planning, environment & native title law

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Research Director
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Parliament House
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BY EMAIL: vminquiry@parliament.qld.gov.au

Dear Sir/Madam

SUBMISSION ON *VEGETATION MANAGEMENT (REINSTATEMENT) AND OTHER LEGISLATION AMENDMENT BILL 2016* (QLD)

p&e Law acts for rural landholders throughout Queensland in a range of matters including mining and coal seam gas development, water rights and vegetation management. We thank the Agriculture and Environment Committee for the opportunity to make a submission on the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* (Qld) ("the Bill").

At the outset, we consider that the consistent changes to vegetation clearing legislation is a fundamental problem for the people of Queensland and particularly those on each side of the debate in relation to conservation or exploitation. That fundamental problem is exacerbated because of a failure by all political parties to fairly value standing vegetation on individuals property other than as a community asset.

Governments have sought to gain the benefit of the carbon sequestration value of vegetation for the national carbon credit targets but have not credited that of value to the individual land owner.

The *Forestry Act 1975* recognises an interest in land, a profit-a-prende. That interest in land arose in feudal England as part of the land tenure system introduced to Australia and related to the ability of a serf to obtain timber from a particular copes of trees.

As government on behalf of the community advises an individual land owner that the vegetation they have retained upon their land is too valuable to be removed, governments penalise that landowner for having kept that vegetation. Neighbours who have cleared are benefited. The present regulatory approach achieves a perverse outcome.

We commend to all sides of Parliament and approach in relation to vegetation laws that identifies the value to a landowner and provides that an interest in land, a profit-a-prende, be acquired under the *Acquisition of Land Act 1967*. We note restoration notices seek to place a value on the vegetation and this value could be applied under the *Acquisition of Land Act 1967.*

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This approach would provide for a recognition on title of interests in land, the standing vegetation, that has been acquired by a government of any political persuasion. In those circumstances, it is unlikely that a future government of a different political persuasion would give away what has been paid for by the people of Queensland through government.

An approach of this nature would prevent the impact of a "flip-flop" of policy in relation to the natural environment which cannot be sustained in the ever-changing political cycles of government in Queensland.

Reverse onus of proof provision

The Bill proposes to reinstate the "reverse onus of proof" which will require landowners who have been charged with vegetation clearing offences to prove that they did not undertake the vegetation clearing.

The Legislative Standards Act 1992 (Qld) provides that the onus of proof cannot be reversed in criminal proceedings 'without adequate justification.'[1]

The Explanatory Notes fail to provide adequate justification as to why the reverse onus is provided for in the Bill.

A report conducted by the Australian Law Reform Commission[2] outlined that a key consideration in introducing reverse onus of proof provisions is the seriousness of the offence being committed, which is often justified where there is a serious threat to the public.[3] That is not the case with vegetation clearing offences.

It is well known that reverse onus of proof provisions are disadvantageous to accused persons who are unable to afford adequate representation. Many persons affected by this amendment, namely regional farmers and primary producers throughout Queensland, are susceptible to experiencing financial hardships, particularly in ongoing drought conditions. In those circumstances, there is a real possibility that persons charged under s67A of the *Vegetation Management Act 1999* may be forced to plead guilty rather than pay for legal advice to ensure evidence is properly compiled and presented to prove the clearing was lawful.

We submit that adequate justification for reversing the onus must be provided prior to its proposed reinstatement.

[1] s 4(3)(d).
[2] 'Traditional Rights and Freedoms-Encroachments by Commonwealth Laws', 2015, *ALRC Interim* Report, 127 pp 333-7.
[3] *R v Lambert* [2002] 2 AC 545; *Sheldrake v DPP* [2005] 1 AC 264; *R v Williams (Orette)* [2013] 1 WLR 1200.

Mistake of Fact

Comment was made in the Explanatory Notes as to the information that has been adequately provided to those who may raise a mistake of fact defence.

Please note the qualifications that are included upon all state vegetation mapping that "this map cannot be relied upon for any purpose".

The department cannot on the one hand say that all the necessary information is available and hide behind qualifications on its mapping to protect itself because it's not confident of the correctness of its mapping.

The Department in placing the qualification is of itself confirming that mistakes can be made and yet it is removing the ability of a person relying upon from the same.

Restoration Notices

The Bill proposes that Restoration Notices be issued for unlawful clearing during the interim period from 17 March 2016 to the date of proclamation. The Notice may require restoration of additional land having regard to the *Environmental Offsets Act.*

The Bill proposes to amend the *Environmental Offsets Act* to require offsets for "any residual impact" on prescribed environmental matters rather than only "significant residual impacts". We note that no consultation was undertaken in relation to the changes to the *Environmental Offsets Act*.

In our view, the penalty that may be imposed for unlawful clearing under this new provision is not sufficiently specific and may require significant financial payments that are not known by the landholder at the time of unlawful clearing. The proposed law is overly harsh in that it is specifically designed to counter the prospect of speculative clearing by landowners when the assumption should be that all landholders will comply with relevant laws.

We welcome contact by the Committee to further discuss the issues raised in this submission.

Yours faithfully

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