property rights australia

August 1, 2016

Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016

On the following pages Property Rights Australia (PRA) provides evidence to answer the question - By what criteria can it be judged that the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 is worthy of a vote in support?

For the majority of the members of parliament who will vote on this Bill there will be no immediate direct effect from passing this Bill on the constituents in their electorates. Those most impacted will be the State's agricultural producers who are the land managers for the largest area of the land in the State but are represented by a small minority of electorates. As pointed out in this document there will be long term impacts for all Queensland citizens by lessening legislative standards to allow erosion of legal protections that we all currently take for granted. Also there will be increased pressure on long term food security.

Addressed in the following pages are the criteria of:

- Is there illegal activity not covered by existing law?
- Legislative Standards
- Environment
  - Tree Cover
  - Great Barrier Reef
  - Climate Change
- Economy
- Compensation
- Fairness for North Queensland - High Value Agriculture permits

Finally the document provides evidence to the question - Should the Bill be passed?

The short answer to this question is that PRA believes that the Bill fails on all the above criteria and is not worthy of support. The indications are that this Bill is being advanced to serve political deals rather than to serve the people of Queensland.

PRA hopes that the following pages are helpful and we are available if you have any further questions.

Dale Stiller

Dale Stiller
Chairman
Property Rights Australia Inc.

www.propertyrightsaustralia.org
pra1@bigpond.net.au

Ph 07 4921 4000
Fx 07 4927 1888

PO Box 2175
Wandal QLD 4700

Like us on Facebook

122 Denham St
Rockhampton QLD

Office Hours: 8am-1pm
Tuesday & Thursday

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Open letter to Queensland cross benches

Property Rights Australia (PRA) is a membership organisation formed to protect property rights of all descriptions. PRA is an apolitical and a not for profit organisation. It aims to promote fair treatment of landowners in their dealings with government, businesses and the community

By what criteria can it be judged that the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* is worthy of a vote in support?

Is there illegal activity not covered by existing law?

> *"Any understanding of the kinds of laws Queensland needs to combat crime sensibly begins with the best and most reliable information we have about the nature and extent of criminal activity within the State.*
> *Crime figures about the frequency and prevalence of certain kinds of criminal activity, from which we can detect patterns and trends, are the only logical starting point.*
> *Statistics enable us to measure the nature, and the extent, of the risks presented by particular kinds of crime (including, of course, organised crime)".*

So says the Queensland Taskforce on Organised Crime Legislation chaired by former Queensland Supreme Court Justice Alan Wilson.[1]

A document tabled by Marland Law at the Gympie hearing of the parliamentary committee into Vegetation Management (Reinstatement) and Other Legislation Amendment Bill[2] gives a breakdown of Remnant Vegetation clearing for 2013-2014 as outlined in the State Government Statewide Landcover and Trees (SLATS) Report. The SLATS Report is the basis on which the legislation is based.

Of the 103,000 hectares of remnant vegetation, the clearing was classified as:

- *58,710 hectares (57%) for fodder under fodder codes;*
- *23,690 hectares (23%) Multiple Permit Purposes (Fodder, Thinning & Encroachment);*
- *7,200 hectares (7%) Native forest practice;*
- *4,120 hectares (4%) fence, firebreak, road and infrastructure;*
- *4,120 hectares (4%) encroachment;*
- *2,060 hectares (2%) - Grazing Lease regrowth;*
- *2,060 hectares (2%) thinning;*
- 1,030 hectares (1%) other.

Any unlawful clearing will sit in the 1030 ha of "other" clearing although not all is necessarily unlawful just unexplained at the time.

How laws which breach fundamental legislative principles can be justified for less than 1% unlawful activity is beyond logic.

[1] http://www.justice.qld.gov.au/__data/assets/pdf_file/0017/463022/report-of-the-taskforce-on-organised-crime-legislation.pdf p76
[2] https://www.parliament.qld.gov.au/documents/committees/AEC/2016/11-VegetationMangt/11-cor-1Jun2016-Gympie.pdf p3

Statements by environmental spokespeople have been very careless in claiming that there were 200 complaints of illegal clearing but only 1 prosecution.[3] They would rather believe that people have escaped prosecution rather than that they have not broken the law. In fact, members of the public and WWF report clearing often; it is usually found to be legal.

