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Using the law to protect our environment.

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22 March 2018

Committee Secretary
State Development , Natural Resources
and Agricultural Industry Development Committee
Parliament House
*Sent via email only:*sdnraidc@parliament.qld.gov.au

Dear Chair and Committee,

Submission to Vegetation Management and Other Legislation Amendment Bill 2018 ('VMOLA Bill') inquiry

Thank you for the opportunity to provide a submission on this important Bill.

About EDO Qld

EDO Qld is a non-profit community legal centre with clients from both rural and urban areas and backgrounds. Our solicitors provide legal advice to over a thousand individuals and groups every year, including through educational events we organise in partnership with community groups and in response to specific advice requests by clients. We run a small number of public interest court cases in state and federal courts to assist those who have good grounds to use their legal rights under our laws to defend the interests of the environment and their community. Our legal work covers a range of planning, environmental and resource law topics, including vegetation protection.

Overall, EDO Qld supports this Bill and congratulates the government for taking swift action to address the crisis of excessive tree clearing in Queensland in this term of government.

We ask that the Committee gives close consideration to our recommendations provided here to strengthen this Bill to ensure it meets its aim of reducing excessive tree clearing rates, as well as to meet the Queensland Government's election commitments and our international commitments to protect the Great Barrier Reef.

Our submissions are provided in summary and in more detail in **Appendix A** to this letter.

Queensland's rate of clearing is a serious environmental emergency that must be addressed

Our wildlife, waterways, Reef and climate all depend on Queensland having strong, certain laws regulating tree clearing. Right now it's clear our laws are not strong enough; Australia is considered to have one of the highest tree clearing rates in the world and Queensland contributes

the majority of this clearing of Australia's native forest.[1] Due to this level of clearing and the weak regulations that allow it, we are not meeting national and international commitments to conserve our biodiversity, or to reduce greenhouse emissions.[2] Further, a 2015 Queensland State of Environment Report found 61 additional fauna species were listed as vulnerable, endangered or extinct in the wild, alongside 275 threatened flora species from 2007 to 2015 in Queensland.[3] Tree clearing, along with other pressures like excessive fertiliser use, can have very serious impacts on water quality and the Great Barrier Reef.[4] A key action (EHA20) of the Reef 2050 Plan developed by the Australian and Queensland governments is to "Strengthen the Queensland Government's vegetation management legislation to protect remnant and high value regrowth native vegetation, including in riparian zones".[5] The science shows that clearing also leads to drought and adversely affects agriculture.[6]

Much stronger controls on tree clearing are needed than what is currently in place through the *Vegetation Management Act 1999* (Qld) (**VMA**), *Planning Act 2016* (Qld) framework and other legislation. In addition to this, we also need restoration of vegetation, especially around eroding areas near watercourses and wetlands, to lessen those ongoing severe impacts.

For this reason we are heartened to see the government take action to re-introduce strengthened tree clearing laws as provided through the VMOLA Bill. We support the sentiment behind the Bill and the commitments by the government which it seeks to implement. We are also concerned that key matters must be addressed for this Bill to effectively reduce the excessive rates of tree and habitat clearing in our state.

We would appreciate the opportunity to appear before the Committee in your hearing for this inquiry. Please do not hesitate to contact us if you have any questions or would like to discuss this matter further.

Yours faithfully
Environmental Defenders Office (Qld) Inc

Revel Pointon
Solicitor - Environmental Defenders Office (Qld) Inc

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[1] Reside April E., Beher Jutta, Cosgrove Anita J., Evans Megan C., Seabrook Leonie, Silcock Jennifer L., Wenger Amelia S., Maron Martine (2017) Ecological consequences of land clearing and policy reform in Queensland. *Pacific Conservation Biology*, p1.
[2] Ibid.
[3] Queensland Government, *Queensland State of the Environment 2015: In Brief*, p.24, https://www.ehp.qld.gov.au/state-of-the-environment/pdf/soe-2015-in-brief.pdf.
[4] Great Barrier Reef Marine Park Authority, 2014, Great Barrier Reef Outlook Report 2014, GBRMPA, Townsville, 58-61; GBR Reef Protection Interdepartmental Committee Science Panel, 2003, A Report on the Study of Land-Sourced Pollutants and Their Impacts on Water Quality in and Adjacent to the Great Barrier Reef.
[5] Commonwealth of Australia, 'Reef 2050 Long-Term Sustainability Plan , 2015'
[6] McAlpine CA et al. (2007) Modelling the impact of historical land cover change on Australia's regional climate. Geophysical Research Letters 34, http://dx.doi.org/10.1029/2007GL031524.
Makarieva AM, Gorshkov VG and Bai-Lian L (2009) Precipitation on land versus distance from the ocean: evidence for a forest pump of atmospheric moisture. Ecological Complexity, doi:10.1016/j.ecocom.2008.11.004.
Shiel D and Murdiyarso D (2009) How forests attract rain: an examination of a new hypothesis. BioScience 59(4), 341–7, www.biosciencemag.org.

