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An End to Broadscale Clearing by 2006 under the Vegetation Management and Other Legislation Amendment Bill 2004 (Qld)

The Vegetation Management and Other Legislation Amendment Bill 2004 (Qld) ('the Bill') marks a significant stage in Queensland's tree clearing laws. The Bill amends the Vegetation Management Act 1999 (Qld), Land Act 1994 (Qld) and Integrated Planning Act 1997 (Qld) to enable assessment of the clearing of remnant vegetation on freehold land and State land to occur under the one Act.

Significantly, the Bill involves the phasing out of broadscale clearing of remnant vegetation by 31 December 2006 under a ballot for the allocation of 500,000 hectares under a transitional cap. 'Of concern' remnant vegetation on freehold land is also protected for the first time, in line with existing protections on leasehold land.

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EXECUTIVE SUMMARY

The Vegetation Management and Other Legislation Amendment Bill 2004 (Qld) ('the Bill') marks a significant stage in Queensland's tree clearing laws (**page 1**). It is anticipated to deliver the single largest reduction in greenhouse gas emissions ever in Australia and save Australians \$600 million per year (**pages 1-2**).

The Bill follows earlier developments in Queensland's tree clearing laws (**page 3**) and a moratorium on accepting further applications for clearing remnant vegetation on freehold and leasehold land that was announced by the Queensland Government on 16 May 2003. The purpose of the moratorium was to prevent a rush of applications while consultations and negotiations were underway with stakeholders to finalise a joint State and Commonwealth package to protect remnant vegetation in Queensland (**pages 3-4**). As part of the 2004 State election campaign, the Beattie Labor Party announced that it would end the broadscale clearing of remnant vegetation in Queensland, with or without Federal Government assistance (**page 5**).

Significant amendments are made by the Bill to the *Vegetation Management Act 1999* (Qld) ('VMA') (**pages 5-24**), *Integrated Planning Act 1997* (Qld) ('IPA') (**pages 24-41**) and *Land Act 1994* (Qld) (**page 42**).

The key features of the Bill are-

- phasing out broadscale clearing of remnant vegetation by 31 December 2006;
- protecting of 'of concern' remnant vegetation on freehold land for the first time, in line with the existing protections on leasehold land;
- a ballot for broadscale clearing applications, to receive an allocation under a transitional cap of 500,000 hectares as part of the phase out process;
- allowing applications for particular but limited purposes to be considered outside the cap;
- permitting clearing of most regrowth vegetation;
- permitting some selective clearing or thinning;
- extending the regulation of vegetation clearing to deeds of grant in trust lands for Aboriginal and Torres Strait Islander purposes;
- greater certainty for landholders through new 'property maps of assessable vegetation', which delineate assessable and non-assessable vegetation at the property scale;
- amendments to the declaration of certain areas under the VMA;
- clarification of the exemptions under IPA from the need for a permit; and
- combination of the vegetation clearing provisions for freehold and leasehold land under the one Act.

A \$150 million financial assistance package over three years will be available to landholders affected by the changes (**pages 42-43**).

1 INTRODUCTION

On 18 March 2004 the Hon S Robertson MP, Minister for Natural Resources, Mines and Energy, introduced the Vegetation Management and Other Legislation Amendment Bill 2004 ('the Bill') into the Queensland Legislative Assembly.

The Bill marks a significant stage in Queensland's tree clearing laws. It-

- amends the *Vegetation Management Act 1999* (Qld) ('VMA') to enable the assessment of the clearing of remnant vegetation on freehold land and State land to occur under the one Act;
- repeals the tree clearing provisions in the *Land Act 1994* (Qld); and
- amends the vegetation clearing provisions in the *Integrated Planning Act 1997* (Qld) ('IPA').

It is anticipated that the Bill will deliver "the largest single reduction in greenhouse gas emissions ever in Australia"¹ through "20 to 25 megatons [per annum] of carbon emission savings and the protection of all 'off concern' vegetation".² It also provides "a historical line in the sand for how we, as a community, manage our often fragile landscapes and their natural limitations to ensure we remain economically and ecologically sustainable".³

The Government has stated that the "scientific arguments supporting this move have been overwhelming and clearly show that inappropriate land clearing poses a threat to Australia's environment through its contribution to species extinctions, salinity, declining water quality, land degradation, damage to coastal marine zones,

¹ Hon S Robertson MP, Minister for Natural Resources, Mines and Energy, Vegetation Management and Other Legislation Amendment Bill 2004 (Qld), *Second Reading Speech*, Queensland Parliamentary Debates, 18 March 2004, pp 62-66, p 63.

² Second Reading Speech, p 66. A 25 megatonne reduction in greenhouse gases is equivalent to a 6.84 tonne per person reduction (based on 2001 population), or the removal of two cars from the road for every Queenslanders (or a total of more than seven million cars) per year (Hon P Beattie MP, Premier and Minister for Trade, 'Tree clearing ban will make Queenslanders top global warming warriors', *Media Statement*, 30 March 2004). Appendix A of this Research Brief contains a copy of this Media Statement. Appendix A also contains Hon P Beattie MP, Premier and Minister for Trade, 'Queensland tree laws a boost to greenhouse battle', *Media Statement*, 15 March 2004 and Hon P Beattie MP, Premier and Minister for Trade, 'Expert science underlines urgent need for tree clearing ban', *Media Statement*, 29 March 2004.

³ Second Reading Speech, p 63.

and greenhouse gas emissions”.⁴ The Bill is expected to save Australians \$600 million per year.⁵

The key features of the Bill are-⁶

- phasing out broadscale clearing of remnant vegetation by 31 December 2006;
- protecting of ‘of concern’ remnant vegetation on freehold land for the first time, in line with the existing protections on leasehold land;
- a ballot for broadscale clearing applications, to receive an allocation under a transitional cap of 500,000 hectares as part of the phase out process;
- allowing applications for particular but limited purposes to be considered outside the cap;
- permitting clearing of most regrowth vegetation;
- permitting some selective clearing or thinning;
- extending the regulation of vegetation clearing to deeds of grant in trust lands for Aboriginal and Torres Strait Islander purposes;
- greater certainty for landholders through new ‘property maps of assessable vegetation’, which delineate assessable and non-assessable vegetation at the property scale;
- amendments to the declaration of certain areas under the *VMA*;
- clarification of the exemptions under *IPA* from the need for a permit; and
- combination of the vegetation clearing provisions for freehold and leasehold land under the one Act.

A \$150 million financial assistance package over three years will be available to landholders affected by the changes.

⁴ Vegetation Management and Other Legislation Amendment Bill 2004 (Qld), *Explanatory Notes*, pp 1-2.

⁵ Hon P Beattie MP, ‘Tree clearing ban will make Queenslanders top global warming warriors’.

⁶ Explanatory Notes, p 2. A fact sheet on the Bill has been prepared by the Department of Natural Resources, Mines and Energy, *New Vegetation Management Laws in Queensland – An Overview*, March 2004; http://www.nrm.qld.gov.au/vegetation/pdf/qld_vegman_laws.pdf.

2 BACKGROUND

2.1 DEVELOPMENT OF TREE CLEARING LAWS IN QUEENSLAND

The development of tree clearing legislation in Queensland has been considered by the Queensland Parliamentary Library in the following publications-

- a December 1999 Background Briefing Kit outlining the policy framework of the *VMA*;⁷
- a September 2000 Legislation Brief on the Vegetation Management Amendment Bill 2000 (Qld) which explains the changes under the Bill to the *VMA* concerning the clearing of native vegetation on freehold land and how the *VMA* would operate subsequent to those amendments;⁸ and
- a March 2003 Research Brief on Land Clearing Offences and the Natural Resources and Other Legislation Amendment Bill 2003 (Qld) which discusses improvements to enforcement and compliance measures for clearing on land in breach of the *VMA* or *Land Act 1994*.⁹

2.2 MORATORIUM ON APPLICATIONS FOR CLEARING REMNANT VEGETATION

On 16 May 2003, the Queensland Government announced an immediate moratorium on accepting applications for clearing remnant vegetation on freehold

⁷ Joanna Fear and Mary Seefried, *Vegetation Management Bill 1999*, Background Briefing Kit No 1/99, Queensland Parliamentary Library. The Kit contains a number of extracts from legislation, policy documents, Government publications, articles, transcript material and Ministerial Media Statements. The Kit is available from the Parliamentary Library for perusal or copying.

⁸ Nicolee Dixon, *Vegetation Management Bill 2000*, Queensland Parliamentary Library, LBR 12/00, September 2000; <http://www.parliament.qld.gov.au/ConcordDocs/LBR/LBR1200ND.PDF>.

⁹ Nicolee Dixon, *Land Clearing Offences and the Natural Resources and Other Legislation Amendment Bill 2003 (Qld)*, Queensland Parliamentary Library, March 2003; <http://www.parliament.qld.gov.au/ConcordDocs/Q03/Q030307LA01.PDF>.

and leasehold land.¹⁰ The effect was that no further applications would be accepted for clearing in Queensland, while consultation and negotiations were underway with stakeholders to finalise a joint State and Commonwealth package to protect remnant vegetation in Queensland. The moratorium was considered necessary to prevent a rush of applications during this process.

Exemptions for clearing under both *IPA* and the *Land Act 1994* remained in force. The moratorium did not affect existing permits or apply to applications for clearing-

- for fodder harvesting for stock feed in drought declared areas on leasehold land;
- for regrowth on leasehold land;
- for weed control or public safety;
- that was the natural and ordinary consequence of other assessable development that had been lodged with local government by 12 midday on 16 May 2003;
- for major projects of regional, state or national significance;
- for projects declared to be a significant project under the *State Development and Public Works Organisation Act 1971* (Qld); or
- for the establishment of a necessary fence, road or other built infrastructure, if no suitable alternative site was available.¹¹

At the time the moratorium was announced, tree clearing in Queensland accounted for approximately 12% of all greenhouse gas emissions in Australia.¹²

In June 2003, the *Vegetation (Application for Clearing) Act 2003 (Qld)* was passed giving effect to the moratorium. This Act will be repealed by the *Vegetation Management and Other Legislation Amendment Act 2004 (Qld)*.¹³

¹⁰ Queensland Government, *Land Clearing Announcement by Queensland Government*, 16 May 2003; <http://www.nrm.qld.gov.au/vegetation/pdf/announcement.pdf>. Also see Hon P Beattie MP, Premier and Minister for Trade, 'Tree clearing applications on hold pending major Commonwealth-State package', *Media Statement*, 16 May 2003. Appendix A of this Research Brief contains a copy of this Media Statement.

¹¹ Information relating to the moratorium may be accessed from the Department of Natural Resources, Mines and Energy website, at <http://www.nrm.qld.gov.au/vegetation/pdf/announcement.pdf>.

¹² 'Governments finally agree on tree clearing', *Courier Mail*, 27 May 2003, p 10.

¹³ **Clause 43** of the Bill.

2.3 BEATTIE LABOR PARTY CAMPAIGN POLICY

In January 2004, as part of the State Election Campaign, the Beattie Labor Party announced that it would end the broadscale clearing of remnant vegetation in Queensland, with or without Federal Government assistance.

The Bill implements this policy.¹⁴

2.4 INTERESTED LOBBY GROUPS

The Bill has attracted the interest of a number of lobby groups, most notably AgForce Queensland, Queensland Farmers' Federation, Property Rights Australia, Queensland Conservation Council and the Wilderness Society.¹⁵

3 KEY PROVISIONS OF THE BILL

The Bill amends the following legislation-

- *Vegetation Management Act 1999* (Qld);
- *Integrated Planning Act 1997* (Qld);¹⁶ and
- *Land Act 1994* (Qld).¹⁷

3.1 AMENDMENT OF *VEGETATION MANAGEMENT ACT 1999* (QLD)

Part 2 of the Bill amends the *VMA*.

