Submission No. 592

EDO Qld.
Environmental Defenders Office
Using the law to protect our environment.

30 Hardgrave Rd WEST END, QLD 4101
tel +61 7 3211 4466 ***fax*** +61 7 3211 4655
edoqld@edo.org.au www.edo.org.au/edoqld

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Research Director
Agriculture and Environment Committee
Parliament House
BRISBANE QLD 4000
Email: vminquiry@parliament.qld.gov.au

Dear Chair and Committee Members

Submission to Committee on Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 (Bill)

Thank you for the opportunity to make this submission.

About EDO Qld

EDO Qld is a small non-profit community legal centre with clients from both rural and urban areas and backgrounds. Our solicitors provide legal advice to over a thousand individuals every year in total, both at educational events we organise in partnership with community groups and in response to specific advice requests by clients. We run a small number of public interest court cases in state and federal courts. Our legal work covers a range of planning, environmental and resource law topics, including vegetation protection.

Summary of Recommendations of this Submission

1. We support passage of the Bill.
2. In particular we support the Bill's approach as reasonable and appropriate with respect to the issues of onus of proof, honest and reasonable mistake of fact and retrospective operation to the date of tabling of 17 March 2016.
3. We propose that the "concurrence" status be restored to the Department of Natural Resources, as it is that Department, and not the State Assessment and Referral Agency, that has the expertise to make assessment and approval/rejection decisions on applications to clear assessable vegetation.
4. We urge discussion of additional reforms to restrict clearing, including:
   - Restricting clearing under self-assessable codes;
   - Increasing controls on clearing in urban areas; and
   - Reducing and reconsidering the many wide exemptions and exceptions under which clearing occurs.

The detail of our submission follows.

1. Need for Vegetation Protection

Vegetation clearing has already caused serious impacts on wildlife, waterways and wetlands, such as when vegetation was cleared for purposes of development, mining and agriculture. Clearing, along with other pressures like excessive fertiliser use, can have very serious impacts on water quality and the Great Barrier Reef.[1] Science shows that clearing also leads to drought and adversely affects agriculture.[2]

The extent of those impacts is such that much stronger controls on vegetation clearing through the *Vegetation Management Act 1999* (Qld) (**VMA**) and other legislation are needed than what is currently in place. In addition to this, we also need restoration of vegetation, especially around eroding areas near watercourses and wetlands, to lessen those ongoing severe impacts.

A key action (EHA20) of the Reef 2050 Plan developed by the Australian and Queensland governments is to "Strengthen the Queensland Government's vegetation management legislation to protect remnant and high value regrowth native vegetation, including in riparian zones".[3]

2. Support for Passage of the Bill

We note that the former Premier Campbell Newman promised prior to his election publicly *"The LNP will retain the current level of statutory vegetation protection"*,[4] yet in office made changes some of which will be remedied by this Bill.

Given the impacts of vegetation clearing, EDO Qld supports passing the Bill to restore protection for some key vegetation weakened under the previous government. This Bill:

- reinstates the protection of high value regrowth on freehold and indigenous land;
- removes provisions which permit clearing applications for high value agriculture and irrigated agriculture;
- broadens protection of riparian vegetation, especially in the Great Barrier Reef catchments of Burnett Mary, Eastern Cape York and Fitzroy Great Barrier Reef;

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[1] Great Barrier Reef Marine Park Authority, 2014, Great Barrier Reef Outlook Report 2014, GBRMPA, Townsville, 58-61; GBR Reef Protection Interdepartmental Committee Science Panel, 2003, A Report on the Study of Land-Sourced Pollutants and Their Impacts on Water Quality in and Adjacent to the Great Barrier Reef.

[2] McAlpine CA et al. (2007) Modelling the impact of historical land cover change on Australia's regional climate. Geophysical Research Letters 34, http://dx.doi.org/10.1029/2007GL031524.
Makarieva AM, Gorshkov VG and Bai-Lian L (2009) Precipitation on land versus distance from the ocean: evidence for a forest pump of atmospheric moisture. Ecological Complexity, doi:10.1016/j.ecocom.2008.11.004.
Shiel D and Murdiyarso D (2009) How forests attract rain: an examination of a new hypothesis. BioScience 59(4), 341–7, www.biosciencemag.org.