WWF spent a great deal of time and money including real time satellite imagery, demonising and defaming an Augathella grazier in the mainstream media and made a great show of urging the State Government into investigating the landowner. He was found to have done nothing unlawful but the intended damage via the urban media had been achieved. Retractions were either non-existent or unnoticed.[4]

Legislative Standards

Whenever new legislation is introduced the question is asked of, "Consistency with fundamental legislative principles" as required under the Legislative Standards Act. In the case of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill* in the explanatory notes[5] the response to this question is, No, it doesn't meet the Legislative Standards Act, but we are introducing these provisions anyway. It's astounding that our political representatives are actually prepared to proclaim that they will reinstate the worst attributes to the Vegetation Management Bill complete with the reversal of onus of proof (you are guilty and have to prove your innocence), the removal of the right to an honest mistake and include retrospectivity if the Act is passed. The last one means that you can do something legal today, but a law passed tomorrow, results in you being prosecuted.

Queensland Law Society President Bill Potts has been widely reported as having been opposed to those aspects of the Bill which breach fundamental legislative principles. The Courier Mail headline on the subject proclaims "*Provisions in VLAD laws being used to stop farmers from land clearing*".[6]

What has shocked our Board is the aggressiveness with which the Queensland Greens, supported by all the prominent environmental groups and some community groups, have pursued those aspects of the Bill which breach fundamental legislative standards, on the grounds that they were part of the preference deal at election time, to reinstate the former Vegetation Framework in its entirety. As recorded in the Parliamentary Committee's report:

> *Environmental groups argued the State would still be required to prove that an offence had occurred and the landholder's right to natural justice would ensure that they had an opportunity to provide evidence to prove their innocence.*

[3] https://www.parliament.qld.gov.au/documents/committees/AEC/2016/11-VegetationMangt/11-trns-ph18May2016.pdf Ms Clare Baldwin, President North Qld Wildlife Inc. p6

[4] http://www.abc.net.au/news/2015-08-21/augathella-tree-clearing-wwf/6714560

[5] https://www.legislation.qld.gov.au/Bills/55PDF/2016/B16_0035_Vegetation_Management_%28Reinstatement%29_and_Other_Legislation_Amendment_Bill_2016E.pdf

[6] http://www.couriermail.com.au/news/queensland/queensland-law-society-says-provisions-in-vlad-laws-being-used-to-stop-farmers-from-land-clearing/news-story/379ab26719db97045134b89332d80ae2

> The Principal Solicitor, EDO of Northern Queensland, Ms Tanya Heber, considered that "Any skerrick of evidence that the occupier is not responsible for the clearing will automatically displace the presumption [of guilt]".[7]

This has not been borne out by experience and the evidence shows that the protections need to be built into the Act.

The claim that landowners would have opportunities to present evidence to prove their innocence is a casual dismissal of what has caused many Queensland landowners years of their life, stress and hundreds of thousands of dollars under the Act before the May 2013 amendments. Case history records where representatives of the Model Litigants have been intent on prosecution, and not justice.

The Queensland Greens and environmental groups are not content to have laws introduced to protect the environment and have them policed in a way that is fair and respectful of the rights of business owners and individuals, but have lobbied hard to erode the basic rule of law that has been developed, adapted and changed over hundreds of years. Much of the reasoning behind why breaches of fundamental legislative principles are justified is thin and dishonest. Certainly, enough landowners have testified at all the regional Parliamentary Committee hearings that the mapping is incorrect, to give major reservations about the removal of the defence of "mistake of fact" which was not part of the original Vegetation Management Act. The Model Litigant has more than enough resources at its disposal to run a fair case. Many of the cases brought in the past have been anything but fair.

