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State Development, Natural Resources
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Submission on Vegetation Management and Other Legislation Amendment Bill 2018

Property Rights Australia was formed in 2003 to protect and defend the property rights of landowners. Most of our members are in Queensland but we have members in most states. Our philosophy is that if you wish to use or acquire our property that you pay fair and unblighted compensation for it.

There is nothing "balanced", "sustainable" or fair about the Vegetation Management Amendment Bill 2018 and to call it such is delusional and unconscionable. It is nothing more than an attack on the productivity of agricultural industries in Queensland. All claims by the State Labour Government not to be anti-farmer are entirely negated by this bill.

There is no issue in rural Queensland which causes more stress, hurt, frustration and anger than the increasing tightening of vegetation management laws. What is most galling is that much of the urban support for these laws is garnered by the deliberate misrepresentation of issues by radical green groups. Mainstream media has been convinced, and pedalled to the public, that people who are clearing in accordance with their permits and the law have been doing something illegal. Koala deaths from south East Queensland from clearing for urban sprawl and infrastructure have been used to campaign against vegetation management being permitted. This is nothing more than misrepresentation.

This bill is a further attack on the only industry to offer steady returns and jobs to the state. Any other industry purported to replace it is subject to economic downturn while agriculture keeps powering on.

This bill if enacted will destroy communities and jobs. Because of the nature of agriculture and the lag effect, it will not happen overnight but it will happen.

The green organisations which have been pushing for this legislation and more, have already demonstrated, both in Australia and internationally that destruction of lives and rural

communities is not a concern of theirs as long as they can pursue their own, often skewed vision of the world.

Some communities have been particularly targeted.

High Value Agriculture and Irrigated High Value Agriculture will cease to exist. This is a particularly harsh provision for North Queensland and Indigenous Communities both of which should have the same right to develop their economic base as the rest of Australia.

Landowners who had submitted applications for HVA and IHVA before 8th March, 2018 should have them evaluated and granted if they would have been granted under the present legislation. There is a limit to how much information should be required.

Failing that, anyone who applied and has not been granted a permit should be given compensation to the full value of the cost of obtaining the permit including consultants.

Redefining high value regrowth to vegetation that has not been cleared in the last 15 years is a breach of trust and is quite frankly not a long enough timeframe. Economic and seasonal conditions could easily impact this. It could also lead to an unpredicted negative impact in that landowners will be forced to clear more frequently to overcome the limitations of economic or seasonal downturn.

Adding the same conditions to freehold land, indigenous land and occupation licenses as leasehold land to with respect to high value regrowth will be another impost that devalues freehold land and will severely deplete rural communities.

Claims that last time there were tight controls there was record agricultural production is nothing more than smoke and mirrors and is unbecoming of an elected State Government. Rural landowners know that there is a lag effect to these controls and that high production depends on other factors such as seasons. Nevertheless, just because there is a lag effect and the State Government can distance itself from the timeframe when controls will start to bite does not mean that it should be using the same spin and waffle as the green groups do to justify these amendments.

Singled out in the legislation for revocation under S139 is the deeply drought affected Mulga area.

> ***139 Revocation of particular area management plan***
> *(1) The area management plan made by the chief executive under section 20UA called the 'Managing fodder harvesting Mulga Lands Fodder Area Management Plan' is revoked.*
> *(2) For this Act—*
> *(a) a notice for the intended clearing of vegetation given under the plan ceases to have effect when the plan is revoked; and*
> *(b) the clearing can not continue to be carried out under the plan.*

This revocation is effective from 8th March, 2018.

The practical implication of this section is that for a livestock producer trying to maintain nutrition under drought conditions is that he/she not only has to keep a weather eye out for legislation which was not announced in the Notice Paper (another unconscionable feature) but needs to read the Explanatory Notes (31 pages) on what actions to take next. This requires finding and reading the new code, obtaining up to date mapping, submitting a Notification of Intent, with or without computer or phone service for some, by Friday 9th March before he can legally harvest fodder for drought feeding.

Impractical, unfeeling, showing no regard for the realities and stress of being in drought, impossible to comply with, oppressive, vindictive, unconscionable.

Fines

There has been a tripling and quadrupling or fines imposed. Far from being the claimed deterrent, this legislation is so complex that even a producer with the best of intentions to stay within the law can inadvertently break it. The government knows this very well. It also knows that the incidence of deliberate unlawful clearing is very low as far as "crime" statistics go and does not justify increased fines.

We have in recent years seen unwarranted accusations, attacks and publicity by green groups on individuals who have been operating within the law. That the government not only condones these actions by groups such as WWF, The Wilderness Society and the Queensland Conservation Council, but negotiates with them and allows them to dictate policy is not acceptable.

Restoration Notices

Restoration Notices are a historical feature of this legislation which PRA has long campaigned against as they are based on the reasonable belief of an authorised officer rather than a court process, do not have a legislated standard of proof, are unclear on what restoration penalties may be imposed and there is no court appeal. There is also the ability to require restoration of multiples of the area believed to be cleared unlawfully. A restoration notice goes on title.

