August 2018

AgForce Submission

Vegetation Management (Clearing for Relevant Purposes) Amendment Bill 2018

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1.0 INTRODUCTION

AgForce is the peak rural group representing the majority of beef, sheep & wool and grain producers in Queensland. The broadacre beef, sheep and grains industries in Queensland generated around $8.2 billion in gross farm-gate value of production in 2016-17. AgForce exists to facilitate the long-term growth, viability, competitiveness and profitability of these industries. Our members provide high-quality food and fibre products to Australian and overseas consumers, manage around 42 per cent of the Queensland agricultural landscape and contribute significantly to the social fabric of rural and remote communities.

AgForce supports the growth and prosperity of rural and regional Queensland, which includes supporting member needs for developing and managing resources on their properties to enable sustainable long-term production of ecological, production, social and economic outcomes. In this vein, AgForce welcomes the opportunity to provide a submission on the *Vegetation Management (Clearing for Relevant Purposes) Amendment Bill 2018.*

Following recommendations outlined in the following section the subsequent sections separately expand on Clause 3 and 4 of the Bill which refer to changes in the Vegetation Management Act 1999 (the VMA):

Clause 3 Amendment of s 22A (Particular vegetation clearing applications may be assessed)
Section 22A— *insert*— (3) If the chief executive decides the development applied for is not development mentioned in subsection (2)(a) to (l), the chief executive must give the applicant an information notice about the decision.

Clause 4 Amendment of schedule (Dictionary)
Schedule, definition *high value agriculture clearing*, 'grazing activities or'— *omit..*

2.0 RECOMMENDATIONS

AgForce asks the Queensland Government to contemplate the recommendations below and is available to meet at your convenience to discuss our concerns. Agforce recommends the Queensland Government:

1. Implement Clause 3 of the *Vegetation Management (Clearing for Relevant Purposes) Amendment Bill 2018*, namely:
   Section 22A—
   insert—
   (3) If the chief executive decides the development applied for is not development mentioned in subsection (2)(a) to (l), the chief executive must give the applicant an information notice about the decision.
2. Include 'Improved Pasture' as Relevant Purpose for Clearing in s22A under the VMA
3. Reinstate HVA and IHVA to permit development of improved pasture
4. Delivers on the Queensland food and fiber policy[1]

3.0 CLAUSE 3 AMENDMENT OF S 22A

2.1 AgForce Member Experience with s22A Relevant Purpose Requirements: 2004 - 2013

Since its inception, the Vegetation Management Act 1999 has had 41 amendments, with more than 20 of these being significant changes which required landholders to significantly alter their vegetation and property management plans. Included in this latter number is the introduction to the VMA, as amended on the 21 May 2004, of Section 22A which defines relevant purposes for which an application for clearing regulated vegetation may be made by a landholder. In 2004 Section 22A (s22A) included the following relevant purposes for clearing: thinning, encroachment, weeds or installing or maintaining necessary infrastructure. While this was a welcome addition by landholders which provided greater clarity on permissible clearing actions, these relevant purposes did not include the possibility for landholders to clear regulated vegetation for development of cropping or improved pasture. It was only in 2013 that the Queensland Government added further relevant purposes to Section 22A (s22A) for clearing vegetation, which included clearing for high value agriculture (HVA) and irrigated high value agriculture (IHVA).

2.2 AgForce Member Experience with s22A Relevant Purpose Requirements: 2013 - 2018

Once these purposes were included in the VMA, AgForce members made Development Applications to Queensland Government for HVA and/or IHVA with several receiving permits between 2013 and 2015 to clear vegetation and develop cultivation areas. Permit approval was on the basis of detailed assessment processes by the Queensland Department of Natural Resources and Mines (DNRM), who once they had identified that the landholder had supplied a properly made application and fulfilled s22A purposes,

[1] https://www.daf.qld.gov.au/business-priorities/business-trade/development/queensland-food-and-fibre-policy

referred the project for assessment against State Development Assessment Provisions (SDAP) with the Department of Infrastructure, Local Government and Planning (DILGP).

