities) for at least 15 years, if the area is an endangered regional ecosystem, an of concern regional ecosystem or a least concern regional ecosystem. This gives effect to the policy objective of aligning the high value regrowth definition with the ‘high conservation value’ international definition advocated by the High Conservation Resource Network. See new definition for ‘relevant clearing activities’ below.

A new definition of ‘managing thickened vegetation’ replaces the previous definition for “thinning” to ensure the new definition is consistent with the *Vegetation Management and Other Legislation Amendment Act 2018*.

The definition of ‘owner’ is amended to align with the removal of the ability for landholders to apply for an area management plan, or to have planning documents accredited as an area management plan.

‘Relevant clearing activities’ is a new definition which includes fodder harvesting, managing thickened vegetation, clearing of encroachment, controlling non-native plants or declared pests, necessary environmental clearing, and managing, felling and removing trees for an ongoing forestry business.

The definition of ‘vegetation clearing provision’ is amended to add a provision which identifies the clearing of vegetation that happened before the repeal of the *Sustainable Planning Act 2009*—sections 578(1), 580(1), 581(1), 582 or 594(1).

The fodder species under the definition of ‘fodder harvesting’ are amended in line with current science.

The definition of 'forest practice' is amended to ensure forestry practices in native forests must be consistent with the accepted development vegetation clearing code for native forest practice.

The definition of 'protected wildlife' is amended to include near threatened wildlife. This gives effect to the policy objective of aligning the high value regrowth definition with the 'high conservation value' international definition advocated by the High Conservation Resource Network.

The definition of 'regrowth watercourse and drainage feature area' is amended to apply to the Burnett-Mary, Eastern Cape York, and Fitzroy Great Barrier Reef catchments, in addition to the Burdekin, Mackay Whitsunday and Wet Tropics catchments. This amendment gives effect to the policy objective of broadening protection of regrowth vegetation in watercourse areas to these additional Great Barrier Reef catchments.

### **Part 3      Amendment of Planning Act 2016**

#### **Act amended**

*Clause 39* provides that this part amends the *Planning Act 2016*.

#### **Replacement of ch 8, hdg (Transitional provisions and repeal)**

*Clause 40* changes the heading of chapter 8 to 'Repeal and transitional provisions'.

#### **Relocation and renumbering of ch 8, pt 2 and s 325**

*Clause 41* relocates and renumbers chapter 8, part 2 as chapter 8, part 1 to provide transitional provisions required as a consequence of the *Vegetation Management and Other Legislation Amendment Act 2018*. Section 325 is also renumbered as section 284A.

#### **Renumbering of ch 8, pt 1 (Transitional provisions for repeal of Sustainable Planning Act 2009)**

*Clause 42* renumbers chapter 8, part 1 as chapter 8, part 2 to provide transitional provisions required as a consequence of the *Vegetation Management and Other Legislation Amendment Act 2018*.

#### **Renumbering of ch 8, pt 1A (Transitional and saving provisions for Waste Reduction and Recycling Amendment Act 2017)**

*Clause 43* renumbers chapter 8, part 1A as chapter 8, part 3 to provide transitional provisions required as a consequence of the *Vegetation Management and Other Legislation Amendment Act 2018*.

### **Renumbering of ss 324A-324D**

*Clause 44* renumbers sections 324A to 324D as sections 325 to 328 to provide for transitional provisions required as a consequence of the *Vegetation Management and Other Legislation Amendment Act 2018*.

### **Insertion of new ch 8, pt 4**

*Clause 45* inserts a new part 4 into chapter 8, which contains transitional provisions for the *Vegetation Management and Other Legislation Amendment Act 2018*.

### **Part 4 Transitional provisions for Vegetation Management and Other Legislation Amendment Act 2018**

#### **New section 329 Definitions for part**

New section 329 provides definitions necessary for interpreting the new part 4 in chapter 8. For this part, unlawful clearing refers to clearing that constitutes a clearing offence as a consequence of the commencement of the *Vegetation Management and Other Legislation Amendment Act 2018*.