Fines for failure to implement a Restoration Notice increase from 1665 penalty units to 4500 penalty units or $567,675.

According to the Explanatory Notes this is to bring it into line with the Planning Act 2016.

The Planning Act is positive in its approach and allows for appeal and the opportunity to apply for any necessary permits while the Vegetation Management Act is punitive from the start with no opportunity to put a case.

The Planning Act allows for the subject to be given a "show cause" notice prior to an enforcement notice and a subject has 20 business days make representations about the notice to the enforcement authority. He is also allowed to apply for a development permit if appropriate and when the enforcement notice is given it is a requirement that the subject is informed that they have **a right of appeal** against the giving of the notice unlike the Vegetation Management where there **is no appeal**, no "show cause notice" and no ability to make representations. There are more protections built into the Planning Act so they are not comparable.

The only time a landowner gets to make representations under the Vegetation Management Act is if the Chief Executive decides to amend the restoration plan which he can do at any time.

Under the Planning Act there is a legislated process for the enforcement notice to be removed from the title. No such process exists in the Vegetation Management Act.
It is unconscionable that a fine of such magnitude can be levied when there is no "show cause" notice, no right of appeal, no standard of evidence and no standard of conduct for the authorised officer included in the legislation. The Planning Act has comparable penalties in place against an authorised officer who acts against the spirit of the Act. (S168(7) Planning Act 2016 4500 penalty points).

The Explanatory Notes acknowledge the breach of the Legislative Standards Act only in the respect that the legislation is unclear on how punitive restoration notices can be. There are many more area where this instrument breaches any notion of fairness or justice.

With the lack of accountability and the enormity of the potential impact, it is NOT like a traffic fine, which, unlike restoration notices, does have an appeals process. There is also no legislated timeframe or process to have the restoration notice, which binds successors and assigns, removed from a title deed. It does breach fundamental legislative principles and should be repealed in total.

Penalties
Some of those charged with vegetation offences have both fines following a courtroom hearing and subsequently a restoration notice served on them.

That is clearly double dipping and the imposition of two penalties and is contrary to natural justice.

Enforceable Undertakings 68CC
Enforceable undertakings are a new concept in vegetation management. They are voluntary and appear to be designed to avoid court action. How well they work will depend entirely on how they are administered. There is plenty of room for abuse and fines for non-compliance are huge. Protections should be built into the legislation.

No proceeding can be taken against a person in relation to a vegetation offence if the person is complying with or has complied with the enforceable undertaking under this Act or the Planning Act.

As with much of this Act there are many ways in which the agreement can be amended or suspended (after an unspecified show cause process) so that the subject may never be sure that there is an agreement.

For example, in S68CH in relation to enforceable undertaking agreements: -

> *(b) the undertaking was accepted on the basis of a miscalculation of the impacts of the contravention or alleged contravention;*
> *68CH(8)*
> *(8) In this section— impacts, of a contravention or alleged contravention, include the following—*
> *(a) loss of vegetation;*
> *(b) loss of biodiversity;*
> *(c) land degradation;*
> *(d) loss of connectivity;*
> *(e) altered ecological processes;*
> *(f) contributions to greenhouse gas emissions.*

It is also not clear that the subject will not be required to give up any areas or change any category designations to his detriment such as a change from Cat X to Cat A. There are few transparent reasons why any landowner would wish to make this change.

S68CC(7) requires that in the event of an agreement being reached after a proceeding has been commenced the Chief Executive must take all reasonable steps to have the proceeding discontinued as soon as possible.

This too open and there should be legislated timeframes for the Chief Executive to adhere to and penalties for the Chief Executive such as the penalty under the Planning Act for certain failings of authorised persons of 4500 penalty points.

Penalties for contravening an enforceable undertaking are potentially large at 6,250 penalty points ($788,437) for a wilful breach. Costs and costs of investigation can also be added.

30A Power to enter place on reasonable belief of vegetation clearing offence
This whole section seems to be based on the premise that there is unlawful clearing going on all the time and the government needs to reserve for itself almost unlimited power to enter at will without a warrant. This is clearly not the case and given the extravagant claims of green groups about alleged illegal clearing that have proved to be incorrect, there is the huge potential here for mischievous abuse and harassment. These clauses cannot be

accepted until there are more protections in place to ensure that it is not just used for harassment and never at the behest of green groups.

Entry should ONLY be under warrant and with 24 hours' notice unless a stop work notice is being issued. There needs to be a short-legislated timeframe (such as 24 hours) when a stop work notice must be lifted if the activity is not unlawful or is an inadvertent breach.

Category R and Great Barrier Reef

All that we have been shown with the tens of millions of dollars spent on modelling trying to demonstrate the adverse effect of tree clearing on the GBR is that when it rains a lot in a catchment, and watercourses flood, there is more sediment, Dissolved Inorganic Nitrogen (DIN) and Dissolved Inorganic Phosphorus (DIP), which occur naturally in soil, than when it does not rain. The probability is, that it has always been so. There is no empirical evidence, just assumptions.