APPENDIX A

SUMMARY RECOMMENDATIONS:

Recommendation 1:

Amendment of the VM Act to provide a simple process for making amendments of PMAVs to reflect changes in vegetation and scientific understanding.

Recommendation 2:

The Committee may recommend that the government publishes mapping of existing PMAVs which demonstrates the areas within these PMAVs which would be amended by the new proposed laws to assist in understanding the extent of clearing, particularly of high value regrowth and remnant vegetation that is allowed under the PMAVs in place now.

Recommendation 3:

New provisions be recommended for the Bill to amend existing PMAVs that lock in the weaker laws of the Newman Government to reflect the new proposed strengthened laws provided for in the VMOLA Bill, to ensure the new laws are actually put into effect.

Recommendation 4:

Support the removal of the ability to obtain permits for high value agriculture and high value irrigated agriculture (clause 16).

Recommendation 5:

Support the reintroduction of the requirement to obtain Riverine Protection Permits to better regulate clearing in watercourses (see clauses 51 and 52).

Recommendation 6:

Amend the *Water Act 2000* (Qld) to provide clear definitions free of discretion as to whether a water resource is a watercourse or a drainage feature, to ensure all watercourses are mapped as such in Queensland. Adequate training of Departmental officers on implementing these definitions is essential for their effectiveness.

Recommendation 7:

Support the extension of protections of regrowth vegetation (Category R) near watercourses across Great Barrier Reef catchments, however:

(a) extend this protection across all Queensland watercourses and wetlands, to implement the government's commitment to protect high conservation value regrowth including riparian areas generally, which otherwise is not adequately covered by Category C below; and

(b) remove ability to clear Category R vegetation under accepted development codes.

Recommendation 8:

(a) Support the phasing out of existing Area Management Plans which have allowed significant clearing under lower regulation across Queensland (see clause 14).

(b) However also recommend that consideration should be given to whether they should all be revoked immediately, and the provision that the department can make new Area Management Plans should be removed (clause 14, new s21B).

Recommendation 9:

Support the increase in powers for Departmental officers to seek to enforce the VM Act, as provided in other similar legislation across Queensland, given that the evidentiary burden is significant without the presumption of occupier as clearer without evidence to demonstrate otherwise ('reversal of the onus of proof') (see clauses 19 to 35).

Recommendation 10:

Reinstate previous s67A of the VM Act to re-establish that tree clearing is taken to have been done by the occupier of the land in the absence of evidence to the contrary, to relieve the enormous evidentiary burden on the department that omission of this section provides which threatens the effective enforcement of the Act.

Recommendation 11:

Consider the reintroduction of previous s67B which removed the defence of the mistake of fact to improve enforcement of the Act.

Recommendation 12:

Support the retrospective application of the provisions of the Bill are necessary to avoid panic clearing (see clause 2).

Recommendation 13:

The Bill should protect Category C from clearing, and particularly should not allow clearing of Category C areas through accepted development codes.

Recommendation 14:

The Bill should be amended to clarify protection of high conservation value regrowth vegetation including endangered vegetation species and communities, vegetation in reef catchments, riparian areas, threatened species habitat and areas where landscape integrity is at risk, as committed to by government.

Recommendation 15:

(a) The Bill should remove thinning/ managing thickened vegetation as an allowable purpose.

(b) At very least, the Bill should be further amended to ensure that any further 'thinning' activities must be proven to meet the above tests a) - e) using expert scientific assessment before being approved.

Recommendation 16:

Recommend repeal of the accepted development codes to ensure all clearing is adequately regulated and assessed prior to impact.

Recommendation 17:

At a minimum, the Bill should be amended to limit fodder harvesting to where there is an official drought declaration only, and that large scale bulldozing be excluded as a practice. Ideally fodder harvesting should be removed as an allowable activity given that lopping is exempt from the VM Act.

Recommendation 18:

Remove VM Act s68CA to stop exclusion of the *Judicial Review Act* 1991 (Qld) for the Act in any way.

Recommendation 19:

That the Committee recommends that greater transparency of data be provided by the Queensland Government as to where and under what authority clearing is being undertaken. This could be via amendments to the public register along with government policy.

Recommendation 20:

Specific reforms of the VM Act, the *Nature Conservation Act 1992 (*Qld), the *Environmental Protection Act 1994* (Qld) and the *Planning Act 2016* (Qld) framework are needed to better protect native animals and habitat from clearing impacts, including:

(a) amendments to the purpose of the VM Act to expressly mention of the need to avoid or minimise impacts to native animals;

(b) required conditions of assessment materials and permits to require that:

- **monitoring for application materials is undertaken through various seasons and day and night to ensure all species are captured in the assessment;**
- **suitably qualified persons must always undertake a fauna survey that forms part of assessment material; and**
- **suitably qualified spotter catchers are present when clearing is undertaken.**

Recommendation 21:

Additional provisions to amend the *Planning Regulation 2017* (Qld) to reduce the exemptions from assessment or state government oversight for clearing of less than 5ha as provided in Schedule 10, Tables 2 and 3 and Schedule 21, s1(b)(i) , to 2ha as previously provided prior to the Newman Government changes.