[3] Commonwealth of Australia, 'Reef 2050 Long-Term Sustainability Plan , 2015'

[4] Daniel Hurst, On vegetation management, the LNP will be retaining the legislation, Brisbane Times, 28 February 2012, http://www.brisbanetimes.com.au/queensland/state-election-2012/newman-defends-environmental-record-20120227-1tyy3.html; Letter Campbell Newman to WWF on 14 March 2012, enclosed in submission of WWF to State Development, Infrastructure and Industry Parliamentary Committee inquiry into the Vegetation Management Framework Amendment Bill 2013, 17, http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/10-VegetatationMgmtFramewk/submissions/057.pdf

- reinstates the application of the riverine protection permit framework under the *Water Act 2000* (Qld) to the destruction of vegetation in a watercourse, lake or spring; and
- reinstates a broader requirement for environmental offsets to be required for any residual impact, not just 'significant' impacts as is currently provided for in offsets legislation.

We will not discuss those provisions of the Bill in detail but will leave that role to others. We are aware detailed submissions such as Dr Martin Taylor of WWF Australia will address the need for vegetation protection and those above provisions in detail.

3. Onus of proof and other matters

Reversal of the onus of proof reinstated

If clearing occurs on certain land, it is proposed by the Bill that the onus of proof will be on the occupier to show it was not them who was responsible for the clearing on the land. This proposal is to aid securing prosecutions in remote areas, where there may be no witnesses. The rationale behind this is that an occupier should be responsible for, and knowledgeable about, what is happening on their own land, so it's reasonable to assume the occupier was responsible for any clearing unless they prove otherwise.

When this assumption is not in place, the government is forced to expend considerable resources in evidencing who was in fact responsible for clearing that has already been undertaken, often in remote areas. This can make prosecution of clearing offences near impossible, and at best a significant drain on government resources, simply to ensure the law is being upheld.

A parallel example of where such an assumption also exists is with respect to the presumption as to who is responsible in traffic matters. For example, it is assumed that the owner of the car is driving the car when the car goes through a red light. If this assumption was not in place, it would be very time and resource consuming for traffic police to have to prove who was driving the car at the time it went through the red light, making it much more difficult to enforce our traffic laws which benefit all. If the owner was not driving, he or she can simply produce evidence of that and so not be liable for any penalty.

It is important to note that an occupier would not end up at risk of prosecution if the vegetation clearing that was carried out was lawful. In other words, if the clearing is under a lawful exemption, then the reversal of the onus of proof about who undertook the clearing is completely irrelevant.

We support the provision of a reversal of the onus of proof in relation to this slim issue of who cleared unlawfully on an occupier's land; it is appropriate and necessary for bringing effect to the law.

Removal of the Honest and Reasonable Mistake of Fact

The Bill proposes to remove the defence of honest and reasonable mistake of fact, so landholders will not be able to rely on this defence, known as the "oops defence" to claim that they honestly and reasonably made a mistake of fact in clearing vegetation. Given vegetation laws and

classifications have been in place in Queensland for years, it's reasonable for landholders to be expected to know what type of vegetation is on their land and to check maps etc before clearing. There is a general rule at law, and in our Criminal Code, that ignorance of the law is no defence, all citizens must know and abide by the laws that apply to them;[5] there is no good reason to provide this defence to those who have cleared land.

Again, removal of this defence is necessary to aid the government in securing prosecutions to uphold and bring effect to the law. We support removal of this specific defence.

Retrospectivity - Legislative Standards Act 1992 *(Qld)*

Generally speaking, retrospective obligations are not imposed in legislation as they are seen to adversely affect the rights and liberties of individuals. An Act may be made retrospective if on balance there are other compelling public interest policy considerations necessary to achieve a policy objective, such as to protect biodiversity and the Great Barrier Reef. In our view it is therefore necessary, reasonable and proper, for these purposes, to make this Bill retrospective in effect. We support retrospective commencement of the Bill at the date of tabling, 17 March 2016 as is proposed.

