Submission No. 647

**SUBMISSION TO:**

**Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016**

**SUBMISSION COVER SHEET**

**Closing date for submissions is 29 April 2016.**

Please complete and submit this form with your submission to:

**Email:**
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Agriculture and Environment
Committee
Parliament House
BRISBANE QLD 4000

| | |
|---|---|
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**Is all or part of your submission confidential?** Yes, all ☐ Yes, part ☐ No ☒☐☐☐☐

**If part, please identify which sections are confidential:**

**Reason for confidentiality:**

## SUBMISSION

This submission is prepared on behalf of the Graziers, Farmers and Community Members of the Etheridge Shire. On behalf of the proponents of this submission, I respectfully request that the Committee reject the proposed changes in the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 ("the Bill").

The overriding issue with the Bill is that its introduction in the Queensland Parliament on 17th March represents another variation to the Vegetation Management Framework, which has been amended eighteen (18) times since its introduction in 1999. Further to this consideration, the Bill as it is presented appears to lack formal industry and community consultation. The proposed changes to the Bill have the potential to jeopardise the emerging agricultural development within the Shire. It will potentially destroy over $4Billion in proposed agricultural development and shed over 1500 jobs from a region which is significantly disadvantaged as compared to the rest of Australia.

Etheridge Shire is a very remote region of Far North Queensland covering a land mass of approximately 39,332 square kilometres. The boundaries of the Etheridge Shire are aligned with the Gilbert River Catchment; in fact the Gilbert River Catchment is completely contained within the Etheridge Shire boundaries, with all overland flows and water catchment flowing through the Gilbert river system to the Gulf of Carpentaria.

The Etheridge Shire is predominantly comprised of lightly wooded savannah lands with rocky outcrops of granite and basalt. With approximately 98% of the land mass contained within the Shire being in its natural state, this arbitrary passing of legislation that prohibits agricultural development appears to be deliberately disadvantaging this community where other communities within the more populated areas have been permitted to grow and develop. Whilst the proponents of this submission agree that steps must be taken to ensure that sustainable environmental practices are established, it is also argued that these practices can only be developed in partnership with industry. Further to this position, it should also be established that not all areas within Queensland are facing the same environmental challenges and that detailed research and consultation must occur prior to an arbitrary law being passed into legislation.

This constant change in legislation severely impacts on the ability of property managers to plan and implement effective long-term property, environmental and business management decisions. With over 86% of Queensland in drought conditions, this proposed Bill is directly hindering property managers from diversifying their operations and ultimately is challenging the viability of operating. The long-term sustainability of many businesses within the Shire are now at the risk of failure due to Government Legislation.

Further to the above considerations, the timing of this Bill passing through Parliament has been prohibitive in allowing robust review and consideration by Industry Representative Bodies, Local Government and Individual Operators. In allowing the Bill to pass through Parliament during the Local Government Elections, and the subsequent caretaker conventions, Councils have not been permitted their natural right to review and comment on the impact of legislative changes for their communities.

Attached to this document are submissions prepared and submitted on behalf of the Northern Gulf Resource Management Group and the Gilbert River Agriculture Precinct.

**Removing High Value Agriculture and Irrigated High Value Agriculture from the Vegetation Management Framework**

Background

The removal of High Value Agriculture (HVA) and irrigated HVA (IHVA) affects farmers in regions differently, with those in the north particularly hard hit. HVA and IHVA permits provide farmers in northern Queensland with the opportunity to grow fodder and grain for supplementary fodder in the dry season and finishing off stock for market. Throughout northern Queensland energy and protein become the largest limiting factor in cattle production during the dry season, removing these categories will cause farmers issues with stock survival and welfare through years of drought. With over 86% of Queensland being drought declared this is a critical failure in the proposed Bill.

The removal of HVA and IHVA is in direct conflict with the Australian Government White Paper on the Development of Northern Australia. A current example of this is $220 million being spent to upgrade roads to communities across Cape York, but the Queensland State Government Vegetation Management Framework is prohibitive in allowing land holders from developing agriculture projects. The business case for development is un-sustainable without the inclusion of HVA/IHVA.

The inclusion of HVA and IHVA provides the opportunity for farmers to drought-proof properties and stabilise production and income over variable climatic and market conditions. Sustainable clearing for relatively small pockets of high value agriculture enable agricultural production to improve the continuity of supply to food processors and meet the increasing requirements of international markets and Australia's Free Trade Agreements.

Development is particularly compromised by the re-inclusion of High Value Regrowth (HVR) as well as the stripping of the right to develop traditional grazing lands as HVA or IHVA. For example, landowners on the Gilbert River in northern Queensland preparing to submit IHVA applications have now been denied the possibility of stabilising beef production and employing community labour on their properties.

