Parliamentary Committees

Vegetation Management Framework Amendment Bill 2013

Report No. 23

State Development, Infrastructure and Industry Committee

May 2013

State Development, Infrastructure and Industry Committee

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Acknowledgements

The committee thanks those who briefed the committee, gave evidence and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of Natural Resources and Mines.

Contents

Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the Vegetation Management Framework Amendment Bill 2013.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles to the legislation, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The Vegetation Mangagement Framework Amendment Bill 2013 is a bill which divides public opinion. In general, submitters and witnesses who provided evidence to the committee felt very strongly either for or against particular components of the Bill, and there was little common ground between these groups. In this report, the committee has sought to provide a balanced review of the evidence presented to it.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the Bill or gave evidence at the public hearings, and others who informed the committee's deliberations including the officials from the Department of Natural Resources and Mines who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

David Gibson MP
Chair

May 2013

Abbreviations

Act	*Vegetation Management Act 1999*
AMCS	Australian Marine Conservation Society
ASH	Alliance to Save Hinchinbrook
Bill	Vegetation Management Framework Amendment Bill 2013
BREC	Brisbane Region Environment Council
CEO	Chief Executive Officer
committee	State Development, Infrastructure and Industry Committee
department	Department of Natural Resources and Mines
DNRM	Department of Natural Resources and Mines
EDO	Environmental Defenders Office
FLP	fundamental legislative principle
Gecko	Gold Coast and Hinterland Environment Council
GHG	greenhouse gas
LGAQ	Local Government Association of Queensland
PCA	Property Council of Australia
Planning Act	*Sustainable Planning Act 2009*
PMAV	Property Map of Assessable Vegetation
Qld	Queensland
SEQ	South East Queensland
VETO	Veto Energex Towers Organisation
VMA	*Vegetation Management Act 1999*
VMOLA	*Vegetation Management and Other Legislation Amendment Act 2009*
WRA	*Wild Rivers Act 2005*

Recommendations

Points for clarification

The committee seeks advice from the Minister for Natural Resources and Mines on what format the proposed self-assessable codes will take and how they will be developed.

The committee seeks clarification from the Minister for Natural Resources and Mines on how confident the department can be in "locking in" areas on the regulated vegetation map as Category X, given that the maps are not currently accurate. The committee sees a risk in relying solely on the current mapping system to lock in areas as Category X.

The committee seeks further detail from the Minister for Natural Resources and Mines on the justification for clauses 57 and 58 with respect to fundamental legislative principles relating to the exercise of administrative power.

The committee seeks further detail from the Minister for Natural Resources and Mines on the certification of a vegetation management map with respect to fundamental legislative principles relating to the exercise of administrative power.

The committee seeks further detail from the Minister for Natural Resources and Mines on the high value area declaration with respect to fundamental legislative principles relating to the exercise of administrative power.

The committee seeks clarification from the Minister for Natural Resources and Mines on the intended meaning of the following:

- "the diverting of existing natural channels in a way that replicates the existing form of the natural channels" (clause 27);
- how the removal of silt relates to the management of vegetation (clause 65); and
- "extractive industry" (clause 11).

1 Introduction

Role of the committee

The State Development, Infrastructure and Industry Committee was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

The referral

On 20 March 2013, the Vegetation Management Framework Amendment Bill 2013 (the Bill) was referred to the State Development, Infrastructure and Industry Committee (the committee) for examination and report. Pursuant to Standing Order 136(2), the Committee of the Legislative Assembly fixed the time for the tabling of the report on the Bill to be by 14 May 2013.

The committee's inquiry process

The committee was briefed by officers of the Department of Natural Resources and Mines (the department) at a private briefing on 22 March 2013 (see Appendix A for a list of the departmental officers who appeared).

On 22 March 2012, the committee called for written submissions on the Bill on its website and an email was sent to the committee's email subscribers for the same purpose. An advertisement was placed in *Queensland Country Life* on 28 March 2013. The closing date for submissions was 10 April 2013. The committee received 152 submissions (see Appendix B for a list of submitters).

Some submitters expressed disquiet about the shortness of the consultation period and the fact that it was over the Easter period.[1] The committee would have liked to have opened consultation for a longer period but it was constrained by its reporting date and the parliamentary sitting dates.

The committee received oral evidence at a public hearing held at Parliament House in Brisbane on 17 April 2013 (see Appendix C for a list of witnesses) and at a public hearing teleconference held on 22 April 2013 (see Appendix D for a list of witnesses).

The department provided the committee with a number of documents related to the Bill on 10 April 2013: Information Briefing; Consultation Briefing; A Plain English Guide; Questions and Answers; and Response to Questions on Notice. On 23 April 2013, the department provided its response to the issues raised in the summary of submissions prepared by the committee secretariat.

The written submissions, the written briefings from the department and the transcripts of the departmental briefing and the public hearings are published on the committee's webpage at www.parliament.qld.gov.au/SDIIC.

Background to the Bill

Two of the reviews which informed the reform of the *Vegetation Management Act 1999* were:[2]

- Office of Best Practice Regulation review of the vegetation management framework; and

[1] See for example, Natalie Hoskins, submission 24, p 1.

[2] Department of Natural Resources and Mines (DNRM), Vegetation Management Framework Amendment Bill 2013: Information Briefing, p 4.

- State Development, Infrastructure and Industry Committee's Inquiry into the Future and Continued Relevance of Government Land Tenure across Queensland.

The current vegetation management framework commenced in 2000. Native vegetation clearance is regulated under the *Vegetation Management Act 1999* and the Integrated Development Assessment System under the *Sustainable Planning Act 2009*. Many of the changes proposed to be introduced by the Bill are to remove the changes to the vegetation management framework made by the *Vegetation Management and Other Legislation Amendment Act 2009*.

The *Vegetation Management and Other Legislation Amendment Act 2009* (VMOLA Act) introduced new regulations to restrict the clearing of mature regrowth vegetation that had not been cleared since 31 December 1989 on leasehold land for agricultural and grazing purposes, freehold land and indigenous land. The VMOLA Act also maintained "*the protection of regrowth vegetation adjacent to watercourses in the priority Great Barrier Reef catchments of the Burdekin, Mackay-Whitsundays and the Wet Tropics*." The changes to the protection of regrowth vegetation introduced in the *Vegetation Management and Other Legislation Amendment Bill 2009* were introduced "*in response to the level of regrowth clearing in the 2006/07 Statewide Landcover and Tree Study (SLATS) Report, as well as the need to protect Queensland's Great Barrier Reef*."[3]

Government consultation on the Bill

The Government conducted "*targeted consultation*" on the proposed reforms with key government stakeholders[4] and undertook "*quite extensive consultation with its key stakeholders over the last twelve months to gain an understanding of their issues with the vegetation management framework*", many of which are addressed by the Bill.[5] The Government did not, however, consult with external stakeholders and the public during its preparation of the Bill.[6]

In the Explanatory Notes to the Bill, it was stated that "[c]*onsultation will occur once the Bill is introduced into Parliament*".[7] In its Consultation and Information Briefing, the Department confirmed that the committee process was seen as "*the key means to obtain public input to the proposed reforms*".[8]

Some of the submitters commented on the lack of government consultation.[9] In its submission, Queensland Conservation Council made the comment that as it had not been consulted about the Bill prior to it being tabled, it has many questions about the Bill and thus it was unable to provide as constructive a submission as would otherwise have been the case. The Queensland Conservation Council recommended that "*the Bill's passage be postponed until all external stakeholders have been fully briefed, consulted and given adequate time to assess the Bill*".[10]

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3 Vegetation Management and Other Legislation Amendment Bill 2009, Explanatory Notes, p 2.

4 DNRM, Vegetation Management Framework Amendment Bill 2013: Information and Consultation Briefing, p 5.

5 DNRM, Information and Consultation Briefing, p 6.

6 Explanatory Notes, p 2.

7 Explanatory Notes, p 2.

8 DNRM, Information and Consultation Briefing, p 6.

9 See for example, John Dillon, submission 9; Natalie Hoskins, submission 24; The Wilderness Society, submission 42; Logan and Albert Conservation Association, submission 31, p 2; Sunshine Coast Environment Council, submission 152.

10 Queensland Conservation Council, submission 38, p 3.

In its response to submitters who commented on the lack of government consultation, the department stated that it "*will continue to work with relevant stakeholders to ensure delivery of the reforms is streamlined and able to be effectively delivered on the ground over the next six to 12 months*".[11]

Committee comment

As this committee stated in its *Report No. 15 Economic Development Bill 2012*:[12]

> A committee's consideration of a Bill referred to it by the House should not be seen as a substitute for, or an extension of government consultation with stakeholders during a bill's development. The Parliament is a separate institution from the government. A Parliamentary committee's role is to assist the Parliament fulfil its function of overseeing executive government. The distinction between the roles of a parliament and a government is fundamental to the Westminster tradition of the separation of powers. There is a risk of the quite distinct functions of each becoming blurred, and of the separate role of the Parliament becoming unclear, if the consideration of bills by the Parliament is seen as part of a government consultation process.

The committee reiterated this in its *Report No. 22 Subordinate Legislation Tabled on 12 February 2013*:

> … the committee wishes to comment more generally by questioning the increasingly reliance of the executive arm of government upon consultation undertaken by parliamentary commitees in relation to legislation being presented to the Parliament. The role of the Parliamentary committee is to scrutinise the policy and technical merit of legislation, not to undertake broad scale consultation which is most properly undertaken by the executive arm of government during the development of all legislative policy proposals.

The committee encourages the Minister for Natural Resources and Mines to ensure that departmental staff are aware that the committee's consultation on a bill is not a substitute for government consultation with stakeholders during a bill's development.

Policy objectives of the Bill

The policy objectives of the Bill are "*to amend the vegetation management framework,* Land Act 1994*,* Sustainable Planning Act 2009*, and* Wild Rivers Act 2005 *to:*

- *Reduce red tape and regulatory burden on landholders, business and government.*
- *Support the four pillar economy – construction, resources, agriculture and tourism.*
- *Maintain protection and management of Queensland's native vegetation resources".*[13]

[11] See for example, DNRM, Vegetation Management Framework Amendment Bill 2013: Response to Submissions, p 27.

[12] State Development, Infrastructure and Industry Committee, *Report No. 15: Economic Development Bill 2012*, November 2012, p 4.

[13] Explanatory Notes, p 1.

Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend that the Bill be passed. After examining the Bill, and considering issues raised in submissions and evidence provided at the private briefing and the public hearings, the committee determined that the Bill should be passed.

Recommendation 1

The committee recommends that the Vegetation Management Framework Amendment Bill 2013 be passed.

2 Examination of the Bill

The Vegetation Management Framework Amendment Bill 2013 divides public opinion.

There was strong support for the Bill from the farming community in particular.[14] Peter Verri and Patricia White, primary producers, for example, wrote in their submissions to the committee:[15]

> The proposed changes in the Bill present a positive step forward for long-term sustainable land management that will enable our agricultural industry to prosper and to contribute to our economy.
>
> This is about land management and my ability to produce food in a sustainable way without being hindered by red tape.

Many submitters were, however, opposed to the Bill with some being of the view that it occasions "*the biggest rollback of environmental protection in Australian history*".[16]

As the Minister said in his Introducion to the Bill, "*the most significant benefits and opportunities in this bill are afforded to farmers and graziers, agricultural industries and regional and rural communities across Queensland*".[17] The chief executive officer of AgForce Queensland (AgForce)[18] told the committee that AgForce particularly supports "*the changes proposed in the areas of regrowth, the new purpose of the act, the self-assessable vegetation clearing codes, new relevant clearing purposes and … a simplification of the current mapping system as well as offence provisions*".[19]

Some submitters expressed dissatisfaction with the current *Vegetation Management Act 1999* (VMA) and welcomed the amendments.[20] Laurie Taylor, for example, told the committee of how a farmer in the Daintree area ended up losing approximately two to three acres of land because nothing has been able to be done over a period of ten years under the VMA about a large tree that had fallen into a creek.[21] Angus Ryrie, another AgForce member, spoke in support of the proposed development of self-assessable codes, particularly with respect to fodder harvesting, because of the extended time it takes under the VMA to obtain permits.[22]

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[14] See for example, John and Janice Anderson, submission 3; Christmas Creek Cattle Company, submission 5; CANEGROWERS, submission 7; Maryborough Sugar Factory submission 11; Malcolm Beresford, submission 23; Cynthia Sabag, submission 30; Jan Sealy, submission 40; Cement, Concrete and Aggregates Australia, submission 49; AgForce members, submissions 76-128.

[15] Peter Verri, submission 84, p 1; Patricia White, submission 101, p 1.

[16] Gold Coast and Hinterland Environment Council Association Inc (Gecko), submission 25, p 3. See also, David Jinks, submission 37, p 8; Jo-Anne Bragg, Principal Solicitor, Environmental Defenders Office (Qld) Inc, Brisbane Public Hearing, 17 April 2013, transcript, p 8; Anna McGuire, Coordinator, Cairns and Far North Environment Centre, Public Hearing Teleconference, 22 April 2013, transcript, p 17; Margaret Moorhouse, Public Hearing Teleconference, 22 April 2013, transcript, p 17.