DETAILED SUBMISSIONS:

1. **Property Maps of Assessable Vegetation (PMAVs) must be amendable - currently allowed to continue to lock in Newman Government's weak laws**

PMAVs are property specific maps which provide more detail and accuracy as to the categorisation and regulatory application of the VM Act to the property.

The Bill provides that landholders may voluntarily seek to amend their PMAV, for example to reclassify areas currently mapped as exempt (Category C) as Category A (including a cleared area being restored or an offset area etc) to re-regulate clearing in those areas which were locked in across Queensland as not needing assessment under Newman Government laws. While this a good start at addressing this serious problem, we are concerned that this alone will not be sufficient to resolve the extent of this issue.

Under the VM Act, once a PMAV is provided, it is difficult for the government to change this map. This is a flaw with the VM Act framework in that locking in categorisation of vegetation on a property fails to recognise that vegetation communities change and scientific understanding changes, and therefore the regulatory protections that apply to them need to be able to adapt to address these changes. For example, an area may regrow to the extent that it fits the classification as high value regrowth provided in the Bill; or policy may change to reflect scientific understanding of the need to strengthen protection of high value regrowth vegetation. PMAVs must be able to be amended to then reflect these changes so as not to perpetually lock in weaker regulation or outdated scientific understanding.

Currently in Queensland the extent of vegetated areas currently categorised by PMAVs as exempt from regulation (Category X) which in fact are high value regrowth or remnant vegetation is not known. This is essential information which must be determined by the government in order to address the impact of the extent of deregulation of clearing via PMAVs. Martin Taylor of WWF-Australia estimates: '*Far from being knee-high shrubs, the majority (67%) of exempt vegetation being cleared is either remnant, advanced regrowth more than 25 years old, or if younger, still has foliage cover that meets the international definition of a forest.*'[7]

Where policy changes as to how to regulate clearing, our regulatory framework needs to be able to implement these changes efficiently. The current framework prevents easy implementation of the re-introduction and strengthening of our clearing laws.

There is no need to make a PMAV a permanently protected map. The public are used to planning schemes changing which impact how easily a property can be developed; clearing laws are no different. Further, there is no requirement that this be compensable except so far as the government makes this their policy.

[7] WWF-Australia, *Briefing: Bushland destruction in Queensland since laws axed,* January 2018, p1, http://www.wwf.org.au/ArticleDocuments/360/pub-briefing-bushland-destruction-in-queensland-since-laws-axed-9feb18.pdf.aspx.

Recommendation 1:

Amendment of the VM Act to provide a simple process for making amendments of PMAVs to reflect changes in vegetation and scientific understanding.

Recommendation 2:

The Committee may recommend that the government publishes mapping of existing PMAVs which demonstrates the areas within these PMAVs which would be amended by the new proposed laws to assist in understanding the extent of clearing, particularly of high value regrowth and remnant vegetation that is allowed under the PMAVs in place now.

Recommendation 3:

New provisions be recommended for the Bill to amend existing PMAVs that lock in the weaker laws of the Newman Government to reflect the new proposed strengthened laws provided for in the VMOLA Bill, to ensure the new laws are actually put into effect.

2. Removal of the ability to obtain permits for high value agriculture and high value irrigated agriculture is necessary. (*see clause 16)*

Between 2013 - 2016 approximately 10 percent of clearing of remnant vegetation occurred under approvals for high value agriculture. The introduction of high value agriculture as a permit purpose was one of the key mechanisms by which broadscale clearing was opened up in Queensland in 2012-13.

Significant clearing has been approved under HVA and HVIA purposes without sufficient regulation to verify that the land was high value agricultural land, was needed for agriculture, and was actually utilised for the agricultural activity applied for; ***(see clause 16)***

These permit types allowed the infamous clearing at Olive Vale station on the Cape York Peninsula[8] and Strathmore Station in the Gulf,[9] involving very large areas with questionable benefits for agriculture.

Closing this loophole was an express election promise by the government and we welcome its fulfilment in this Bill.

Recommendation 4:

Support the removal of the ability to obtain permits for high value agriculture and high value irrigated agriculture (clause 16).

3. Reintroduction of the requirement to obtain Riverine Protection Permits to better regulate clearing in watercourses *(see clauses 51 and 52)*

We strongly support the reintroduction of Riverine Protection Permits for clearing of vegetation in our watercourses. Upstream impacts to riparian vegetation can have significant impacts to watercourses and downstream ecosystems through the increased erosion of banks. These activities must be assessed, the Riverine Protection Permit is one mechanism for this assessment to ensure

[8] http://www.abc.net.au/news/2015-06-04/queensland-government-steps-in-to-stop-olive-vale-land-clearing/6521928.
[9] http://www.abc.net.au/news/2015-11-22/land-clearing-investigated-for-legal-breaches-environment-damage/6961108.

that these activities are only allowed as far as they will minimise or avoid negative impacts to our watercourses and downstream ecosystems.

