



28 April 2016

Research Director
Agriculture and Environment Committee
Parliament House
BRISBANE QLD 4000

By email: vminquiry@parliament.qld.gov.au

Dear Research Director,

Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016
EDO NQ submission

Who we are

1. Thank you for the opportunity to make a submission to this Committee regarding the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 (the Vegetation Management Bill)*.
2. The Environmental Defenders Office of Northern Queensland Inc. (EDO NQ) is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. We provide legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest. We also deliver community legal education and undertake law reform activities. We provide services to communities in northern and far northern Queensland.

Support for the Vegetation Management Bill

3. EDO NQ strongly supports the Vegetation Management Bill. It is necessary to restore the controls over excessive land clearing that has occurred since the Newman government's green-tape reduction program of 2013. As a result of the amendments made to the *Vegetation Management Act 2009 (VMA)* in 2013, the rate of land clearing in Queensland in 2013/14 was 278,000 hectares, more than 3.5 times the 2009/10 rate of 77,590 hectares¹.
4. The VMA (and its predecessor legislation) arose as a response to the large-scale destruction of Queensland's native vegetation. The Brigalow Scheme, set up to resettle WWII veterans in Central Queensland's Brigalow country, resulted in around 3 million hectares of native bushland being destroyed over a 15 year period². Between 1995 and 2005 Queensland cleared an

¹ Sturmer, Jake & Main, Lisa (2015, June 16) Land clearing soars in Queensland, leaked figures show. *ABC News*. Retrieved from: <http://www.abc.net.au/news/2015-06-16/land-clearing-soars-in-queensland-leaked-figures-show/6550622>

² The Wilderness Society (undated) Land clearing in Queensland. Hobart, Tasmania. Retrieved from: <https://www.wilderness.org.au/land-clearing-queensland>

average of 450,000 hectares of native bushland every year³. In 2000, Queensland had the sixth highest rate of land clearing in the world⁴, and the Queensland and Federal Governments were once again under pressure to act to stop the bulldozers. The VMA was amended to finally stop broadscale clearing of remnant bushland in December 2006 and achieved this until the Newman government's amendments of 2013.

5. Several large land-clearing permits for "high value agriculture" were issued in the last days of the Newman government and are not yet cancelled. These include 31,000 hectares at Olive Vale and 58,000 hectares at Strathmore⁵. Smaller, but equally important, areas of remnant native bushland are also still being cleared in urban areas in Queensland, particularly on urban fringes as suburbs expand. Tighter state-wide laws and government funds are needed to protect the most important patches of remnant bushland that still survive within and close to our cities and towns.
6. Not only does large-scale land clearing result in erosion, soil loss, soil fertility loss, habitat loss, excessive sediment discharge to marine environments (including the Great Barrier Reef) and push many species of flora and fauna towards extinction, but it also may prevent the achievement of the green-house gas reduction commitments that Australia has made at the Paris IPCC conference. Alarming, the data show that clearing in catchments that drain onto the Great Barrier Reef increased dramatically, and constituted 35% of total clearing across Queensland in 2013- 14. The loss of native vegetation cover in such regions is one of the major drivers of the deteriorating water quality in the reef's lagoon, which threatens seagrass, coral reefs, and other marine ecosystems⁶.
7. In 1990 land clearing resulted in greenhouse gas discharges of 83.1 million tonnes of carbon dioxide equivalent (MtCO₂-e) and accounted for 50% of Queensland's total discharge of greenhouse gases⁷. With VMA controls this dropped to a low of 15.1 MtCO₂-e in 2011 before rising back to 25.2 MtCO₂-e in 2013⁸. If 24 of the 47 current land clearing approvals in Queensland were fully used, it would add 12 MtCO₂-e to the atmosphere⁹. This would wipe out 40% of the 28 MtCO₂-e of carbon farming abatement that the federal government just purchased through its first Direct Action Auction.¹⁰
8. Queensland's tree clearing also negates other federal government programs such as the 20 million trees program. At a cost of \$50 million, it aims to replace 20 million trees by 2020 to redress some of the damage from past land clearing. Yet just one year of increased land clearing in Queensland has already removed many more trees than will be painstakingly planted during the entire program.¹¹

³ Ibid.