[17] Hon Andrew Cripps MP, Minister for Natural Resources and Mines, Vegetation Management Framework Amendment Bill, Introduction, Queensland Parliamentary Record, 20 March 2013, pp 771 – 774, p 774.

[18] AgForce is "*the peak lobby group representing the majority of beef, sheep and wool, and grain producers in Queensland*": AgForce, submission 46, p 3.

[19] Charles Burke, Chief Executive Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, pp 1-2.

[20] Some submitters would have liked further amendments. See for example, Laurie Taylor, AgForce member, Brisbane Public Hearing, 17 April 2013, transcript, p 29; Richard Golden, AgForce member, Brisbane Public Hearing, 17 April 2013, transcript, p 34.

[21] Laurie Taylor, AgForce member, Brisbane Public Hearing, 17 April 2013, transcript, pp 30, 33.

[22] Angus Ryrie, AgForce member, Public Hearing Teleconference, 22 April 2013, transcript, p 2.

It was put forward by some submitters that if the Bill is passed, at least 700,000 hectares of 23+ year old forests would be opened to clearing.[23] In its submission, Queensland Conservation Council asserted:[24]

> The potential extent of native vegetation clearing that could occur is likely to cause a wide range of adverse social, economic and environmental impacts, which include:
> - Biodiversity loss – particularly endangered ecosystems and species
> - Water quality decline due to watercourse and wetland degradation
> - Increased land degradation due to clearing allowed on steep slopes and watercourses
> - Increased greenhouse emissions, which will impede achieving state and national GHG emissions reductions targets
> - Tourism downturns due to degradation of iconic natural assets.

Some submitters suggested that vegetation clearing will increase to levels similar to those prior to the introduction of the 2009 reforms,[25] but other submitters did not think that this would occur. In response to a question in relation to clearing rates in Queensland, the WWF indicated that it did not believe that vegetation clearing rates will return to rates similar to 1999-2000 if the Bill is passed. Nick Heath, WWF Australia National Manager, stated: "*No, we do not feel that those rates will return, but we are very concerned about the values that will be lost. We actually do not think the economics support broadscale clearing anymore*".[26] Mr Parratt, spokesperson for Queensland Conservation Council, expressed the hope that "*the bad old days of broadscale indiscriminate land clearing will not recur because everybody now recognises the value that remnant vegetation and ecosystems actually provide both to primary production as well as to the environment*".[27]

In its response to submissions received by the committee, the department stated:[28]

> The reforms are not a signal that the Government is relaxing environmental standards, nor are they a green light for landholders to carry out indiscriminate land clearing. Inappropriate vegetation management practices that show no regard for the environment can still be readily detected through satellite monitoring, with penalties applying to those who do the wrong thing.

The department went on to say that "[t]*he effectiveness and outcomes of these reforms will continue to be monitored to ensure they are achieving their stated objectives*".[29]

Some landholders gave evidence to the committee of their commitment to the environment. Kathy Faldt, for example, told the committee that she has not cleared any trees from her property since she bought it in the 1970s. Arthur Dingle gave evidence to the committee of the value to him of retaining vegetation on his property. He advised the committee that he conserves half of his

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[23] See for example, Vicky Shukuroglou, submission 14; Gecko – Gold Coast and Hinterland Environment Council Association Inc, submission 25, p 3; Fiona Maxwell, Marine Campaigner, Australian Marine Conservation Society, Public Hearing, Brisbane, 17 April 2013, transcript, p 9. The Department stated that "[t]*he potential and expected loss of vegetation as a result of the Bill cannot be accurately predicted*": DNRM, Response to submissions, p 49.

[24] Queensland Conservation, submission 38, p 4.

[25] See for example, Gecko – Gold Coast and Hinterland Environment Council Association Inc, submission 25, p 2; Dr Tim Seelig, State Campaign Manager, The Wilderness Society, Public Hearing, Brisbane, 17 April 2013, transcript, p 7; Margaret Moorhouse, Spokesperson, Alliance to Save Hinchinbrook Inc, Public Hearing Teleconference, 22 April 2013, transcript, p 17.

[26] Nick Heath, National Manager, WWF Australia, Brisbane Public Hearing, 17 April 2013, transcript, p 11.

[27] Nigel Parratt, Spokesperson, Queensland Conservation Council, Public Hearing, Brisbane, 17 April 2013, transcript, p 13.

[28] DNRM, Response to Submissions, p 9.

[29] DNRM, Response to Submissions, p 24.

property and earns a living from the other half. Every 15 years he harvests his timber to supplement his income from cattle grazing. With respect to farmers in general, Mr Dingle told the committee:[30]

> … 95 per cent of people are wanting to improve their country and leave it in a better state than what we first started with when we first bought it. People forget that that is our biggest asset we have ever owned, so why would we want to destroy it?

A similar sentiment was expressed by the AgForce chief executive officer (CEO) when he told the committee that AgForce is "*strongly of the view that productive agriculture and environmental outcomes are not mutually exclusive*".[31]

The key policy proposals in the Bill, and the committee's findings regarding them, are outlined in the sections below. The committee notes that it has not examined the department's planned amendments to the Sustainable Planning Regulation 2009 (which are discussed in some of the submissions and in the material provided to the committee by the department) because these are outside the scope of the Bill.

New purpose in Vegetation Management Act 1999

Section 3 of the *Vegetation Management Act 1999* (VMA) sets out the purpose of the Act. Subsection 3(1) provides that the Act's purpose is to regulate clearing in a way that:

(a) conserves remnant vegetion that is:

  (i) an endangered regional ecosystem; or

  (ii) an of concern regional ecosystem; or

  (iii) a least concern regional ecosystem; and

(b) conserves vegetation in declared areas; and

(c) ensures clearing does not cause land degradation; and

(d) prevents the loss of biodiversity; and

(e) maintains ecological processes; and

(f) manages certain environmental effects; and

(g) reduces greenhouse gas emissions.

The Vegetation Management Framework Amendment Bill 2013 proposes to add the following:

(h) allows for sustainable land use.

The department notes that this is similar wording to that which was deleted from the Act in 2004 when broadscale clearing was phased out[32] and its reinstatement provides the regulatory basis for the Bill's proposed reforms.[33]

Some submitters expressed support for the new purpose but others were opposed to it.[34] Simon and Christine Campbell consider that the proposed new purpose "*will provide a platform for rebalancing the outcomes of the VMA between purportedly good environmental outcomes and sustainable*

[30] Arthur Dingle, AgForce member, Brisbane Public Hearing, 17 April 2013, transcript, pp 31 - 32.

[31] Charles Burke, Chief Executive Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, p 2.

[32] DNRM, Information Briefing, p 6.

[33] DNRM, Response to Submissions, p 45.

[34] See for example, WWF, submission 57; The Wilderness Society, submission 42, p 3; Barry Fitzpatrick, Conservation Ecologist, Brisbane Public Hearing, 17 April 2013, transcript, p 16.

agricultural production outcomes".[35] David Jinks, on the other hand, asserted that "[t]*he new purpose only deals with sustainable* use *of vegetation and not the* protection *of vegetation*". He regards this as a "*clear and deliberate watering-down of environmental values*".[36]

In its response to concerns about the proposed new purpose, the department stated:[37]

> The VMA contains a range of purposes that relate to the fundamental components of ecologically sustainable development, including conservation of the environment, and the new purpose of allowing for sustainable land use. These purposes aim to balance environmental preservation and appropriate economic development opportunities.

There was discussion in public hearings and in submissions about lack of definition for "*sustainable land use*" .[38] Dorean Erhart, Principal Adviser, Local Government Association of Queensland (LGAQ), told the committee that the lack of a definition "*was a shortcoming in the original legislation and it should be rectified in this amendment bill*".[39] The department and the Office of Queensland Parliamentary Counsel, however, are of the view that a definition of sustainable land use is not required.[40]

Committee comment

The committee considers that it is necessary to insert the proposed additional purpose into the *Vegetation Management Act 1999* to provide the basis for the other proposed amendments. The committee accepts the position of the department and the Office of Queensland Parliamentary Counsel that, consistent with the earlier VMA, it is not necessary to add a definition of "*sustainable land use*" to the Bill.

Regional vegetation management codes

Currently under the Act, the Minister must make codes for vegetation management for the regions of the State.[41] Such a code may, amongst other things, provide for the protection of the protection of the habitat of native wildlife prescribed under the *Nature Conservation Act 1992* as endangered, vulnerable or near threatened wildlife.[42] The Bill proposes to omit "*near threatened*" wildlife so that a regional vegetation management code may only provide for the protection of the habitat of endangered or vulnerable wildlife.

In response to the Alliance to Save Hinchinbrook's suggestion that the amendment in s 11 omitting "*near threatened*" will result in general widespread reduction in protection of biodiversity,[43] the department stated that the amendment is proposed "*to be consistent with those matters identified*

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35 Simon and Christine Campbell, submission 36, p 3.

36 David Jinks, submission 37, p 3. Other submitters expressed their concern that economic imperatives may be given priority over ecology: see for example, Anna McGuire, Coordinator, Cairns and Far North Environment Centre, Public Hearing Teleconference, 22 April 2013, transcript, p 12.

37 DNRM, Response to submissions, p 23.

38 See for example, The Wilderness Society, submission 42, p 3; Nigel Parratt, Spokesperson, Queensland Conservation Council, Public Hearing, Brisbane, 17 April 2013, transcript, p 8; David Jinks, Representative, Gold Coast Botany Pty Ltd, Public Hearing, Brisbane, 17 April 2013, transcript, p 16; Dorean Erhart, Principal Adviser, Local Government Association of Queensland, Public Hearing, Brisbane, 17 April 2013, transcript, p 19; Anna McGuire, Coordinator, Cairns and Far North Environment Centre, Public Hearing Teleconference, 22 April 2013, transcript, p 12.

39 Dorean Erhart, Principal Adviser, Local Government Association of Queensland, Public Hearing, Brisbane, 17 April 2013, transcript, p 19.

40 DNRM, Response to submissions, p 24.

41 Section 11.

42 Section 11(2)(a).

43 Alliance to Save Hinchinbrook, submission 70, p 3.

as 'matters of state environmental significance' … approved [in December 2012] *by the Government. Near threatened species will continue to be regulated under the* Nature Conservation Act 1992".[44]

Wild rivers

The Bill proposes to make a number of amendments to the VMA relating to provisions which overlap with those in the *Wild Rivers Act 2005* (WRA). It is intended that the amendments will reduce unnecessary red tape.[45]

Clause 8, for example, omits subsection 17(1A)(2A) and (4) which relate to the declaration of certain wild river areas as areas of high conservation value. The Explanatory Notes explain that this amendment "*is to remove unnecessary interactions between the VMA and* Wild Rivers Act 2005 *and reduce regulatory burden on landholders*".[46]

Clause 6 removes s 16(8). In relation to this amendment, the Explantory Notes state, "*The Wild Rivers Code is a declared area code against which applications for relevant purposes permitted in a high preservation area are assessed. However, using the Wild Rivers Code is essentially duplication of the existing regional vegetation management codes under the VMA and therefore unnecessary*".[47]

In its Information Briefing, the department provided the following example to illustrate the removal of the interaction between the VMA and the WRA: Landholders will no longer have to apply to clear for fence lines in 'least concern' vegetation in high preservation areas; they will be exempt as in most other parts of the State. Clearing applications will be assessed against the regional vegetation management codes rather than a separate Wild Rivers code.[48]

Gold Coast and Hinterland Environment Council (Gecko) and The Wilderness Society, amongst others, are concerned that the stricter Wild Rivers Code will no longer be used, meaning decreased levels of protection for declared wild rivers.[49] In its response to concerns about removal of the interactions between the VMA and the Wild Rivers Act, the deparment stated that removal of interactions between VMA and WRA "*is seen to be a key amendment to reduce unnecessary regulatory burden on landholders*" and that "[t]*he regulation of tree clearing around river systems and wetlands will still be regulated under the VMA*".[50]

Committee comment

The committee notes and supports the Government's policy objectives of reducing red tape, supporting the four pillar economy, and maintaining protection and management of Queensland's native vegetation. The committee considers that its proposed amendments relating to wild rivers fulfil these objectives. The committee notes the concerns raised by submitters but considers that the proposed amendments will benefit landholders and that the *Vegetation Management Act 1999* codes will provide sufficient protection for vegetation.

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44 DNRM, Response to Submissions, p 47. See also, Explanatory Notes, p 4.

45 DNRM, Information Briefing, p 13.

46 Explanatory Notes, p 5.

47 Explanatory Notes, p 4.

48 DNRM, Information Briefing, p 13.

49 GECKO, submission 25; The Wilderness Society, submission 42, pp 3 – 4. See also David Jinks, submission 37, p 7 who described the removal of interactions between the VMA and the Wild Rivers Act as "*a step backwards*" for the protection of Queensland's natural resources. See also, AMCS, submission 34, p 1; ASH, submission 70.