We are aware that improvements are needed to the method by which watercourses are mapped in Queensland, to ensure that all water resources that meet the definition in the *Water Act 2000* (Qld) (**Water Act**) are mapped as such and provided with the requisite level of regulatory protection. We are informed by landholders around Queensland that the determination of the resource as a 'watercourse' or 'drainage feature' is not always being undertaken with sufficient reference to the Water Act and it's regulatory intent. This determination effects the level of protection the water resource is provided with – including under these new proposed amendments. We recommend that the Water Act is amended to provide clear definitions free of discretion as to whether a water resource is a watercourse or a drainage feature.

Recommendation 5:

Support the reintroduction of the requirement to obtain Riverine Protection Permits to better regulate clearing in watercourses (see clauses 51 and 52).

Recommendation 6:

Amend the *Water Act 2000* (Qld) to provide clear definitions free of discretion as to whether a water resource is a watercourse or a drainage feature, to ensure all watercourses are mapped as such in Queensland. Adequate training of Departmental officers on implementing these definitions is essential for their effectiveness.

4. **Extended protections of regrowth vegetation near watercourses across Great Barrier Reef catchments, to reduce damaging runoff, including Eastern Cape York, Fitzroy and Burnett-Mary catchments which were not protected under the VM Act currently.** *(see clauses 133 and 38)*

At present, clearing of regrowth vegetation (Category R) is only regulated in northern Reef catchments. The Bill would extend regulation to all Reef catchments, a significant and welcome improvement. However, this does not mean clearing is banned. It may still be conducted under the accepted development code for clearing of Category R, for which the 2013 self-assessable code still remains current.[10] The Bill should not leave the details of how much of Category R can be cleared to accepted development codes.

Further, these protections should be provided across Queensland for all watercourses. Our Reef needs strong protection from upstream impacts, but so too does Moreton Bay and all other non-Reef catchments. This will ensure that the government meets its election commitment to protect the high conservation value of our riparian areas that have regrown.[11]

Also, we raise again, as above, that improvements are needed to the method by which watercourses are mapped in Queensland, to ensure that all water resources that meet the definition in the *Water Act 2000* (Qld) (Water Act) are mapped as such and provided with the requisite level of regulatory protection.

[10] https://publications.qld.gov.au/dataset/self-assessable-vegetation-clearing-codes/resource/ba3b7d50-b176-47da-b71e-4c8b6bf440b8.
[11] https://www.queenslandlabor.org/media/20226/alpq-saving-habitat-policy-document-v3.pdf, p10.

Recommendation 7:

Support the extension of protections of regrowth vegetation (Category R) near watercourses across Great Barrier Reef catchments, however:

(c) extend this protection across all Queensland watercourses and wetlands, to implement the government's commitment to protect high conservation value regrowth including riparian areas generally, which otherwise is not adequately covered by Category C below; and
(d) remove ability to clear Category R vegetation under accepted development codes.

5. Phasing out existing Area Management Plans which have allowed significant clearing under lower regulation across Queensland *(see clause 14)*

Area Management Plans (AMPs) were the main mechanism by which codes for self-assessable clearing of mature bushland were created, prior to the amendments of 2013 introducing self-assessable codes. They are a mechanism whereby clearing of an area can be undertaken under reduced regulation.

This has resulted in substantial clearing with limited oversight across southwest Queensland. Since the Bill proposes to maintain accepted development codes, there is now no use in maintaining a power to create AMPs as yet another tool to allow weaker regulation of clearing.

We support the phase out of AMPs but we recommend that consideration should be given by the Committee as to whether they should all be revoked immediately, and the provision that the department can make new Area Management Plans should be removed.

Recommendation 8:

(c) Support the phasing out of existing Area Management Plans which have allowed significant clearing under lower regulation across Queensland (see clause 14).

(d) However also recommend that consideration should be given to whether they should all be revoked immediately, and the provision that the department can make new Area Management Plans should be removed (clause 14, new s21B).

6. Increasing provisions to support effective compliance and enforcement of the VM Act by the Department *(see clauses 19 to 35)*

These strengthened enforcement powers are now essential to ensure the Act can be enforced by the Department given that the 'reversal of the onus of proof' - the occupier being presumed to be the clearer without evidence to the contrary - is not being reintroduced by the Bill.

Two of the provisions in the Bill which may be raised with the Committee as part of these increased enforcement powers are:

- Clause 21, new section 30A: Power to enter place on reasonable belief of vegetation clearing offence, allowing:
    - an authorised officer to enter land without the owner's consent or a warrant to investigate whether clearing is happening or has happened on the site;

- however only once written detailed notice has been given to the occupier of the place 24 hours prior; and
- no entry into a place a person resides; ; and

- Clause 24, amending s39: Seizing evidence: which allows an authorised officer to enter a place to seize evidence where the officer reasonably believes the thing is evidence of a clearing offence notified of to the owner prior to entering.

These provisions may be raised as controversial, however we note that these enforcement mechanisms are provided for in many other environmental or development frameworks in Queensland; they are not novel in any way and are needed to assist the relevant departments in undertaking enforcement on private land.

