From the desk of Morgan Begg, Research Fellow

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22 March 2018

Committee Secretary
State Development, Natural Resources
and Agricultural Industry Development Committee
Parliament House
George Street, Brisbane QLD 4000
Email: sdnraidc@parliament.qld.gov.au

Dear Committee

Inquiry into the *Vegetation Management and Other Legislation Amendment Bill 2018*

Please find attached the submission from the Institute of Public Affairs to this inquiry. The submission argues the *Vegetation Management and Other Legislation Amendment Bill 2018* is burdensome red tape on Queensland's agriculture sector and represents an erosion of private property rights. The IPA recommends the Bill should not proceed.

If the IPA can be of further assistance to the Committee, please do not hesitate to contact me in writing to 2/410 Collins Street, Melbourne, VIC 3000; by telephone on ; or by email to

Regards,

Morgan Begg

Research Fellow
Institute of Public Affairs

CUT RED TAPE TO
UNLEASH PROSPERITY

March 2018

SUBMISSION TO THE STATE DEVELOPMENT, NATURAL RESOURCES AND AGRICULTURE INDUSTRY DEVELOPMENT COMMITTEE RELATING TO THE VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2018

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Morgan Begg, Research Fellow

About the Institute of Public Affairs

The Institute of Public Affairs is an independent, non-profit public policy think tank, dedicated to preserving and strengthening the foundations of economic and political freedom.
Since 1943, the IPA has been at the forefront of the political and policy debate, defining the contemporary political landscape.
The IPA is funded by individual memberships and subscriptions, as well as philanthropic and corporate donors.
The IPA supports the free market of ideas, the free flow of capital, a limited and efficient government, evidence-based public policy, the rule of law, and representative democracy.
Throughout human history, these ideas have proven themselves to be the most dynamic, liberating and exciting. Our researchers apply these ideas to the public policy questions which matter today.

About the author

Morgan Begg is a Research Fellow at the Institute of Public Affairs.

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Executive summary

Proposed changes to vegetation management law in Queensland are burdensome red tape and an erosion of property rights.

This submission will refer to three major reforms included in the *Vegetation Management and Other Legislation Amendment Bill 2018* that are representative of the broader red tape problem in Australia and the failure to acknowledge private property rights.

In particular, the abolition of 'high value agriculture' and 'irrigated high value agriculture' as relevant purposes for land clearing tip the balance of the laws significantly in favour of environmentalism at the expense of economic and agricultural development.

Development of land, while still complying with numerous other environmental laws, can create jobs and prosperity that outweighs the protection of native flora and fauna. The proposed laws are a further step away from a balanced regulatory framework between environmental protection and economic development.

The Institute of Public Affairs recommends that the *Vegetation Management and Other Legislation Amendment Bill 2018* should not proceed. Instead, state governments should consider market-based solutions to meet environmental goals while also respecting property rights that allow private landowners to develop their land in an effective and efficient way.

Background to the *Vegetation Management and Other Legislation Amendment Bill 2018*

On 8 March 2018, the Hon Dr Anthony Lynham MP, Minister for Natural Resources, Mines and Energy introduced the *Vegetation Management and Other Legislation Amendment Bill 2018* into the Queensland Parliament. The bill was referred to the State Development, Natural Resources and Agricultural Industry Development Committee for consideration.

This Bill is just the most recent illustration of the long running underlying conflict between environmentalism and property rights in native vegetation policy. Prior to the 1990s, there were few restrictions on land clearing in Queensland outside of national parks, state forests and the protection of forestry resources.[1] Before that time, the legal framework relating to the environmental impacts of agriculture reflected an approach of Australian regulators to not police agricultural producers, but to "assist them to do the right thing".[2] This was consistent with a policy approach that respected private property rights, particularly of freehold title holders.

The first major restrictions on agricultural land clearing passed the Queensland Legislative Assembly in 1999, with additional major restrictive changes introduced later in 2004 and 2006.[3] Amendments past in 2013 represented a slight relaxation of land clearing laws, dictating, among other things, what native vegetation could be cleared in Queensland. The 2013 amendments introduced additional 'relevant purposes' which allowed for the clearing of high-value agricultural land - where the land must be proved to be economically viable and the environmental effects minimised before clearing.

Following the election of a new government in 2015, the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* was introduced in November 2015 to reverse the 2013 changes. In a submission to the Agriculture and Environment Committee, the Institute of Public Affairs objected specifically to the removal of high value agriculture and irrigation as relevant purposes for land clearing, the reversal of the onus of proof, a lack of compensation for erosion of property rights and its retrospective implementation.[4] The Bill failed to pass the Legislative Assembly.