#### **New section 330 Development applications made but not decided before commencement**

New section 330 provides that development applications for:

1. high value agriculture and irrigated high value agriculture; or
2. assessable development under section 43(1)(a) of the *Planning Act 2016* for the clearing of vegetation that includes essential habitat for protected wildlife that is near threatened wildlife;

that were properly made under the *Planning Act 2016* and undecided before 8 March 2018, must continue to be dealt with and decided under the *Planning Act 2016* as in force before 8 March 2018.

In effect, this section enables relevant applications to continue to be assessed and decided under the *Planning Act 2016*, and will not be affected by amendments resulting from the *Vegetation Management and Other Legislation Amendment Act 2018*.

#### **New section 331 Certain development approvals not affected**

This new section provides that a development approval given before 8 March 2018 will not be affected by amendments resulting from the *Vegetation Management and Other Legislation Amendment Act 2018*.

#### **New section 332 Unlawful clearing not an offence during interim period**

This section provides that unlawful clearing is not an offence against section 162 (Carrying out prohibited development) or section 163 (Carrying out assessable development without permit) of the *Planning Act 2016* to the extent that the offence became unlawful clearing on the commencement of the *Vegetation Management and*

*Other Legislation Amendment Act 2018*. Accordingly, it will not be an offence under the *Planning Act 2016* if this clearing is undertaken, however a restoration notice may be given under the *Vegetation Management Act 1999* for the unlawful clearing.

### **New section 333 Development application for certain operational works during interim period**

New section 333 provides that a development application for operational works made during the interim period for high value agriculture clearing or irrigated high value agriculture clearing, will, on assent of the *Vegetation Management and Other Legislation Amendment Act 2018*, be taken not to have been properly made, and any decision on the development application will have no effect. This is because on assent, high value agriculture and irrigated high value agriculture clearing will no longer be a relevant purpose under the *Vegetation Management Act 1999* for which clearing can occur under the vegetation management framework.

### **New section 334 Development application for certain material change of use during interim period**

New section 334 provides that development applications made during the interim period for a material change of use that involves clearing for high value agriculture and irrigated high value agriculture, where the chief executive of the *Planning Act 2016* is a referral agency, will, on assent of the *Vegetation Management and Other Legislation Amendment Act 2018*, be taken not to have been properly made, and any decision on the development application will have no effect. This is because on assent, high value agriculture and irrigated high value agriculture clearing will no longer be a relevant purpose under the *Vegetation Management Act 1999* for which clearing can occur under the vegetation management framework.

## **Part 4 Amendment of Planning Regulation 2017**

### **Regulation amended**

*Clause 46* provides that this part amends the Planning Regulation 2017.

### **Amendment of sch 10 (Development assessment)**

*Clause 47* amends schedule 10, part 3, division 3, table 1, item 5(c)(iii), to remove the term ‘thinning’ and replace it with the term ‘managing thickened vegetation’. This amendment ensures the new term ‘managing thickened vegetation’ used in the *Vegetation Management and Other Legislation Amendment Act 2018* is consistent with the term used in the Planning Regulation 2017.

### **Amendment of sch 21 (Exempt clearing work)**

*Clause 48* inserts a new section 19A in schedule 21, part 1, section 1. The new provision removes doubt that clearing in accordance with a restoration notice under

the *Vegetation Management Act 1999* or an enforcement notice under the *Planning Act 2016* does not require any further approval and will be exempt clearing work.

The clause also amends schedule 21, part 2, section 8(b)(iv) and (v) to expand the exemption for urban purposes in an urban area, and the exemption for routine management, on land subject to a licence or permit under the *Land Act 1994*, to include 'regulated regrowth vegetation'. The expansion of these exemptions are necessary given the regulation of high value regrowth (category C) on occupational licences issued under the *Land Act 1994*, and to ensure the consistency of application of exemption across various tenures.