For example, see **Appendix B** to this submissions for a brief table outlining similar provisions found in the *Water Act 2000* (Qld), the *Nature Conservation Act 1992* (Qld) and the *Planning Act 2016* (Qld).

See point 7 below for more discussion on the need to reintroduce the 'reversal of the onus of proof' and the exclusion of the defence of mistake of fact.

Recommendation 9:

Support the increase in powers for Departmental officers to seek to enforce the VM Act, as provided in other similar legislation across Queensland, given that the evidentiary burden is significant without the presumption of occupier as clearer without evidence to demonstrate otherwise ('reversal of the onus of proof') (see clauses 19 to 35).

7. Effective enforcement of the VM Act is greatly assisted through the assumed occupier accountability and removal of the defence of the mistake of fact

The Bill does not include the reversal of the onus of proof or the exclusion of the mistake of fact defence, which are needed to ensure the Act can be adequately enforced by the Department. As stated above, we support the introduction of greater compliance and enforcement powers as provided in clauses 19-35. These will be essential in ensuring the Department is able to collect sufficient evidence to undertake enforcement activities where they now hold the significant evidentiary burden of proving the identity of the person who cleared.

Previous section 67A of the VM Act provided that tree clearing is taken to have been done by the occupier of the land in the absence of evidence to the contrary. This is much like when an owner of a vehicle is presumed to be the person responsible for a traffic infringement unless a statutory declaration is completed to prove that someone else was operating the vehicle at the time of the infringement.

This provision was necessary to assist in enforcement of the VM Act because it is extremely difficult and expensive for the State to gather sufficient evidence to prove the identity of who cleared land once it is cleared across the vast, and often remote, expanses of Queensland. Further, the proof as to whether it was the occupier or not is within a potential defendant's knowledge and ability to easily prove. Further, the possible economic benefit of clearing the land would most obviously be with the occupier, and therefore they can be assumed to have the largest motivation to clear.

There is express provision in the Fundamental Legislative Principles which provides for situations where the onus of proof can be reversed if necessary to ensure that a law is upheld, where the matter would be extremely difficult, or very expensive for the State to prove, and where the subject

of proof is peculiarly within the defendant's knowledge. (See section 7.2.4 of the Qld Legislation Handbook). The proof of the identity of who cleared vegetation fits just this scenario.

EDO Qld thoroughly support that the Fundamental Legislative Principles should be followed as far as possible, but equally, as envisaged by the Principles themselves, there are some instances where the Principles are not seen to be appropriate to apply, to ensure that a law is effective – the reinstatement of these provisions in our VM Act is one of those instances.

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

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

The failure to reintroduce previous s67A of the VM Act makes the enforcement provisions provided for in the Bill essential requirements to ensure the Act can be enforced by the Department.

The Bill also does not reinstate the exclusion of the defence of mistake of fact for clearing offences, so landholders will not be able to rely on this defence to claim that they honestly and reasonably made a mistake of fact in clearing vegetation. Previous s 67B of the VM Act removed the application of s 24 of the Criminal Code which would normally allow people convicted of an offence to claim 'mistake of fact' as a defence, so that they would not be criminally responsible for the offence where they committed the offence under 'an honest and reasonable, but mistaken, belief in the existence of any state of things'.

In s24 of the Criminal Code there is also a subsection (2) which allows for the express exclusion of this defence by a law.

In the VM Act the defence was expressly excluded by previous s67B so that people who were being convicted of a vegetation clearing offence could not claim that they has some misunderstanding as to a fact relevant to proving the offence. This is because it would be very difficult for the department to prove the state of mind of an offender to be able to successfully prosecute illegal clearing where this defence was made, making it difficult to enforce the Act.

The Newman Government removed s67B, so that people clearing vegetation can now claim that this defence – making for a much higher bar for the department to prove the clearer was acting under correct facts as to the state of things when action was undertaken to then prosecute them successfully for undertaking the clearing.

In the VM Act it is seen as necessary to exclude the defence of mistake of fact due to the enormous amounts of resources the Department has put into informing landholders of the regulations provided around clearing under the VM Act, which has been in place since 1999, and due to the difficulty in disproving a state of mind that might have existed at the time of the offence. This defence has equally been excluded in our *Forestry Act 1959* (Qld) (section 94) and until recently in our *Water Act 2000* (Qld), so the provisions were in no way unique to the VM Act.

Recommendation 10:

Reinstate previous s67A of the VM Act to re-establish that tree clearing is taken to have been done by the occupier of the land in the absence of evidence to the contrary, to relieve the enormous evidentiary burden on the department that omission of this section provides which threatens the effective enforcement of the Act.

Recommendation 11:

Consider the reintroduction of previous s67B which removed the defence of the mistake of fact to improve enforcement of the Act.

8. Retrospective application of the provisions of the Bill are necessary to avoid panic clearing *(see clause 2)*

Generally speaking, retrospective obligations are not imposed in legislation as they are seen to adversely affect the rights and liberties of individuals. An Act may be made retrospective if on balance there are other compelling public interest policy considerations necessary to achieve a policy objective, such as in this case to protect against 'panic clearing' upon the introduction of the Bill's reinstatement of stronger tree clearing laws. This panic clearing may have serious impacts on biodiversity, the rate of greenhouse gas release and the Great Barrier Reef. In our view it is therefore necessary, reasonable and proper, for these purposes, to make this Bill retrospective in effect. We support retrospective commencement of the Bill at the date of tabling.