¹⁴ Queensland Labor Party Policy, 'Protecting Queensland's Natural Heritage: Saving our Trees', January 2004; <http://www.parliament.qld.gov.au/ConcordDocs/E04/E040130MP04.PDF>.

¹⁵ AgForce Queensland website, <http://www.agforceqld.org.au/>; Queensland Farmers' Federation website, <http://www.qff.org.au/>; Property Rights Australia website, <http://www.propertyrightsaustralia.org/>; Queensland Conservation Council website, <http://www.qccqld.org.au/>; The Wilderness Society website, <http://www.wilderness.org.au/>.

¹⁶ Amendments to the *Integrated Planning and Other Legislation Amendment Act 2003* (Qld) ('*IPOLA*'), which reflect the amendments to *IPA*, are also considered. These amendments are necessary because the relevant provisions of *IPOLA*, which amend *IPA*, have not yet commenced.

¹⁷ Note that the Bill also makes minor amendments to other legislation; however, this is not considered in this Research Brief.

3.1.1 Management of Vegetation on Freehold Land and most State Land

The *VMA* will regulate all clearing of vegetation on freehold land and most State land, other than vegetation on-

- a forest reserve under the *Nature Conservation Act 1992* (Qld);
- a protected area of Crown tenure under section 28 of the *Nature Conservation Act 1992* (Qld);
- a State forest or timber reserve under the *Forestry Act 1959* (Qld); or
- a forest entitlement area under the *Land Act 1994* (cl 4, 7(1)).

Vegetation on these area is excluded from regulation “because it is adequately regulated and subject to equivalent levels of protection” under the legislation mentioned above.¹⁸

3.1.2 Revised Purpose

Clause 6(1) makes the following additions to the purpose of the *VMA*-¹⁹

- conserving ‘remnant endangered regional ecosystems’, ‘remnant of concern regional ecosystems’ and ‘remnant not of concern regional ecosystems’;²⁰
- managing the environmental effects of clearing; and
- reducing greenhouse gas emissions.

Clause 6(2) inserts the following additional measures by which the purpose of the *VMA* will be achieved-²¹

- phasing out broadscale clearing of remnant vegetation by 31 December 2006;
- providing a framework for decision making that applies the ‘precautionary principle’;²² and

¹⁸ Explanatory Notes, p 5.

¹⁹ The purpose of the *VMA* is outlined in section 3(1).

²⁰ ‘Remnant endangered regional ecosystems’, ‘remnant of concern regional ecosystems’ and ‘remnant not of concern regional ecosystems’ are defined in the Dictionary in the Schedule of the *VMA*.

²¹ The measures by which the purpose of the *VMA* is achieved are outlined in section 3(2).

²² The amendment describes the precautionary principle by stating that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage.

- providing for declared areas.²³

Clause 6(3) provides a definition of ‘environment’ which is taken from *IPA*.²⁴

3.1.3 New Exclusions from ‘Vegetation’

Section 8 currently defines ‘vegetation’ as a native tree or a native plant, other than a grass or mangrove.

Clause 8 amends this definition by excluding non-woody herbage (this clarifies that the exclusion of grass extends beyond plants identified botanically as true grasses) and a plant within a grassland regional ecosystem prescribed under a regulation (this will allow the identification in a regulation of certain regional ecosystems that are dominated by grasses).²⁵

3.1.4 State Policy for Vegetation Management

Clause 9 amends section 10 by providing that the State policy for vegetation management prepared by the Minister-

- is not restricted to freehold land; and
- does not require a code for the clearing of vegetation.

The State policy will contain the objectives and outcomes for vegetation management in Queensland, which will then be achieved by regional vegetation management codes.²⁶

3.1.5 Regional Vegetation Management Codes

Clause 10 replaces the existing provisions in Part 2, Division 3 concerning regional vegetation management plans with ‘regional vegetation management codes’. These codes will provide guidance for vegetation management activities

²³ ‘Declared areas’ are provided for under sections 17 or 18 of the *VMA*.

²⁴ ‘Environment’ is defined in the Schedule 10 dictionary of *IPA*.

²⁵ Explanatory Notes, p 5.

²⁶ Explanatory Notes, p 5.

such as thinning, encroachment, fodder harvesting and weed control, as well as for forestry practices and contain provisions for extractive industries.²⁷

The Minister must approve codes for regions of the State, which are not inconsistent with the State policy for vegetation management (amended s 11). This will allow the State to retain the ability “to define the State interests in vegetation while allowing for regional definition of the measures required to achieve or protect these interests”.²⁸

The process for making the codes is based on that previously used under the *Land Act 1994* to make local tree clearing guidelines.²⁹

Before approving a code, the Minister-

- may seek appropriate public input in preparing a draft code; and
- must publish notice of the draft code in an appropriate newspaper, stating the places where the draft code may be inspected or purchased, and inviting submissions, which must then be considered by the Minister (amended ss 12-13).

After the Minister has approved a code, the chief executive must-

- publish notice of the code in an appropriate newspaper; and
- make the code available for inspection, purchase or viewing on the Department’s website (amended s 14).

The Minister may make minor amendments to a code after its approval, or amendments of a type stated in the code (amended s 15).³⁰

Clause 14 amends section 20 by providing that a code for the clearing of vegetation in a declared area will, to the extent of any inconsistency, prevail over a regional vegetation management code for a region that includes a declared area.

The codes will be finalised prior to the proclamation of the legislation and be used to assess future applications for clearing. They will be deemed to be interim codes, because of the short timeframe within which they are being developed, and a comprehensive review will occur after six months for all applications outside the

²⁷ Second Reading Speech, p 63.

²⁸ Explanatory Notes, p 6.

²⁹ Explanatory Notes, p 6. This process is in the *Land Act 1994*, ss 272-274.

³⁰ For example, if a code allows a further species to be added to a list of acceptable fodder species for the region, a later amendment could be made to add such a species (Explanatory Notes, p 6).

ballot. This review will involve consultation with stakeholders. The codes will draw on the work done by the community based regional vegetation planning committees over the past three years.³¹

3.1.6 Extension to Declaration Process on the Request of Person

Clause 11 amends the existing process in section 16 for declaration by the Minister that a stated area is an area of high nature conservation value, or vulnerable to land degradation. A person will now be able to request the Minister to make such a declaration.

There is also a new requirement that the Minister publish notice of a proposed declaration in an appropriate newspaper, which invites submissions on the proposal.

Clause 13 amends section 19 by allowing an area of regrowth vegetation to be included in a declaration of an area of high conservation value or vulnerable to land degradation.

3.1.7 Forest Practice Codes

Clause 14 inserts a new section 20A, which states that if the Minister has approved a code applying to native forest practice,³² native forest practice must be conducted as required by the code. A person who conducts a native forest practice must, before 1 January 2005, give the chief executive notice in the approved form stating the location of the native forest practice. If the practice starts after 31 December 2004, the notice must be given before the practice starts.

This provision relates to the exemption for clearing as part of a forest practice.³³

3.1.8 Property Maps of Assessable Vegetation

Clause 14 inserts a new Part 2, Division 5A which provides for the creation of property maps of assessable vegetation ('PMAVs'), which will map vegetation in a similar way to regional ecosystem maps but at a finer scale. Together with

³¹ Second Reading Speech, p 63.

³² 'Native forest practice' is defined to mean a forest practice other than in a plantation. This definition is inserted into the schedule to the *VMA* by **clause 28**.

³³ Explanatory Notes, p 7. This exemption is discussed in section 3.2.3 of this Research Brief.

Schedule 8 of *IPA*,³⁴ a PMAV will show what vegetation can be cleared without a permit on a property (non-assessable vegetation defined as ‘category X’) and, depending on the clearing activity, what vegetation can only be cleared with a permit. Where a PMAV exists, it replaces the remnant and regional ecosystem maps for the purposes of determining when an exemption from the requirement to obtain a permit for clearing under Schedule 8 of *IPA* applies for certain activities.³⁵

A PMAV is a map, certified by the chief executive as the PMAV for a particular area, which-³⁶

- is maintained by the Department for the purpose of showing, for the area-
 - category 1, 2, 3 and 4 areas; and
 - category X areas; and
- shows areas subject to a remnant map or regional ecosystem map for the area.

Category 1, 2, 3, 4 and X areas are defined as follows.³⁷

‘Category 1 area’ means an area that-

- is an endangered regional ecosystem;
- was an endangered regional ecosystem when the chief executive was notified of a native forest practice in the area or when an approval was given for an ongoing application³⁸ for the area;
- contains vegetation that, at the time of the notification or approval, was a not of concern regional ecosystem or an of concern regional ecosystem, but would, at the time a PMAV for the area is replaced, be considered an endangered regional ecosystem;
- is a declared area; or
- has been unlawfully cleared.³⁹

³⁴ Schedule 8 of *IPA* outlines what is assessable, self-assessable and exempt development.

³⁵ Explanatory Notes, p 7.

³⁶ This definition is inserted in the schedule to the *VMA* by **clause 28**.

³⁷ These definitions are inserted in the schedule to the *VMA* by **clause 28**.

³⁸ ‘Ongoing application’ means a vegetation clearing application that is for a relevant purpose under an amended section 22A. This is discussed in section 3.1.9 of this Research Brief.

³⁹ ‘Unlawfully cleared’ is defined to mean cleared of vegetation by a person in contravention of a vegetation clearing provision if the person has not contested an infringement notice given for the contravention or has been convicted of the contravention, whether or not the conviction is recorded. This definition is inserted in the schedule to the *VMA* by **clause 28**.

‘Category 2 area’ means an area that-

- is an of concern regional ecosystem;
- was an of concern regional ecosystem when the chief executive was notified of a native forest practice in the area or when an approval was given for an ongoing application for the area; or
- contains vegetation that, at the time of the notification or approval, was a not of concern regional ecosystem or an endangered regional ecosystem, but would, at the time a PMAV for the area is replaced, be considered an of concern regional ecosystem.

‘Category 3 area’ means an area that-

- is a not of concern regional ecosystem;
- was a not of concern regional ecosystem when the chief executive was notified of a native forest practice in the area or when an approval was given for an ongoing application for the area; or
- contains vegetation that, at the time of the notification or approval, was an of concern regional ecosystem or an endangered regional ecosystem, but would, at the time a PMAV for the area is replaced, be considered a not of concern regional ecosystem.

‘Category 4 area’ means an area that-

- is a lease issued under the *Land Act 1994* for agricultural or grazing purposes;
- was cleared of vegetation before 31 December 1989; and
- does not contain remnant vegetation at the time the PMAV is made or replaced.

‘Category X area’ means an area that-

- did not contain remnant vegetation at the time the first PMAV was made for that area; and
- is not a declared area.

A PMAV will map the boundary between assessable and exempt vegetation, at a property scale, thereby providing landholders with a greater degree of clarity.⁴⁰ It will also provide landholders with a greater degree of certainty, because it can only be made in particular circumstances and may then only be changed in particular ways. Notably, a PMAV cannot be changed in a way that alters an agreed

⁴⁰ Explanatory Notes, p 7.

boundary between non-assessable vegetation (category X) and other vegetation shown on the map without the agreement of the landowner.⁴¹

Under a new section 20B, a PMAV for an area may be made by the chief executive if-

- a development approval under *IPA* is given for a vegetation clearing permit for the area for fodder harvesting, thinning,⁴² clearing of encroachment,⁴³ control of non-native plants or declared pests⁴⁴ or control of regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes;⁴⁵
- the area becomes a declared area;⁴⁶
- the chief executive has been notified that the area is subject to a native forest practice;⁴⁷
- the area contains forest products under the *Forestry Act 1959* and has been defined by agreement with the chief executive responsible for administering

⁴¹ Explanatory Notes, p 7.

⁴² ‘Thinning’ means the selective clearing of vegetation at a locality to restore a regional ecosystem to the floristic composition and range of densities typical of the regional ecosystem at that locality, and does not include clearing using a chain or cable linked between two tractors, bulldozers or other traction vehicles. This definition is inserted in the schedule to the *VMA* by **clause 28**.