50 DNRM, Response to submissions, pp 23 - 24.

PMAVs in wild river areas

In its submission, AgForce expressed its concern about the likely impact of proposed new s 113 which revokes Property Maps of Assessable Vegetation (PMAVs)[51] that include land in a wild river area. In its response (p 29), the department stated:

> The intention of this clause is to remove Category A PMAVs that were made over some Wild River High Preservation Areas. The department agrees this clause requires amendment to achieve the intent. The way the clause is currently drafted presents a risk that it could be interpreted that the clause removes / revokes all PMAVs in a Wild River Area.

Committee comment

Although proposed new s 113 appears to achieve the aim as set out in the Explanatory Notes (p 22), the department has acknowledged that the clause may currently go beyond the stated intent. The committee is therefore concerned about the potential unintended consequences of the provision as drafted and recommends that the provision be amended.

Recommendation 2

The committee recommends that proposed new section 113 be amended to better reflect the Department of Natural Resources and Mines' intention to remove only the existing Category A PMAVs that were made over some Wild River High Preservation Areas.

Self-assessable codes

Clause 11 replaces Part 2, Divisions 4B (Other codes for vegetation management) and 4C (Authorisation to clear regulated regrowth vegetation other than under regrowth vegetation code (ss 19O – 19ZG) with Division 4B (Self-assessable codes).

Proposed new s 19O(1) provides that the Minister must make a self-assessable vegetation clearing code for:

(a) clearing vegetation for the following:

- (i) controlling non-native plants or declared pests; and
- (ii) relevant infrastructure activities to which the clearing can not reasonably be avoided or minimised; and
- (iii) fodder harvesting; and
- (iv) thinning; and
- (v) clearing of encroachment; and
- (vi) an extractive industry; and
- (vii) necessary environmental clearing; and
- (viii) in a Category C area; and
- (ix) in a category R area; and

(b) conducting a native forest practice.

[51] A PMAV "*is a property scale map that landholders may apply for to show vegetation boundaries on particular properties at a property or more zoomed-in scale. … Once approved, PMAVs override other vegation maps to show what clearing is assessable*": DNRM, Questions and Answers, p 4.

Obtaining a development permit is currently costly for the landholder and the department even though "*standardised conditions apply to most of the approvals issued*".[52] The department is of the view that "[s]*elf-assessable vegetation codes will save landholders time and money, and reduce the regulatory burden associated with applications made under the VMA*".[53]

In his Introduction speech, the Minister for Natural Resources and Mines said that landholders will be able to clear vegetation under one of the codes provided they meet the requirements of the relevant code, which may include notifying the department of the clearing.[54]

It is intended that only low risk clearing activities will be assessable under a self-assessable code[55] and that the codes "*will be developed to reflect the conditions that are usually applied to a permit*".[56] Training and "*decision-support tools*" will be provided to assist landholders and land managers implement the self assessable codes.[57]

Proposed new s 19Q provides that if a self-assessable vegetation clearing code applies to the clearing of vegetation or the conduct of a native forest practice, and the activity is not carried out in compliance with the code, the activity will be assessable development under the *Sustainable Planning Act 2009* (Planning Act). Under s 578 of the Planning Act, it will be an offence to carry out the activity without a development permit unless an exemption under s 584 applies.

AgForce is strongly in favour of self-assessable codes - the AgForce CEO, Charles Burke, commented at the public hearing that the establishment of self assessable codes will provide flexibility and eliminate "*some of that long arduous and excessive application process*" that has been needed to undertake some day-to-day tasks.[58] He also said that simple tasks, such as laying poly pipe to establish watering points for cattle, that are not possible at the moment, should be possible under self-assessable codes.[59]

Angus Ryrie, an AgForce member, was very supportive of self-assessable codes if it will mean that decisions can be made more quickly, especially with regard to fodder. He told the committee that the landholder (as opposed to the department) is best placed to make timely decisions about fodder because "*the bloke who owns the property is the best judge of what the situation is*".[60]

There was not, however, universal support for self-assessable codes.[61] Natalie Hoskins, for example, commented in her submission that "[s]*elf assessable codes are a useful tool*" but "*to utilise them in a situation where the consequence of a mistake can take hundreds of years to rectify is irresponsible*".[62] David Jinks is opposed to self-assessable codes on the basis that those applying for clearing under the

52 DNRM, Vegetation Management Amendment Bill 2013: Plain English Guide, p 1.

53 DNRM, Information Briefing, p 7.

54 Hon Andrew Cripps MP, Minister for Natural Resources and Mines, Vegetation Management Framework Amendment Bill, Introduction, Queensland Parliamentary Record, 20 March 2013, pp 771 – 774, p 773.

55 DNRM, Response to Submissions, p 19.

56 DNRM, Plain English Guide, p 1.

57 DNRM, Response to Submissions, p 23.

58 Charles Burke, Chief Executive Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, p 3.

59 Charles Burke, Chief Executive Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, p 4.

60 Angus Ryrie, AgForce member, Public Hearing Teleconference, 22 April 2013, transcript, p 7.

61 See for example, Nigel Parratt, Spokesperson, Queensland Conservation Council, Public Hearing, Brisbane, 17 April 2013, transcript, p 13; Anna McGuire, Coordinator, Cairns and Far North Environment Centre, Public Hearing Teleconference, 22 April 2013, transcript, p 15.

62 Natalie Hoskins, submission 24, p 1.

self-assessable codes are not likely to have the expertise to enable them to self assess and that there will be insufficient scrutiny of those clearing under the proposed codes.[63]

There was also concern expressed by some stakeholders about compliance with the codes.[64] The Logan and Albert Conservation Association is very concerned about self-assessable codes because of that small fraction of the community who "*will colour their application to make it fit their purpose*". By way of analogy, she gave the example of code-assessable development in Greenbank in which developers falsely submitted that koalas no longer inhabited the area.[65] Mr McDonnell from Logan City Council gave qualified support to the idea of self-assessable codes but said: "*If it is self-assessment for a really large scale, where the person has a vested interest in a certain outcome, you have a potential risk issue to deal with*. … [Logan City Council has] *attempted at different times to allow more flexibility in our vegetation protection at the local government level and 90 per cent of the people will do the right thing and will apply it well*".[66]

Nigel Parratt from the Queensland Conservation Council suggested that it may be wise to run a pilot program to determine whether self regulation is effective or whether it results in indiscriminate land clearing.[67] Jo-Anne Bragg from the EDO is opposed to self-assessable codes and considered a pilot project "*fundamentally risky*".[68]

Many of the submitters remarked that different landscapes or vegetation types should be treated differently under the proposed codes.[69] Regarding self-assessable codes, Margaret Moorhouse, representing the Alliance to Save Hinchinbrook, said to the committee, "*I think the problem is … that there is no detail. Codes like that have to be very carefully spelt out in great detail so everybody is very clear about where the limits to the self-assessment are*".[70] Hugh Yorkston from the Great Barrier Reef Marine Park Authority said that operational, farm based activities would not be as likely to cause significant environmental impacts as broadscale clearing activities.

Committee comment

The codes have not yet been developed so the committee is limited in its ability to be able to comment on the provisions relating to self-assessable codes. The committee heard from a number of witnesses at its hearings who supported the concept of self-assessable codes. The committee notes the concerns expressed by some submitters and witnesses about self-assessable codes but it accepts the department's position that this red tape reduction initiative will not lead to indiscriminate land clearing and that the department will continue to monitor clearing via satellite and prosecute those who do not comply with the Act and codes.

63 David Jinks, submission 37, p 4.

64 Tim Stumer, submission 17.

65 Anne Page, President, Logan and Albert Conservation Association, Brisbane Public Hearing, 17 April 2013, transcript, p 18.

66 James McDonnell, Environment and Sustainability Manager, Logan City Council, Brisbane Public Hearing, 17 April 2013, transcript, p 21.

67 Nigel Parratt, Spokesperson, Queensland Conservation Council, Public Hearing, Brisbane, 17 April 2013, transcript, p 13.

68 Jo-Anne Bragg, Principal Solicitor, Environmental Defenders Office (Qld) Inc, Brisbane Public Hearing, 17 April 2013, transcript, p 13.

69 See for example, Des Edmonds, submission 20, p 2; James McDonnell, Environment and Sustainability Manager, Logan City Council, Brisbane Public Hearing, 17 April 2013, transcript, pp 20-21.

70 Margaret Moorhouse, Spokesperson, Alliance to Save Hinchinbrook Inc, Public Hearing Teleconference, 22 April 2013, transcript, p 16.

Point for clarification 1

The committee seeks advice from the Minister for Natural Resources and Mines on what format the proposed self-assessable codes will take and how they will be developed.

Energex Limited and Ergon Energy suggested in their submission that a "*small amendment*" to proposed new s 19O(1)(a)(ii) should be made – the word "*to*" should be replaced by the word "*for*". The committee supports this proposed recommendation because it clarifies the proposed subsection.

Recommendation 3

The committee recommends that the Vegetation Management Amendment Bill 2013 be amended so that the word "to" is replaced with the word "for" in proposed new section 19O(1)(a)(ii) so that it will read:

(ii) relevant infrastructure activities for which the clearing can not reasonably be avoided or minimised; and.

Mapping

The committee received much evidence about mapping during its inquiry into the Bill. While there were conflicting views on many matters relating to mapping, such as whether or not the current system needs simplifying, all witnesses or submitters who expressed a view on the matter agreed that the maps are often inaccurate. In this section of the report, the following matters are discussed: the proposed streamlining of the maps; the inaccuracy of the maps; "locking in" of non-assessable vegetation; and amending the regulated vegetation management map.

Simplification

The Bill proposes to streamline the maps required under the VMA.[71] Currently, the following six maps are required for landholders to understand the vegetation on their property and the level of regulation applied to it include all or some of the following:[72]

- regional ecosystem (RE) maps;
- remnant maps;
- regrowth vegetation maps;
- property maps of assessable vegetation;
- essential habitat map; and
- watercourse maps.

[71] Explanatory Notes, p 2.
[72] DNRM, Information Briefing, p 3.

The Bill proposes that a single regulated vegetation management map (new s 20A)[73] will replace the current regional ecosystem map (s 20A), the remnant map (s 20AA) and the regrowth vegetation map (s 20AB). The regulated vegetation management map will identify assessable and non-assessable vegetation.

The Bill will also provide for a vegetation management wetlands map (showing particular wetlands) (new s 20AA) and the vegetation management watercourse map (showing particular watercourses) (new s 20AB).

The department said the proposal to replace ss 20A – 20AB was in response to stakeholder concerns that the current mapping is "*complex and confusing, which has resulted in a large number of enquiries, and a general angst in interpreting and applying the vegetation map*".[74] The aim of the new mapping provisions is to make "*it easier for clients to understand, and apply on the ground*".[75] The department expects that the new maps will be available by the end of 2013.[76]

There was some disagreement amongst the submitters and witnesses about the current mapping system. Natalie Hoskins stated that she works with the current mapping system, finding it "*simple, clear and concise*"[77] and David Jinks advised the committee that he "*regularly uses the* [current] *mapping*" and finds it "*relatively straightforward and its basis and descriptions are already very easy to understand!*"[78] This is in contrast to others who found it complex. AgForce, for example, "*have always called for a simplification of the mapping*".[79]

Committee comment

The committee supports the policy objective of streamlining the current mapping so that it is more accessible to a greater number of users. The committee appreciates the department's acknowledgment that the current mapping has resulted in numerous enquiries because of users experiencing difficulty in interpreting the maps.

Inaccuracy

The key point made by many witnesses and submitters in relation to vegetation mapping in Queensland was that it is often inaccurate.[80] The AgForce CEO told the committee that a large number of AgForce members "*have been incredibly frustrated with the inaccuracy of the mapping and a process to be able to rectify those issues*".[81] Mr Burke continued, "*We do not mind working*

[73] "Regulated vegetation management map" is defined in proposed new s 20A as "*the map certified by the chief executive as the regulated vegetation management map for a part of the State and showing the vegetation category areas for the part*": cl 12.

[74] John Skinner, Deputy Director-General, Land and Mines Policy, Department of Natural Resources and Mines, private departmental briefing, 22 March 2013, transcript, p 4.

[75] John Skinner, Deputy Director-General, Land and Mines Policy, Department of Natural Resources and Mines, private departmental briefing, 22 March 2013, transcript, p 4.

[76] DNRM, "Response to submissions", p 17.

[77] Natalie Hoskins, submission 24, p 2.

[78] David Jinks, submission 37, p 6.

[79] Charles Burke, Chief Executive Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, p 3.

[80] See for example, Jo-Anne Bragg, Principal Solicitor, Environmental Defenders Office (Qld) Inc, Brisbane Public Hearing, 17 April 2013, transcript, p 12; Brett Campbell, Team Leader, CSG Policy and Strategy, Origin Energy, Brisbane Public Hearing, 17 April 2013, transcript, p 26; Richard Golden, AgForce member, Brisbane Public Hearing, 17 April 2013, transcript, p 30.

[81] Charles Burke, Chief Executive Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, p 3.

with parameters. We do not mind working with guidelines and maps, as long as the things are right.".[82]

Angus Ryrie, an AgForce member, for example, told the committee:[83]

> In the case of one paddock on Mount Pleasant – country that had a chain over it on three occasions – it was deemed to be virgin. I had a hell of a job convincing the department that they were wrong. There have to be more on-property inspections and the people who come out should know what they are talking about. One character came out to a neighbour and said that he had a good body of grass and, for God's sake, it was spinifex.