Recommendation 12:

Support the retrospective application of the provisions of the Bill are necessary to avoid panic clearing (see clause 2).

9. Improved protected of 'high value regrowth vegetation', being vegetation that has grown back well after being cleared (Category C).

The Bill creates a broader definition, including vegetation that hasn't been cleared for 15 years and re-extending regulation to freehold, indigenous land and occupational licences (see clause 38). This is fully supported and necessary. It is illogical to restrict the categorisation of vegetation to a specific date (31 December 1989) as provided currently in the VM Act Schedule Dictoinary, where by its nature vegetation is constantly regrowing such that each year near areas may have regenerated to a state that would once again be considered of high conservation value.

However, we are very concerned that whether this high value vegetation can be cleared is still subject to reduced regulation through the accepted development codes.[12]

Also, 'high value regrowth vegetation' must be extended to fully meet the government's election commitment by protecting high conservation value regrowth vegetation. Amendments are needed to allow much more extensive protection including endangered vegetation species and communities, vegetation in reef catchments, riparian areas, threatened species habitat and areas where landscape integrity is at risk. This extended definition was a commitment of the government.[13]

[12] https://publications.qld.gov.au/dataset/self-assessable-vegetation-clearing-codes/resource/130fed64-cc49-4752-ac2d-de24fe86f082.
[13] https://www.queenslandlabor.org/media/20226/alpq-saving-habitat-policy-document-v3.pdf, p10.

Recommendation 13:

The Bill should protect Category C from clearing, and particularly should not allow clearing of Category C areas through accepted development codes.

Recommendation 14:

The Bill should be amended to clarify protection of high conservation value regrowth vegetation including endangered vegetation species and communities, vegetation in reef catchments, riparian areas, threatened species habitat and areas where landscape integrity is at risk, as committed to by government.

10. Stronger provisions for control of 'thinning' activities, now known as 'managing thickened vegetation'(*see clauses 4 and 38*)

Significant broadscale clearing has been undertaken under the guise of 'thinning' under the current VM Act and the applicable code that has been in force under the previous two governments.

We support the requirement for such an activity to be allowable only where absolutely necessary to maintain ecological processes and prevent loss of diversity where this is scientifically valid.

While the definition provided in clause 17, new section 22B, strengthens what may be considered 'managing thickened vegetation', it is not drafted in a way that *clearly* requires the applicant to meet the definition of 'managing thickened vegetation' provided in the amendments to the VM Act Schedule in clause 38, being:

> *'… the selective clearing of vegetation at a locality that does not include clearing using a chain or cable linked between 2 tractors, bulldozers or other traction vehicles—*
>
> *(a) to restore a regional ecosystem to the floristic composition and range of densities typical of the regional ecosystem in the bioregion in which it is located; and*
>
> (b) *to maintain ecological processes and prevent loss of diversity.'*(our emphasis)

We recommend that new section 22B(2) is amended to specifically require, in addition to the list of items that must be demonstrated by an applicant currently provided, demonstration that:

(a) vegetation thickening has actually taken place relative to appropriate reference sites;

(b) it is an unnatural phenomenon resulting from past land management;

(c) it is having proven negative effects on the faunal and floral composition of the Regional Ecosystem concerned;

(d) it is having proven negative effects on the ecological processes and causing a loss of diversity in the area; and

(e) simply changing land management to best practice has been proven to be ineffective necessitating intervention with machinery.

Assessment of whether these tests are met requires detailed expert scientific study of the natural dynamics of the ecosystem concerned, and it is appropriate to require comprehensive scientific assessment of each case prior to approval.

Given the complex onus on the applicant to demonstrate the above, we remain concerned, as outlined above and below, that the Bill will continue to permit thinning activities, particularly of mature and high value regrowth vegetation, through existing codes, existing or new Area Management Plans and the potential creation of a new applicable code under the broad powers available to the Minister to make codes.

Recommendation 15:

(c) The Bill should remove thinning/ managing thickened vegetation as an allowable purpose.

(d) At very least, the Bill should be further amended to ensure that any further 'thinning' activities must be proven to meet the above tests a) - e) using expert scientific assessment before being approved.

11. Removal of accepted development codes in their entirety

We are very concerned that the VMOLA Bill relies too heavily on self-assessable 'accepted development codes'. These codes were introduced by the former Newman government in 2013 for native vegetation clearing.

The effect of clearing being covered by an accepted development code is that it is considered to be accepted development for the purposes of the *Planning Act 2016* (Qld), rather than being code assessable and requiring a permit as other vegetation clearing is. Other than notification of the clearing to DNRME, development under an accepted development code will not be assessed.