Those that did receive permits were required to provide rigorous Development Applications which included land suitability studies, business proposals and verified proof that the proposed cropping system would be effective in the application area and financially viable. On many occasions DNRM made information requests to assist their assessment against the s22A definition and SDAP requirements. While arduous, this approval process appeared to result in HVA/IHVA projects receiving approval until the State election at the end of 2015. Landholders with existing unapproved HVA/IHVA applications found from 2016 on, that the DNRM-DILGP assessment process slowed considerably, with DNRM making numerous requests for further information from applicants to establish whether the project met s22A requirements. Landholders found that DNRM did not provide reasons as to why their applications were assessed as not meeting s22A relevant purposes, despite the VMA still included HVA and IHVA provisions. There appeared to be no legislative or regulatory trigger requiring DNRM to provide a formal s22A response to the applicant. The result of this was applicant lack of clarity as to whether the HVA/IHVA permit approval process was going ahead or not. Following an unsuccessful attempt to remove HVA and IHVA as relevant purposes by the Queensland Government in amendments included in the Vegetation Management (Reinstatement) and Other Legislation Amendments Bill 2016 (VMROLA 2016), the granting of s22A approval ground to a halt.

Without the s22A VMA approval, DILGP do not consider the application to be properly made and the approval process can go no further. Also, the VMA does not require an information notice to be given with the s22A decision therefore no right of appeal or review exists for the applicant to review the decision against the VMA. Despite following all criteria in the HVA/IHVA guidelines, some members have been refused a positive s22A determination and not been provided with an information notice, leaving them with no recourse to an internal review. Some members have communicated that they have had to go to extraordinary lengths with Queensland Government in order to receive s22A approval from DNRM and then have their HVA/IHVA application assessed by DILGP. In some instances, this has involved inordinate costs and extended timeframes with the engagement of lawyers in cases before the Planning ad Environment Court and/or QCAT. A greater degree of transparency on s22A assessment and approval would have provided landholder applicants with a far better understanding of the prospects of their application being successful and most certainly would have reduced their need to resort to expensive court costs and legal proceedings simply to receive an answer from Queensland Government.

At the time of preparing this submission, there continues to be cases before the Planning and Environment Court and QCAT where landholder applicants are having to vigorously contest their rights to a response on s22A and assessment of their application according to the regulations in force at the time it was lodged. These legal proceedings are occurring subsequent to the removal of HVA/IHVA from the VMA in March 2018, but it is arguable that resolution of these disputes would have occurred much earlier had the applicants had access to an s22A decision through an information notice.

2.3 Queensland Government Remove HVA/IHVA, Thinning and Fodder Codes – Need for s22A Changes

In May 2018 HVA and IHVA were removed from the VMA in the Queensland Government's second attempt at doing so (Vegetation Management Other Legislation Bill 2018 – VMOLA 2018). This eliminated the future need for s22A approval for development clearing in line with these two provisions.

VMOLA 2018 also took away the ability for landholders to use self-assessable-codes (SACs) for thinning vegetation. This SAC had previously provided landholders with the possibility of thinning thickened vegetation by abiding with prescriptions in prepared codes, without the need to seek approval from DNRM. After the May 2018 decision, the current requirement for landholders who need to thin vegetation that is thickening is to submit a Development Application to the Queensland Government and Department of Natural Resources, Mines and Energy (DNRME).

This will require DNRME to assess the proposal against s22A relevant purposes for clearing. However, as the landholder experience with HVA and IHVA has shown, it appears that the Queensland Government continues to have no legislative or regulatory requirement to provide an information notice to applicants and can thereby either halt clearing projects or stall progress until the landholder contests the non-result legally. Implementing recommendation 1 above will rectify this.