The vegetation maps for most of Queensland are prepared by Queensland Herbarium at a scale of 1:100,000[84] which means that one centimetre on the map equals one kilometre on the ground. Ms Badenoch from AgForce pointed out that "*it is very hard to be extremely accurate*" using such a scale.[85] James McDonnell from Logan City Council reiterated this point in relation to his local government area: "[T]*he mapping itself of that scale that it was conducted originally is not particularly accurate on the ground*". With respect to the Park Ridge development area, Mr McDonnell said that "*at the time I think 40 per cent of the mapping was in error and of that 10 per cent of it needed to go up in classification but the other 30 per cent needed to go down in classification*".[86]

While Queensland's maps may be amongst the best quality in Australia,[87] Tamara Badenoch from AgForce informed the committee that the Queensland Herbarium indicated to AgForce that the Queensland Herbarium tries "*to aim for 80 per cent accuracy*". She contrasted this with the requirement for landholders who "*must have 100 per cent accuracy when they are working on the ground with these maps*".[88]

In response to CANGROWERS' suggestion that the onus of proof be reversed so that Government must justify mapping and zoning decisions with real, site specific evidence,[89] the department stated:[90]

> [T]he mapping is undertaken using the Queensland Herbarium's widely accepted and publicly available methodology. This methodology is used by a number of State departments and Local Governments. The current process is efficient and effective for government. If the Government was required to ground-truth all mapping it would be cost and resource prohibitive.

Debra Gilbert submitted that the maps should be accurate before the Bill is passed.[91]

Committee comment

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82 Charles Burke, Chief Executive Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, p 3.

83 Angus Ryrie, AgForce member, Public Hearing Teleconference, 22 April 2013, transcript, pp 4-5.

84 Queensland Government, Department of Environment and Heritage, "Queensland Herbarium: Survey and Mapping" http://www.ehp.qld.gov.au/plants/herbarium/survey_and_mapping.html at 3 May 2013.

85 Tamara Badenoch, Policy and Project Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, p 3.

86 James McDonnell, Environment and Sustainability Manager, Logan City Council, Brisbane Public Hearing, 17 April 2013, transcript, p 20.

87 Jo-Anne Bragg, Principal Solicitor, Environmental Defenders Office (Qld) Inc, Brisbane Public Hearing, 17 April 2013, transcript, p 12.

88 Tamara Badenoch, Policy and Project Officer, AgForce Queensland, Brisbane Public Hearing, 17 April 2013, transcript, p 3.

89 See CANEGROWERS, submission 39, p 3.

90 Department of Natural Resources and Mines, Response to Submissions, pp 24-25.

91 Debra Gilbert, submission 63.

The committee acknowledges the cost of ground truthing but considers that it would be beneficial for all parties for the maps to more accurately reflect the on ground situation. The committee is of the view that at present, the maps are only a guide to, rather than an accurate representation of, the vegetation on the ground.

Locking in non-assessable vegetation (Category X)

Under the amendments, it is proposed that "[a]*ll areas of the State are assigned a vegetation category area, which aligns with pre-existing PMAV vegetation categories for consistency*".[92]

The regulated vegetation management map will consist of five different vegetation category areas:[93]

- Category A (s 20AL, as amended by cl 21) – vegetation subject to compliance notices, offsets, exchange areas and voluntary declarations.
- Category B (s 20AM, as amended by cl 22) – remnant vegetation with no differentiation between VMA conservation status (including cleared areas the chief executive decides to show as category B under section 20AH of the VMA)
- Category C (s 20AN, as amended by cl 23) – high value regrowth vegetation (only on leasehold land for agriculture and grazing) with no differentiation between VMA conservation status (including cleared areas the chief executive decides to show as category C under s 20AI of the VMA).
- Category R (proposed new s 20ANA) – regrowth watercourse areas – i.e areas located within 50m of a watercourse located in the Burdekin, Mackay Whitsunday or Wet Tropics catchments.
- Category X (s 20AO, as amended by cl 25) – areas not assessable, or not regulated under the vegetation management framework and are 'locked in' as such.

At the date of commencement of the proposed Act, it is proposed that Category X (that is, non-assessable vegetation) will be "*locked in*". From that time, the area covered by Category X cannot be reduced (except in limited circumstances[94]) but may be increased.

Category X may be expanded "*through a PMAV process that amends the regulated vegetation management map where a landholder and DNRM agree that the extent of assessable vegetation mapped on the new map is incorrect*".[95]

It is proposed that areas of high value regrowth on freehold and indigenous land will be labelled Category X on the new regulated vegetation management map.[96]

The department notes that the proposed changes will remove "*the necessity for landholders to seek … 'lock-it-in' Category X PMAVs*".[97]

Many of the submitters have strongly held and conflicting opinons on the treatment of Category X areas. The Australian Marine Conservation Society (AMCS) and The Wilderness Society, for example, are strongly opposed to the movement of high value regrowth vegetation on freehold and indigenous land which has not been cleared since 1989 into Category X as this will effectively leave it

92 Explanatory Notes, p 7.
93 See also Explanatory Notes, p 7; DNRM, Information Briefing, p 10.
94 The only way that Category X areas will be remapped as remnant vegetation is if the areas "*are involved in offsetting or subject to restoration/enforcement notices or unlawful clearing*": Explanatory Notes, p 7.
95 DNRM, Plain English Guide, p 2.
96 DNRM, Response to Submissions, p 17.
97 DNRM, Information Briefing, p 10.

unprotected.[98] The Wilderness Socity argues that this "*will have a devastating effect on biodiversity and intact landscpaes, and will have serious consequences for carbon release and loss of carbon sequestration*". Other submitters were, however, strongly in favour of Category X, particularly the categorisation of high value regrowth on freehold and indigenous land being classified as such. [99]

While he was talking about vegetation mapping generally, rather than specifically in relation to Category X, Mr McDonnell from Logan City Council made the point that "*locking in*" areas on maps at a point in time "*always has a certain risk to it*".[100]

Committee comment

As discussed above, there are many inaccuracies in the current maps. The committee is therefore concerned that areas that should not be classified as Category X on the regulated vegetation management map may be, and areas that should be categorised as Category X may not be. This former classification is particularly important because once an area is "*locked in*" as Category X it cannot be remapped as remnant vegetation unless the area is "*involved in offsetting or subject to restoration/enforcement notices or unlawful clearing*".[101]

Point for clarification 2

The committee seeks clarification from the Minister for Natural Resources and Mines on how confident the department can be in "locking in" areas on the regulated vegetation map as Category X, given that the maps are not currently accurate. The committee sees a risk in relying solely on the current mapping system to lock in areas as Category X.

Amending the regulated vegetation management map

It is proposed that the regulated vegetation management map will only be amended to reflect the certification, or amendment, of a PMAV (proposed new s 20HB).[102] The Government expects that this amendment "*will save time and resources as well as lead to fewer client enquiries concerning mapping*".[103] The department considers that "*there will more than likely be a reduction in PMAV applications, and resultant faster processing times, given Category X areas will be 'locked-in' on the State-wide map, thus making individual applications less necessary*".[104]

The department informed the committee that:[105]

> The Queensland Herbarium will continue to periodically update regional ecosystem mapping, which may be used as a guide for identifying regional ecosystems and the corresponding conservation status on the ground but will not be used to increase the area of remnant or high value regrowth vegetation under the vegetation management framework.

And in its response to submissions, the department stated:

> Despite this simplied approach to mapping, the conservation status of vegetation, both remnant and regrowth, is still part of the vegetation management framework. This information, which is additional to

[98] Australian Marine Conservation Society, submission 34, p 1; Wilderness Society, submission 37, p 3.
[99] See for example, Simon and Christine Campbell, submission 36, p 3. Further discussion on this point below.
[100] James McDonnell, Environment and Sustainability Manager, Logan City Council, Brisbane Public Hearing, 17 April 2013, transcript, pp 20-21.
[101] Explanatory Notes, p 7.
[102] Clause 32.
[103] DNRM, Information Briefing, p 13.
[104] DNRM, Information Briefing, p 13.
[105] DNRM, Questions and Answers, p 9.

> the generic layer of the regulated vegetation management map, will be readily available, and landholders will be made aware that they must take account of conservation status where it applies to them.[106]

Angus Ryrie, AgForce member, brought up the issue of incorrect mapping and the difficulty with PMAVs at the committee's public hearing teleconference. He said that the department "*did not seem to be able to differentiate between regrowth and virgin timber*" and that they incorrectly identified timber species – confusing belah and lancewood – and incorrectly identified certain species as endangered when they were not.[107]

In their submissions, Energex Ltd and Ergon Energy suggested that it would be beneficial to allow someone other than the owner of land to apply to amend a map because others, such as energy companies, can be affected by errors on the regulated vegetation management map. The department's view is that the owner is aware of issues affecting their land and so the onus is on the owner.

Committee comment

The committee understands the interest of energy companies and others to be able to seek amendments to PMAVs and hence amend the regulated vegetation management map. The committee is concerned, however, that a widened provision may open the door to vexatious applicants to seek a PMAV over another person's property. The committee considers that the current provisions are adequate and should not be amended at this time.

Timeframes

The Property Council of Australia, the Moreton Bay Regional Council and the LGAQ submitted that it would be beneficial to have a timeframe inserted in proposed new ss 20HB and 20HC which deals with the updating of the vegetation management map.[108] The department responded to their concerns in the following manner:

> The timeframes for publishing the updated regulated vegetation management map will be kept to a minimum to ensure that there is as little delay as possible for the date of certification of a PMAV to the date the regulated vegetation management map is updated to reflect the creation or update of a PMAV. Nothwithstanding this, once the PMAV is certified, it is the point of truth, and clearing must be done in accordance with the vegetation categories on the PMAV, not the regulated vegetation management map, until the PMAV is incorporated.

Committee comment

The committee notes the concern raised about timeframes and is of the view that it would be useful for landholders and other stakeholders to have a clear idea of how quickly the vegetation management map will be amended to relect the certification or amendment of a PMAV. The commitee therefore recommends that the department regularly report on the time that elapses between the certification or amendment of a PMAV and the corresponding update to the regulated vegetation management map.

[106] DNRM, Response to submissions, p 30.

[107] Angus Ryrie, AgForce member, Public Hearing Teleconference, 22 April 2013, transcript p 3.

[108] Property Council of Australia, submission 66; Moreton Bay Regional Council, submission 56; Local Government Association of Queensland, submission 151.

Recommendation 4

The committee recommends that the Department of Natural Resources and Mines publishes regular updates on the timeframe to amend the regulated vegetation management map following the certification or amendment of a property map of assessable vegetation (PMAV).

Removal of high-value regrowth regulations from freehold and indigenous land

The Bill proposes to remove the high value regrowth provisions that were introduced in October 2009 from freehold and indigenous lands, but retain them on leasehold land for agriculture grazing as well as the reef watercourcourse regulations.[109] These amendments will "*return regrowth regulation (other than reef watercourse regulations) to a similar level that existed prior to the 2009 reforms*".[110] The department is of the view that:[111]

> *This reform will … present opportunities for landholders to gain potential financial and environmental benefits, through protecting and managing areas of regrowth which are no longer regulated, via a vegetation management offset arrangement, or similar protection mechanism*.

In its submission, AgForce pointed out that landholders who had retained vegetation on paddocks ("*for example using it in a rotational management plan, spelling the paddock to ensure it was well maintained, animal welfare reasons or future proofing their properties*") had their ability to manage this land removed when the 2009 regrowth regulations came into force.[112] AgForce submitted that the following impacts resulted from those 2009 amendments:[113]

- Prevention of expansion of agricultural activities
- Prevention of land use changes – including the adoption of innovative technologies that assist landholders in producing in a more sustainable manner
- Inhibited routine management of vegetation regrowth and thickening of woody vegetation
- Loss of land values

AgForce considers that proposed removal of the 2009 amendments will mean that farmers will be able to manage their land more effectively.

Some submitters, however, contended that regulation of high value regrowth vegetation should remain as it plays a vital role in the protection of biodiversity[114] and maintenance of water quality.[115] Martine Maron submitted that regrowth has been an important habitat for some native species, including the threatened woma python and the painted honeyeater. She made the comment that "[t]*he habitat value of brigalow* Acacia harpophylla *regrowth for birds is close to that of remnant vegetation after 30 years*".[116] Kathy Faldt asserted that regrowth vegetation in the Mt Lindesay North Beaudesert region is currently providing habitat for koalas and spotted tail quolls.[117]

[109] DNRM, Information Briefing, p 6.
[110] DNRM, Information Briefing, p 7.
[111] DNRM, Information Briefing, p 7.
[112] AgForce, submission 46, p 21. See also, Richard Golden, AgForce member, Public Hearing, Brisbane, 17 April 2013, transcript, p 30.
[113] AgForce, submission 46, p 22.
[114] See for example, David Jinks, submission 37, pp 3-4.
[115] See for example, Wildlife Preservation Society, submission 52; Kathy Faldt, submission 44, p 2.
[116] Dr Martine Maron, submission 18. See also VETO, submission 32.
[117] Kathy Faldt, submission 44, p 1.

