

22 March 2018

State Development, Natural Resources and Agricultural
Industry Development Committee
Parliament House
BRISBANE QLD 4000

**BY EMAIL: sdnraidc@parliament.qld.gov.au;
committee.reps@aph.gov.au**

Dear Sir/Madam,

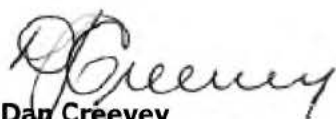
Submission to Parliamentary Committee

Please find **attached** our submission to the State Development, Natural Resources and Agricultural Industry Development Committee.

Kindly acknowledge receipt in due course.

Yours faithfully

CREEVEY RUSSELL LAWYERS



Dan Creevey
Principal

Email: dcreevey@crlawyers.com.au

Vegetation Management and Other Legislation Amendment Bill 2018

Creevey Russell Lawyers

**Submission to the State Development Natural Resources and Agricultural Industry
Development Committee**

March 2018



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1. EXECUTIVE SUMMARY

1.1 Overview of experiences and specialised knowledge of the cattie and beef markets

With a genesis in regional Queensland, Creevey Russell Lawyers have a strong connection to the bush. Our offices are in Brisbane, Toowoomba and Roma, with clients from all across Queensland and New South Wales. We are a law firm that provides specialist expertise on all agribusiness related matters. Creevey Russell Lawyers services many landholders, producers, farmers and associated services industries across numerous rural transactions. We have extensive experience in a wide range of issues that face landholders and the agricultural industry and have acted for a number of clients in relation to vegetation management issues.

1.2 Context: Previous attempts at vegetation management legislation

In March 2018, the *Vegetation Management and Other Legislation Amendment Bill 2018* (the **VMOLA Biii**) was introduced to the Queensland Parliament, which has been referred to the State Development Natural Resources and Agricultural Industry Development Committee for detailed consideration.

Within the explanatory notes, the primary policy objective for the bill is to amend current vegetation management laws to “reinstate responsible clearing laws” – a position taken by the labour Government against the *current* vegetation management laws which the liberal government was responsible in 2013.

The VMOLA Bill has been introduced on the back of the failure of the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* that received harsh public criticism and sought to ‘reinstate’ laws that were effective immediately before the LNP’s reform of the vegetation management framework in 2013. The hypothesis that the previous bill did no more than simply ‘reinstate’ old legislation was quickly criticised when analysis showed its attempt to considerably impact on the rights and livelihoods of farmers and graziers who ultimately suffer the consequences of the state government’s blanket approach attempt at nature conservation.

The previous attempt, sought to remove the defence of ‘mistake of fact’, a defence ordinarily available to people charged with criminal offences. The result of the removal of that defence meant that prosecuting ‘alleged’ offences would have been made significantly easier for the government – a step way over and above that of a simple reinstatement of legislation.

Although the VMOLA Bill no longer pushes for the removal of the above defence, it still takes a large step in affecting rights with respect of people’s land, in particular, the ability for farmers to have the economical and efficient use of their land.

1.3 Progression of Queensland Farming Laws

Date	Commentary
1994	First significant controls of vegetation clearing on leasehold land imposed under the Land Act 1994.
September 2000	Vegetation Management Act 1999 takes effect. First ever controls imposed on vegetation clearing on freehold land. All broadscale clearing on both leasehold and freehold now requires a permit.
May 2003	Halt on new broadscale clearing applications. Halt on new applications for broadscale clearing on both freehold and leasehold land.

May 2004	Vegetation Management and Other Legislation Amendment Bill 2004 includes the phasing out of broadscale clearing. Landholders invited to participate in ballot process to end broadscale clearing.
December 2006	Ballot clearing finalised. No more broadscale clearing allowed beyond this date.
April 2009	A six-month moratorium is imposed on the clearing of all native vegetation within 50 metres of a watercourse in priority reef catchments and endangered regrowth vegetation in rural areas across the state.
October 2009	Regulations take effect for the clearing of regrowth. The moratorium on clearing high-value regrowth ends and new arrangements protecting regrowth take effect.
March 2013	Vegetation Management Framework Amendment Bill 2013.
December 2013	Vegetation Management Framework commences.
March 2018	<p>New laws currently before the Queensland Parliament will reinstate vegetation management controls repealed in 2013. The changes will increase protection for high-value regrowth and remnant vegetation and boost protection for important habitats, including waterways leading to the Great Barrier Reef.</p> <p>Some provisions of the Vegetation Management and Other Legislation Amendment Bill 2018 will commence from 8 March 2018 to minimise the potential for pre-emptive clearing.</p>