## **Part 5      Amendment of Water Act 2000**

### **Act amended**

*Clause 49* provides that this part amends the *Water Act 2000*.

### **Amendment of ch 2, pt 4, div 1, hdg (Granting permits for excavating or placing fill in a watercourse, lake or spring)**

*Clause 50* amends the heading to include 'destroying vegetation'. This reflects that the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring is being reinstated by the *Vegetation Management and Other Legislation Amendment Act 2018*.

### **Amendment of s 218 (Applying for permit to excavate or place fill in a watercourse, lake or spring)**

*Clause 51* amends section 218 of the *Water Act 2000* to allow a person to apply to the chief executive for a riverine protection permit to destroy vegetation in a watercourse, lake or spring. Currently this section only requires a person to apply for a riverine protection permit to excavate or place fill in a watercourse, lake or spring. This clause reinstates its application to destruction of vegetation. Vegetation is defined under the *Water Act 2000* to mean native plants including trees, shrubs, bushes, seedlings, saplings and reshoots and the destruction of vegetation refers to the removing, clearing, killing, cutting down, felling, ringbarking, digging up, pushing over, pulling over or poisoning of the vegetation.

### **Replacement of s 220 (Criteria for deciding application)**

*Clause 52* replaces section 220 to include criteria relevant for deciding an application for a riverine protection permit to destroy vegetation in a watercourse, lake or spring. This reflects that the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring is being reinstated by the *Vegetation Management and Other Legislation Amendment Act 2018*.

### **Amendment of s 746 (Power to enter land to monitor compliance)**

*Clause 53* amends section 746 of the *Water Act 2000* to expand its application to allow an authorised officer to enter land of a person authorised to destroy vegetation (other resource) to monitor compliance. For example, enter land to calculate or measure the amount of vegetation destroyed.

The term ‘other resources’ is defined under the *Water Act 2000* to mean quarry material and riverine vegetation.

This reflects the reinstatement by the *Vegetation Management and Other Legislation Amendment Act 2018* of the application of the riverine protection provisions to the destruction of vegetation.

### **Amendment of s 748 (Power to enter land to search for unauthorised activities)**

*Clause 54* amends section 748 of the *Water Act 2000* to allow an authorised officer to enter land to assess whether the unauthorised destruction of other resources has occurred, or is occurring. The term ‘other resources’ is defined under the *Water Act 2000* to mean quarry material and riverine vegetation. This amendment reflects the reinstatement by the *Vegetation Management and Other Legislation Amendment Act 2018* of the application of the riverine protection provisions to the destruction of vegetation.

### **Amendment of s 814 (Excavating or placing fill without permit)**

*Clause 55* amends section 814 of the *Water Act 2000* to make it an offence to destroy vegetation in a watercourse, lake or spring without a riverine protection permit. This reflects the reinstatement by the *Vegetation Management and Other Legislation Amendment Act 2018* of the application of the riverine protection provisions to the destruction of vegetation. Section 814 of the *Water Act 2000* provides for a number of circumstances when the offence does not apply, for example when the activity is permitted under regulation.

This clause also amends section 814 to expand the application of existing exemptions to the destruction of vegetation and also reinstates some vegetation specific exemptions that were provided for prior to the destruction of vegetation provisions being removed from the *Water Act 2000* in 2013. These include, for example, where required under the *Fire and Emergency Services Act 1990* to reduce the risk of fire; where vegetation has been unlawfully planted for woodlot, fodder, agriculture, forestry, garden or horticultural purposes; or where it is necessary to prevent personal injury or property damage or to provide for emergency access.

### **Amendment of sch 4 (Dictionary)**

*Clause 56* amends the definition of ‘other resources’ to ensure it appropriately includes reference to vegetation in a watercourse, lake or spring.