⁴ Ibid

⁵ Sturmer & Main (2015, June 16) *op cit*.

⁶ Maron, M., Laurance, B., Pressey, B., Catterall, C. P., McAlpine, C., Possingham, H., Watson, J., Rhodes, J., Wilson, K. & Hockings, M. (2016, February 22). Queensland land clearing is undermining Australia's environmental progress. *The Conversation*. Australia: The Conversation Media Group Ltd. Retrieved from: <https://theconversation.com/queensland-land-clearing-is-undermining-australias-environmental-progress-54882>

⁷ Department of Environment and Heritage Protection. (undated). *Carbon Pollution Projections: Queensland's baseline greenhouse gas emissions projections to 2030*. Brisbane: Queensland Government. Retrieved from: <http://www.ehp.qld.gov.au/assets/documents/climate/carbon-pollution-projections.pdf>

⁸ Ibid.

⁹ Sturmer & Main (2015, June 16). *op cit*.

¹⁰ Ibid.

¹¹ Maron, M., et al. (2016, February 22) *op cit*.

9. A recent article in *The Conversation* by Luke Preece, Adjunct Researcher, James Cook University and Penny van Oosterzee, Principal Research Adjunct James Cook University and University Fellow Charles Darwin University, James Cook University assessed the value of the ecosystem services of Cape York grazing lands at up to \$6,100 per hectare, compared to beef productivity at \$20 per hectare.¹² The retention of native vegetation for carbon storage can also generate income for landholders with indigenous communities leading the way.
10. The Olkola people of Cape York have demonstrated that an ecosystem services economy could generate greater returns than pastoralism and deliver multiple benefits. Through the first Emissions Reduction Fund auction, the Olkola Aboriginal Corporation and clan group in southern central Cape York were contracted to reduce greenhouse gas emissions by 455,000 tonnes over seven years by changing the way savannah ecosystems are burned. A preliminary estimate suggests that Olkola will possibly earn millions of dollars over seven years from implementing more eco-friendly burning regimes on approximately 870,000 ha of land.¹³ Such payments, along with carbon offsets, environmental offsets and carbon credits under an emissions trading scheme could easily be of more benefit to Cape York landholders than cleared land, and also benefit the global community and environment by reducing greenhouse gas emissions.

A look at the provisions of the Vegetation Management Bill

Amendments to the Vegetation Management Act 1999

11. The Vegetation Management Bill seeks to:
 - 11.1. Reinstate the protection of high value regrowth on freehold and indigenous land;
 - 11.2. Remove provisions which permit clearing applications for high value agriculture and irrigated high value agriculture;
 - 11.3. Broaden the protection of regrowth vegetation in watercourse areas to harmonise reef catchment controls across the State;
 - 11.4. Reinstate the compliance provisions relating to evidence of clearing and remove the 'mistake of fact' defence for vegetation clearing offences.
 - 11.5. Provides transitional provisions to deal with clearing undertaken after 17 March 2016, the date the Vegetation Management Bill was introduced into Parliament.

Amendments to the Water Act 2000

12. The Vegetation Management Bill seeks to reinstate the application of the riverine protection framework to the destruction of vegetation in a watercourse, lake or spring.

Amendments to the Environmental Offsets Act 2014

13. The Vegetation Management Bill amends the environmental offsets framework by:
 - 13.1. Requiring offsets for any residual impact on prescribed environmental matters rather than only significant residual impacts; and

¹² Preece, L. & van Oosterzee, P. (2016, April 8). Cape York's ecosystems are worth billions of dollars: time to share the wealth. *The Conversation*. Australia: The Conversation Media Group Ltd. Retrieved from: <https://theconversation.com/cape-yorks-ecosystems-are-worth-billions-of-dollars-time-to-share-the-wealth-56994>

¹³ *Ibid.*

- 13.2. Provide an ability to legally secure offset areas and make payments into Queensland's offset account for conditions required under Australian Government approvals.