In its response to the submissions, the department pointed out:

> *Where high-value regrowth is no longer regulated, this vegetation would be available for use as an offset that would be protected using a legal contract and management plan. Some high value regrowth vegetation is also protected by other Commonwealth, State or Local Government regulations, eg brigalow communities under the* [Environment Protection and Biodiversity Conservation] *Act*.[118]

As discussed above, AgForce supports the removal of the provisions relating to freehold and indigenous land, but does not agree with leasehold land still being subject to regrowth regulations.[119] In its response to AgForce's position, the department stated that the intention was "*not to reduce the regrowth regulations beyond what was in place prior to the 2009 reforms*". In its Information Briefing, the department advised that "[t]*he clearing of native vegetation on leasehold land for agriculture and grazing has been regulated for over a century under the VMA since 2000 and previously to this under the Land Acts 1910, 1962 and 1994*".[120]

Committee comment

The committee recognises that there was much support from freehold farming stakeholders, in particular, for the proposal to remove high-value regrowth regulations from freehold and indigenous land. Some of the witnesses told the committee about areas of their land that they had been unable to farm because of the regulations and how pleased they are with the Bill's proposed amendments regarding high-value regrowth. The committee also recognises that there is much concern about the proposed changes to the high-value regrowth provisions, particularly with respect to habitats for native species, climate change and the impact on the quality of water in affected watercourses and on the Great Barrier Reef. However the committee heard compelling evidence from many land holders attesting to their commitment to manage their land in a responsible and sensitive manner and their strong arguments for their right to be permitted to do so.[121]

Riparian regrowth

The Bill does not propose to reduce the current level of protection for regrowth in areas located within 50m of a watercourse in the Great Barrier Reef catchments of the Burdekin, Mackay-Whitsundays and the Wet Tropics. The WWF submitted that all GBR watercourses and wetlands should be given the same protection as currently only three of the six are being protected. It is concerned about the impact on biodiversity and the Reef and the resultant impact on tourism.[122] The department said that Reef is being protected in other way, such as through the Reef Water Quality Protection Plan and the Reef Protection Package.[123]

Committee comment

The committee is of the view that the current level of protection for watercourses in the Great Barrier Reef catchment should be maintained and further extension of these protections is not warranted at this time.

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[118] DNRM, Response to Submissions, p 19.

[119] AgForce, submission 46, p 23.

[120] DNRM, Information Briefing, p 7.

[121] See for example, John Kelman, AgForce member, who told the committee at its public hearing on 17 April 2013 (transcript, p 31): "… prior to any land-clearing regulations, I left 400 acres of bendee bonewood country on my Emerald property, which is probably one of the only areas of that left in Australia … We got no credit for it and we did not need any. We just wanted to leave it and we did so. That is on some of the best soil. We could have cleared it and we would have had buffel grass this high – halfway up a cow's belly".

[122] WWF, submission 57.

[123] DNRM, Response to Submissions, p 37.

Introduction of new relevant clearing purposes

The Bill proposes to introduce new relevant clearing purposes for necessary environmental clearing, high value agriculture and irrigated high value agriculture clearing.

Section 22A provides for when a vegetation clearing application is for a relevant purpose for the *Sustainable Planning Act 2009*. If the clearing of vegetation is not a relevant purpose under s 22A of the Act, it will be defined as prohibited development under the *Sustainable Planning Act 2009*. It is an offence to carry out development that is prohibited development.[124]

Subsection 22A(2) currently provides that a vegetation clearing application is for a relevant purpose under s 22A if the applicant satisfies the chief executive that the development applied for is:

(a) a project declared to be a coordinated project under the *State Development and Public Works Organisation Act 1971*, s 26; or
(b) necessary to control non-native plants or declared pests; or
(c) to ensure public safety; or
(d) for establishing a necessary fence, firebreak, road or vehicular track, or for constructing necessary built infrastructure, (each relevant infrastructure) and the clearing for the relevant infrastructure can not reasonably be avoided or minimised; or
(e) a natural and ordinary consequence of other assessable development for which a development approval was given under the repealed *Integrated Planning Act 1997*, or a development application was made under that Act, before 16 May 2003; or
(f) for fodder harvesting; or
(g) for thinning; or
(h) for clearing of encroachment; or
(i) for an extractive industry; or
(j) for clearing regrowth vegetation on freehold land, indigenous land or leases issued under the *Land Act 1994* for agriculture or grazing purposes, in an area shown as a registered area of agriculture on a registered area of agriculture map in a wild river high preservation area.

Clause 46 proposes to omit 22A(2)(j) and provide the following new clearing purposes:

(j) for necessary environmental clearing; or
(k) for high value agriculture clearing; or
(l) for irrigated high value agriculture clearing.

The proposed definitions of these terms (to be inserted in the 1 Schedule to the VMA) are as follows:

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 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.

High value agriculture clearing means clearing carried out to establish, cultivate and harvest crops, other than clearing for grazing activities or plantation forestry.

Irrigated high value agriculture clearing means clearing carried out to establish, cultivate and harvest crops, or pasture, other than clearing for plantation forestry, that will be supplied with water by artificial means.

[124] *Sustainable Planning Act 2009*, s 581.

Clause 46 proposes to replace subsection 22A(2)(d).

Clause 47 inserts new Part 2, Division 6, Subdivision 1A into the Act. The proposed new subdivision applies if a vegetation clearing application for particular land is for high value agriculture clearing or irrigated high value agriculture clearing. Proposed new s 22DAB sets out the requirements for making an application which includes evidence that the land is suitable for agriculture and, if the clearing involves irrigated high value agriculture clearing, evidence that the owner of the land is an eligible owner who has, or may have, access to enough water for establishing, cultivating and harvesting the crops to which the clearing relates. Proposed new s 22DAC sets out the matters for deciding the application.

With respect to high value agriculture clearing and irrigated high value agriculture clearing, the department explained as follows:[125]

> At present, the vegetation management framework does not allow clearing of remnant vegetation for agricultural development … It is proposed to create a new clearing purpose under the framework to allow applications to be made for high value and irrigated high value agriculture.
>
> …
>
> Before an application for these purposes progresses to the assessment stage, applicants will need to provide certain information to DNRM, including particulars of the clearing extent and location, evidence that the development cannot occur on already cleared land, and other evidence to demonstrate viability of the activities and sufficient water where required for irrigated activities. Importantly, the applicant will also need to demonstrate that the relevant land is suitable for the proposed activity, in terms of soil, climate, and topography.
>
> This will ensure that new agricultural development is targeted towards areas whch are suitable for agriculture, and hence are most likely to be successful enterprises.

The department expects that these new clearing purposes "*will open up new areas of suitable land for development*"[126] and that the new clearing purpose for necessary environmental clearing "*will allow a range of new clearing activities to occur, that may provide an environmental or community benefit*".[127]

The department commented that the new clearing purposes for high value agriculture "*may have a flow on effect for water resource planning and water services in the State as a consequence of increased landholder interest in accessing water to leverage the new opportunities to clear vegetation to support business expansion and diversification*".[128]

Some submitters had concerns about the impact of the proposed new clearing purposes. AMCS, for example, is opposed to the proposed changes that will allow clearing applications for additional relevant purposes of high value agricultural clearing and irrigated high value agricultural clearing because of the potential for "*adverse impacts on catchment health and Queensland's … marine environments*".[129]

Some submitters expressed concern about particular aspects of the new provisions. John Dillon, for example, questioned whether the list of matters set out in proposed new s 22DAC is sufficiently comprehensive.[130] Tim Stumer questioned how the proposed new clearing purpose for necessary environmental clearing will work.[131] Gecko expressed concerns about the actions required to provide

[125] DNRM, Questions and Answers, p 6.
[126] DNRM, Questions and Answers, p 7.
[127] DNRM, Questions and Answers, p 8.
[128] DNRM, Information Briefing, p 9.
[129] Australian Marine Conservation Society, submission 34, p 1.
[130] John Dillon, submission 9.
[131] Tim Stumer, submission 17.

the beneficial impact.[132] In its response to Gecko's submission, the department noted that "*the specific requirements associated with 'significant beneficial impact' are yet to be developed*".[133]

Some submitters, such as AgForce, support the proposed new clearing purposes but consider that the amendments should go further. AgForce suggests that it also should include landholders who do not have access to water to undertake irrigated pasture improvements.[134] At present though, "*the Government's policy position* [is] *not to include clearing for dry land grazing in 'high value agriculture'*".[135]

Committee comment

The committee recognises that the proposed new clearing purposes will increase the instances in which remnant vegetation will be able to be cleared but it considers that the Bill provides sufficient protections to ensure that such applications will only be approved in suitable circumstances. The committee also recognises that it is difficult to achieve a balance between the opposing views of stakeholders but considers that the Government has put forward the most balanced position in these provisions.

Declaring restricted high value agriculture areas

Clause 10 proposes to insert new Part 2, Division 4, Subdivision 1A in the Act. This subdivision (new s 19D) will enable the Minister for Natural Resources and Mines to declare an area to be a restricted high value agriculture area if satisfied the declaration is necessary to manage high value agriculture clearing or irrigated high value agriculture clearing. The declaration may include restrictions on things such as the type of crops and the size of land that can be subject to a vegetation clearing application. The objective of the head of power is "*to mitigate the risk of inappropriate clearing and contain activities that may lead to environmental degradation*".[136]

Some submitters were concerned about the Minister's discretionary powers relating to high value agricultural clearing.[137] At the Brisbane public hearing, Queensland Conservation Council was questioned about the organisation's position with respect to the Minister's discretionary powers. Mr Parratt stated that he is not completely opposed to discretionary powers but he is concerned about the guidelines the Minister would use in exercising those powers because these are not in the Bill or Explanatory Notes.[138]

Committee comment

The committee notes that this matter is discussed in Part 3.2 of this report.

Additional relevant purpose

The committee received a submission outlining an initiative currently underway in the Lockhart River area of North Queensland which could provide both employment opportunities to the local indigenous community and high grade biodiesel to Australia. Evidence was presented, however, that "*expansion of the project is in jeopardy*" due to the *"significant hurdles and costs associated with the*

[132] Gecko, submission 25, p 4.
[133] DNRM, Response to submissions, p 15.
[134] AgForce, submission 46, p 27. See also, Simon and Christine Campbell, submission 36, p 4 who are disappointed that clearing to establish and cultivate native or introduced pastures for grazing of livestock has been excluded.
[135] DNRM, Response to submissions, p 22.
[136] DNRM, Information Briefing, p 9.
[137] See for example, Kathy Faldt, submission 44, p 2.
[138] David Gibson MP and Nigel Parratt, Brisbane Public Hearing, 17 April 2013, pp 10-11.

clearing of native vegetation for the project".[139] Several proposed legislative amendments were suggested in the submission that would assist in creating greater certainty and opportunity for future development in indigenous communites. The most meritorious of these suggestions was to include a new relevant purpose in the Bill under s 22A of the VMA. The new relevant purpose would be for a significant indigenous community project, where a project provides desirable social, economic and environmental outcomes and/or significant employment to a local indigenous community.

Committee comment

The committee supports the view of reducing unnecessary red tape to achieve increasing employment opportunities for indigenous people. The committee recommends that the Government amend the Bill to include a new relevant purpose under s 22A of the *Vegetation Management Act 1999* to enable significant indigenous community projects that provide desirable social, economic and environmental outcomes and/or significant employment to a local indigenous community.

Recommendation 5

The committee recommends that the Government amend the Vegetation Management Framework Amendment Bill 2013 to include a new relevant purpose under s 22A of the *Vegetation Management Act 1999* to enable significant indigenous community projects that provide desirable social, economic and environmental outcomes and/or significant employment to a local indigenous community.

Enforcement, Investigations and Offences

The Bill proposes to amend a number of the enforcement, investigations and offence provisions in the VMA.

Since the commencement of the VMA in 2000, a number of amendments to the Act have adversely affected fundamental legislative principles. For example, the current provisions of the VMA dealing with enforcement have been described in the following terms: [140]

> The enforcement provisions of the VMA violate the most fundamental requirements of criminal justice and should concern every civil libertarian. The intrusive investigatory powers, the coercive extraction of evidence, the conferment of judicial powers on executive officers, the reversal of the burden of proof, the various presumptions favouring prosecutors, and the use of criminal history, combine to create a regime more reminiscent of a police state than of a liberal democracy.

In the departmental briefing, the committee chair asked the department whether any breaches of fundamental legislative principles had been identified in the current VMA.[141] The department acknowledged that previous amendments to the VMA had breached fundamental legislative principles pursuant to the *Legislative Standards Act 1992*. The department advised: [142]

> In 2003 a number of fundamental legislative breaches were introduced. The reforms that have been undertaken as part of this bill will actually remove those fundamental legislative breaches.

The Bill proposes to restore fundamental legislative principles by removing unfair enforcement and compliance provisions such as the 'reversal of the onus of proof' provisions in section 67A so that

[139] Evergreen Fuels Pty Ltd, submission 62, p 2.