While repercussions for contravening a code exist, the clearing would not receive the same level of scrutiny that regulated code assessed development does. While the changes do provide a lower regulatory burden obligation on farmers and landholders wishing to clear vegetation under certain circumstances, this slight reduction in administrative burden reduces protections for vegetation, thereby potentially jeopardising goals relating to maintenance and enhancement of vegetation cover in Queensland.

Under the Bill as drafted, the Minister is able to make an accepted development code about any matter relating to clearing of vegetation (clause 4, amending s19O VM Act). The list of examples provided in this section as to what a code may cover is not exhaustive, and includes broad matter such as 'sustainable land use'. This discretion to weaken the level of assessment given to clearing is dangerous and should be limited to only very minor, low risk activities.

All clearing that has significant conservation impacts, including on threatened species and ecosystems, should be required to follow a full assessment of environmental impacts and should not evade the requirement for explicit approval, regardless of who is doing the clearing or why. This assessment should take place through an independent scientific assessment process and take into account regional level cumulative impacts. Piecemeal clearing of small areas at one time is the major underlying threat to many species because the cumulative impact of clearing many small areas over time and space amount to very large areas and impacts.

Recommendation 16:

Recommend repeal of the accepted development codes to ensure all clearing is adequately regulated and assessed prior to impact.

12. Stronger provisions needed for control of clearing for fodder harvesting.

Revision of the accepted development code for fodder harvesting is an improvement on the previous code. However, the Bill still permits fodder harvesting under the accepted development codes that is not linked to necessity of drought, permits fodder harvesting in 'of concern' regional

ecosystems and still allows bulldozing of mature forest rather than limiting clearing to selective methods, or just lopping of boughs which is already exempt under the VM Act.[14]

Recommendation 17:

At a minimum, the Bill should be amended to limit fodder harvesting to where there is an official drought declaration only, and that large scale bulldozing be excluded as a practice. Ideally fodder harvesting should be removed as an allowable activity given that lopping is exempt from the VM Act.

13. Improvements to accountability and transparency of mapping through application of Judicial Review Act

The Bill should include removal of the exclusion of the *Judicial Review Act 1991* in s68CB of the VM Act for applying to review a decision under the VM Act related to various mapping decisions made by the chief executive (see s68CA). There is no reason to exclude the transparency and accountability provided by judicial review procedures from the important decisions made around mapping, which are a major element in determining the effectiveness of the VM Act framework.

Recommendation 18:

Remove VM Act s68CA to stop exclusion of the *Judicial Review Act* 1991 (Qld) for the Act in any way.

14. Greater transparency as to the amount and type of vegetation being cleared under our regulatory framework is needed

We highlight that it is very difficult for the public to discern where clearing has been undertaken and under what permit, code or exemption. As we understand Dr Martin Taylor has raised to the Committee, 21.7 % of regulated clearing between 2013-2016 has not, on information available to the community, been undertaken under a high value agricultural approval, accepted development code or AMP. Clearing under development approvals by local governments is not being centrally mapped.

Given the importance of this matter, and the benefit of the community acting as a watchdog to assist the Department in their enforcement of the Act across Queensland, we recommend that a central online database of this information could be created.

This would assist landholders to defend their actions by providing greater transparency of what regulatory power clearing was undertaken. This would also assist the Department in understanding how the regulatory framework is working and where amendments may be needed.

Recommendation 19:

That the Committee recommends that greater transparency of data be provided by the Queensland Government as to where and under what authority clearing is being undertaken. This could be via amendments to the public register along with government policy.

[14] Vegetation Management Act 2009 (Qld), Schedule Dictionary, definition of 'clear'.

15. Native animals and their habitat need stronger protection under our clearing laws

Tree clearing has been labelled 'the single greatest animal welfare crisis in Queensland' because of the extent of the death and suffering involved.[15]

Tree clearing has been estimated to kill nearly 45 million fauna species individuals, 1.1 million mammals, 3.7 million birds and 39.9 million reptiles, per year in Queensland alone based on clearing rates for 2015-2016.[16]

Our regulatory framework in Queensland does not currently take this issue into account in assessing or conditioning clearing activities. This is a significant omission that needs to be addressed.

Recommendation 20:

Specific reforms of the VM Act, the *Nature Conservation Act 1992 (*Qld), the *Environmental Protection Act 1994* (Qld) and the *Planning Act 2016* (Qld) framework are needed to better protect native animals and habitat from clearing impacts, including:

(c) amendments to the purpose of the VM Act to expressly mention of the need to avoid or minimise impacts to native animals;

(d) required conditions of assessment materials and permits to require that:

- **monitoring for application materials is undertaken through various seasons and day and night to ensure all species are captured in the assessment;**
- **suitably qualified persons must always undertake a fauna survey that forms part of assessment material; and**
- **suitably qualified spotter catchers are present when clearing is undertaken.**

16. Planning amendments to ensure ecosystems not lost through a thousand cuts

The *Planning Regulation 2017* (Qld) needs to be amended to revert the trigger of when clearing is exempt and when clearing activities are required to be referred to the State Government for consideration from the current 5ha trigger[17] back to the previous trigger of 2ha. This trigger was increased to 5ha under the Newman Government and is allowing the death by a thousand cuts through the inconsistent application of tree clearing regulations by local councils in Queensland.