This has even spilled over into perjury and fabrication of evidence. The most blatant example is of the attempted prosecution of a landowner from Hebel where the court finding reads:

> *"It was rather concerning during his evidence to consider the emails which reported that the remotely sensed images used by the Prosecution to prove clearing of the land did not show a very large shed which is actually on the property. The area around the shed simply looked like pasture in the images.*
>
> *A computerised set of information concerning property boundaries is used by the Department. This is the Digital Cadastral Data Base (DCDB). Linda Lawrence moved the DCDB approximately 100 metres to the southwest for the purpose of assessing the area of alleged clearing on the roads reserve. She did this only for the purposes of the prosecution.*
>
> *The permanent records of the department were not also altered."* [8]

In one (Western Australian) case, it was obvious well before a case was taken to court that neighbours who were called as witnesses (one of whom totally overlooked the subject property), were able to testify that the clearing had been carried out by a previous owner. He was eventually found to be not guilty but his savings are gone, his property is being foreclosed on, his health has suffered badly enough that he is no longer able to work, and his retirement plans are shattered.

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[7] https://www.parliament.qld.gov.au/documents/committees/AEC/2016/11-VegetationMangt/11-rpt-019-30Jun2016.pdf p23

[8] [paragraphs 43 to 73] http://www.propertyrightsaustralia.org/speeches/philsheridan-pra-agm-2009/

We acknowledge that the parliamentary committee has recognised that "reversal of the onus of proof" should be removed from the Bill. We are also aware that the parliament is not obliged to adopt the recommendations of the committee.

Removal of "mistake of fact" was not part of the original Beattie Vegetation Framework.

Mistake of Fact - Mapping

> *Regional ecosystem mapping is conducted at a scale of between 1:100,000. This means that for one centimetre on a map is 1000 meters on the ground. This map forms the basis for regulated vegetation on each landholder's property. The mapping is provided with a qualification that it is only accurate to plus or minus 100 meters. When prosecutions are undertaken, that scale is digitally reduced to 1-meter resolution to show and prove areas that have been cleared. These areas are as small as 0.001 hectares. The accuracy of the mapping and the large variation in its application does not provide sufficient protections to a landholder seeking to manage the vegetation on their land nor afford them a reasonable opportunity to defend themselves in a court of law.*[9]
>
> ***Department's response***
>
> *At the public briefing on 25 May 2016, DNRM advised that "the way the vegetation management framework operates is that the map and the law work together in applying how that framework should work".*[10]

The claims of DNRM about how the mapping and the law work together and how easily incorrect mapping can be addressed, is not borne out by the evidence. Even though some changes may be made, as the Department claims free of charge, that is not the major cost, where the landowner bears the major cost in resources and/or direct cost. Many landowners have been totally unsuccessful in having incorrect mapping changed.

It is also a matter of record that landowners have been charged and fined for clearing non-native vegetation or declared weeds.

DNRM and the Deputy Premier have also made much of the accessibility and amount of information available and assistance available from Departmental officers.

Most of the material comes with disclaimers and cannot be used in a court of law so that claim is a thin one when it comes to removal of "mistake of fact".

Some information given by Departmental officers has been incorrect both in terms of what is permitted and what is not permitted. This information is rejected by the court as the Court relies on strict interpretation of the law as it is written. These limitations occurred even when "mistake of fact" was still an allowable defence.

Retrospectivity-Practical considerations

People have been cut off from applying for PMAV's in spite of confusing and inaccurate advice or if they acquired property recently.

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[9] https://www.parliament.qld.gov.au/documents/committees/AEC/2016/11-VegetationMangt/11-cor-1Jun2016-Gympie.pdf p2

[10] Peter Lazzarini, Director, Land and Mines Policy, DNRM, *Public Briefing Transcript*, 25 May 2016, p.3

Permit and PMAV applications are not accepted in spite of (often considerable) funds outlaid.

These exchanges from the Bundaberg parliamentary hearing[11] below shows that the much touted justification for the removal of "mistake of fact", that there is much information available shows that the department is often wrong, changes its mind or its interpretation, and regulations or attitudes change. Departmental advice with disclaimers is useless in a court. So is advice that is given and then abruptly changed. The exchanges below also speak to retrospectivity.