[140] Ratnapala, Suri (2005). Constitutional vandalism under green cover. In: John Stone, Upholding the Australian Constitution Volume 17. 17th Conference of the Samuel Griffith Society, Greenmount, QLD Australia, (28-43). 8-10 April, 2005, p 38.

[141] DNRM, Departmental Briefing, p 7.

[142] DNRM, Departmental Briefing, p 7.

standard prosecution principles apply and landholders are not automatically held responsible for clearing on their land without evidence; reinstating the 'mistake of fact' defence under the Criminal Code by removing section 67B; and reinstating 'self-incrimination' as a reasonable excuse for not providing information.[143]

Power to enter places

Clause 51 proposes to amend s 30 by reducing the number of places an authorised officer is able to enter without the consent of the occupier. This power has previously been heavily criticised: [144]

> The powers of the authorized officer recall the authority of the infamous Star Chamber. They combine legislative, judicial and executive powers in the one person. If this does not alarm our learned judges, lawyers, politicians and civil society leaders, Australian constitutionalism is in serious trouble.

However, in its submission to the committee, the Moreton Bay Regional Council (MBRC) submitted that the restriction on access powers by authorised officers 'appear to be unwarranted'.[145] With respect to MBRC's comment, the department advised: [146]

> Although it is in many instances impossible to monitor a development permit or compliance notice without entering the place where vegetation clearing may be taking place, such powers are a breach of fundamental legislative principles under the Legislative Standards Act 1992. The breach has been partially amended by limiting those powers to circumstances where the landholder has already had significant interaction with the Department. Where significant interaction has not occurred such as those circumstances where the landholder has notified the Department of self-assessable clearing, it is unreasonable to enter the property without consent.

Committee Comment:

The committee is satisfied with the department's response in relation to the concerns raised by the MBRC.

Power to obtain information

Currently, in ss 51 (Power to require information) and 54 (Failure to produce a document), the VMA provides that it is not a reasonable excuse for a person not to comply with the relevant section on the basis that complying with the requirement might tend to incriminate the person. The Bill (cll 52 and 54, respectively) proposes to amend ss 51 and 54 so that it will be a reasonable excuse for an individual not to comply if doing so might tend to incriminate the individual or expose the individual to a penalty. It is also proposed that a similar subclause will be inserted in s 53 (Failure to certify copy of document) (cl 53).

Guide for deciding penalty for vegetation clearing offence

Clause 55 proposes to omit s 60B which provided a guide for a court in deciding the penalty to impose on a person for a vegetation clearing offence. This is in line with a recommendation made by Crown Law.[147] The Explanatory Notes state that removing the provision "*will provide a positive benefit to the community by providing a more equitable and consistent approach to the sentencing of unlawful clearing by reverting to the existing* Penalties and Sentences Act 1992".[148]

[143] Explanatory Notes, p 2.
[144] Suri Ratnapala, Constitutional vandalism under green cover, p 39.
[145] Moreton Bay Regional Council, submission 56, p 3.
[146] DNRM, Response to Submissions, p 36.
[147] Explanatory Notes, p 20.
[148] Explanatory Notes, p 20.

Evidence

Clause 56 proposes to remove ss 67A and 67B of the VMA. Currently, s 67A places responsibility for unlawful clearing with the 'occupier' of the land, which includes the owner, lessee or title holder depending on the tenure. This section has placed a presumption of guilt (or reversal of the onus of proof) on the occupier of the land and raises issues with fundamental legislative principles. It has the potential to see landholders wrongly accused of unlawful clearing where there is no evidence to suggest that it was not their fault.

The reversal of the onus of proof is another provision of the VMA which has been heavily criticised:[149]

> Not content with this arsenal of prosecutorial weapons, the perpetrators of the VMA have even removed from land owners the defence of mistake of fact.[26] These provisions cumulatively deny landowners the basic safeguards of procedural justice available even to persons accused of the most heinous crimes.

At the committee's public hearing, AgForce commented on the reversal of the onus of proof currently provided for at s 67A of the VMA. AgForce advised the committee:[150]

> I know there has been work done by other legal groups that actually substantiated our claim that it was a reversal of onus of proof essentially and in every other law in this land that is not the case. It certainly was something that we were always very strongly of the view needed to be changed, and this certainly will go some way towards rebalancing what is essentially something that is not accepted in normal law.

Section 67B currently provides that for a proceeding against a person for a vegetation clearing offence, the Criminal Code, s 24 (Mistake of fact) does not apply. Under s 24, persons who make a honest and reasonable mistake are not criminally responsible for their acts or omissions which are based on their mistaken belief.

In their submission to the committee, AgForce argued that the VMA had disregarded necessary fundamental legislative principles (FLP) and failed to provide natural justice or procedural fairness for its members:[151]

> The VMA fails to provide procedural fairness and natural justice- with a reverse onus of proof, conferment of judicial powers on executive officers, and various presumptions favouring prosecutors. In addition there is no appeal from the VMA to any court or Parliamentary process. It is unclear why such onerous restrictions are necessary and we would question their justification.
>
> AgForce believes the VMA should be referred to the appropriate standing committee of the Parliament and reviewed against the Legislative Standards Act 1992 as a matter of urgency.

The committee asked the department whether the current Bill will correct the FLP breaches brought about by previous amendments. The department confirmed that the Bill seeks to correct these breaches particularly through the removal of ss 67A and 67B.

The removal of s 67A will remove the heavily cristicised reversal of the onus of proof to ensure that the rights and liberties of individuals, a key fundamental legislative principle, are protected. The department advised the committee: [152]

> This breach (reversal of the onus of proof) has been addressed through the removal of section 67A of the VMA, which contained the presumption of guilt (clause 56 in the VMFA Bill 2013). The

[149] Suri Ratnapala, Constitutional vandalism under green cover, p.40
[150] Charles Burke, Brisbane Public Hearing, 17 April, transcript, p 2.
[151] Agforce, 2013, Submission No.46, pp.23-24.
[152] DNRM, Response to Question on Notice, p 6.

> presumption of guilt raises issues with FLPs, and has the potential to see landholders wrongly accused of unlawful clearing where there is no evidence to suggest that it was not their fault.

The removal of s 67B will mean that an individual who makes an honest mistake will not be charged. In relation to this amendment, the department advised:[153]

> This potential FLP breach has been addressed through the reintroduction of Section 24 of the Criminal Code to the VM framework by removing s 67B of the VMA (VMFA Bill 2013, clause 56). This ensures that individuals who make an honest mistake in accordance with section 24 of the Criminal Code cannot be charged with an offence, as they are not seen to be criminally responsible for their acts.

However, in its submission to the committee the Australian Marine Conservation Society (AMCS) advised that it was strongly opposed to the "weakening" of the compliance, offences and enforcement provisions.[154] In response, the the department advised:[155]

> In terms of the changes to compliance, it is important to note that reforms are not a signal that the Government is relaxing environmental standards, nor are they a green light for landholders to carry out indiscriminate land clearing. Inappropriate vegetation management practices that show no regard for the environment can still be readily detected through satellite monitoring, with penalties applying to those who do the wrong thing. Many of the changes address previous breaches of fundamental legislative principles, rather than a weakening of compliance and enforcement mechanisms.

Committee Comment:

The committee notes the amendments proposed in the Bill removing sections 67A and 67B which will ensure procedural fairness and natural justice. The committee views these as some of the Bill's most significant amendments and commends the Minister for the restoration of these important fundamental legislative principles.

Review and appeal

Clause 58 replaces s 68CB (Non-application of Judicial Review Act 1991) with s 68CB (Limitation of review and appeal). At present, s 68CB prevents a person exercising a right of review under the *Judicial Review Act 1991* in relation to applications for a PMAV and certification or amendment of the regional ecosystem, remnant and regrowth vegetation maps by the chief executive. It also places a limitation on particular appeals. Limiting the appeal rights of individuals may be considered to be unconstitutional and again raises concerns in relation to fundamental legislative principles.

The new provisions contained in the Bill will address these issues by limiting the review and appeal rights for decisions made by the chief executive to those decision affected by jurisdictional error as determined by the Supreme Court.[156]

In its submission, the Property Council of Australia (PCA) highlighted a potential issue with the wording of clause 58 of the Bill. It pointed out that while the definition of 'relevant PMAV application' under proposed new s 68CA and current s 68CA are the same,[157] the only PMAV applications affected by the current provision are those made on or after 8 October 2009 and before 3 November 2009, whereas the proposed new definition will include dates up to the date of assent of the Bill. The PCA is concerned that proposed new s 68CA will mean that applicants between 8 October 2009 and the date of assent of the Bill will not be able to use any review mechanisms in

[153] DNRM, Response to Question on Notice, p 4.
[154] Australian Marine Conservation Society, 2013, submission 14, p 2.
[155] DNRM, Response to Submissions, p.21.
[156] Explanatory Notes, p 21.
[157] 'Relevant PMAV application means a PMAV application made on or after 8 October 2009 and before the date of assent'.

the VMA.[158] In its response to the PCA's submission, the department acknowledged that there is a drafting error in clause 57.[159] The provision is only meant to apply to PMAV to PMAV applications made between 8 October 2009 and 3 November 2009.[160]

Clause 59 omits s 68CC (No appeals about relevant vegetation maps and particular PMAV applications). The Explanatory Notes (p 21) explain that appeals generally have been addressed by the amendment to s 68CB made by cl 58. However, in its submission to the committee the PCA sought clarification in relation to the proposed amendment to s 68CB. The PCA submitted:[161]

> The [PCA] seeks greater clarification as to how this proposed change [to s 68CB] aligns with the provisions within the VMA, which allow for internal review and appeals to QCAT with respect to PMAV applications.

With respect to PCA's concerns, the department advised that there are drafting errors in clause 58 of the Bill.

Committee Comment:

The committee notes the issues raised by submitters in relation to clauses 57 – 59 and recommends that the errors identified by the department be rectified.

Recommendation 6

The committee recommends that the Vegetation Management Framework Amendment Bill 2013 be amended to rectify the errors in clauses 57 and 58 identified by the Department of Natural Resources and Mines.

Amendments to the *Land Act 1994*

Clauses 67 and 68 remove the forfeiture provisions in the *Land Act 1994*.

Clause 67 omits section 234(e)(i) to remove unfair forfeiture provisions relating to vegetation clearing under the *Land Act 1994*. Pursuant to this amendment, a lease may be forfeited when the lessee has one or more convictions for a vegetation clearing offence, regardless of whether the offences were committed on lease land. [162]

The AMCS does not support this proposed amendment. The AMCS submitted:[163]

> AMCS is … opposed to the removal of penalty provisions that allow for forfeiture of lease if the lessee has more than one conviction for a vegetation clearing offence (Vegetation Management Amendment Bill 2013 cl67 cl68).

With respect to AMCS's concern, the department advised:[164]

> In terms of the changes to compliance, it is important to note that [the] reforms are not a signal that the Government is relaxing environmental standards, nor are they a green light for landholders to carry out indiscriminate land clearing. Inappropriate vegetation management practices that show no regard for the environment can still be readily detected through satellite monitoring, with penalties applying to

[158] Property Council of Australia (PCA), submission 46, p 3.
[159] DNRM, Response to Submissions, p 46.
[160] DNRM, Response to Submissions, p 54.
[161] PCA, submission 46, p 3. Logan City Council also raised concerns about proposed new s 68CB: submission 73, pp 6 – 7.
[162] Explanatory Notes, p.24.
[163] Australian Marine Conservation Society, submission 14, p.2.
[164] DNRM, Response to Submissions, p 21.

> those who do the wrong thing. Many of the changes address previous breaches of fundamental legislative principles, rather than a weakening of compliance and enforcement mechanisms.

Area management plans

The Bill contains several sections which change requirements for area management plans.

Clause 33 amends s 20J of the *Vegetation Management Act 1999* as to what an area management plan is. Clause 38 inserts a new head of power at s 20UA to allow the chief executive to make area management plans for an area, to be called area plan (chief executive). This will allow the chief executive greater flexibility to carry out area management plans that respond to emerging land management issues.[165] Pursuant to s 20UA(3) an area plan (chief executive) will not be subordinate legislation.

In accordance with section 20UA(2), an area plan must include:

- the plan area; and
- if the conditions for clearing vegetation relate to different zones within the plan area—each of the zones;
- the management intent and management outcomes for vegetation management in the plan area; and
- the conditions for clearing vegetation or restricting clearing in the area to achieve the management intent and management outcomes.

An area plan (chief executive) must not be inconsistent with State policy and the regional vegetation management code for the plan area.

In his submission to the committee, Des Edmonds, while supporting the Bill's contents, sought clarification in relation to the proposed changes to area management plans (AMPs). Mr Edmonds submitted:[166]

> Queensland is a very large & diverse vegetated & climate variance state, and lawmakers must avoid the easy road of one size fits all which leads to inequities.
>
> It would seem the AMPs on a district basis will be taking into account Qld's diversity. If I have got that wrong then that's what they should be for. Most importantly the groups/persons creating the AMPs for the Chief Executive should be representative of all interested stakeholders for a balanced & practical result and also be required to allow general public input AND a fair method of appointing one or more stakeholders from the public in the district to the group preparing the AMP. ie the district AMP group should not be all bureacrats. The public appointees should be able to claim out of pocket expenses. These AMP groups would have a very busy first couple of years and then a steady reviewing/amending task.