It is important to note that if you obtained a valid permit to clear before 17 March 2016 the retrospective provisions do not apply in accordance with the transitional provisions in this Bill and you will be able to clear according to the VMA. Of course, it will still be necessary to check if other permits are needed under other laws, for example under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

We understand that new EDS satellite technology and imaging of the Department of Natural Resources and Mines will mean that clearing will be detected early, and any potentially unlawful clearing will be discussed with landholders on a fortnightly basis. This will hopefully prevent most unlawful clearing from being undertaken and mean fewer prosecutions would need to be pursued, so reducing the frequency with which the above provisions need to be used.

However, capacity and preparedness to prosecute needs to be maintained to keep adherence and respect for the law. Under the former government Minister Cripps had a policy of reduced enforcement which may have led to increased clearing.[6] It is important for the departments enforcing compliance with the law to be well resourced and under a directive to enforce the law.

4. Administration of the VMA concurrence status

The department responsible for nature resources was once a 'concurrence agency' with respect to vegetation matters decided under our planning laws. What that meant was that under the VMA and *Sustainable Planning Act 2009* (Qld) DNRM assessed applications to clear and had powers to approve, approve with conditions or refuse proposed assessable vegetation clearing. DNRM was the expert in this field, so it was appropriate that they made such decisions.

[5] *Criminal Code 1899* (Qld), section 22.

[6] https://publications.qld.gov.au/dataset/supplementary-report-to-the-statewide-landcover-and-trees-study-report-2012-14

However, in 2013 under the former state government those concurrence powers were removed and replaced with mere advisory powers for DNRM to direct the decision-making powers of a newly created State Assessment and Referral Agency (**SARA**) based in the Department of Planning. Unlike DNRM, SARA lacks the expertise to make decisions on vegetation. There was no public consultation on that major change.

Those changes were made by changes to the *Sustainable Planning Regulation 2009* (Qld).
We strongly recommend that concurrence powers with respect to assessable vegetation clearing are taken from SARA and restored to the DNRM.

5. Bill Fails to protect Vegetation

While we support passage of the Bill, we urge consideration of a number of additional reforms to vegetation protection, as quite simply this Bill alone will not avoid the impacts described at the start of this submission or restore degraded land by clearing.

Key additional reforms needed include, amongst others:

- Restriction of scope of self-assessable codes (**SAC**), for example restrictions or removal of 'thinning' under SAC or broad terms like 'necessary environmental clearing[7]'. Activities such as thinning which fall under SAC are commonly broadscale clearing in disguise and can be seen as such from aerial photographs. Leaving such SAC in place would undermine reinstatement of protections against broadscale agricultural clearing;
- Increased controls on clearing in the urban footprint, as planning schemes provide fragile or no protection against clearing, and the VMA has little application; and
- Reduction of exemptions and exceptions that apply to vegetation protection, such as apply for roads and infrastructure, or for mining projects, as otherwise these allow vast amounts of clearing to occur, defeating the intent of the VMA as well as pushing species to further endangerment.

We request the opportunity to appear before the Committee in their hearing into this Bill.

Yours faithfully

[redacted]

Jo Bragg
CEO, Solicitor
Environmental Defenders Office (Qld) Inc

[7] *Vegetation Management Act 1999* (Qld) Schedule:
necessary environmental clearing means clearing of vegetation that is necessary to—
(a) restore the ecological and environmental condition of land; or
Example—
stabilising banks of watercourses, works to rehabilitate eroded areas, works to prevent erosion of land or for ecological fire management
(b) divert existing natural channels in a way that replicates the existing form of the natural channels; or
(c) prepare for the likelihood of a natural disaster; or
Example—
removal of silt to mitigate flooding
(d) remove contaminants from land.