Reinstatement of compliance provisions

14. This submission will focus on the proposed changes to the compliance provisions of the *Vegetation Management Act*.

Evidence of clearing – clause 6 of the Vegetation Management Bill

15. Clause 6 of the *Vegetation Management Bill* provides that in the absence of evidence to the contrary, the occupier of land is responsible for unauthorised clearing of vegetation.
16. The proposed provision has given rise to some myths that require debunking. One such myth is that this provision means that landholders are treated as guilty until proven innocent.¹⁴ This is simply not true. It is a fundamental principle of our system of law that a person is innocent until proven guilty. This provision does nothing to change that principle. A prosecutor of an offence against a vegetation clearing provision would still need to prove every element of an offence before a court could make a determination of guilt. The proposed provision has the effect of ensuring that the proper person is prosecuted for any alleged offence.
17. To put it another way, people rightly assume that landholders are in control of their land and know what is happening on it. If someone other than the landholder carries out unauthorised clearing of vegetation on land, then the landholder should be given the opportunity to let the authority's know that another person is responsible. This is only fair.
18. This situation can be usefully compared with traffic offences. If you receive an infringement notice for a speeding offence and another person was driving your vehicle at the time of the offence you are given an opportunity to nominate that person as the offender. The original assumption is that it is your car and you rightly know who was in control of it at any given time. Similarly, this provision allows for the assumption that the landholder is the best person to know what is happening on their land and is given the opportunity to disclaim responsibility.
19. Notably, this provision is not unique to Queensland. It occurs in other jurisdictions.¹⁵

Removal of 'mistake of fact' defence - clause 6 of the Vegetation Management Bill

20. Clause 6 provides that the mistake of fact defence, provided for in the *Criminal Code 1899*, does not apply in proceedings for a vegetation clearing offence.
21. Notably, the *Criminal Code* expressly provides for the exclusion of the operation of the defence.¹⁶ Parliament has clearly anticipated that there will be certain offences where this defence is not appropriate.
22. In the case of vegetation clearing offences the defence is not appropriate because the vegetation management legislation has been in place for over 15 years. Landholders are provided with a large amount of information and assistance in relation to vegetation on their

¹⁴ Phelps, Mark (2016, February 24) Embattled Palaszczuk Government loses vegetation vote. *Queensland Country Life*. Fairfax Media. Retrieved from: <http://www.queenslandcountrylife.com.au/story/3750373/parliament-backs-common-sense-vegetation-laws/> and Chambers, Geoff & Elks, Sarah (2016, March 29) Palaszczuk government teeters on land-clearing laws. *The Australian News*scorp Australia. Retrieved from:

¹⁵ See, for example, s 126 *Planning and Environment Act 1987* (Vic)

¹⁶ See s 24 *Criminal Code 1899* (Qld)

land. Online vegetation mapping is readily available and ground proofing of vegetation by the department is available by way of the provision of the property map of assessable vegetation (PMAV). In these circumstances, no honest or reasonable, but mistaken, belief in the facts should arise.

Further reforms needed

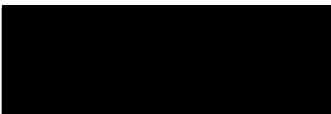
23. Whilst this proposal is welcome, EDO NQ would like to see further changes to the VMA supported by incentives for sustainable land management practices to reward landholders for caring for large areas of Queensland's regional ecosystems, including endangered regional ecosystems, that are currently outside protected areas. For freehold land this could be financial support such as rate rebates and establishment grants, or for set-up costs such as additional fencing, for Nature Refuges. For leasehold land a lease renewal assessment system, such as the Delbessie system scrapped by the Newman government, could be reintroduced. The Delbessie system had the support of Agforce and the graziers and definitely rewarded better land management practices. However, there may be difficulties and delays in reintroducing such a system due to the automatic lease extensions granted by the Newman government regardless of property condition.

Conclusion

24. EDO NQ supports the provisions of the Vegetation Management Bill for the environmental benefits it will afford.
25. We welcome any opportunity to appear as a witness at the Committee's hearings. We are available to appear in person in Cairns or by phone at any Brisbane hearings.

Please contact me with any queries.

Yours faithfully,



Tania Heber - Principal solicitor, EDO NQ