⁴³ ‘Encroachment’ means a woody species that has invaded an area of a grassland regional ecosystem to an extent the area is no longer consistent with the description of the regional ecosystem. This definition is inserted in the schedule to the *VMA* by **clause 28**.

⁴⁴ ‘Declared pest’ means a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002* (Qld). This definition is inserted in the schedule to the *VMA* by **clause 28**.

⁴⁵ In these circumstances, the PMAV may be revoked only if the area is shown on a regional ecosystem map or remnant map as remnant vegetation and the approval for clearing the area has expired (new s 20E(1(a))).

⁴⁶ In this case, the status of the vegetation on the PMAV will be elevated to that equivalent to a remnant endangered regional ecosystem (Explanatory Notes, p 8).

⁴⁷ In these circumstances, the PMAV may be revoked if the area is shown on a regional ecosystem map or remnant map as remnant vegetation and the chief executive has been notified that the area is no longer subject to a native forest practice (new s 20E(1)(b)).

the *Forestry Act 1959* as an area in which the State has an interest in commercial timber;⁴⁸

- the area has been unlawfully cleared;⁴⁹
- the area is subject to a compliance notice or an enforcement notice under *IPA* containing conditions about the restoration of vegetation;⁵⁰ or
- the area has been cleared of native vegetation and in relation to the clearing a person has been found guilty by a court, whether or not a conviction has been recorded, of an offence under the *Forestry Act 1959*, the *Nature Conservation Act 1992* or the *Environmental Protection Act 1992*.⁵¹

Under a new section 20C, an owner⁵² of land may also initiate the making of a PMAV for the land, or part of the land, by application to the chief executive.⁵³

A new section 20D provides that a PMAV for an area may be replaced by a new PMAV for all or part of the same area, or all or part of the same area and another area-

- in order to record a change in a matter mentioned in the new s 20B;
- to reflect a change to an endangered, of concern or not of concern regional ecosystem if the conservation status of one or more of the regional

⁴⁸ This will ensure the vegetation remains assessable in these areas despite any timber harvesting operation undertaken under the *Forestry Act 1959*. In these circumstances, the PMAV may be revoked if the area is shown on a regional ecosystem map or remnant map as remnant vegetation and the chief executive responsible for administering the *Forestry Act 1959* has advised that the State no longer has an interest in commercial timber in the area (new s 20E(1)(c)).

⁴⁹ 'Unlawful clearing' includes clearing of vegetation in contravention of a tree clearing provision under the *Land Act 1994*, as in force before the commencement of the amendments to the *VMA* under the Bill. In these circumstances, the PMAV may be revoked if the area is shown on a regional ecosystem map or remnant map as remnant vegetation (new s 20E(1)(d)).

⁵⁰ In these circumstances, the PMAV may be revoked if the area is shown on a regional ecosystem map or remnant map as remnant vegetation (new s 20E(1)(d)).

⁵¹ In these circumstances, the PMAV may be revoked if the area is shown on a regional ecosystem map or remnant map as remnant vegetation (new s 20E(1)(d)).

⁵² 'Owner' is defined to include a registered owner of freehold land; a lessee, licensee or permittee under the *Land Act 1994*; the holder of title to indigenous land or the holder of any tenure under any other Act. This definition is inserted in the schedule to the *VMA* by **clause 28**.

⁵³ In these circumstances, the chief executive may revoke the PMAV if the owner of the land agrees to the revocation (new s 20E(2)).

- ecosystems in the area changes in a way that would affect the exemptions that should apply to that area; or
- if an owner of the land included in the PMAV agrees to the replacement.

It is intended that there will be only one PMAV per property.⁵⁴

The new section 20F requires that if a PMAV is made or replaced, each owner of land that is included in the PMAV must be given a copy free of charge, and a copy must be available for purchase by any other person. If a PMAV is revoked, the chief executive must give each owner of land that is included in the PMAV written notice of, and reasons for, the revocation (new s 20G).

The issue of regrowth “has created more heat and anxiety than almost any other single aspect of vegetation management legislation”.⁵⁵ Under the existing framework, regrowth is defined as non-remnant vegetation on regional ecosystem maps, which generally have a scale of 1:100,000. This accuracy has, at times, been criticised by landholders and provided difficulty in relating what is depicted on a map to the vegetation that is on a property. The amendments allow landholders to develop PMAVs that identify regrowth at the property scale. The details of what will be required for the certification of these maps will be defined in regulation.

3.1.9 Assessment of Applications and Modification of Appeal Processes

Clause 15 inserts new sections 22A – 22D regarding the assessment of particular vegetation clearing applications and modifications to appeal processes.

Section 22A(1) provides that if a ‘vegetation clearing application’⁵⁶ is not for a ‘relevant purpose’, the application is taken, for *IPA*, not to be a properly made application and must be refused by the assessment manager.⁵⁷

The new section 22A(2) provides that a vegetation clearing application is for a ‘relevant purpose’ if the applicant satisfies the chief executive that the relevant development is for-

⁵⁴ Explanatory Notes, p 9.

⁵⁵ Second Reading Speech, p 64.

⁵⁶ A ‘vegetation clearing application’ means a development application under *IPA* that involves assessable development under the new Items 3AA to 3AG which are inserted in Schedule 8, Part 1 of *IPA*. This definition is inserted in the schedule to the *VMA* by **clause 28**. The new Items 3AA to 3AG are discussed in section 3.2.3 of this Research Brief.

⁵⁷ This is the case, despite section 3.2.1 of *IPA* which concerns applications for development approval.

- a project declared to be a significant project under the *State Development and Public Works Organisation Act 1971*, section 26;
- necessary to control non-native plants or declared pests;
- to ensure public safety;
- for establishing a necessary fence, firebreak, road or other built infrastructure, if there is no suitable alternative site available and the amount of clearing required is greater than that allowed without a permit under the exemptions in *IPA*, Schedule 8, Part 1;
- a natural or ordinary consequence of other assessable development for which a development approval under *IPA* was given, or a development application under *IPA* was made, before 16 May 2003;⁵⁸
- for fodder harvesting, thinning or clearing of encroachment;
- for an extractive industry;⁵⁹ or
- for clearing regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes.⁶⁰

A vegetation clearing application that is for a relevant purpose under section 22A is an ‘ongoing application’.⁶¹

Under the amendments, appeals on applications that are for vegetation clearing alone will be made to a tribunal, rather than the Planning and Environment Court. *IPA* provides for the Minister and chief executive under *IPA* to action the establishment and running of a building and development tribunal.⁶² The new section 22B transfers these powers to the Minister and chief executive under the

⁵⁸ This was the date the moratorium was placed on accepting clearing applications. It does not include applications for material change of use or reconfiguration of a lot because there is no clearing that is a ‘natural and ordinary consequence’ of such development (Explanatory Notes, p 10).

⁵⁹ This applies for existing and new operations. ‘Extractive industry’ means one or more of dredging material from the bed of any waters; extracting rock, sand, clay, gravel, loam or other material, from a pit or quarry; screening, washing, grinding, milling, sizing or separating material extracted from a pit or quarry (new s 22A(3)).

⁶⁰ This applies for clearing regrowth vegetation that has emerged following clearing undertaken on or before 31 December 1989 and that is not remnant vegetation. The intention is to transfer the regulation of non-remnant vegetation from the *Land Act 1994* to the *VMA*. Regrowth vegetation that has emerged following clearing undertaken after 31 December 1989 on these leases can be cleared under an exemption in Schedule 8, Part 1 of *IPA* (Explanatory Notes, pp 10-11).

⁶¹ This definition is inserted in the schedule to the *VMA* by **clause 28**.

⁶² *IPA*, s 4.2.36(1), s. 5.8.1A and Chapter 4, Part 2.

VMA for the purpose of establishing a tribunal to hear appeals for applications involving vegetation clearing only. The tribunal will be non-legalistic and include representatives of the stakeholder and scientific communities, similar to the tribunal under the *Water Act 2000* (Qld).⁶³

The new section 22C provides that appeals for ongoing applications, where the application is for clearing alone, may be to a tribunal. However, an applicant may appeal the decision of the tribunal to the Planning and Environment Court on a matter of law.⁶⁴ An applicant will not be able to appeal a matter to the tribunal, including the refusal of an application, unless they have sought a 'negotiated decision'. The intent of this section is to carry forward the internal review process under the *Land Act 1994*. A review need not be made of a deemed refusal and, in this case, an applicant may go directly to the appeal process.⁶⁵

The new section 22D modifies the appeal rights for ongoing applications where the application involves other development and for which the chief executive is a concurrence agency. Unless representations on the matter have been made by the applicant, the applicant cannot appeal the matter to the Planning and Environment Court.

3.1.10 Broadscale Applications and Ballots

Clause 15 inserts a new Part 2, Division 7 'Broadscale applications and ballots'.

Over the next two and a half years, clearing of remnant vegetation will be restricted to 500,000 hectares. Based on an assessment of applications already received (but not assessed) when the moratorium was announced, it is estimated that between 200,000 and 250,000 hectares will remain available for allocation through the ballot process provided for by the Bill. The ballot is planned for September 2004.⁶⁶

Every successful application will then be assessed against the new regional vegetation management codes, a process which may take at least 12 months to complete. Successful applicants will then have between 18 months and two years to complete their clearing, with all clearing to be completed by 31 December 2006. No more broadscale clearing permits will be issued after the process is completed.

⁶³ Second Reading Speech, p 64.

⁶⁴ Explanatory Notes, p 11.

⁶⁵ Explanatory Notes, p 11.

⁶⁶ Second Reading Speech, pp 63-64.

The only exceptions to participation in the ballot are landholders in the Cape York region, where no further applications for clearing will be accepted. Comparatively little clearing has occurred in this region to date and there are long-term proposals for areas in the region to be World Heritage listed or placed into national parks because of their high biodiversity values.⁶⁷

Accepting Broadscale Applications

A 'broadscale application' is a vegetation clearing application that does not include any other development⁶⁸ and is not for a relevant purpose under section 22A.

A broadscale application can be accepted if it is only for land in a single region⁶⁹ and is properly made during the 'ballot application period' (new s 22F(1)).⁷⁰ The chief executive must, for each region of the State for which a ballot must be conducted, conduct a ballot for all broadscale applications for that region (new s 22F(2)).

Only one broadscale application may be made for each parcel of land; however, an applicant who holds more than one parcel may make an application in relation to each such parcel. If more than one application is made affecting the same parcel, the later application(s) will be discounted to the extent that an earlier application already includes the land (new s 22F(3)).

Regions and Ballots

Under a new section 22G(1), a regulation may be made prescribing-

- the regions of the State for which a ballot must be conducted;
- the way, and the time at which, each ballot must be conducted;
- the clearing allocation for each region; and
- the matters a broadscale application must contain.

⁶⁷ Second Reading Speech, p 64.

⁶⁸ Vegetation clearing applications that include other development are excluded from the ballot to prevent the modified timeframes associated with the ballot from having any impact on local governments' decision-making (Explanatory Notes, p 11).

⁶⁹ If a property or parcel of land lies across two regions, two applications for land in the respective regions must be made (Explanatory Notes, p 12).

⁷⁰ A person is not prevented from lodging an ongoing application under section 22A if they are also lodging a broadscale application under sections 22F or 22G, or vice versa, even if it is for the same area. For example, an existing application or approval for fodder or thinning can be applied for outside the ballot (Explanatory Notes, p 12).