**Re-introducing Reverse Onus-of-Proof**

Background

The inclusion of Reverse Onus of Proof in Queensland Government's Vegetation Management Framework will stifle even the most modest development with landholders fearing persecution or more probable prosecution when they have acted in good faith. The benefit of doubt and natural justice are in jeopardy of being removed where honest mistakes or the incorrect interpretation of highly complex guidelines may be punished with little or no consideration of the mitigating factors. Reverse Onus-of-proof laws are archaic in nature and have no place in a modern democratic society. If this Bill is passed not only will farmers be presumed guilty until they are proven innocent, but they are refused the possibility of making a mistake. This overly onerous burden on hard working Australians is further exacerbated by the fact that the mapping and recording of vegetation and topography is highly inaccurate. The reliance on inaccurate data and outdated records provides the certainty of a systems failure regardless of the Governments and landholders intentions.

**That no compensation will be payable to HVA, IHVA and Property Map of Assessable Vegetation (PMAV) applicants during transitional arrangements**

Background

The proposal that compensation will not be available for HVA, IHVA or PMAV applicants during the Bill transition period may be a policy to prevent panic clearing. However the implications of compensation for vegetation management in the broader sense have not been clearly defined causing grave concern for the loss of property values purchased in good faith.

With the cessation of land-clearing, compensation for landholders to offset opportunity costs, lost development potential and decreased property value has been a critical omission from the Vegetation Management Regulatory Framework. The issue of compensation has been debated heavily by federal and state legislators; however a precedent was set by the Beattie Government in 2004 with provision of $150 million over 5 years to offset landholder losses due to the removal of their rights to clear.

In the 2016 Bill transition period the situation is quite different to what it was in 2004. The proposal to remove HVA and IHVA from landholders as a potential to develop property provides considerable grounds for compensation, particularly for those that have structured investments and farm management activities to take advantage of HVA/IHVA in the near future. Furthermore HVA/IHVA has attracted far greater interest in northern Queensland, with large swathes of marginal beef production areas being provided the opportunity of growing supplementary feed to overcome the protein drought in the dry season and to assist in ensuring sustainable operations during years of drought.

**Including High Value Regrowth as an additional layer of regulation under the Vegetation Management Framework on leasehold, freehold and indigenous land**

Background

The re-inclusion of High Value Regrowth (HVR) as an additional layer of regulation on leasehold, freehold and indigenous land is an overt grab by Queensland Government in search of targets for meeting international treaties such as the Kyoto Protocol and more recently the 2015 Paris Climate Deal. In 2009 when initially introduced, this HVR layer was prepared hastily in a 'desk-top' mapping exercise with associated errors including areas of non-native vegetation (such as orchards) and bare earth. In preliminary investigations of several properties it appears that the accuracy of the 2016 HVR is no better than that in 2009.

If the free market places a value of $12.25 per tonne on carbon, what is the estimated dollar value of "High Value Regrowth" and where is the Queensland Government's recompense for farmers and indigenous land holders?

**Summary**

The Bill states its policy objectives are to;

- Reinstate a responsible vegetation management framework to more effectively manage vegetation clearing in Queensland thereby reducing clearing rates and consequential carbon emissions.
- Guard against excessive clearing of riparian vegetation especially in the Great Barrier Reef catchments and
- Reinstate a riverine protection framework for destruction of vegetation in a watercourse, lake or spring
- Reinstate Environmental offsets to ensure adequate conservation outcomes

The Bill will;

- Remove high value agriculture and irrigated high value agriculture as a relevant purpose under the VMA and making it a prohibited development under SPA bringing to an end native vegetation clearing for high value agriculture in Queensland.
- Retrospectively take away an applicant's right to have their application determined if it was lodged prior to the 17th Match 2016 but not properly made.
- Take away the fundamental principle that a person is innocent until proven guilty by reversing the onus of proof.
- Take away a long established and fundamental defence to a charge of reasonable and honest mistake of fact.s24 Criminal Code

Note: Environmental offsets, Riparian protection and high value regrowth do not form part of this submission.

**Pre 17th March 2016 Approvals or Clearing Native Vegetation**

The clearing of native vegetation in Queensland is regulated by the VMA and SPA and associated policies and codes which were amended in 2104 to allow for clearing of native vegetation for high value agriculture and for irrigated high value agriculture.

The application process involves;

1) Inspection of the vegetation mapping

The report will enable an applicant to determine:

- if vegetation can be cleared under an exemption
- what self-assessable code might apply
- if clearing may be undertaken under an area management plan
- if a development approval is necessary

2) Make an application to SARA

As part of the application process it is necessary to demonstrate in a development plan that:

- The land is suitable for the proposed high-value or irrigated high-value agriculture land suitability report by a Suitably Qualified Person
- The development will be economically viable
- Economic viability report by a Suitably Qualified Person
- There is no suitable alternative site and clearing is limited to the extent necessary to establish and cultivate crops.