> ***Ms Barratt:*** *Retrospectivity is quite unfair. Firstly, if you are looking at country that is mapped as non-remnant, in the current legislation, before this bill was introduced, the government said, 'Everything that is mapped non-remnant is now category X and it is locked in, so you do not need to put a PMAV in.' This bill has now introduced regrowth mapping which, if you have not got your country locked in as category X on a PMAV, affects you. That is very unfair to start with. I think that is really the main thing. It basically has not given people due warning that there are changes afoot and that the attitude within the government has changed. For a period there you could not even lodge lock-it-in PMAVs because they said it is already locked in on the regional ecosystem mapping. This legislation now proposes to change that so for people who have been advised by the government previously that their country is safe that is no longer the case.*
>
> *Mr Collins p11*
>
> *At the time of the roadshows that were carried out with the major amendments that were made in 2013, the department staff said in front of landowners that with category X you do not need to lock your land in anymore. Either the government has hoodwinked the landowners or hoodwinked the department themselves, because now these people who have not gone and locked their land in have now got category X and category C on it. On that category X and category C country, because the laws are retrospective, if you are not exempt currently under the self-assessable code—the self-assessable codes are exempt under schedule 24—you cannot clear and there is no other mechanism for you to clear. If you wanted to manage something or build something, you cannot do it currently because there is no mechanism. They basically brought in some legislation with no mechanism to be able to fix the problem.*

Environment

Tree Cover

The debate surrounding vegetation management largely is conducted as if trees are the primary indicator of the environmental health of the landscape. Yet trees are but one type of flora in a vast array of flora and fauna.

This ignores three major factors

[11] https://www.parliament.qld.gov.au/documents/committees/AEC/2016/11-VegetationMangt/11-trns-ph1June2016-Bberg.pdf

These are dynamic ecological systems. The Queensland government's SLATS report clearly shows that, in spite of 296,000 ha cleared (most of which was regrowth and mulga for fodder) that tree cover actually increased by a net amount of 437,000 ha. This confirmed the scientific report released early 2015, ''Recent reversal in loss of global terrestrial biomasses' which established a thickening of woodlands and tree encroachment into grasslands.

Other flora and fauna live in a variety of ecological systems. Some native species in a region cannot survive in thickened woodland that is declining in diversity to the extent that it is becoming a monoculture.

Lastly and importantly the debate is focusing on land set aside for the use to produce food and fibre, not high conservation value land set aside for National Park. This is land purchased by people who have invested not only capital but also specialist local knowledge to best manage this land to produce much needed food and fibre for this Nation in addition to the contribution to the economy through exports.

Great Barrier Reef

The Great Barrier Reef, a well-known natural wonder, runs off shore along a long stretch of the Queensland coastline. The government has made the association of the need to introduce tougher provisions in the Act within the aim to stop sedimentation going to the reef. What has been overlooked is the fact that it is not tree cover that prevents erosion, rather ground cover. This principle is confirmed in the 2015 Soil Conservation Guidelines for Queensland.

> *This Bill and the arguments behind it is a gross misuse of available science which discusses the delicate balance between trees and grass cover in some areas. There is a very large body of evidence that it is grass, not trees which protect streams and the GBR from sedimentation. The balance differs between woodland types some of which allow almost no grass on the bare earth beneath them but there is no such delicacy of balanced science involved in this debate which has the Government and green groups running amok with selective science and the lives of rural Queenslanders.*[12]

Climate Change

The claim is made that tree clearing must be stopped to meet Australia's signature to the Paris agreement. Ignored is that the Paris agreement for the first time has recognized the importance of food production and food security to the world where it "encouraged farmers to produce food with the lowest possible emissions, rather than just focusing on total emissions." [13]

It's exasperating that the tree clearing, or more accurately the vegetation management debate is being executed with little to no recognition that these areas are not declared for conservation, but are mostly privately owned by farming families - land designated for agricultural production. Depending on what is being produced from the land, it needs management to balance vegetation types to a greater or lesser extent.

[12] https://www.parliament.qld.gov.au/documents/committees/AEC/2016/11-VegetationMangt/submissions/654.pdf

[13] http://www.abc.net.au/news/2016-03-24/paris-agreement-carbon-farming-food-security/7270580

Lost is recognition of science that shows grassland actually sequesters more carbon than old forests.