The ballot determines the priority in which broadscale applications will be assessed for receiving part of the clearing allocation for the region (new s 22G(2)). After the ballot for a region is conducted, the applications will be assessed according to this priority against the regional vegetation management codes and, subject to the finalisation of any appeals, development approvals may be given only until the clearing allocation for the region is exhausted (new s 22G(3)). Once the clearing allocation for a region is exhausted, any remaining applications in that region must be refused and need not be assessed (new s 22G(4)); however, the refused applications may be considered for the purpose of determining their eligibility for financial assistance.⁷¹

A ballot application may only be changed until 20 business days after an information request has been made for the application. After the end of the ballot application period, however, a successful application can not be changed in a way that increases the area proposed to be cleared (new s 22H).

The timeframes under *IPA* for the assessment of properly made broadscale applications are modified as follows⁷²

- the time limits for requesting further information and making a decision are removed (new s 22I(a) and (c));⁷³
- if the applicant does not respond to an information request within 20 business days, the application may be assessed as if the applicant had sent a notice stating that the applicant does not intend to supply the information and requesting the assessment to proceed (new s 22I(b));⁷⁴ and
- the suspension of the applicant's appeal period, and the applicant's appeal period itself, is limited to 10 business days respectively (new sections 22I(d) and (e)).⁷⁵

⁷¹ Explanatory Notes, p 12.

⁷² These timeframes are amended to ensure that the assessment process and any appeals are finalised for the clearing to be completed by December 2006. The December 2006 endpoint is constrained by the requirements of the Kyoto protocol reporting arrangements (Explanatory Notes, p 13).

⁷³ These time limits are in *IPA*, ss 3.3.6(4) and 3.5.7(1) respectively and have been removed because applications will be made during the ballot application period but cannot be assessed until after the ballot. Assessment will then occur progressively according to the priority determined under the ballot.

⁷⁴ This reduces the available response time to an information request from 12 months to 20 business days. It is anticipated that ballot applications will be assessed within 12 months of the ballot being conducted (Explanatory Notes, p 13).

⁷⁵ These time frames are otherwise 20 business days under *IPA*, ss 3.5.18(3) and (4), s 4.2.9(2).

The time period within which clearing under a broadscale approval must be completed can not be extended (new s 22J).⁷⁶

The appeal rights for a broadscale application are also modified under a new section 22K.⁷⁷ An appeal against a decision notice, or negotiated decision notice, for ballot applications can only be made to the proposed building and development tribunal and only in circumstances where the applicant has made representations to the assessment manager. Representation may also be made about a refusal.

The new s 22L prohibits an appeal to any court, under any Act, against-

- the ballot process or result;
- a refusal of a ballot application from the ballot for a region after the clearing allocation for the region has been exhausted;
- the length of the currency period; or
- a decision of the tribunal.

Appeals may still be made for balloted applications based on the merits of the decision on the application.⁷⁸

3.1.11 Miscellaneous

Clause 15 also inserts a new Part 2, Division 8 ‘Miscellaneous’.

Refusal of Vegetation Clearing Application after Conviction for a Vegetation Clearing Offence

The existing section 22A is relocated as a new section 22M, and relates to refusal of a vegetation clearing application after conviction for a vegetation clearing offence during the ‘relevant period’. For an application made before 28 March 2008, the ‘relevant period’ is from 28 March 2003⁷⁹ until the application is made. For an application made on or after 28 March 2008, the ‘relevant period’ is five years before the application is made.

⁷⁶ This is in order to meet the requirements of the Kyoto Protocol reporting arrangements (Explanatory Notes, p 13).

⁷⁷ This is to expedite the appeals and reduce costs for applicants and the Government (Explanatory Notes, p 14).

⁷⁸ Explanatory Notes, p 14.

⁷⁹ This is the date of the commencement of the existing section 22A of the *VMA*.

The provision extends to all land tenures previously dealt with by the *Land Act 1994*. A definition of ‘vegetation clearing offence’ has also been included to enable an application to be refused where the applicant or owner of land has been convicted of a tree clearing offence under the *Land Act 1994*.

Amendments to Enforcement and Investigation Provisions

There are various further miscellaneous amendments under **clauses 16-20** for the enforcement and investigation provisions of the *VMA* to apply to freehold land and State lands, and to include specific enforcement provisions under the *Land Act 1994* for State lands where no equivalent power exists under the *VMA*.

Notably, **clause 19** amends section 55 to increase the penalty for failing to comply with a compliance notice from 100 penalty units (\$7,500) to 1,665 penalty units (\$124,875), which is in line for non-compliance with an enforcement notice under *IPA*. The rationale for the increase is that “[r]estoring an area that has been cleared can cost anywhere between \$500 and \$15,000 per hectare. In many cases, it is less onerous for a landholder to pay the penalty for non-compliance, rather than to comply with the notice and revegetate the land”.⁸⁰

Clause 21 amends section 62 to impose a 20 business time limit on the commencement of an appeal after a compliance notice is issued. This reflects the timeframe for an appeal against an enforcement notice under *IPA*.

Interaction with Forestry Act 1959 (Qld) where Vegetation Clearing Application given for a Forest Product on Forest Land

Clause 25 inserts a new section 70A, which provides that if a development approval is given under *IPA* for a vegetation clearing application in relation to a forest product on forest land, the approval is taken to be, for section 53 of the *Forestry Act 1959*,⁸¹ a permit, lease, licence, agreement or contract required under that section and, for section 54, the authority of another Act. This removes the need for approval under both the *VMA* and *Forestry Act 1959* to clear vegetation on land to which the *Forestry Act 1959* applies. Section 70A(3) provides that if the clearing of remnant vegetation on forestry land does not involve the removal of a species prescribed under a regulation and is done under an exemption in Schedule

⁸⁰ Explanatory Notes, p 15.

⁸¹ The *Forestry Act 1959* reserves as the absolute property of the Crown all forest products on a range of tenures including Crown Land and Crown holdings, and prohibits the interference with, and sale or use of, such products without an authority under the Act or another Act (Explanatory Notes, p 16).

8, Part 1, Items 3AA to 3AG of *IPA*,⁸² the clearing is taken to be an authority to interfere with forestry products under the *Forestry Act 1959*, sections 53 or 54.⁸³

Under s 70A(4), an exemption for clearing vegetation that is not remnant vegetation under *IPA* Schedule 8, Part 1, including commercial species, is taken to be an approval to interfere with forest products under the *Forestry Act 1959*, sections 53 or 54. This allows for the removal of non-remnant native vegetation without the need for approval under the *Forestry Act 1959*.

Section 70A(5) provides that, for the removal of doubt, sections 70A(3) and (4) only authorise the use of a forest product cleared if the clearing is-

- on land subject to a lease issued under the *Land Act 1994* for agriculture or grazing purposes; and
- to source construction timber to repair existing infrastructure on the land if the infrastructure is in need of immediate repair, the clearing does not cause land degradation and restoration of a similar type, and to the extent of the removed trees, is ensured.

Approval under the *Forestry Act 1959* would be required to sell any forestry products or use them as construction material, other than in the specified manner.

Recording of Development Approvals and PMAVs in Land Registry

Clause 25 also inserts a new section 70B which requires a development approval under *IPA* for a vegetation clearing application, and a PMAV, to be recorded in the appropriate land registry such that a search of the title to the relevant land will show that the approval has been issued or the PMAV has been made.

3.1.12 Transitional Provisions for the Vegetation Management and Other Legislation Amendment Act 2004 (Qld)

Clause 27 inserts transitional provisions for the *Vegetation Management and Other Legislation Amendment Act 2004 (Qld)*.

⁸² The Bill replaces Schedule 8, Part 1, Item 3A with new Items 3AA to 3AG. These items are discussed in section 3.2.3 of this Research Brief.

⁸³ This allows the removal of native remnant vegetation, other than commercial species prescribed under a regulation, without a further approval under the *Forestry Act 1959*. Under the current arrangements, landholders clearing under exemptions under the *Land Act 1994* must notify the Department before removing any commercial species mentioned in schedule 1C of the *Land Regulation 1995*. The amendment means that landholders must obtain an authority under the *Forestry Act 1959* to interfere with commercial species within remnant vegetation despite an exemption under Schedule 8, Part 1 of *IPA* (Explanatory Notes, p 16).

The key features are-

- the Minister may approve regional vegetation management codes based on parts of draft regional vegetation management plans identified as a code for the clearing of vegetation that have been prepared and consulted on under the current provisions of the *VMA* (new s 75);⁸⁴
- a development application under *IPA* for the clearing of vegetation on freehold land made before midday on 16 May 2003 cannot be changed to increase the area to be cleared, and the development approval for the application cannot be changed to increase the area approved to be cleared or extend the currency period. Such an application must be dealt with as if the *Vegetation Management and Other Legislation Amendment Act 2004* (Qld) had not commenced (s 76);⁸⁵
- an application for a tree clearing permit made under the *Land Act 1994* before midday on 16 May 2003 must be dealt with under the *Land Act 1994* as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004* (Qld). These applications can not be changed in any way that increases the area of the proposed tree clearing, and a tree clearing permit issued for such an application can not be changed to increase the area permitted to be cleared or extend the term of the permit (new s 77);⁸⁶
- applications for a tree clearing permit made on or after midday on 16 May 2003 under the *Land Act 1994* must be dealt with under the *Land Act 1994* as in force immediately before the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004* (Qld) (new s 78);⁸⁷

⁸⁴ 23 draft regional vegetation management plans have been prepared by regional vegetation management committees, and extensive consultation undertaken on the drafts. This work will form the basis of the new regional vegetation management codes. Further limited consultation will be undertaken prior to the draft plans being made regional codes (Explanatory Notes, p 17).

⁸⁵ These applications include applications for broadscale clearing and will be assessed against the existing State Policy for Vegetation Management of Freehold Land. The area approved for clearing will be deducted from the allocation under the ballot (Explanatory Notes, pp 17-18).

⁸⁶ These applications are also broadscale applications and will be assessed against the existing Broadscale Tree Clearing Policy for State Lands. The area approved for clearing will be deducted from the allocation under the ballot (Explanatory Notes, p 18).

⁸⁷ These applications are for purposes other than broadscale clearing and, accordingly, there is no restriction on changing these applications or a permit. These applications will also be assessed against the existing Broadscale Tree Clearing Policy for State Lands, however the area approved for clearing will not be deducted from the allocation under the ballot. The repealed provisions of the *Land Act 1994* are also preserved so that the assessment process and any

- the provisions of the *Land Act 1994* that are repealed by the Bill are preserved so that existing tree clearing permits, and any tree clearing permits issued for applications under the new sections 77 and 78, are dealt with under the *Land Act 1994* as if the repeal had not occurred.⁸⁸ The repealed provisions of the *Land Act 1994* also continue to apply for monitoring, enforcing compliance with and prosecution of an offence against the tree clearing provisions (new s 79).

3.1.13 Selected New Definitions

Clause 28 omits various definitions from, and inserts new definitions into, the Dictionary in the Schedule to the VMA. Key new definitions are discussed below.

‘Clear’

‘Clear’, for vegetation-

- means remove, cut down, ringbark, push over, poison or destroy in any way including by burning, flooding or draining; but
- does not include destroying standing vegetation by stock, or lopping a tree.

The amendment no longer excludes a forestry practice from the definition. Instead, native forest practices on freehold land will still be exempt from the need for development approval under an exemption to be given in *IPA*, Schedule 8, Part 1.

appeals against assessment decisions can be dealt with as if there had been no change to the current processes (Explanatory Notes, p 18).

⁸⁸ This means that an existing tree clearing permit can be transferred under section 267 of the *Land Act 1994* despite its repeal. Similarly, a tree clearing permit could be cancelled under the repealed section 266 of the *Land Act 1994* (Explanatory Notes, p 18).