In doing so it is necessary to consider:

- The guidelines to clear high value or irrigated high value agriculture V2.0 27 July 2015
- A pre-lodgement meeting
- An assessment against SDAP Module 8: Clearing Native Vegetation

3) Obtain DNRM s22A approval

- Obtain approval from the Chief Executive DNRM that the clearing is for a relevant purpose and therefore not prohibited pursuant to the VMA s22A
- Complete a development approval template
- DNRM may provide written confirmation that the proposed clearing is for high-value or irrigated high-value agriculture.
- If approval is not obtained the application can go no further as it is prohibited.

4) Application properly made

When the S22A approval is obtained the application is deemed properly made and SARA then:

- Issues notices to native title parties pursuant to NTA
- Assesses the application against the SDAP and issues a decision notice approving or refusing the application.

5) The approval

- The development approval for operational works will set out the conditions of the approval, provide essential mapping and co-ordinates necessary to complete the works
- The works must be substantially commenced with 2 years of the decision notice.

**State Development Assessment Provisions SDAP**

The SDAP are codes containing performance criteria and acceptable outcomes against which a properly made application is assessed by SARA.

Module 8 relates specifically to native vegetation clearing and Tables 8.1.1, 8.1.2, 8.1.3 and 8.1.6 apply.

This process does away with assessment managers and concurrence agencies and provides SARA with considerable flexibility in the codes and performance standards so as provide a smooth pathway to approval once an application is property made.

Since July 2015 there have been some significant amendments to the SDAP and the approval process by the current Government.

In summary

The acceptable outcome for PO1 in SDAP 1.5 was

*AO1.1 The chief executive administering the VMA is satisfied the clearing meets the requirements of VMA section 22A for high value agriculture clearing or irrigated high value agriculture as evidenced through written confirmation from the chief executive OR*

*AO1.2 Demonstrate that the clearing is for high value agriculture clearing or irrigated high value clearing*

*Editor's Note: This can be demonstrated through preparing a development plan in accordance with the Guidelines for determining high value and irrigated high value agriculture DNRM*

The effect of this Acceptable Outcome is that upon the Chief executive of DNRM giving the s22A approval and the application is properly made the PO1 is satisfied. This placed the bulk of the assessment process on DNRM (as it should be given the expertise DNRM has in the land management arena)

It is important to understand that SDAP 1.5 Module 8 Table 8.1.6 PO 1 mirrored the legislative requirements of section 22DAB VMA in that matters the Chief Executive had to consider were identical to the SDAP.

SDAP Version 1.6 was introduced on 6th July 2016 amending version 1.5

The effect of the amendment was to remove the section 22A approval as an acceptable outcome for PO1.

**SDAP Version 1.5 Watercourses**

PO3 relates to ensuring riparian vegetation is maintained along watercourses to prevent erosion and sediment and relevant distances were established.

A Watercouse is defined in the *Water Act 2000 - SECT 5*

> *(1)* ***A watercourse is a river, creek or other stream****, including a stream in the form of an anabranch or a tributary, in which water flows permanently or intermittently, regardless of the frequency of flow events—*
>
> *(a) in a natural channel, whether artificially modified or not; or*
>
> *(b) in an artificial channel that has changed the course of the stream.*
>
> *(2) A watercourse includes any of the following located in it—*
>
> *(a) in-stream islands;*
> *(b) benches;*
> *(c) bars.*
>
> *(3) However, a watercourse* ***does not include a drainage feature.***

The effect of this definition was to provide the landholder with some certainty that he could clear vegetation provided he left a buffer around defined watercourses as might be required in the Development Approval.

SDAP Version 1.7 was introduced on 23rd November 2015 amending version 1.5

PO3 was amended to include drainage feature

Drainage feature is defined in the *Water Act 2000 definitions* as

*A natural landscape feature including a gully drain drainage depression or other erosion feature.* It is impracticable if not impossible to map drainage features on any scale and DNRM do not have maps.

The effect of this amendment will make it virtually impossible to obtain an approval to clear anything but the flattest country that has no drainage features as a buffer of up to 100 metres each side of any drainage feature will be required.

**SDAP Version 1.5 Soil Erosion**

PO5 relates to potential soil erosion and was intended to avoid land degradation.

Under Version 1.5 the land clearing could not result in soil erosion and an acceptable outcome if there was any potential for soil erosion was a sediment and erosion control plan. This process was certain and where erosion might occur is an exact science.

SDAP Version was introduced on the 8th April 2016 amending Version 1.5.

PO5 was amended to say the proposed clearing could not accelerate soil erosion and that the sediment and erosion control plan must control measures to ensure rates of soil loss and sediment movement are the same or less than those prior the proposed development.

The rules are very well established about slopes, soils types and landforms where clearing can be safely undertaken without the risk of erosion. Whilst this amendment may not appear onerous it has taken an objective process and made it subjective. It is impossible to supply a plan in advance of the

works that can guarantee and outcome and it requires monitoring which are added and unnecessary expenses.

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| Signed: | [redacted] | **Michael Kitzelmann**<br>**Chief Executive Officer** |
| Address: | | Georgetown, QLD 4871 |
| Date: | | 29th April 2016. |