2. VMOLA BILL

2.1 The proposed changes to the vegetation management laws can be summed up relatively briefly, being:

High-value regrowth

- Changing the definition of high-value regrowth vegetation - this term will be applicable to vegetation not cleared in the last 15 years rather than since 31 December 1989
- Protecting high-value regrowth along waterways in all 6 Great Barrier Reef catchments
- Regulating regrowth on freehold land, Indigenous land and occupational licences in addition to leasehold land for agriculture and grazing

Habitat and environmental protection

- Boosting protection of essential habitat for near-threatened wildlife
- Requiring a riverine protection permit before removing vegetation in a watercourse
- Prohibiting clearing for high-value agriculture and irrigated high-value agriculture

Monitoring and compliance

- Improving monitoring and other measures to ensure compliance with the law and reporting based on latest science
- Supporting the use of self-assessment for low-risk activities

2.2 Opposition

It has been a common belief among the farmers that the proposed removal of high value agriculture and irrigated high value agriculture shows a total lack of understanding and objectivity. The Queensland Farmers' Federation (QFF) and industry members have expressed their frustration and disappointment over this Bill.

(a) Requirement of Permit to clear land

If landowners have not already locked in a Property Map of Assessable Vegetation (PMAV), they must ensure that they re-familiarise themselves with their updated PMAV which will show what land they can and cannot clear without a permit. Likewise, landowners must ensure that when their current PMAV expires that they make themselves aware of the new clearing restrictions.

Under the fresh legislation, landowners will no longer be able to apply for permits that allow for large-scale clearing of native vegetation for cropping and horticulture. That will result in cattle growers being unable to clear new land to use for fodder production and crop farmers not being able to fully utilise portions of their land. The clearing of high-value regrowth on freehold and indigenous land will be regulated once again.

The changes will negatively impact on rural investment, devalue property, and curb the productivity of food and fibre. As a result, they present major problems for the efficient and productive management of a rural property.

Properly made development applications lodged under the *Planning Act 2016* from 8 March 2018 for the clearing of vegetation (not involving high-value agriculture or irrigated high-value agriculture) will be impacted in so far as the new law relating to essential habitat for near-threatened species, if the law is passed.

(b) Avenues for Jobs and Impact on Economy

The proposed changes, if enacted, will be responsible for preventing clearing for high value crops - which provides a huge economic boost to regional economies and much needed long-term direct and indirect jobs. The laws would make it harder for farmers to grow their businesses which would mean fewer job opportunities in regions like north and far north Queensland.

Moreover, the amendment will affect housing affordability, food security and make battling drought much more difficult.

Without being able to maximise income from their land, farmers are facing significant expenses that they will be unable to meet while parts of their land remain unutilised.

(c) Onus of Proof is too onerous

This plank of the legislation will require farmers who have been accused of illegal land clearing to prove they are not guilty. If one is accused of killing somebody, or assaulting somebody, he/she has a presumption of innocence until proven guilty. This is demonising farmers, who provide high-quality food and fibre, and are a key asset for the economical viability of Queensland and Australia.

(d) Increase of penalties

The existing penalties for offences under current legislation can be up to 1665 penalty units depending on the type of offense. The VMOLA Bill seeks to increase those penalties to a massive 4500 penalty units. In a dollar perspective, the potential penalties for an offence against the VMOLA Bill has increased to \$567,675 up from the previous maximum of \$210,037.75. This change will more than doubles the previous maximum penalties applicable.

(e) Farmers' displeasure

Local farmers are disappointed with the amendments. It has been alleged that the proposed legislation is unbalanced and put limits on farmers and grazier's property rights. There are farmers who have immense love and passion for their land and they see the amendments as "bully-tactics" being used. If introduced, there laws will have a negative impact on the future generations of farmers.

The farmers will now have little control over their properties. Many farmers have spent almost all their life enhancing the country through their own management styles. The Government should have had trust on the farmers to manage their land well and add value to the climate and the country. Their management styles have been always considered in ways which is best for their land, for their country.

Farmers manage vegetation and clear land to grow pasture for livestock to eat, and to plant crops such as sorghum, sugar cane, and a range of fruit and vegetables. The development of more high-value agricultural land is the need of the hour and the rights of the hard-working farmers and graziers should be protected at all cost.

The farmers fear that primary producers will again be dragged through the courts for cutting down trees on their own properties. For the farmers it is hard to plan their business and have long-term succession plans when governments keep shifting the goalposts.

3. CONTACT

3.1 Questions, Comments and Contacts

As a full service law firm servicing rural clients, Creevey Russell Lawyers is pleased to make the submissions contained in this document. If the reader has any questions regarding its contents or wished to seek advice please contact:

Dan Creevey