Recommendation 21:

Additional provisions to amend the *Planning Regulation 2017* (Qld) to reduce the exemptions from assessment or state government oversight for clearing of less than 5ha as provided in Schedule 10, Tables 2 and 3 and Schedule 21, s1(b)(i) , to 2ha as previously provided prior to the Newman Government changes.

[15] M. Taylor, C. Booth, and M. Patterson. (2017). Tree-clearing: the hidden crisis of animal welfare in Queensland. WWF-Australia and RSPCA Queensland, Brisbane. Available at: http://www.wwf.org.au/ArticleDocuments/353/pub-tree-clearing-hiddencrisis-of-animal-welfare-queensland-7sep17.pdf.aspx?Embed=Y.

[16] H. Cogger, C. Dickman, H. Ford, C. Johnson, and M. Taylor. (2017). Australian animals lost to bulldozers in Queensland 2013-2015. WWF-Australia. Available at: http://www.wwf.org.au/ArticleDocuments/353/pub-australian-animals-lost-to-bulldozers-inqueensland-2013-15-25aug17.pdf.aspx?Embed=Y.

[17] See *Planning Regulation 2017* (Qld) Schedule 10, Tables 2 and 3 and Schedule 21, s1(b)(i) .

Statutory powers under the VMOLA Bill and analogous provisions

VMOLA Bill	*Water Act*	*Nature Conservation Act*	*Environmental Protection Act*
Clause 21 – Power to enter place on Reasonable Belief of Vegetation Clearing Offence Cl 21 amends s 30A of the *Vegetation Management Act 1999* (Qld) (**VMA**), allowing authorised officers the power to enter a place on reasonable belief of a vegetation clearing offence, including empowering Cl 21 proposes amendments to the VMA s 30A(2), that an authorised officer: • may enter and re-enter a place without the occupier's consent or a warrant to investigate whether a vegetation clearing offence is happening, or has happened, at the place; • may enter and re-enter a place with force that is necessary and reasonable in the circumstances; and • must give notice before entering a place 24 hours beforehand pursuant to certain notice requirements; • must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage, as is practicable in the circumstances.	***Division 2 – Powers of entry of authorised officers:*** ***Sections 746 (monitoring compliance), 747 (information collection), and 748 (unauthorised activities)*** An authorised officer has the power: to enter land • at any reasonable time to monitor compliance with the Act; • to collect information in relation to the land in question; • (where reasonable) to confirm whether an unauthorised activity is happening or has happened; and may do so with the help, and use of force that is necessary and reasonable in the circumstances. ***Section 749*** An authorised officer may enter a place for purposes other than above: • where the occupier consents to the entry; it is a public place and entry is made when open to the public; entry is authorised by warrant;	***Part 9 – Investigation and Enforcement:*** ***Sections 145 (entry and search for monitoring compliance)*** Where exercising general powers a conservation officer may enter and search any place where reasonable in order to monitor compliance under the NC Act.	***Part 2 – Powers of authorised persons for places and vehicles:*** ***Sections 452 (Entry of place – general)*** Authorised persons may enter a place where the occupier consents to entry, or is a public place, or is a place to which an environmental authority relates, or has given written notice of at least 5 business days etc. ***Section 460 (General powers for places and vehicles)*** Grants broad powers as to entry of land for the purposes of searching; inspecting, examining, testing, measuring, photographing or filming; taking samples of any contaminant, substance or thing; recording, measuring, testing or analysing the release of contaminants etc.

	• where reasonable to enter land around premises at the place to an extent that is reasonable to contact the occupier; or where the authorised officer reasonably considers members of the public are ordinarily allowed to enter.		

Clause 24 – Seizing Evidence Cl 24 intends to amend s 39 of the VMA allows for the seizure of a thing at a place where the authorised officer: • reasonably believes the thing is evidence of a vegetation clearing offence; and • that the belief is consistent with either the purpose of entry as told to the occupier when asking for the occupier's consent to enter the place; or notice of entry under s 30A(4) and (5).	***Division 4 – Powers for authorised officers after entering a place*** The act gives general powers to authorised officers after entering places. ***Division 4A – Power to seize evidence*** The Water Act mirrors cl 21 of the VMOLA Bill, which proposes to amend VMA s 39 as to the seizing of evidence vis-à-vis the reasonable belief of the authorised officer being consistent with the purpose of entry or notice of entry. The Water Act provides an authorised officer with the ability to move things that have been seized, take reasonable action to restrict access to it, or make it inoperable.	***Section 146 (entry and search for evidence of offences)*** Conservation officers may seize evidence of an offence at a particular place. Conservation officers may apply to a magistrate for a warrant where permission to enter is refused.	**Section 461 Power to seize evidence** Grants the power to seize evidence for which a warrant was issued, or where consent is given, or on reasonable grounds where the thing related to evidence of an offence against the Act or seizure is necessary to prevent the thing being concealed, lost, destroyed; or used to commit, continue or repeat the offence, and may do so with or without a warrant.