> *"The argument that converting pasture land to trees in order to sequester massive amounts of carbon dioxide cannot be used if the carbon sequestration of grasslands is ignored.*
>
> *Grasslands can store 260 tonnes of carbon per hectare (Neely 2009). Teague (2016) argues that well managed pasture and livestock can sequester significantly more carbon in the soil than ruminants emit.*
>
> *Under existing management most temperate grasslands worldwide are net carbon sinks"* [14]

Governments and environmental organisations have tried hard to dismiss a number of older research papers from field investigation in northern Australia by woodland ecologists and rangeland scientists, that has determined woodlands are thickening and encroaching onto grasslands. This has now been confirmed by the release of two decades of international cooperative research by the University of NSW, Australian National University and CSRIO in the report, 'Recent reversal in loss of global terrestrial biomass.' [15] The illustrated map is quite striking. Also the Qld government's own SLATS report[16] establishes an increase in tree cover.

From the humblest household, to a government budget, any criticism of expenditure means very little, if the income amount is greater. It is the net amount that is important and the same is true for carbon emissions by agricultural activity. Internationally reputable climate research demonstrates that Australia is a net CO2 sink through NASA's OCO-2 satellite and independently Japan's GOSAT (IBUKI) satellite.

> *NASA's OCO 2 satellite, has the capacity to accurately measure columns of greenhouse gases from earth to the outer atmosphere with total coverage.*
>
> *Not only does this system show Australia as a greenhouse gas sink but it also shows Queensland as a greenhouse gas sink in contrast to the Australian Government accounting system which shows us with a significant deficit and our country liable for significant outlays for greenhouse gas shortfalls.*
>
> *That Queensland and Australia are greenhouse gas sinks has also been measured by Japan's GOSAT satellite.*[17],[18]

[14] http://soilalliance.blogspot.com.au/2016/04/ruminant-livestock-and-greenhouse-gases.html
[15] https://theconversation.com/despite-decades-of-deforestation-the-earth-is-getting-greener-38226
[16] https://www.qld.gov.au/environment/land/vegetation/mapping/slats/

[17] http://atse.uberflip.com/i/665800-focus-195-innovate-or-perish-thats-the-mantra-we-must-turn-our-ideas-into-world-products-and-services/29

[18] [page 8]
http://www.propertyrightsaustralia.org/documents/1453457894_vegetation_management_in_queensland_-_some_essential_facts_21_jan_2016_update3.pdf

Economy

The Draft Productivity Report into the cost of agricultural regulation released 21st July, 2016, recognises, not for the first time, that the cost of vegetation regulation falls on a very small section of the community.

> *The bottom line is that landholders are required to bear the cost of providing many communitywide benefits from better environmental outcomes. While the community may demand better environmental outcomes, because the costs fall on landholders, the community is not necessarily aware of the cost of achieving those outcomes. Such an arrangement is likely to encourage the community to continue to demand greater levels of environmental protection, simply because they are not paying for (or not paying the full cost of) that protection.*[19]
>
> *Another perverse incentive created by native vegetation and biodiversity conservation regulations is that they impose the greatest costs on landholders who, by choice or chance, have substantial native vegetation remaining on their properties. Past actions that resulted in native vegetation being well managed are not rewarded.*[20]

It also says that laws should be risk based and balance social, economic and environmental factors. It recommends that there is scope for governments to,

> *fundamentally change native vegetation and biodiversity conservation regulations, so that they consistently consider economic, social and environmental factors; account for the impact of proposed activities on the landscape or the region (not just the impact on individual properties); and are based on an assessment of environmental risks*[21]

The Vegetation Management (Reinstatement) and Other Legislation Amendment Bill is certainly not risk based.

There has been no increase in unlawful clearing as a result of self-assessable codes. Indeed, the environmental groups are bewailing the fact that there has been only one prosecution in spite of 200 reports of clearing, which were obviously legal.

Balancing of any objectives other than environmental, (such as social and economic) is simply not on the radar of the green groups, who are directing this legislation.

Tim Seelig of *The Wilderness Society* stated in evidence to the Brisbane parliamentary hearing into the Bill, that he wanted the allowance of sustainable land use [S3(1)(h)] removed from the purpose of the Act.