‘Forest practice’

‘Forest practice’-

- means planting trees, or managing, felling and removing standing trees, on freehold land, for an ongoing forestry business in a-
 - plantation; or
 - native forest, if, in the native forest-
 - all the activities are conducted in a way that is consistent with a native forest practice code; or
 - if there is no code, all the activities are conducted in a way that-
 - ensures restoration of a similar type, and to the extent of, the removed trees;
 - ensures trees are only felled for the purpose of being sawn into timber or processed into another value added product (other than woodchips for an export market); and
 - does not cause land degradation;
- includes carrying out limited associated work, including, for example, drainage, road construction, and maintenance, and other necessary engineering works;
- does not include clearing vegetation for the initial establishment of a plantation.

The amendment ensures that it applies only to freehold land, and clarifies that it includes road construction and maintenance among the limited associated works permitted under the exemption.

‘Regional Ecosystem Map’ and ‘Remnant Map’

The definitions of ‘regional ecosystem map’ and ‘remnant map’ are amended to remove references to declared areas and unlawfully cleared vegetation, as these matters will now be recorded where appropriate by a PMAV, which will replace the regional ecosystem map and remnant map as triggers for assessment in the areas to which they apply.⁸⁹

3.2 AMENDMENT OF INTEGRATED PLANNING ACT 1997 (QLD)

Part 3 of the Bill amends the *Integrated Planning Act 1997* (Qld).

⁸⁹ Explanatory Notes, p 20.

3.2.1 Definition of Operational Work

Clause 30 amends the definition of ‘operational work’ in sections 1.3.5(e) and (f) to incorporate all vegetation to which the *VMA* now applies. This allows the Integrated Development Assessment System (‘IDAS’) to apply to the assessment of applications for clearing on freehold land and most State land.

3.2.2 Application of *Vegetation Management Act 1999 (Qld)* for Mining and Petroleum Activities

Clause 31 provides that a ‘mining activity’ or ‘petroleum activity’ under the *Environmental Protection Act 1994* is taken to have been inserted into Schedule 8, Part 1, Item 3A on 15 September 2000 and have effect until the commencement of the *Vegetation Management and Other Legislation Amendment Act 2004 (Qld)*.⁹⁰

3.2.3 Amendment of Schedule 8, Part 1

Schedule 8, Part 1 contains the triggers for what is assessable development.

Clause 32(1) replaces Item 3A of Schedule, Part 1 (which defines what clearing the State has made assessable) with seven new items, Items 3AA to 3AG, relating to vegetation clearing on the different land tenures to which the *VMA* now applies. The paragraphs within each item then outline the specific clearing activities that are exempt from the trigger for when vegetation clearing is assessable.

Item 3A currently provides as follows-

Carrying out operational work that is the clearing of native vegetation on freehold land, unless the clearing is-

- (a) to the extent necessary to build a single residence and any reasonably associated building or structure; or*
- (b) necessary for essential management; or*
- (c) necessary for routine management in an area that is outside-*
 - (i) an area of high nature conservation value; and*
 - (ii) an area vulnerable to land degradation; and*
 - (iii) a remnant endangered regional ecosystem shown on a regional ecosystem map; and*
 - (iv) an area of unlawfully cleared vegetation; or*

⁹⁰ It was intended that this be the situation when the *VMA* was enacted, however amendments to *IPA* at this time only provided an exemption from such activities being made assessable under a planning scheme. The amendment clarifies the legal situation with regard to mining and petroleum activities on freehold land (Explanatory Notes, pp 20-21).

- (d) *in an urban area, other than an area mentioned in paragraph (c)(i) or (iii); or*
- (e) *in a non-urban area, other than an area mentioned in paragraph (c), and is-*
 - (i) *for the reconfiguration of a lot not involving the opening of a road; or*
 - (ii) *the natural and ordinary consequence of other assessable development and the total area of the part of the land on which the development occurs is less than 5 ha;⁹¹ or*
- (f) *before 5 March 2001 – the natural and ordinary consequence of other assessable development.*

While each item is discrete, there are some common exemptions between the items.

Item 3AA – Carrying out operational work that is the clearing of native vegetation on freehold land and indigenous land.

A definition for ‘indigenous land’ is inserted by **clause 32(5)** in the dictionary in Schedule 8, Part 4. ‘Indigenous land’ means, for regulating the clearing of vegetation under the VMA, land held under a following Act by, or on behalf of or for the benefit of, Aboriginal or Torres Strait Islander inhabitants or for Aboriginal or Torres Strait Islander purpose-

- *Local Government (Aboriginal Lands) Act 1978;*
- *Aborigines and Torres Strait Islanders (Land Holding) Act 1985;*
- *Aboriginal Land Act 1991;*
- *Torres Strait Islander Land Act 1991;*
- *Land Act 1994.*

The exemptions to this item are as follows.

- (a) *The clearing of vegetation to which the VMA does not apply.*

Section 3.1.1 of this Research Brief discusses the clearing of vegetation to which the VMA does not apply.

- (b) *For a native forest practice, other than on indigenous land on which the State owns the trees.*

⁹¹ This exemption has been removed “because it was misleading and unnecessary”. IPOLA clarified that the use of land did not include the clearing of native vegetation. Consequently, clearing could never constitute a ‘natural and ordinary consequence’ of a material change in use or a reconfiguration of a lot. Instead, the clearing is a result of undertaking other activities on the land following a reconfiguration such as building roads, installing sewerage infrastructure and constructing buildings. Clearly that is the natural and ordinary consequence of building, plumbing or drainage work already exempt under routine management. Clearing to give effect to an operational works permit will be assessable (Explanatory Notes, p 24).

This provides for the existing exemption,⁹² but with greater clarity and transparency. The exemption will apply regardless of what the vegetation is mapped as on a PMAV or the regional ecosystem maps.⁹³

The exclusion of a forest practice does not apply on indigenous land on which the State owns the trees. The State owns or has reserved rights to forest products on most indigenous land tenures. On some indigenous land, however, ownership of the trees is effectively transferred from the State to the owners of the indigenous land. An example of this situation is the Gurridi Traditional Land Trust, which was granted title to land on 21 September 1994 under the *Aboriginal Land Act 1991*. The relevant deed of grant reserves to the Crown all rights to minerals and petroleum search rights in relation to minerals and petroleum, but does not contain a reservation for forest products. As a result, the Gurridi Traditional Land Trust owns the forest products on the granted land, similar to the ownership of trees on land by the owner of freehold land, and could therefore undertake a native forest practice on the land under this exemption.⁹⁴

(c) *To the extent necessary to build a single residence on a lot, the building of which is approved under IPA, and any reasonably associated building or structure.*

This is an amendment to the existing exemption, which clarifies that the exemption applies-

- only to a residence for which building approval has been given to construct the residence; and
- to each lot of land.

‘Reasonably associated buildings or structures’ must be associated with residing on the property and not for another reason such as a commercial activity. The exemption will apply regardless of what the vegetation is mapped as on a PMAV or the regional ecosystem maps.⁹⁵

(d) *Necessary for essential management.*

⁹² The current definition of ‘clear’ in Schedule 10 excludes clearing as part of a native forest practice.

⁹³ Explanatory Notes, pp 21-22.

⁹⁴ This example is provided for in the Explanatory Notes, p 22.

⁹⁵ Explanatory Notes, p 22.

This provides the existing exemption. The clearing must be restricted to what is 'necessary'. The exemption will apply regardless of what the vegetation is mapped as on a PMAV or the regional ecosystem maps.

Clause 32(5) amends the definition of 'essential management' in Schedule 8, Part 4. Currently, the definition reads as follows.

"Essential management" means clearing native vegetation-

- (a) for establishing or maintaining a fire break sufficient to protect a building, property boundary or paddock; or*
- (b) that is likely to endanger the safety of a person or property on the land because the vegetation is likely to fall; or*
- (c) for maintaining an existing fence, stock yard, shed, road or other built infrastructure; or*
- (d) for maintaining a garden or orchard.*

Under the Bill, the amended definition of 'essential management' means clearing native vegetation-

- for establishing or maintaining a necessary fire break to protect infrastructure other than a fence or road, if the maximum width of the fire break is equivalent to the greater of 1.5 times the height of the tallest vegetation adjacent to the infrastructure, or 20 metres;⁹⁶
- for establishing a necessary fire management line if the maximum width of the clearing for the fire management line is 10 metres;⁹⁷

⁹⁶ This amends the existing exemption to prescribe maximum clearing widths and allow a firebreak to be constructed to protect certain infrastructure, including buildings.

⁹⁷ This replaces the existing exemption for clearing for establishing and maintaining a fire break to protect property boundaries or paddocks. The reference is to a 'fire management line', as it is intended only to allow for the management and control of fire on a property including wild fire and hazard reduction control burns, and is not limited to property boundaries or paddocks. The clearing must be restricted to what is 'necessary', which may be less than 10 metres, and is not intended to allow additional clearing if sufficient firebreaks and access roads already exist on the property for this. The maximum width of clearing is 10 metres is sufficient to enable vehicles passing points and turn around areas, where required (Explanatory Notes, p 33).

- necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure;⁹⁸
- by fire under the *Fire and Rescue Service Act 1990* (Qld) to reduce hazardous fuel load;⁹⁹
- necessary to maintain infrastructure including airstrips, buildings, fences, helipads, roads, stock yards, watering facilities and constructed drains other than contour banks, other than to source construction material;¹⁰⁰
- for maintaining a garden or orchard, other than clearing predominant canopy trees to maintain under-plantings established within remnant vegetation;¹⁰¹
- on land subject to a lease under the *Land Act 1994* for agriculture or grazing purposes to source construction timber to repair existing infrastructure on the land, if-
 - the infrastructure is in need of immediate repair;
 - the clearing does not cause land degradation as defined by the *VMA*; and
 - restoration of a similar type, and to the extent of the removed trees, is ensured;¹⁰²
- by the owner on freehold to source construction timber to maintain infrastructure on any land of the owner, if-

⁹⁸ This replaces, and is broader than, the existing exemption and is also in place of, and broader than, the routine management exemption under the *Land Act 1994* and *Land Regulation 1995* to ensure the safety of persons or property in an emergency. The exemption extends beyond vegetation that is likely to fall. It is intended that the exemption apply if a tree's roots are damaging infrastructure, such as sewerage pipes, or if a tree is diseased and could fall on a nearby house or driveway, causing serious damage to the house or injury to someone using the driveway. It is not intended to apply where a tree is merely causing a nuisance by the dropping of leaves or limbs (Explanatory Notes, p 33).

⁹⁹ This replaces the existing provision relating to clearing by fire. The exemption is restricted to clearing by fire that is associated with hazard reduction control burns (Explanatory Notes, p 33).

¹⁰⁰ The amendment extends the list of infrastructure included in the exemption.

¹⁰¹ This amends the existing exemption by clarifying that it does not include clearing canopy trees for the maintenance of garden plants or orchard trees planted within remnant vegetation.

¹⁰² This replaces the existing routine management exemption under the *Land Act 1994* and *Land Regulation 1995* on leases for agriculture or grazing purposes only, to obtain replacement fence, yard rails or rail posts required for immediate repair works. The exemption has been broadened to apply to any existing infrastructure on the property.

- the clearing does not cause land degradation as defined by the *VMA*; and
- restoration of a similar type, and to the extent of the removed trees, is ensured.¹⁰³

(e) *In an area shown on a PMAV as a category X area.*

This is a new exemption. Category X area is as defined under the *VMA*.

(f) *In an area for which there is no PMAV, and the vegetation is not remnant vegetation.*

This provides for the existing exemption for the clearing of vegetation that is shown on the regional ecosystem maps as vegetation that is not remnant vegetation, currently contained within the routine management exemption. The exemption applies only when there is no PMAV, as a PMAV takes precedence over a regional ecosystem map for showing what vegetation clearing is assessable and non-assessable for a particular area.