The *Vegetation Management and Other Legislation Amendment Bill 2018* was introduced into the Legislative Assembly in March 2018, and seeks to emulate many of the changes of the 2016 bill. (Notably, the reversal of the onus of proof included in the 2016 has not been repeated in the 2018 bill.) The explanatory notes state that the primary policy objective of the bill is to "reinstate responsible clearing laws" by making amendments to the *Vegetation Management Act 1999*, the *Planning Act 2016*, the *Planning Regulation 2017* and the *Water Act 2000*. This submission will address the proposed expansion of the definition of "high value regrowth" vegetation and the removal of the ability to apply for a development approval for clearing high value and irrigated high value agriculture.

1 Christopher McGrath, 'End of Broadscale Clearing in Queensland' (2007) 24(1) *Environmental and Planning Law Journal* 5-13.

2 N Cunningham & P Grabosky, *Smart Regulation: Designing Environmental Policy* (Oxford University Press, Melbourne, 1998) 278-9.

3 Darcy Allen, Chris Berg and Simon Breheny, 'Submission to the Agriculture and Environment Committee relating to the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016' (Institute of Public Affairs, 2016).

4 Allen, Berg, and Breheny (2016).

High value regrowth vegetation refers to vegetation located—

a. on a lease issued under the Land Act 1994 for agriculture or grazing purposes; and

b. in an area that has not been cleared since 31 December 1989 that is—

   i. an endangered regional ecosystem; or

   ii. an of concern regional ecosystem; or

   iii. a least concern regional ecosystem.

Clause 38 the 2018 Bill will change the definition of "high value regrowth vegetation" in the schedule of the *Vegetation Management Act 1999* to expand it to cover freehold land, indigenous land, and land subject to an occupation licence under the Queensland *Land Act 1994*, and to also include land that has not been cleared "for at least 15 years" as opposed to since 31 December 1989.

Clause 38 of the 2018 Bill will also remove the ability for a person to apply for a development approval for clearing for "high value" and "irrigated high value" land by omitting both as "relevant purposes" under the *Vegetation Management Act 1999*.

These particular changes represent a significant reinstatement of red tape on farmers and landowners and an erosion of private property rights. The Institute of Public Affairs recommends that *Vegetation Management and Other Legislation Amendment Bill 2018* should not proceed.

Red tape and property rights

Burdensome and duplicative native vegetation legislation are a significant cost to farmers. Landholders raise environmental regulations, and land use regulations in particular, as a key concern,[5] while the Productivity Commission has acknowledged that current native vegetation and biodiversity rules do not reflect minimum best practice regulation.[6] This indicates a more efficient regime could be adopted with no cost to overall environmental conditions.

This submission will address the following: the increase in red tape on farmers and landowners; and the erosion of property rights.

Red tape

The IPA has estimated that red tape reduces economic output in Australia by $176 billion each year. Red tape refers to the laws and regulations that go beyond the minimum required to meet a regulatory objective.[7]

The proposed laws add to the red tape problem afflicting Australia, as they exceed what is required to meet the regulatory objective of protecting vegetation. Implicit in the proposed laws are an assumption that protection of vegetation cannot coexist with agricultural development.

This is an extreme view that ignores the many economic benefits associated with agricultural development. Indeed, the proposed laws tip the regulatory balance far in favour of environmentalist objectives. As the IPA noted in 2016 in response to similar proposals to abolish high value agriculture clearing, "removing the pathway for high value agriculture and irrigation hinders property rights and [prevents farmers] from most efficiently operating their land."[8]

While no widespread clearing for agricultural purposes was permitted from 2006 to 2013, around 112,400 hectares had been cleared from 2013 to 2016 following the passage of state land clearing reforms. That enabled in that period approximately 107,000 hectares of high value agriculture and 5,000 hectares of irrigated high-value agriculture land to be freed.[9] Reverting to the pre-2013 legal framework would reduce that number, which would represent a significant cost on economic productivity and prosperity.

The IPA's Darcy Allen considered this distinction between environmentalism and the benefits of agricultural land clearing in 2016:

> One side sees this almost exclusively in terms of greenhouse gas emissions, or damage to wonderful resources such as the Great Barrier Reef. For instance, in the public hearing of the current Committee, this is viewed as the 'release of around nine million tonnes of carbon emissions'.
>
> Farmers and land owners, however, see this clearing as a necessity to continue productive agribusiness. The clearing, in their eyes, is the release of otherwise government-stymied land for the benefits of themselves and the nation.[10]

5 GrainGrowers, 'Regulation in Agriculture Survey 2016' (March 2016) <file:///C:/Users/mbegg/Downloads/red%20tape%20survey%20responses2.pdf>.

6 Productivity Commission, 'Regulation of Australian Agriculture' (Draft report, March 2016) 91.

7 Daniel Wild, 'Barriers to Prosperity: Red Tape and the Regulatory State in Australia' (Institute of Public Affairs, 2017) 13-15.