[19] http://www.pc.gov.au/inquiries/current/agriculture/draft/agriculture-draft.pdf pp107-8
[20] Ibid. p109
[21] http://www.pc.gov.au/inquiries/current/agriculture/draft/agriculture-draft.pdf p91

Compensation

> ***Ms Hamilton:*** *I understand with the introduction of the original Vegetation Management Act that there was a structural adjustment package available to landowners who could demonstrate that if they had land that was a viable income source that they were not able to use then they were eligible for the structural adjustment. It is also my understanding that there was a significantly low uptake of that structural adjustment package that was made available by the state government. I think that landholders who have significant vegetated land have been given this significant opportunity to be able to apply for that package and have chosen not to take it up.*[22]

ABARE, DPI and Productivity Commission reports have all shown that the original compensation package was woefully inadequate.

It is important to clarify other reasons why it was not taken up.

Queensland was still in, or just emerging from, a severe drought. Landowners were not permitted to take the money and retire debt as many would have liked to have done after a drought. They were required to match the State dollar for dollar, and install prescribed infrastructure. It then became a decision about whether they could afford to go into more debt to take advantage of the "compensation", or whether it was a risk they could not take. Many decided that more debt was something their businesses may not survive. Genuine compensation for such a serious impediment should have no strings attached. Claiming that adequate compensation was paid, is a disgrace.

Fairness for North Queensland - High Value Agriculture permits

When the Vegetation Management Act was first introduced it was blanket legislation that failed to take into account the differences in different bio-regions and the low state of development in far north Queensland. Many regions in north Qld currently have over 90% remnant vegetation.

To remove the High Value Agriculture categories introduced in the May 2013 amendments from the legislation is to deny Far North Queensland indigenous and non-indigenous Australians the opportunity to develop their economy in line with the expectations of the rest of the country.

In the application for a HVA permit the landowner has to demonstrate through a vigorous process the environmental, agronomy and economic feasibility of the project before a permit is granted.

WWF published on the internet an exhaustive list of all landowners who had applied for and been granted permits for High Value Agriculture, with an interactive map, which it labelled a "map of shame" thereby defaming every farmer on the list.

An analysis of that list shows that of all the permits granted, contrary to perception of the reports in the media, whipped up by WWF, 65% of permits were for fewer than 250 ha with many for between 2 and 10 ha. They were granted to fruit growers, vegetable growers, canefarmers and other small crop growers as well as broad scale agriculture and were spread all over Queensland.

The human rights and property rights of individual property owners have been totally disregarded by this Bill.

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[22] https://www.parliament.qld.gov.au/documents/committees/AEC/2016/11-VegetationMangt/11-trns-ph18May2016.pdf p10 Townsville

Should the Bill be passed?

Rule of Law Institute of Australia (ROLIA) says of changes to the Vegetation (Reinstatement) Bill that they "*involve key rule of law debates, including when it is acceptable to reverse the onus of proof, the importance of law reform vs. stability of law, and making legislation retrospective.*"[23]

ROLIA also shared the concerns of Speaker Peter Wellington[24] about the instability of the law.

> *The constant tinkering with Queensland's vegetation management laws has raised concerns that those facing the brunt of the laws – predominantly farmers – are unable to plan beyond the electoral cycle. Regardless of the merit of the amendments, the instability itself becomes a rule of law issue.*[25]

Although the Board of Property Rights Australia shares concerns over the constant changing of the law, we do not agree with a proposed solution that Agforce and the green groups should sit down and sort it out. The history of such negotiations has shown them to be a farce[26], which was again repeated in attempted consultation[27] prior to the tabling of this Reinstatement bill.

PRA maintains that the Act following the 2013 amendment retains significant environmental protection and substantial penalties for any unlawful clearing. The most significant changes made were the removal of provisions that attack legal protections, that most Australians believe are foreign to the standard of human rights and protection under law for this nation.

This Bill is deeply flawed and should not be passed.

[23] http://www.ruleoflaw.org.au/vegetation-management-queensland/
[24] http://www.abc.net.au/news/2016-03-22/qld-speaker-appeals-for-tree-clearing-compromise/7267444
[25] Ibid.
[26] http://www.thechangeagency.org/_dbase_upl/CaseStudy_Landclearing.pdf
[27] http://www.beefcentral.com/news/agforce-furious-at-qld-govt-tree-change/