(g) *For urban purposes in an urban area that is-*

- (i) *shown on a PMAV as a category 2 area or a category 3 area; or*
- (ii) *if there is no PMAV for the area – a remnant of concern regional ecosystem or a remnant not of concern ecosystem.*

The existing exemption is amended so that it applies only when the clearing is for 'urban purposes'. It addresses the current anomaly where broadscale clearing can occur in an 'urban area' without a permit, even if it is wholly unrelated to giving effect to an urban purpose. It is also amended to reflect the creation of PMAVs. Clearing within a category 1 area on a PMAV, including a declared area or an area that has been illegally cleared, and clearing a remnant endangered regional ecosystem in an area where there is no PMAV, remains assessable.

Clause 32(5) inserts a definition of 'urban purposes' into Schedule 8, Part 4. 'Urban purposes' means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes, but not including environmental, conservation, rural, natural or wilderness area purposes.

¹⁰³ This provides for the existing implicit exemption to obtain construction material for the maintenance of existing infrastructure. It is broader than the exemption discussed for leasehold land used for agriculture or grazing, because the timber is privately owned on freehold land. The timber which is cleared on one property under the exemption may be used to maintain infrastructure on another property owned by the same person.

‘Urban area’ is currently defined in Schedule 8, Part 4 to mean an area identified on a map in a planning scheme as an area for urban purposes, including rural residential purposes and future urban purposes.

Clause 32(5) inserts a new definition of ‘urban area’. ‘Urban area’ will mean-

- an area identified as a priority infrastructure area in a priority infrastructure plan;¹⁰⁴
- if no priority infrastructure area exists, an area identified in a gazette notice by the chief executive under the *VMA* as an urban area;¹⁰⁵ or
- if no priority infrastructure area exists or gazette notice has been published, an area identified on a map in a planning scheme as an area for urban purposes, including future urban purposes, but not rural residential or future rural residential purposes.¹⁰⁶

(h) Necessary for routine management in an area of land-

(i) shown on a PMAV as a category 3 area; or

(ii) for which there is no PMAV, and the vegetation is a remnant not of concern ecosystem.

This reflects the existing exemption for routine management activities, and has been amended to reflect the creation of PMAVs and the protection of remnant of concern regional ecosystems. The clearing must be restricted to what is ‘necessary’.

Clause 32(5) inserts a new definition of ‘routine management’ into Schedule 8, Part 4. Currently, ‘routine management’ means clearing native vegetation-

- for establishing a necessary fence, road or other built infrastructure that is on less than 5 hectares;
- that is not remnant vegetation; or

¹⁰⁴ Local governments must prepare priority infrastructure plans by 2005 (Explanatory Notes, p 35).

¹⁰⁵ A gazette notice will be used where it would otherwise be difficult to determine whether an area is urban or non-urban because of the descriptive terminology used in the planning scheme (Explanatory Notes, p 35).

¹⁰⁶ In this circumstance, urban areas are defined according to the current definition but excluding rural residential areas and future rural residential areas. Rural residential has been removed, as these areas reflect rural areas more than urban areas in terms of their management by local government. Rural residential will also be omitted from a priority infrastructure area unless a local government decides to include it. The gazettal of areas within a planning scheme as urban will be done in consultation with local government and will only occur where the current zoning is ambiguous and requires clarification (Explanatory Notes, p 35).

- for supplying fodder for stock, in drought conditions only.

The new definition of ‘routine management’ means clearing native vegetation-

- to establish a necessary fence or road if the maximum width of clearing for the fence or road is 10 metres;¹⁰⁷
 - for establishing necessary infrastructure other than contour banks, fences or roads if-
 - the clearing is not to source construction timber;
 - the total extent of clearing is less than 2 metres; and
 - the total extent of the infrastructure is on less than 2 hectares;¹⁰⁸
 - by the owner on freehold land to source construction timber for establishing necessary infrastructure on any land of the owner, if-
 - the clearing does not cause land degradation as defined by the *VMA*; and
 - restoration of a similar type, and to the extent of the removed trees, is ensured;¹⁰⁹ or
 - before 30 June 2004, for sustainable harvesting of fodder for stock on freehold land, in drought conditions only.¹¹⁰
- (i) *On indigenous land, gathering, digging or removing forest products for-*
- (i) *the purpose of improving the land or for use under the Local Government (Aboriginal Lands) Act 1978, section 28;*
 - (ii) *use under the Community Services (Aborigines) Act 1984 (Qld), section 175; or*

¹⁰⁷ The exemption also provides for the routine rural management exemptions under the *Land Act 1994* and *Land Regulation 1995* relating to the establishment of fences and roads to access facilities. The clearing must be restricted to what is ‘necessary’, which may be less than 10 metres.

¹⁰⁸ This replaces the existing exemption to establish necessary infrastructure.

¹⁰⁹ This replaces the existing implicit exemption for clearing to obtain timber for constructing the infrastructure mentioned in the preceding paragraph and allows timber to be cleared on a property if it is to establish new infrastructure on another property owned by the same person.

¹¹⁰ This amends the freehold routine management exemption for clearing fodder for stock in drought conditions. The fodder exemption currently available on freehold land is being replaced with the requirement to apply for clearing for fodder harvesting. To enable landholders affected by the current drought to have adequate time to prepare an application to clear for fodder harvesting, the exemption will continue until 30 June 2004 (Explanatory Notes, p 35).

- (iii) *use under the Community Services (Torres Strait) Act 1984 (Qld), section 185.*

This is a new exemption that recognises approvals to take forest products that exist under these Acts.

- (j) *For a specified activity.*

This provides for the existing exemptions for activities undertaken as authorised under other legislation.

Clause 32(5) inserts a new definition for ‘specified activity’ into Schedule 8, Part 4. ‘Specified activity’ means-

- clearing under a development approval for a material change of use or the reconfiguration of a lot, if the approval is given for a development application-
 - made after the commencement of this definition; and
 - for which the chief executive administering the *VMA* is a concurrence agency;¹¹¹
- a traditional Aboriginal or Torres Strait Islander cultural activity, other than a commercial activity;
- a mining activity or a petroleum activity as defined under the *Environmental Protection Act 1994*;
- an activity under the *Fire and Rescue Service Act 1990*, section 53, 68 or 69;
- an activity under the *Electricity Act 1994 (Qld)*, section 101 or 112A, or the *Electricity Regulation 1994 (Qld)*, section 14;
- for a State-controlled road under the *Transport Infrastructure Act 1994 (Qld)*, road works carried out on the State-controlled road or ancillary works and encroachments carried out under section 500 of that Act; or
- clearing, for routine transport corridor management and safety purposes, on existing rail corridor land, new rail corridor land, non-rail corridor land or commercial corridor land (within the meaning of the *Transport Infrastructure Act 1994*) that is not subject to a commercial lease; or
- any activity authorised under the *Forestry Act 1959 (Qld)*.

¹¹¹ As the clearing will now be considered at an earlier stage in the development assessment process, it will not need to be reconsidered at the operational works stage. The exemption addresses the current situation where the consideration of clearing at operational works stage can effectively prevent development from proceeding if the clearing is not approved, despite the previous stages of the development being approved (Explanatory Notes, p 24).

Item 3AB - Carrying out operational work that is the clearing of native vegetation on land subject to a lease issued under the Land Act 1994 for agriculture or grazing purposes.

This is a new exemption in place of the existing permit requirements under the *Land Act 1994* relating to the clearing of trees on these leases that are repealed.

The exemptions to this item are as follows.

(a) *The clearing of vegetation to which the VMA does not apply.*

Refer to the discussion of this exemption in Item 3AA Exemption (a).

(b) *To the extent necessary to build a single residence on a lot, the building of which is approved under IPA, and any reasonably associated building or structure.*

This provides a new exemption. Refer to the discussion of this exemption in Item 3AA Exemption (c).

(c) *Necessary for essential management.*

This exemption replaces the routine management and routine rural management exemptions under the *Land Act 1994* and *Land Regulation 1995* that relate to the maintenance of firebreaks, infrastructure and gardens. Refer to the discussion of this exemption in Item 3AA Exemption (d).

(d) *In an area shown on a PMAV as a category X area.*

Refer to the discussion of this exemption in Item 3AA Exemption (e).

(e) *In an area for which there is no PMAV and the vegetation is not remnant vegetation and the area has been cleared of vegetation after 31 December 1989.*

This exemption is in place of part of the routine rural management exemption under the *Land Act 1994* and *Land Regulation 1995* that exempts the clearing of regrowth vegetation that has emerged after clearing under a permit issued after 31 December 1989. However, the exemption only applies if there is no PMAV for the area and the vegetation is not remnant vegetation on the regional ecosystem or remnant maps.

If, over time, the vegetation regenerates and is remapped as remnant on the regional ecosystem or remnant maps, it will become assessable unless a PMAV has been made that identifies it as category X (non-assessable).

Note also that, as under the previous provisions for leasehold land under the *Land Act 1994*, re-clearing an area of vegetation that was cleared previously under a permit given before 1 January 1990 is assessable.¹¹²

- (f) *Necessary for routine management in an area of land-*
 - (i) *shown on a PMAV as a category 3 area or category 4 area; or*
 - (ii) *for which there is no PMAV, and the vegetation is a remnant not of concern ecosystem or the vegetation is not remnant vegetation.*

This replaces parts of the routine rural management exemption under the *Land Act 1994* and *Land Regulation 1995* that relate to making and maintaining fences, roads and facilities and reflects the creation of PMAV. It enables clearing for routine management purposes in a not of concern regional ecosystem or of regrowth vegetation cleared on or before 31 December 1989. The clearing must be restricted to what is ‘necessary’.

- (g) *For a specified activity.*

This replaces the exemption under the *Land Act 1994* for clearing authorised under another Act. Refer to the discussion of this exemption in Item 3AA Exemption (j).

Item 3AC - Carrying out operational work that is the clearing of native vegetation on land subject to a lease under the Land Act 1994, other than a lease issued for agriculture or grazing purposes.

This is a new item in place of the previous permit requirements under the tree management part of the *Land Act 1994*.

The following exemptions apply only if the clearing activity is consistent with the purpose of the lease.

- (a) *The clearing of vegetation to which the VMA does not apply.*

Refer to the discussion of this exemption in Item 3AA Exemption (a).

- (b) *To the extent necessary to build a single residence on a lot, the building of which is approved under IPA, and any reasonably associated building or structure.*

This provides a new exemption, in recognition of those leases that are to be used solely for a single dwelling house. Refer to the discussion of the exemption in Item 3AA Exemption (c).

- (c) *Necessary for essential management.*

¹¹² Explanatory Notes, pp 25-26.

This is a new exemption for clearing for essential management activities and is similar to the routine management exemption under the *Land Act 1994* and *Land Regulation 1995*. The exemption is provided in recognition that limited amounts of clearing will need to be undertaken to maintain existing infrastructure, remove dangerous or damaging vegetation and manage the risk of wildfire.¹¹³ Refer to the discussion of this exemption in Item 3AA Exemption (d).

(d) *In an area shown on a PMAV as a category X area.*

Refer to the discussion of this exemption in Item 3AA Exemption (e).

(e) *For a category 3.1, 3.2, 4, 5, 8.2, 9.1 or 9.2 lease under the Land Regulation 1995, part 4, in an area for which there is no PMAV and in which the vegetation is not remnant vegetation.*

This is in place of an existing routine management exemption under the *Land Act 1994* and *Land Regulation 1995*.

(f) *For a specified activity.*

This replaces the exemption under the *Land Act 1994* for clearing authorised under another Act. Refer to the discussion of this exemption in Item 3AA Exemption (j).

Item 3AD - Carrying out operational work that is the clearing of native vegetation on a road under the Land Act 1994.

This exemption is in place of the previous permit requirements under the tree management part of the *Land Act 1994* for clearing roads.

Vegetation on roads is considered to be highly valuable in the provision of wildlife habitat and movement corridors between areas of remnant vegetation, particularly where the remaining land has been largely cleared of native vegetation. As a result, there are fewer exemptions applicable for clearing activities on roads.¹¹⁴

Because local governments have control of roads, a person will still require authority from the relevant local government to clear on a road, despite the exemptions below.