The freshwater itself is most likely to damage coral.

There is also a great deal of literature which supports the fact that tree cover with insufficient grass cover will lead to more erosion rather than less. This evidence has been presented many times but Labor and the green groups prefer not to take account of it.

Property Rights Australia has already submitted on claims about the Great Barrier Reef and the modelling on which claims are made for increased regulation.

I attach Appendix A which is an extract from a previous submission.

Compensation

That duly elected Westminster style governments can contemplate introducing legislation that blights property value and not only puts a brake on productivity increases but decreases present productivity without compensation is a testament to how far our property rights have been eroded. Legislation such as this places the burden for a public benefit or perceived public benefit on the heads of a very small section of the community.

This public benefit, private cost has been acknowledged by the Productivity Commission.

Recommendations

Property Rights Australia recommends that this legislation should not be passed.

Right of entry should be by warrant only and only with 24 hours notice.

If the matter is urgent a stop work notice should be issued. It must have legislated short timeframes in place to ensure that it is lifted immediately if clearing is being done under a permit, accepted code or a PMAV.

The inclusion of freehold land, indigenous land and occupation license under the high value regrowth regulation is to devalue them without compensation.

Restoration notices and enforceable undertakings need to be fair and achievable with a limited timeframe. Restoration notices must have a full right of appeal and early opportunities to "show cause" and acquire the necessary permits as is the case under the Planning Act.

There needs a legislated means of having the restoration notices removed from title as is the case for the equivalent instrument under the Planning Act.

Once restoration notices and enforceable undertakings are in place they should not be varied to the detriment of the subject unless misinformation was wilfully given.

Existing fines are more than sufficient. Businesses can already be ruined by them. The Planning Act has more protections and is used by wealthier businesses, namely miners and developers.

There is no natural justice in levelling higher fines while making farmers unprofitable and inefficient.

To single out the Mulga drought feeding area and withdraw the area management plan while 86% of the state are drought declared and more in drought conditions is irresponsible and unconscionable. The State must be as mindful of animal welfare considerations as livestock owners are.

Category R declarations are based on poor scientific knowledge. To target farmers based on the irrational claims of green organisations is unacceptable.

"Authorised officers" have been given a great deal of power under this legislation. It needs to have legislated responsibilities and penalties to ensure that power is not abused. That would simply bring it in line with the Planning Act.

Entry of authorised officers must be in accordance with livestock owner's bio-security plans so that they can fulfil their Livestock Production Assurance (a legal document) obligations. Certified vehicle washdowns are a must.

Conclusion

There are fewer than 87,000 registered primary producers in Australia. Fewer and fewer of our young people are taking up primary production. Government costs, imposts and vindictive legislation contribute to this in no small way.

Governments which accede to demands for legislation such as this are condemning the Australian public to an uncertain future of imported food of doubtful origin and safety as has already been the case with seafood.

Yours sincerely

Joanne Rea

Joanne Rea
Chairman
Property Rights Australia

Appendix A

Is Agriculture Being condemned by Hypothesis?

A reasonable scan of available literature about increased sediment and accompanying nutrients throws up the words "estimate" and "modelling" and other speculative language. Similarly, questions about whether they actually cause harm to the GBR ecosystems come up with the same sorts of speculative language with "may" and "circumstantial" being the norm. The paper claims that "*Increased nutrient levels are also **thought to be** linked to outbreaks of the coral eating crown-of-thorns starfish."*[1]

This is the case even where measures such as core samples dating back to the 1400's are available. This leaves many of the broad brush claims about "pollution" caused by grazing and agriculture to the demi-monde of the pseudo-science world, the environmental organisations.

The more reputable parts of the scientific community, mostly funded one way or another by government, now concentrate on "resilience", (another indeterminate and undefined term) of coral reefs to climate change with improved water quality. Even if they are wrong they can emerge with reputations intact and claim that we did not do enough.

In the RIS documents there are hypotheses which are made as statements of fact. For example,

"Pollution levels to the GBR have increased substantially since European settlement."

Not only is it incumbent on government to ensure that public money spent is anchored in good science supported by the facts but that money which will be required to be spent by agricultural producers is based on fact and not hypothesis.

If there are to be significant costs attached to agriculture, and it would appear there will be, the very least that the government needs to do is ensure that the initial assumptions on which all relevant modelling is based are based in fact rather than hypotheses. They should also be publicly available and part of the public discussion in an accessible form. PRA has called for this for some time. Now it is incumbent on the government to ensure it happens with qualified advocates for and on behalf of agriculture available. PRA would like to see an independent review of the science by scientists who are not aligned with any green organisation nor dependent on government funding.

The linkage of starfish outbreaks with excess nutrients is entirely speculative and ignores the many recorded outbreaks in oceanic regions where nutrient runoff could not be a factor. (Dr. Walter Starck)

[1] http://www.ehp.qld.gov.au/assets/documents/reef/enhancing-reef-protection-regulations-ris-summary.pdf *p3/11*