2.4 Argument for Legislative Standards and Ethical Government

AgForce members have argued that Queensland Government has used the current conditions attached to s22A to withhold reasons why HVA/IHVA applicants have not been granted a permit, thereby stalling development projects. Irrespective of the removal of HVA and IHVA, it is arguable that the long-term refusal of DNRM to provide an information notice to applicants to inform them of the s22A decision and rationale for the result, breaches the Legislative Standards Act 1992. AgForce has case examples where members have communicated their frustration with the difficulties involved in receiving a timely response on s22A approval (which may be supplied on a confidential basis if required). In particular, s22A currently does not deliver **"fundamental legislative principles"** [2] [which] are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law… requiring that legislation has sufficient regard to—
(a) rights and liberties of individuals; and
(b) the institution of Parliament."

When considering s22A within the VMA it is important to consider whether its current status has sufficient regard to rights and liberties of individuals from the Legislative Standards Act, in particular:
"(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
(b) is consistent with principles of natural justice; and

[2] https://www.legislation.qld.gov.au/view/whole/html/2017-07-03/act-1999-090

(c) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
…
(g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

…(k) is unambiguous and drafted in a sufficiently clear and precise way."

Arguably, the administration of s22A since 2016 and non-provision of information notices to applicants informing them of assessed outcomes, has taken administrative power in relation to the VMA to a level where non-disclosure is condoned. This has occurred in spite of media coverage and contact between AgForce, Ministers and their staff. The fact that applicants have had to spend hundreds of thousands of dollars through the courts to force the Queensland Government to administer legislation and regulations in a fair and equitable manner has adversely affected rights and is certainly not consistent with the principles of natural justice. It can equally be argued that because the requirement to notify landholder applicants of s22A assessment was not written in the VMA, that in this instance, the Act is not unambiguous, nor has it been drafted in a sufficiently clear and precise way.

Further to issues with the standards of the legislation, the actions by Departmental staff and officials have arguable been in breach of the Public Sector Ethics Act 1994. From this Queensland Government Act, the "***ethics principles*** are—
- integrity and impartiality
- promoting the public good
- commitment to the system of government
- accountability and transparency. (Queensland Government 1994)" [3]

In particular, DNRME on behalf of Queensland Government appears to have compromised its role as a public administrator in integrity, accountability and transparency. If integrity is defined as honesty and truthfulness or accuracy of one's actions[4], it appears that the truth has not been communicated accurately by staff. If accountability is defined as answerability, blameworthiness, liability, and the expectation of account-giving[5], s22A reporting has fallen well short. Moreover, if transparency in government holds that citizens have the right to access the documents and proceedings of the government to allow for effective public oversight[6], s22A is a blatant breach of this principle.

4.0 CLAUSE 4 AMENDMENT OF SCHEDULE (DICTIONARY) high value agriculture clearing, 'grazing activities or'— omit.

Due to this Vegetation Management (Clearing for Relevant Purposes) Amendment Bill being introduced prior to the result of the VMOLA Bill 2018, arguably the amendment of the definition of 'high value agricultural clearing' to include grazing activities as a relevant purpose becomes null and void. Despite this

[3] https://www.legislation.qld.gov.au/view/whole/pdf/inforce/current/act-1994-067
[4] https://en.wikipedia.org/wiki/Integrity
[5] https://en.wikipedia.org/wiki/Accountability
[6] https://en.wikipedia.org/wiki/Open_government

fact, AgForce strongly advocates for the inclusion of cultivated and sown improved pasture as relevant purposes for clearing under s22A in combination with the reinstatement of HVA and IHVA to permit development of regulated vegetation and production of improved pasture.

3.1 Improved Pasture as Relevant Purpose for Clearing in s22A under the VMA

The current scope of s22A provisions do not include clearing vegetation for improved pasture as an acceptable practice. The practice of developing improved pastures has been carried out in Australia since settlement and has resulted in the establishment of a thriving grazing industry. The incorporation of improved pasture areas within larger properties, particularly in the north, has an important role to play in mitigating the effects of drought as well as in preparation of animals for market. Including improved pasture as a relevant purpose for clearing under s22A will provide landholders with improved options for reducing pressure on other parts of their property while managing drought and maintaining income.