The exemptions to this item are as follows.

¹¹³ Explanatory Notes, p 27.

¹¹⁴ Explanatory Notes, p 28.

- (a) *Carried out by a local government¹¹⁵ and is-*
- (i) *necessary to construct road infrastructure or to source¹¹⁶ construction materials for roads;*
 - (ii) *in an urban area¹¹⁷ and the vegetation is a remnant of concern regional ecosystem or a remnant not of concern regional ecosystem;*
or
 - (iv) *for an activity approved by the chief executive administering the VMA.*
- (b) *Necessary to remove or reduce the imminent risk that the vegetation poses of serious personal injury or damage to infrastructure.*

This replaces, and is broader than, the routine management exemption under the *Land Act 1994* that relates to the clearing of vegetation in an emergency. Refer to the discussion of this exemption in Item 3AA Exemption (d).

- (c) *By fire under the Fire and Rescue Service Act 1990 to reduce hazardous fuel load.*

This replaces the routine management exemption under the *Land Act 1994* for the reduction of combustible material by controlled burning. The exemption allows a person who holds a permit under the *Fire and Rescue Service Act 1990* to undertake a controlled burn to reduce hazardous fuel load without a permit for the clearing.

- (d) *Necessary to maintain infrastructure located on the road, other than fences.*

This is a new exemption which will apply where infrastructure has been placed on, or under, a road. It acknowledges that infrastructure such as electricity cables and sewerage pipes are often located within a road, and clearing may be necessary for

¹¹⁵ Under section 901 of the *Local Government Act 1993* (Qld), local governments have control of all roads within their area. It has been unclear to what extent this provision provided an authority under the *Land Act 1994* for clearing trees. These amendments clarify the clearing a local government can undertake on a road without having to obtain a permit for clearing. In addition to the exemption in this paragraph (a), a local government can clear without a permit if the activity is for any of the other listed exemptions for Item 3AD in paragraphs (b) to (g).

¹¹⁶ This preserves the exemption local governments currently have to source forest products regulated under the *Forestry Act 1959* for road construction purposes (Explanatory Notes, p 28).

¹¹⁷ The meaning of 'urban area' is discussed in Item 3AA Exemption (g).

the maintenance of this infrastructure.¹¹⁸ The clearing must be restricted to what is 'necessary'.

- (e) *Necessary to maintain an existing boundary fence, to a maximum width of 1.5 metres.*

This replaces the existing routine management exemption under the *Land Act 1994* that relates to clearing to maintain an existing boundary fence. A maximum width of 1.5 metres is imposed in recognition that the remaining vegetation strips on roads adjacent to road carriageways are often already narrow and at risk of losing their habitat values if further cleared.¹¹⁹ The clearing must be restricted to what is 'necessary'.

- (f) *Necessary for reasonable access¹²⁰ to adjoining land from the existing formed road for a maximum distance of 100 metres with a maximum width of 10 metres.*

This is a new exemption. The clearing must be restricted to what is 'necessary'. Clearing to construct a single residence and any other reasonably associated structure such as a driveway on adjacent property is already exempt from the requirement for a permit in most cases.¹²¹

- (g) *Necessary to maintain an existing firebreak or garden located on the road.*

This replaces the existing routine management exemption under the *Land Act 1994* and *Land Regulation 1995* that relates to maintaining gardens and firebreaks. The clearing must be restricted to what is 'necessary'.

- (h) *For a specified activity.*

Refer to the discussion of this exemption in Item 3AA Exemption (j).

¹¹⁸ Explanatory Notes, p 29.

¹¹⁹ Explanatory Notes, p 29.

¹²⁰ For example, by a driveway.

¹²¹ Explanatory Notes, p 29.

Item 3AE - Carrying out operational work that is the clearing of native vegetation on trust land under the Land Act 1994, other than indigenous land.

This is a new item and replaces the previous permit requirements under the tree management part of the *Land Act 1994* for trust land.¹²²

The exemptions to this item are as follows.

- (a) *Carried out by the entity that, under the Land Act 1994, is the trustee and is-*
 - (i) *necessary for essential management;*¹²³
 - (ii) *in an area shown on a PMAV as a category X area;*¹²⁴
 - (iii) *in an area for which there is no PMAV and the vegetation is not remnant vegetation; or*
 - (iv) *for an activity approved by the chief executive administering the VMA.*¹²⁵
- (b) *For a specified activity.*

Refer to the discussion of this exemption in Item 3AA Exemption (j).

Item 3AF - Carrying out operational work that is the clearing of native vegetation on unallocated State land under the Land Act 1994.

This item replaces the previous permit requirements under the tree management part of the *Land Act 1994* for unallocated State land.

The exemptions to this item are as follows.

¹²² **Clause 32(5)** inserts a definition for ‘trust land’ into Schedule 8, Part 4. ‘Trust land’ means trust land under the *Land Act 1994*, other than indigenous land.

¹²³ For a discussion of ‘essential management’, refer to Item 3AA Exemption (d).

¹²⁴ Refer to the discussion of this exemption in Item 3AA Exemption (e).

¹²⁵ This replaces the existing authorised activities exemption under the tree management parts of the *Land Act 1994* and *Land Regulation 1995*. The intention that on-going routine clearing activities undertaken by a trustee to maintain trust land or a reserve for the purpose it was granted be allowed if the clearing is consistent with the purposes of the *VMA*. It is not intended that this exemption provide for an alternative approval process if the clearing is for the development of all or part of the trust land or reserve, even if the development would be consistent with the purpose for which the trust land or reserve was granted (Explanatory Notes, pp 30-31).

- (a) *Carried out by the chief executive administering the Land Act 1994 and is necessary for-*
- (i) *essential management;*¹²⁶ *or*
 - (ii) *the control of non-native plants*¹²⁷ *or declared pests.*

This is a new exemption and is provided because the chief executive has land management responsibilities for unallocated State land until the land is allocated as another tenure.¹²⁸ The clearing must be restricted to what is ‘necessary’.

- (b) *For a specified activity.*

Refer to the discussion of this exemption in Item 3AA Exemption (j).

Item 3AG - Carrying out operational work that is the clearing of native vegetation on land that is subject to a licence or permit under the Land Act 1994.

This item replaces existing permit requirements under the tree management part of the *Land Act 1994* for licensed or permitted land that are being repealed.

The exemptions to this item are as follows.

- (a) *Carried out by the licensee or permittee and is necessary for essential management.*

This exemption is provided because the licensee or permittee has land management responsibilities for the land. It replaces the existing routine management exemption for licensees and permittees under the *Land Act 1994* and *Land Regulation 1995*.

- (b) *For a specified activity.*

Refer to the discussion of this exemption in Item 3AA Exemption (j).

3.2.4 Amendment of Schedule 8, Part 3

Schedule 8, Part 3 of *IPA* lists exempt development that may not be made assessable or self-assessable development.

¹²⁶ For a discussion of ‘essential management’, refer to Item 3AA Exemption (d).

¹²⁷ **Clause 33** amends the definition of ‘native vegetation’ so that it is consistent with the amended meaning of ‘vegetation’ in section 8 of the *VMA* discussed in part 3.1.3 of this Research Brief.

¹²⁸ Explanatory Notes, p 31.

Item 13(a)(i) currently provides operational work associated with management practices for the conduct of an agricultural use other than the clearing of native vegetation on freehold land.

Clause 32(2) removes the reference to freehold land, thereby allowing local governments to regulate vegetation clearing on lands other than freehold through their planning schemes, to the same extent they can do on freehold land.¹²⁹

3.2.5 Amendment of *Integrated Planning and Other Legislation Amendment Act 2003 (Qld)*

Part 4 of the Bill amends *IPOLA*.

Most of the provisions of *IPOLA*, which amends *IPA*, have not commenced and, as a result, *IPOLA* must also be amended. The amendments to *IPOLA* in **Part 4** reflect the amendments to *IPA*.

Specifically, **clause 36** amends section 109 of *IPOLA*. **Clause 36(1)** amends Item 1 of Table 4 within Schedule 8, Part 1 which defines the clearing that the State has made assessable development.

Item 1 currently provides that the following is assessable development-

Operational work that is the clearing of native vegetation on freehold land is assessable, unless the clearing is-

- (a) to the extent necessary to build a single residence on a lot and any reasonably associated building or structure; or*
- (b) necessary for essential management; or*
- (c) necessary for routine management in an area that is outside-*
 - (i) an area of high nature conservation value; and*
 - (ii) an area vulnerable to land degradation; and*
 - (iii) a remnant endangered regional ecosystem shown on a regional ecosystem map; and*
 - (iv) an area of unlawfully cleared vegetation; or*
- (d) in an urban area, other than an area mentioned in paragraph (c)(i) or (iii);*
- (e) in a non-urban area, other than an area mentioned in paragraph (c), and is the natural and ordinary consequence of other assessable development and the total area of the part of the land on which the development occurs is less than 5 hectares; or*
- (f) for a mining activity or a petroleum activity as defined under the Environmental Protection Act 1994; or*
- (g) by fire under the Fire and Rescue Authority Act 1990; or*

¹²⁹ Explanatory Notes, p 32.

- (h) for the conservation or restoration of natural areas; or
- (i) for ancillary works and encroachments that are carried out in accordance with the requirements specified by gazette notice by the chief executive under the Transport Infrastructure Act 1994 or done as required by a contract entered into with the chief executive under the Transport Infrastructure Act 1994, section 47.

This item is replaced with seven new items, 1A to 1G, relating to vegetation clearing on the different land tenures to which the *VMA* now applies. The paragraphs within each item outline the specific clearing activities that are exempt from the trigger for when vegetation clearing is assessable. In this respect, the amendments to *IPOLA* reflect those for *IPA* discussed in section 3.2.3 of this Research Brief.

3.3 AMENDMENT OF *LAND ACT 1994* (QLD)

Part 5 of the Bill amends the *Land Act 1994*.

Clause 36 removes Chapter 5, Part 6 (Tree Management) which provides for the management of trees on unallocated State land and reserves, deeds of grant in trust, roads, licences, permits and leases on which the State owns the trees. The amendments under the Bill result in the clearing of vegetation on these tenures being dealt with under the *VMA* and *IPA*.

The amendment by **clause 40** to section 400 ensures that authorised officers can continue to enter land to carry out work such as vegetation identification and mapping and ground-truthing for the State-wide Landcover and Trees Study (SLATS).¹³⁰

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

Clause 42 amends section 431C (Further evidentiary aids) to remove items relating to tree clearing provisions.

4 FUNDING

The Queensland Government has acknowledged that some primary producers who had not previously cleared their properties may be affected by this legislation. All landholders may, however, participate in the ballot and a \$150 million financial package over three years will be available to those who are unsuccessful and

¹³⁰ Explanatory Notes, p 53.

significantly affected by the changes.¹³¹ The package also extends to tree clearing contractors affected by the changes.

Allocation of the package will be as follows-¹³²

- \$130 million will form a structural adjustment package similar to the existing industry adjustment packages, to assist landholders significantly disadvantaged by the new framework, with a focus on sustaining primary production in the affected regions. A portion may be used to purchase properties with “exceptional environmental values that warrant inclusion in Queensland’s protected areas estate, but were earmarked for clearing”.¹³³
- \$12 million for incentives to support landholders willing to manage and maintain remnant and high value non-remnant native vegetation as part of their operation.
- \$8 million for direct financial assistance to support rural industry groups in promoting ‘best management practices’ in sustainable agriculture.

The package will be managed by the Queensland Rural Adjustment Authority. Regional vegetation management committees or regional natural resource management groups will play a role in setting regional priorities within management areas, and in advising on applications for funding.¹³⁴

¹³¹ The \$150 million figure is backed by the Australian Bureau of Agricultural and Resource Economics. Peter Beattie, ‘Beattie defends Qld clearing ban’, *Queensland Country Life*, 22 January 2004, p 1.