8 Allen, Berg, and Breheny (2016) 3.

9 Departmental Briefing to the Agriculture and Environment Committee, Legislative Assembly, Brisbane, 2 March 2016, 2 (Sue Ryan).

10 Darcy Allen, 'Why the proposed tree laws are the very worst kind of red tape', *Queensland Country Life*, 7 April 2016.

The clearing of land - especially where individuals can prove its economic viability - is crucial for economic production in Queensland. However, the approach offered in the 2018 Bill, is a more restrictive approach that will hurt Queensland's most productive farmers and landowners.

A consequence of this style of regulation is the costs of environmental regulations do not appear in government financial documents, and thus distort how many people understand the costs of such regulation. As the Productivity Commission noted in 2016, native vegetation legislation imposes significant and persistent costs on farmers through bureaucratic controls.

> The bottom line is that landholders are required to bear the cost of providing many community wide benefits from better environmental outcomes. While the community may demand better environmental outcomes, because the costs fall on landholders the community is not necessarily aware of the cost of achieving these outcomes.[11]

The explanatory notes for the 2018 Bill is an example of this, which estimates the costs of implementing the amendments as effectively nil: "Overall, the financial cost of administering the legislation is expected to be cost neutral or covered by prioritising existing resources."[12]

The IPA has previously recommended a market-based solution to native vegetation and land clearing overregulation. Market based solutions provide an incentive for landowners to elect to pursue environmental objectives by offering a monetary benefit to conserve their land in a particular way. This potential for governments to buy environmental services from existing landholders would be a vital change in native vegetation policy, and would bring this cost onto government financial documents - as well as the wider community who apparently request environmental protection through government intervention. Additionally, it would represent a form of recognition that environmental red tape erodes the property rights of private landholders.[13]

11 Productivity Commission, 'Regulation of Australian Agriculture' (Draft report, March 2016) 107. Daniel Wild, 'Red tape is strangling Australia's primary resources industries,' *The Australian,* 14 August 2016.

12 Explanatory Memorandum, Vegetation Management and Other Legislation Amendment Bill 2018 (Qld) 6-7.

13 Darcy Allen et al, 'A Response to the Productivity Commission Draft Report on the Regulation of Agriculture' (Institute of Public Affairs, 2016) 6-7.

Erosion of property rights

An important consideration that should inform regulators is the landholders are the best custodians of their own land. As the IPA's Darcy Allen argued in 2016 in relation to the Queensland government's 2016 amendments:

> Land owners and farmers are the most interested in protecting and conserving their farms. Bureaucrats in Brisbane - far from the reality of farm life - should not be in the business of classifying and determining the use of private land.

Moreover, landowners are incentivised to improve the efficiency and productivity of their land. As the IPA's Daniel Wild noted in 2016:

> Property rights give owners incentive to look after what they own. Farmers know their livelihood depends on environmentally sustainable practice.
>
> Competition fostered by free markets provides powerful incentive for land-users to economise land use and develop more efficient and environmentally friendly technology. In the last century land used for agriculture has decreased, yet output has skyrocketed.

The 2018 Bill expands land clearing restrictions to freehold land, indigenous land and land subject to an occupation licence. Altering or restricting what farmers can do with their land as this Bill does is an erosion of property rights, and where such regulation of land is sufficiently significant it can render the land of a substantially lower economic value to the landowner.[14] In these cases, the reduction in value should be accompanied by just compensation. As Professor Suri Ratnapala noted in the *IPA Review* in 2004:

> ... property values diminish because the state is limiting its use and enjoyment to serve what it considers to be the public interest in conservation. The state thus converts private property to public use and hence should compensate the owner.[15]

A market based approach to native vegetation and land clearing regulation, as discussed on page 6, would allow landholders to make decisions about their own land while also offering a path to achieving a goal desired by many environmental regulations.

Concluding remarks

This submission reiterates the concluding remarks from the Institute of Public Affairs submission to the proposed vegetation management reforms of 2016:

> We can have both a productive and growing agriculture sector as well as sufficient environmental outcomes. There is a balance where both objectives can be met. We cannot, however, continually, push to shut down all progress on Queensland's agriculture sector.[16]

The proposed changes will stifle and distort productive agricultural activity, erode property rights and increase uncertainty in the agricultural sector. Accordingly, the *Vegetation Management and Other Legislation Amendment Act 2018* should not proceed.

14 Senate Finance and Public Administration References Committee, Parliament of Australia, *Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures* (2010) [5.13].

15 Suri Ratnapala, 'Vegetation Management in Queensland: A Case of Constitutional Vandalism' (2004) 56(4) *IPA Review* 11.

16 Allen, Berg and Breheny (2016) 7.

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