The committee sought advice from the department in relation to the points raised by Mr Edmonds. The department advised:[167]

> There is no maximum area requirement for an area management plan. Provisions in the Bill further broaden the application of area management plans. Hence district-based area management plans, could in theory be a reality, if all landholders involved were willing to participate, the area in question had the same or similar vegetation type or characteristics, and are subject to the same or similar management intent or outcomes for the area.
>
> With regard to self-assessable codes, consultation will take place as part of their implementation with relevant stakeholders.

[165] Explanatory Notes, p 15.
[166] Mr Des Edmonds, submission 20, p 1.
[167] DNRM, Response to Submissions, p 14.

> The Department notes the suggestion to be more considerate of areas that have ample natural water resources and allowing clearing for grazing in these areas for the purpose of 'high value agriculture'. It is currently the Government's policy position not to include clearing for dry land grazing in 'high value agriculture'. However the Bill does allow for clearing for irrigated pasture to occur under the 'irrigated high value agriculture' definition.
>
> The Department notes the comments concerning high value and endangered regrowth vegetation in the Wet Tropics. The classification of this vegetation is consistent with the Queensland Herbarium's methodology and is consistently used across State departments.

Committee comment

The committee is satisfied with the department's response in relation to this issue.

Register of area management plans - replacement of s 20V

Clause 39 amends section 20V by removing unnecessary information. However, the requirement still exists to maintain a register of area management plans including any information the chief executive believes is appropriate in relation to clearing notices. An identifying number for each area management plan will also be required.

The LGAQ queried this amendment in its submission to the committee. The LGAQ submitted:[168]

> The proposed changes to section 20V appear to remove the requirement for the "register of area management plans" to be published on the department's website. That requirement needs to be reinstated for public convenience and transparency purposes.

The committee sought clarification from the department as to whether area management plans would still be placed on the department's website. The department confirmed that pursuant to section 70AB(2)(b) of the VMA, area management plans will continue to be published on its website.[169]

Review of the amended Vegetation Management Act 1999

At present, the Bill does not make provision for a review of the Vegetation Management Act 1999.

Committee comment

The committee considers that it is important for the Government to review the impacts of the Vegetation Management Framework Amendment Bill and notes that the department intends to do so.[170] This will enable an evaluation of the amendments to determine whether they have been successful in reducing unnecessary red tape and improving the economy while still mainting protection and management of Queensland's native vegetation.

Recommendation 7

The committee recommends that the amendments introduced by the Vegetation Management Framework Amendment Bill 2013 into the *Vegetation Management Act 1999*:

(i) be subject to ongoing monitoring and review to determine the effectiveness of their implementation; and
(ii) be reported in the Department of Natural Resources and Mines' annual reports.

[168] Local Government Association of Queensland, submission 151, p 4.
[169] DNRM, Response to Submissions, p 66.
[170] See DNRM, Response to Submissions, p 24.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that "*fundamental legislative principles*" are the "*principles relating to legislation that underlie a parliamentary democracy based on the rule of law*". The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

Statutory interpretation

Clause 4 amends the *Vegetation Management Act 1999* ('VMA'), section 3 and in so doing amends the purpose of the VMA. Clause 4 adds a reference to sustainable land use. This is important because, when interpreting legislation, in the event of ambiguity, a court will have regard to the objects of the VMA.

Administrative power

Section 4(3)(a) *Legislative Standards Act 1992* – Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Limitation of review and appeal

Clause 57 replaces section 68CA. Clause 58 inserts proposed new section 68CB, which limits review and appeal of specific decisions by the chief executive. The following decisions are covered by proposed new sections 68CA and 68CB:

'(a) a decision by the chief executive to—

(i) certify, amend or replace a relevant vegetation map; or

(ii) agree to make a PMAV the subject of a relevant PMAV application; or

(b) a failure to make a decision to make a PMAV the subject of a relevant PMAV application; or

(c) a purported decision relating to a matter mentioned in paragraph (a)'.

The following definitions apply to the abovementioned provisions:

***'PMAV application** means an application under section 20C to make a PMAV for an area.*

***relevant PMAV application** means a PMAV application made on or after 8 October 2009 and before the date of assent.*

***relevant vegetation map** means the regulated vegetation management map or a PMAV'*.

These decisions cannot be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity). Further, these decisions are not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The only exception to this is where there is a determination by the Supreme Court that the decision is affected by jurisdictional error.

The effect of clauses 57 and 58 is that these exercises of administrative power are not subject to appropriate review. This limitation of review and appeal for decisions of the chief executive is broader than the current limitations in sections 68CB and 68CC.

As a matter of fundamental legislative principle, exercises of administrative power are to be subject to appropriate review.

Clauses 57 and 58 take effect as privative clauses as they purport to '*oust the inherent and statutory jurisdiction of the Supreme Court to review the legality of decisions and actions*'.[171] The former Scrutiny of Legislation Committee considered that '*privative clauses should rarely be contemplated and even more rarely enacted. They represent a parliamentary attempt to deny the courts a central function of their judicial role, preventing courts pronouncing on the lawfulness of administrative action.'*[172]

The Committee further stated:

> *… in given circumstances, it is possible that removal of rights to access to courts and tribunals may be justified by significant legislative objectives. However, the committee notes that Australian courts have resisted parliamentary attempts to limit their powers and have given a restrictive interpretation to privative clauses. Principles to be taken into account by a court will include:*
>
> - *parliamentary supremacy which 'requires obedience to the clearly expressed wish of the legislature'; and*
> - *preservation of rights to access the courts.*

The rationale for judicial review is, as explained by the former Scrutiny of Legislation Committee, related to the fact that "*judicial review differs in nature from, and provides an additional mechanism to, statutory rights of appeal or administrative review. Indeed, a determination of the legality of administrative action by way of judicial review represents an important protection of rights and liberties of individuals*".

A consequence of clauses 57 and 58 is that a person aggrieved by a decision of the chief executive has very limited means of recourse to have the decision reviewed or appealed. Therefore clauses 57 and 58 would have a significant effect upon rights and liberties of individuals.

Committee comment

The committee notes that the Explanatory Notes do not identify this issue of fundamental legislative principle or give any justification for clauses 57 and 58. The committee therefore seeks further information from the Minister for Natural Resources and Mines.

Point for clarification 3

The committee seeks further detail from the Minister for Natural Resources and Mines on the justification for clauses 57 and 58 with respect to fundamental legislative principles relating to the exercise of administrative power.

Certification of vegetation management map by chief executive

New sections 20HA, 20HB, 20HC (inserted by clause 32), also 20AH, 20AI (amended by clauses 15 and 16) deal with certification of the vegetation management map by the chief executive. The vegetation management map is certified by the chief executive. Certification of the map by the chief executive effectively determines what action may be taken in relation to vegetation on land. This may impact on the amenity and use of land and to what extent the land can be used to earn income.

The Bill does not set out any criteria to be used by the chief executive in certifying this map. Therefore it may be argued that this exercise of administrative power is not sufficiently defined.

[171] Former Scrutiny of Legislation Committee, *Alert Digest* 5 of 2009, p 20
[172] *Ibid*, p 20

The decision of the chief executive to certify a vegetation management map is not reviewable under the *Vegetation Management Act 1999*. Further, unless there is a determination by the Supreme Court that the decision is affected by jurisdictional error, the decision cannot be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity). In addition, the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. Therefore this exercise of administrative power is not subject to appropriate review.

These provisions do not appropriately define the exercise of administrative power and this exercise of administrative power is not subject to appropriate review. This is of concern and indicates that these provisions do not have sufficient regard for the rights and liberties of individuals.

Committee comment

The committee notes that the Explanatory Notes do not identify this issue of fundamental legislative principle. The committee therefore seeks further information from the Minister.

Point for clarification 4

The committee seeks further detail from the Minister for Natural Resources and Mines on the certification of a vegetation management map with respect to fundamental legislative principles relating to the exercise of administrative power.

High value area declaration by gazette notice

Clause 10 inserts new section 19D. Proposed new section 19D would provide that the Minister may by gazette notice make a high value area declaration. A declaration may include restrictions on the type of crops, the size of land that can be subject to a vegetation clearing application or any other restriction the Minister considers necessary or desirable for achieving the purposes of this Act. Section 19D provides that the criteria for making a high value area declaration is that the declaration is necessary to manage high value agriculture clearing or irrigated high value agriculture clearing.

This is also relevant to section 22DAC(1)(g) (inserted by clause 47) – a matter for deciding a vegetation clearing application includes compliance with a restriction in a high value area declaration.

Making a declaration by gazette notice under section 19D would be an exercise of administrative power. Considering the potentially extensive restrictions that can be made under a high value area declaration, it is especially important that this exercise of administrative power be defined.

As a general principle, express, relevant criteria or matters to which a decision-maker must have regard in exercising a statutory administrative power is required.[173] The question of whether or not something is necessary is essentially a subjective one. This subjectivity is problematic. It would be preferable if more objective criteria were used to define the exercise of administrative power. The Explanatory Notes do not identify this issue of fundamental legislative principle or give any justification for clause 10.

Therefore it is questionable whether this provision has sufficient regard for the rights and liberties of individuals.

[173] Office of the Queensland Parliamentary Counsel, '*Fundamental Legislative Principles: The OQPC Notebook*', 2008, page 15

Committee comment

The committee notes that the Explanatory Notes do not identify this issue of fundamental legislative principle. The committee therefore seeks further information from the Minister.

Point for clarification 5

The committee seeks further detail from the Minister for Natural Resources and Mines on the high value area declaration with respect to fundamental legislative principles relating to the exercise of administrative power.

The second limb of this issue of fundamental legislative principle is that the exercise of administrative power should be subject to appropriate review. There is no process for review of an action by the Minister (in making a declaration by gazette notice) under the *Vegetation Management Act 1999*. Judicial review would still be available under the *Judicial Review Act 1991*. Therefore this exercise of administrative power is subject to some form of review.

Clear and precise

Section 4(3)(k) *Legislative Standards Act 1992* - Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Diversion of existing natural channels and replication of existing form of natural channels

Clause 16 amends section 20AI to insert (a)(iv) and Clause 27 amends section 20CA to insert (2)(d)(iv):

'(iv) necessary environmental clearing that is not the diverting of existing natural channels in a way that replicates the existing form of the natural channels; or'

This phrase is used in:

- clause 16's amendment to section 20AI - the decision of the chief executive to show an area on the map as a category C area; and
- clause 27's amendment of section 20CA - process before making a property map of assessable vegetation ('PMAV).

Clause 65 inserts a new definition of 'necessary environmental clearing', paragraph (b) of which provides:

'Divert existing natural channels in a way that replicates the existing form of the natural channels; or'.

The term 'necessary environmental clearing' is in turn used in sections 19O (1)(a)(viii), 20AH, 20AI, 20CA, 20P and 22A.

It is hard to make sense of this wording. In particular, it is unclear how diverting existing natural channels can replicate the existing form of the natural channels. The Explanatory Notes (at page 10) mention 'necessary environmental clearing that is not the diverting of existing natural channels'.

Silt not vegetation

As mentioned above, clause 65 inserts a new definition of necessary environmental clearing. After paragraph (c), the following example is given:

'Example— removal of silt to mitigate flooding'

Silt is not vegetation. Therefore it is not clear how removal of silt could be regarded as clearing of vegetation to prepare for the likelihood of a natural disaster. The Explanatory Notes do not offer any clarification on this matter.

'Extractive industry' undefined

Clause 11 inserts proposed new section 19O. Section 19O(1)(a)(vi) is 'an extractive industry'. This term is not defined in the Bill. A definition appears in the current reprint of the *Sustainable Planning Regulation 2009*, schedule 26, as follows:

> Extractive industry means an extractive industry as defined under the standard planning scheme provisions.

However, this is not a substantive definition as it requires reference to the standard planning scheme provisions. The *Vegetation Management and Other Legislation Amendment Act 2004*, section 15, replaced section 22A of the *Vegetation Management Act 1999*. That section 22A(3) contained the following definition:

"extractive industry" means 1 or more of the following—

(a) dredging material from the bed of any waters;

(b) extracting rock, sand, clay, gravel, loam or other material, from a pit or quarry;

(c) screening, washing, grinding, milling, sizing or separating material extracted from a pit or quarry.

The ambiguity of using the term 'extractive industry' but not defining it means that it is not possible to fully understand proposed new section 19O(1)(a)(vi). The Explanatory Notes do not offer any clarification on this matter.

The ambiguity of these provisions means that it is questionable whether these provisions have sufficient regard for the rights and liberties of individuals.

Committee comment

The committee seeks information from the Department of Natural Resources and Mines about the intended meaning of these provisions.

Point for clarification 6

The committee seeks clarification from the Minister for Natural Resources and Mines on the intended meaning of the following:

- "the diverting of existing natural channels in a way that replicates the existing form of the natural channels" (clause 27);
- how the removal of silt relates to the management of vegetation (clause 65); and
- "extractive industry" (clause 11).