¹³² Second Reading Speech, p 65.

¹³³ Peter Beattie, ‘Beattie defends Qld clearing ban’.

¹³⁴ Peter Beattie, ‘Beattie defends Qld clearing ban’.

APPENDIX A – MINISTERIAL MEDIA STATEMENTS

Hon. Peter Beattie MP, Premier and Minister for Trade

30 March 2004

Tree clearing ban will make Queenslanders top global warming warriors

Queenslanders will be world leaders in the battle against global warming when the Beattie Government's new tree clearing laws take effect, an international comparison shows.

The Australian Bureau of Agricultural and Resource Economics, a Commonwealth body, has estimated Queensland's tree clearing package may reduce greenhouse gases by 25 million tonnes (25 megatonnes) per year.

It will be Australia's single biggest contribution to greenhouse gas reduction.

Premier Peter Beattie said: "A new Queensland Government analysis shows the clearing ban will make Queenslanders world leaders in greenhouse gas reduction, based on our population. We will be doing much more to combat global warming than Europeans and Canadians.

"Our land clearing package will reduce greenhouse gases by an impressive 6.84 tonnes per person per year (based on 2001 population).

"That is equivalent to taking two cars off the road for every man, woman and child in Queensland - a staggering total of more than seven million cars per year.

"It leaves other leading developed nations in the shade.

"Plans in the 15 nations of the European Union* will reduce greenhouse gases by approximately 1.23 tonnes per European, while efforts in Canada** will reduce emissions by about 1.62 tonnes per Canadian each year.

"Amid mounting evidence of the harm caused by global warming - to health, lifestyle, the economy and the environment - Queenslanders are making an important contribution to the future of the planet.

"The Australian Bureau of Agricultural and Resource Economics, together with the Federal Government's Bureau of Rural Sciences, has estimated Queensland's tree clearing ban will save Australians \$600 million per year.

"Yet the Federal Government will not join in this effort and be part of the \$150 million package we will provide to farmers effected by the tree clearing ban." Mr Beattie said.

Natural Resources Minister Stephen Robertson last week introduced legislation to Parliament to implement the phase-out of broadscale remnant tree clearing. The Vegetation Management and Other Legislation Amendment Bill 2004 was the first bill introduced to the 51st Queensland Parliament, in line with an election commitment.

***Environmental Issue Report no.36 - Greenhouse Gas Emission Trends and Projections in Europe 2003 (Dec 2003)**

***Climate Change Plan for Canada, Government of Canada**

Media contact: 3224 4500

Hon. Peter Beattie MP, Premier and Minister for Trade

29 March 2004

Expert science underlines urgent need for tree clearing ban

Premier Peter Beattie today welcomed an expert scientific report on climate change that reinforces the huge benefits of his government's commitment to end remnant tree clearing in Queensland.

The report, *Environmental Crisis: Climate Change and Terrestrial Biodiversity in Queensland* - released today in Cairns - was compiled by the respected Rainforest CRC at James Cook University.

"This report is the result of a climate change summit held in Brisbane in July 2003 with assistance from the Queensland Government," Mr Beattie said.

"It sounds a grim warning about the impacts of climate change, not only on the rainforests of Queensland but also on our health and safety, our primary industries and water quality.

"The report endorses the Queensland Government's policy of ending remnant tree clearing.

"It says clearing natural vegetation "exacerbates gas build-up and reduces the resilience of the landscape to effects of climate change".

Further, the report says: "Minimising the impact of climate change on biodiversity should begin with the cessation of widespread clearing of vegetation.

"We welcome the current efforts of the Queensland Government to control or end broadscale clearing of remnant vegetation." Mr Beattie said: "Our ban on remnant tree clearing, which will take full effect by December 2006, is the single biggest action to reduce greenhouse gases taken by any Australian government.

"It will reduce greenhouse gas production by 25 million tonnes a year-equivalent to taking about seven million cars off the roads each year.

"The tree clearing ban will also make Queensland's priceless native plant and animal populations more resilient, and will protect regrowth of high conservation value.

It will preserve species that may unlock cures to human, plant and animal diseases.

"It is now widely accepted by scientists that human-induced global warming is a reality.

"The report stresses the need for emission control, and the Queensland Government has a range of initiatives that will restrain production of greenhouse gases.

"They include: the Cleaner Energy Strategy, which requires electricity retailers to source 13% of power used in Queensland from gas fired generation

and 2% from renewables from 1 January 2005; the solar hot water rebate; support for ethanol and coal seam methane gas; and better planning and integration of transport systems.

"The scientific paper highlights that extreme events such as droughts and floods are likely to become more severe, frequent and prolonged under global warming conditions.

"It points out that climate change may favour weeds, feral animals and diseases. Alarmingly, weeds from subtropical and tropical zones may come to represent a greater threat than temperate zone weeds, as temperatures rise.

"I commend the efforts of the Rainforest CRC and all who collaborated on the report.

"I am delighted that their world class science will continue to inform our environmental protection policies," Mr Beattie said.

The paper is edited by respected scientists Dr Andrew Krockenberger of James Cook University, Professor Roger Kitching of Griffith University and Professor Steve Turton of the Rainforest CRC.

The summit from which the report resulted was part of the Global Canopy Programme under, which involves organisations including the prestigious Smithsonian Institution. The Queensland Government gave the CRC \$50,000 to be part of this programme.

The Environmental Protection Agency will review the report and prepare recommendations on how to further address climate change issues.

An initial assessment shows Queensland Government initiatives that match the recommendations include:

- Expanding the protected area estate by 1.2 million hectares since 1998.
- A \$10 million commitment to protect Cape York Peninsula's world class heritage and cultural values, including \$7.5 million for voluntary acquisitions.
- The Trust for Nature, a revolving fund to buy, protect, and re-sell areas of high regional conservation value. The Queensland Government has committed \$5 million to this initiative.
- A commitment of \$5 million to buy and protect private land in the internationally-acclaimed Daintree Rainforest.
- Tax exemptions to encourage private citizens to set aside land for conservation purposes.
- Water resource allocation management plans that are reviewed every 10 years and take into account factors such as climate change.
- Department of Natural Resources, Mines and Energy climate predictions for weeds and pests that use a program which can incorporate climate change scenarios.
- A recent commitment of \$6 million over three years to tackle weed and feral animal problems on national parks.
- Policies that encourage landholders to be prepared for climatic extremes.

- The examination of environmental flows are in the water planning approach of Department of Natural Resources, Mines and Energy.
- A wetlands conservation and management implementation plan will address biodiversity conservation in waterways and wetlands.
- A proposed Greenhouse Strategy which is now being developed, to help Queenslanders reduce emissions and adjust to the environmental, social and economic impacts that climate change might cause.

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Hon. Peter Beattie MP, Premier and Minister for Trade**15 March 2004****Queensland tree laws a boost to greenhouse battle**

The Queensland Government will deliver on a key election commitment when legislation to protect native trees is the first bill introduced to the new Parliament on Thursday.

Premier Peter Beattie said Queensland's \$150 million package to protect remnant and "of concern" vegetation will be Australia's single biggest contribution to the battle against global warming.

Queensland Cabinet today approved the legislation underpinning the package.

"The Federal Government is turning a blind eye to global warming by refusing to be part of the \$150 million package - despite the fact it was designed to meet Australia's international greenhouse obligations and agreed to by the Prime Minister," Mr Beattie said.

"The legislation will mean the native animals and plants, water quality and land productivity that depend on Queensland's remnant vegetation will be protected for future generations.

"It is also a step towards protecting aspects of our health, lifestyle, economy and environment - including the Great Barrier Reef - that are threatened by global warming.

"It's disgraceful that the Federal Government would walk away from Queensland farmers by reneging on a promise to join the Queensland Government in this historic package.

"The issue is so important that we are prepared to go it alone and single-handedly fund \$150 million in assistance to affected farmers - including the Federal Government's \$75 million share.

Minister for Natural Resources and Energy Stephen Robertson, who will introduce the bill and implement the legislation, said: "This long-running issue of national importance can now be resolved once and for all.

"The new laws will provide much-needed certainty to Queensland primary producers who have had to wait far too long for this vital issue to be resolved," Mr Robertson said.

Mr Beattie said broadscale clearing will end by December 2006.

"Between the start of the moratorium in May 2003 and the end of 2006, 500,000 hectares of clearing will be permitted.

"This includes clearing applications lodged but not processed at the start of the moratorium.

"It's estimated that existing applications will account for between 250,000 ha and 300,000 ha, leaving between 200,000 ha and 250,000 ha under the cap.

"The Government will allocate these additional hectares after a ballot, which is likely to occur in September 2004.

"There will be no more clearing of remnant and of concern vegetation on Cape York Peninsula, in line with another election commitment.

"Every application that makes it through the ballot will be assessed against regional vegetation management codes," Mr Beattie said.

Mr Robertson said the new legislation will establish a voluntary system of property maps of assessable vegetation.

"Landholders who have regrowth clearing approved according to a property map of assessable vegetation will not need to keep reapplying to clear regrowth," Mr Robertson said.

"Landholders who want a property map of assessable vegetation will provide the Department of Natural Resources with evidence such as photos, past permits and approvals, business and property plans, and documents to prove clearing has occurred.

"The Department will then assess the evidence and, if correct, certify it.

"Areas of high nature conservation value and areas vulnerable to degradation will be assessable - meaning they cannot be cleared.

"Any regrowth in areas which has been illegally cleared will be classified as remnant and be off-limits to clearing.

"However existing exemptions will continue, and a policy on "thinning" (selective clearing) is being developed to give greater certainty to landholders while upholding conservation concerns," Mr Robertson said.

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Hon. Peter Beattie MP, Premier and Minister for Trade**16 May 2003****Tree clearing applications on hold pending major Commonwealth-State package**

The Federal Government has given the green light to a temporary hold on land clearing applications in Queensland, while the Federal and State governments finalise a major assistance package for landholders.

Premier Peter Beattie and the Minister for Natural Resources and Mines, Stephen Robertson, welcomed the co-operation of Prime Minister John Howard, who has confirmed his support for this approach in a letter to the Premier.

"This is a temporary measure while we finalise a package to protect remnant vegetation, and while we consult with farmers and other interested parties," Mr Beattie said.

"When finalised, this package will hold many benefits for landholders, for Queensland and for Australia.

"The temporary halt on clearing is effective from today.

"It will not affect existing permits for clearing.

"It will not affect clearing applications already lodged - the Department of Natural Resources and Mines will continue to assess these applications.

"And it will not apply to fodder harvesting for stock feed in drought declared areas, to clearing for weed control or to clearing for public safety," Mr Beattie said.

Mr Robertson said: "The message is: If you clear without a permit, action will be taken under the State's tough new vegetation management laws.

"You will be prosecuted, or you may have to revegetate the area you have cleared, or you may be excluded from any further clearing."

He said the Federal and State Governments had been negotiating for years over a package to protect remnant vegetation.

"Our Governments are now at the point where we need to discuss our proposals with stakeholder groups," Mr Robertson said.

"By declaring there will be no further applications accepted for clearing in Queensland while consultation and negotiations are underway to finalise a major assistance package for landholders, we are avoiding any prospect of a rush of applications.

"I stress that land holders with current permits to clear can go ahead and carry out their activities lawfully. Current exemptions for clearing under both the Integrated Planning Act 1997 (IPA) and the Land Act 1994 remain in force.

"Any clearing associated with other assessable development that has been approved by or lodged with Local Government at this date, will not be affected," the Minister said.

Mr Beattie welcomed the Prime Minister's letter confirming support for a temporary halt on clearing applications as an indication of the significant progress that the two governments had made in negotiating a joint package to address the problem of high rates of land clearing.

"The scientific evidence shows that land clearing poses a grave threat to Australia's environment by contributing to salinity, declining water quality, species extinctions and degradation of the Great Barrier Reef," Mr Beattie said.

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