To include improved pasture under s22A it is important to acknowledge that this is not simply clearing trees at a large scale to allow native grasses to grow and some improved pastures seeds broadcast at the time of clearing to germinate. Improved pastures, as defined here, includes the preparation of soils for optimum establishment of high quality, permanent pasture grasses. It would be necessary to cultivate soil and plant improved pasture seed for livestock grazing practices such as baling pasture for fodder and forage, storing silage, as well as strip or rotational grazing.

The recognition of improved pasture as a relevant purpose for clearing will require that these activities are contained within a Development Application, which is a valid reason for the reinstatement of HVA and IHVA for the purposes as they were originally intended. This includes allowing sustainable vegetation management activities to occur to support the development of high value agriculture in areas with appropriate land and climate characteristics.

3.2 Reinstatement of HVA and IHVA to permit development of improved pasture.

AgForce sees that the March 2018 removal of HVA and IHVA from the VMA contrasts with the Queensland' Government's 2015 food and fibre policy. This policy advocates that "Working with industry is essential to drive growth and innovation across the entire supply chain, particularly with respect to opportunities presented by North Queensland agricultural initiatives."[7] Landholders view the development of land for improved pastures as a safeguard for mitigating against drought and protein deficiencies in wet season conditions, particularly in northern Queensland. This provides a strong argument for the development of improved pastures under HVA and IHVA.

HVA and IHVA require submission of a Development Application to Queensland Government, which will then be assessed against s22A by DNRME and SDAP requirements by DILGP. Following vegetation clearing for improved pasture the soil is to be cultivated with ploughs, prepared as a seedbed and seed is planted using seeding implements. Improved pasture under HVA and IHVA is an environmentally advantageous

[7] https://publications.qld.gov.au/dataset/queensland-food-and-fibre-policy

practice as improved grass cover reduces the risk of soil erosion and impact on waterways, catchment health and water quality.

Overall, improved pasture under HVA and IHVA would result in better land management with improved vegetation cover and more holistic management of resources, with increased emphasis on proactive herd management and increased drought mitigation options. Incorporation of improved pasture will enable landholders to store fodder reserves for drought feed. Queensland Government actively promotes improved pasture. The economic benefits of improved pasture have been verified by the government and other research bodies through large increases in food and fiber production capacity. Further financial advantages are delivered through improved production resilience due to increased grass ground cover and density, along with better soil health which includes increased organic matter, reduced soil loss, increased water infiltration and improved moisture retention. In many bioregions and localities, improved pasture development can return the vegetation densities and extents to pre-settlement coverage.

Improved pasture provides producers with the flexibility to market cattle all year around. The advantage of the 12-month marketing cycle in the beef industry sees that cattle can be prepared for sale at any time of the year and improved pasture under HVA and IHVA will greatly improve the ability to proactively sell stock and rest country. The ability to grow feed reserves on-property eliminates the need for transporting fodder from other locations and drawing on expensive Government freight subsidies.

5.0 CONCLUSION

AgForce members appreciate the opportunity of providing response to the Vegetation Management (Clearing for Relevant Purposes) Amendment Bill 2018. The current drought across Queensland and also New South Wales highlights the need for landholders to be able to develop their properties to be able to stabilize income streams, prepare for meeting protein deficiencies in dry times as well as improve flexibility of when animals can be prepared for market. AgForce strongly recommends that in order to provide this flexibility and deliver on the Queensland food and fibre policy, the Queensland Government needs to improve options for landholders to develop improved pastures on their properties and enable the thinning of thickening vegetation. To help achieve this the Queensland Government needs to facilitate the Development Application process through the chief executive providing applicants an information notice about the decision on s22A assessment of relevant purposes for clearing vegetation under the VMA. The Queensland Government also needs to reinstate HVA and IHVA provisions in the VMA as relevant purposes for clearing vegetation in order to plant improved pastures.

AgForce invites further contact in order to provide more detail on this submission. For any questions or further discussion on these recommendations or this submission, please contact Dr Greg Leach, Senior Policy Advisor