Sufficient regard to the institution of Parliament

The committee notes that no issues have been identified in relation to whether the Bill has sufficient regard to the institution of Parliament.

Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, the Bill's explanatory notes do not raise any issues of fundamental legislative principle.

Appendices

Appendix A – Departmental officers who gave evidence at the briefing on 22 March 2013

Witnesses
1. Ms Jennifer Armstrong, Principal Policy Officer, Land and Mines Policy, Department of Natural Resources and Mines
2. Ms Leanne Barbeller, Director, Water Allocation and Planning, Department of Natural Resources and Mines
3. Ms Bernadette Ditchfield, Executive Director, lnad and Mines Policy, Department of Natural Resources and Mines
4. Ms Sarah Heenan, Principal Policy Officer, Land and Mines Policy, Department of Natural Resources and Mines
5. Mr Graham Nicholas, Director, Land and Mines Policy, Department of Natural Resources and Mines
6. Mr John Skinner Director-General, Policy and Program Support, Department of Natural Resources and Mines

Appendix B – Stakeholders from whom submissions were received

Sub #	Name
1	Don Middleton
2	Robert Cousin
3	John and Janice Andersen
4	Elizabeth and David Allomes
5	Christmas Creek Cattle Company
6	Eric McKenzie
7	Cane Growers Maryborough
8	Les and Bev Wilson
9	John Dillon
10	Dalkeith Pastoral Company
11	MSF Sugar Limited – Maryborough Region
12	Don and Belinda Perkins
13	S B Collins
14	V Shukuroglou
15	K Just
16	Energex
17	Tim Stumer
18	Dr Martine Maron
19	Rowena Foong
20	Des Edmonds
21	George Muirhead
22	Wildlife Preservation Society of Queensland Tully and District Branch
23	Malcolm Beresford
24	Natalie Hoskins
25	Gecko – Gold Coast and Hinterland Environment Council Assn Inc.
26	Richard Johnson
27	Lisa Carter
28	North Queensland Conservation Council
29	Urban Development Institute of Australia - Queensland
30	Cynthia Sabag
31	Logan and Albert Conservation Association
32	VETO
33	LNP Atherton Branch
34	Australian Marine Conservation Society
35	Ergon Energy
36	Simon and Christine Campbell
37	Gold Coast Botany Pty Ltd

Sub #	Name
38	Queensland Conservation
39	Cane Growers
40	Jan Sealy
41	Reg and Diane Grace
42	The Wilderness Society
43	Robyn and Tom Aisbett
44	Kathy Faldt
45	Powerlink Queensland
46	AgForce
47	Wildlife Queensland Gold Coast & Hinterland Branch
48	SEQ Catchments Limited
49	Cement Concrete & Aggregates Australia
50	Barry Fitzpatrick
51	Terrain
52	Wildlife Preservation Society of Queensland
53	Gus McGown
54	Sunshine Coast Council
55	Property Rights Australia
56	Moreton Bay Regional Council
57	WWF Australia
58	Capricorn Conservation Council
59	The Web Inc (BREC)
60	Birds Queensland
61	National Parks Association of Queensland
62	Evergreen Fuels Pty Ltd
63	Debra Gilbert
64	Scenic Rim Wildlife – Queensland Branch
65	Cairns and Far North Environment Centre Inc.
66	The Voice of Leadership
67	Origin
68	Gail Podberscek
69	Heart Foundation Queensland
70	Alliance to Save Hinchinbrook
71	Mamia Shukuroglou
72	Michelle Sauter
73	Logan City Council
74	Great Barrier Reef Marine Park Authority
75	Jo-Anne Bragg – EDO Qld Principal Solicitor

Sub #	Name
76	John Kelman
77	Greg Callander
78	Laurie Taylor
79	Peter Mifsud
80	Ronald Sevil
81	William Davies
82	Richard Williams
83	Stuart Leahy
84	Peter Verri
85	David Winten
86	Barbara Hockey
87	John Westaway
88	Douglas Bryant
89	Greg Bryant
90	John Baker
91	Ken Wilson
92	Andrew Hawkins
93	Charles Clark
94	Bruce Crichton
95	Michael Hirst
96	John te Kloot
97	Ian Burnett
98	Harold Lowth
99	Carli McConnel
100	Peter Pocock
101	Patricia White
102	David Clark
103	Robert Devine
104	Robert Webb
105	Rick Gurnett
106	Neil Cameron
107	Robert Crichton
108	Richard Golden
109	David Stent
110	Angus Ryrie
111	Richard Davis
112	Violet Davis
113	Peter Spies

Sub #	Name
114	Richard Bucknell
115	Arthur Dingle
116	Lloyd Harth
117	Laurelle Gundersen
118	Julie Berryman
119	Ross Groves
120	Wendy Groves
121	Darcy Byrnes
122	Michael Killen
123	Michael Price
124	Carl Moller
125	John Webb
126	Vicki Franklin
127	Richard Simmons
128	Gregory Sherwin
129	Joanne Salmond
130	Phillip Quayle
131	John Schutt
132	Raymond Barrett
133	Kim Felton-Taylor
134	Barry Hoare
135	Margaret House
136	Trudy Roberts
137	Paul Mackenzie
138	Leif and Ann Due
139	Darcy Volz
140	Malcolm Dyer
141	Linda Cowan
142	David Luke
143	Ralph Mantel
144	Garth Ferguson
145	Thomas Sorensen
146	Christine Campbell
147	Frank McKerrow
148	Michael MacTaggart
149	Peter Crook-King
150	Desert Channels Queensland
151	Local Government Association of Queensland

Sub #	Name
152	Sunshine Coast Environment Council

Appendix C – Witnesses at the public hearing in Brisbane on 17 April 2013

Witnesses
1. Mr Charles Burke, Chief Executive Officer, AgForce Queensland
2. Ms Tamara Badenoch, Policy and Project Officer, AgForect Queensland
3. Ms Fiona Maxwell, Marine Campaigner, Australian Marine Conservation Society
4. Mr Nigel Parratt, Rivers Project Officer, Queensland Conservation
5. Dr Tim Seelig, State Campaign Manager, The Wilderness Society
6. Ms Jo-Anne Bragg, Principal Solicitor, EDO Queensland
7. Mr Nick Heath, National Manager, WWF Australia
8. Mr Barry Fitzpatrick, conservation ecologist
9. Mr David Jinks, Gold Coast Botany Pty Ltd
10. Mr Paul McDonald, Manager Offsets, SEQ Catchment
11. Ms Anne Page, President, Logan and Albert Conservation Assocition
12. Ms Dorean Erhart, Principal Advisor-Natural Assets, NRM & Climate Change, Local Government Association of Queensland
13. Mr Jim McDonnell, Environment and Sustainability Manager, Logan City Council
14. Mr Brett Campbell, Environment CSG Team Leader Policy and Strategy, Origin
15. Ms Kathy Faldt
16. Mr Richard Golden, AgForce member
17. Mr John Kelman, AgForce member
18. Ms Lauire Taylor, AgForce member
19. Mr David Stent, AgForce member
20. Mr Arthur Dingle, AgForce member

Appendix D – Witnesses at the public hearing held by teleconference on 22 April 2013

Witnesses
1. Mr Peter Verri, AgForce member
2. Mr Angus Ryrie, AgForce member
3. Mr Michael Price, AgForce member
4. Mr Barry Hoare, AgForce member
5. Mr Hugh, Director, Coastal Ecosystems and Water Quality, Great Barrier Reef Marine Park Authority
6. Ms Anna McGuire, Coordinator, Cairns and Far North Environment Centre
7. Ms Margaret Moorhouse, Alliance to Save Hinchinbrook Inc

Dissenting report

The *Vegetation Management Framework Amendment Bill 2013* is a regressive piece of legislation which should not be passed by the Queensland Parliament. I fundamentally disagree with the State Development, Infrastructure and Industry Committee's report on the bill and offer this dissenting report.

Counter-productive public comment

The *Vegetation Management Act 1999* is the central legislative instrument in protecting remnant vegetation and high-value regrowth throughout Queensland. Since its introduction it has prevented the clearing of hundreds of thousands of hectares of vegetation. The legislation is widely credited with ending broad-scale tree clearing in Queensland and enabling Australia to meet its greenhouse gas targets under the Kyoto Protocol.

This legislation should rightly be regarded as a significant public policy success. Of course, governments should continuously review legislation to ensure it still meets its requirements and identify any improvements that can be made. In the case of vegetation management there is a substantial level of agreement between the conservation movement and primary producers that vegetation management could be simplified to reduce unnecessary red tape for landholders while still maintaining strict environmental standards.

A responsible government that was interested in finding an appropriate balance between economic growth and environmental protection would have consulted closely with conservation groups and agricultural peak bodies to identify common-sense ways to streamline the administration of the *Vegetation Management Act 1999*. Unfortunately the Newman Government has chosen to engage in an attack on the conservation movement.

The Premier made his views towards the environmental sector clear in an interview with Queensland Country Life where he stated in relation to agricultural peak bodies, "*They need to take the case directly to South East Queensland and tackle the green radical agenda."* When paired with the Minister for Natural Resources and Mines' speech to the Rural Press Club entitled *"Taking the axe to Queensland's tree clearing laws,"* the Newman Government has deliberately created a counter-productive environment in which to consider any changes to vegetation management.

Such statements show that this Government has no desire to find an appropriate balance between conservation and agricultural land use. It is extremely disappointing that the

Government has chosen to act in this manner as it completely undermines any chance of constructive engagement with the environmental movement.

Protection of high-value regrowth

The centrepiece of the *Vegetation Management Framework Amendment Bill 2013* is the repeal of protections for high-value regrowth on freehold and indigenous land. These protections were introduced in 2009 in line with a Labor election commitment to institute a moratorium on clearing high-value regrowth while it assessed the issue. It is clear that these protections received the backing of the Queensland people in 2009.

Further, these protections received the backing of the Queensland people at the 2012 election. Prior to the 2012 election the current Premier made assurances that vegetation management laws would remain in place. That commitment was made through the OurSay Queensland Agenda initiative where in response to a question on environmental protection Mr Newman stated *"On vegetation management, the LNP will be retaining the legislation."* Mr Newman reiterated this commitment in a letter to the World Wildlife Fund just twelve days prior to the 2012 election stating that the "*LNP will retain the current level of statutory vegetation protection*."

The protection of high-value regrowth was endorsed by the public at both the 2009 and 2012 elections despite the vastly different results of those elections. Therefore the changes canvassed in the *Vegetation Management Framework Amendment Bill 2013* represent a massive broken promise by the Newman Government. The LNP's position on vegetation management is further proof that the environmentally conscious elements of the former liberal party who used to support conservation no longer exist.

The Government has chosen not to provide an estimate of the amount of vegetation that will lose protection as a result of these amendments, however, conservative estimates put it at roughly 700,000 hectares. This practice is in keeping with recent changes included in the *Land, Water and Other Legislation Amendment Act 2013* when the Government refused to provide an estimate of the amount of riparian vegetation that has lost protection under the *Water Act 2000*. In not providing these estimates, the Newman Government is acting in a deceptive and dishonest manner.

The removal of protection for 700,000 hectares of high-value regrowth represents a major reversal of environmental safeguards. It is yet another example of the Newman Government's determination to wind the clock back on the environmental reforms of the last twenty years.

Mapping and Workforce Capacity

There is no doubt that the implementation of the *Vegetation Management Act 1999* has been hampered by the inaccuracy of mapping and workforce capacity issues. The desire to simplify the mapping is understandable and would be welcomed by most stakeholders if completed in the manner the Government has indicated.

However the administration of the *Vegetation Management Act 1999* has at times been made more difficult by an insufficient number of public servants with appropriate qualifications. These problems with workforce capacity have been highlighted during committee investigations.

These workforce capacity issues are likely to have been exacerbated by the Newman Government's costly, ill-considered program of forced redundancies in the public sector. While simplifying vegetation mapping and the administration of permits is desirable, workforce capacity issues are likely to continue to hamper the process. The Government's aim to complete this new mapping by the end of 2013 seems particularly ambitious without an accompanying plan to address workforce capacity issues within the public sector.

Consultation

The committee report does highlight the continued failure of the Newman Government to engage in meaningful consultation. Leaving aside the short timeframe which the committee has had to operate, it is clear that the Government continues to see the committee process as an excuse to avoid detailed consultation with relevant stakeholders.

It is worrying that the Government has not engaged stakeholders in the development and drafting of this bill. Unfortunately stakeholders have been left to assess the legislation with insufficient information and have been forced to make assumptions as to the intent and likely consequences of the amendments. The Newman Government has abrogated its responsibility to provide adequate information for stakeholder consideration and public debate.

Conclusion

The *Vegetation Management Framework Amendment Bill 2013* breaks an election commitment of the Newman Government. It is also a retrograde step for Queensland's environmental protection framework. In introducing this legislation the Government has not only completely ignored any input from the conservation movement but also sought to vilify the sector.

The amendments being considered go too far. They drastically reduce the area of vegetation that will be protected and fail to address other problems in the administration of the *Vegetation Management Act 1999*. Opposition members will outline further concerns with the legislation during parliamentary debate.

Tim Mulherin MP

Deputy Leader of the Opposition