LBR 12/00 Vegetation Management Amendment Bill 2000

The Queensland Government passed the *Vegetation Management Act 1999* (Qld) in December 1999 in order to regulate, through development control measures, clearing of native vegetation on freehold land in areas of particular environmental sensitivity. Due to a funding shortfall which the Queensland Government wanted the Commonwealth Government to fill, the legislation has not been proclaimed.

Eight months of discussions with stakeholders and the Commonwealth Government about funding issues then followed. On 24 August 2000, with no agreement about funding assistance from the Commonwealth Government in sight, the Vegetation Management Amendment Bill 2000 (Qld) was introduced into the Queensland Parliament. It will remove controversial parts of the legislation that the Queensland Premier assured farmers would not be brought in without adequate funding to compensate affected landowners.

Nicolee Dixon

Legislation Brief 12/00
September 2000

LEGISLATION BRIEF
ISSN 1443-7910
ISBN 0 7242 7894 X

This Legislation Brief was prepared to assist Members in their consideration of the Bill in the Queensland Legislative Assembly. It should not be considered as a complete guide to the legislation and does not constitute legal advice.

The Brief reflects the legislation as introduced. The *Queensland Legislation Annotations*, prepared by the Office of the Queensland Parliamentary Counsel, or the *Bills Update*, produced by the Table Office of the Queensland Parliament, should be consulted to determine whether the Bill has been enacted and if so, whether the legislation as enacted reflects amendments in Committee. Readers are also directed to the relevant *Alert Digest* of the Scrutiny of Legislation Committee of the Queensland Parliament.

Inquiries should be addressed to:

Director, Research Publications & Resources
Queensland Parliamentary Library
Parliament House
George Street, Brisbane QLD 4000
Director: Ms Mary Seefried. (Tel: 07 3406 7116)

Information about Research Publications can be found on the Internet at:

http://www.parliament.qld.gov.au/parlib/research/index.htm

CONTENTS

1 INTRODUCTION

The Queensland Government passed the *Vegetation Management Act 1999* (Qld) in December 1999 in order to regulate, through development control measures, clearing of native vegetation on freehold land in areas of particular environmental sensitivity. Due to a funding shortfall which the Queensland Government wanted the Commonwealth Government to fill, the legislation has not been proclaimed.

What followed was eight months of discussions with stakeholders and with the Commonwealth Government about funding issues. On 24 August 2000, with no resolution in sight, the Vegetation Management Amendment Bill 2000 (Qld) was introduced into the Queensland Parliament. It will remove controversial parts of the legislation that the Queensland Premier assured farmers would not be brought in without adequate compensation to affected landowners.

2 BACKGROUND

The policy framework into which the *Vegetation Management Act 1999* (Qld) (the *VM Act*) fits is set out in a Background Briefing Kit produced by the Parliamentary Library in December 1999.[1] A recent newspaper article (see Appendix – 'Clippings') provides a very good background to the history of land clearing in Queensland.[2]

2.1 LEGAL REGIME PRIOR TO IMPLEMENTATION OF THE VEGETATION MANAGEMENT ACT

Prior to the *VM Act*, Queensland was the only State not to regulate land clearing across all tenures.[3]

---

1 Joanna Fear and Mary Seefried, *Vegetation Management Bill 1999*, Background Briefing Kit No 1/99, Queensland Parliamentary Library, 1999. The kit includes a number of relevant extracts from legislation, policy documents, Government publications, articles, transcript material and Ministerial Media releases. Copies are available to Members (for perusing or copying) from the Parliamentary Library**.**

2 Phil Dickie, 'Death by a thousand cuts', *Courier Mail*, 14 July 2000, p 19.

3 Hon R J Welford MLA, Minister for Environment and Heritage and Minister for Natural Resources, Vegetation Management Bill 1999 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 8 December 1999, pp 6081-6084, p 6082.

Prior to the *VM Act* coming into force, clearing on **leasehold land** is governed by:

- the provisions of the *Land Act 1994* (Qld) which provide for management of trees on leasehold and other State lands. Chapter 5 Part 6 requires a person to have a permit for clearing in those areas, the granting of which is conditional on a number of considerations that the Chief Executive of the Department of Natural Resources (DNR) must take into account, including broad environmental factors;
- the Land Regulation 1995 (Qld);
- the Broadscale Tree Clearing Policy, expanding on the matters that the Chief Executive must consider in granting a tree clearing permit. It sets out three conservation categories that have to be maintained:
    - **endangered and vulnerable** – vegetation communities that have **less than 10%** of their original distribution intact should **not** be cleared;
    - **of concern** – vegetation communities that have between **10% and 30%** of their original distribution intact may be cleared provided the community does not move into the first category;
    - **not of concern** – where **more than 30%** of original distribution remains intact clearing may occur be cleared provided the community does not move into the second category;
- the Local Tree Clearing Guidelines which adapt the Broadscale Tree Clearing Policy to local conditions (eg status of tree clearing, any special local issues such as thinning in retention areas) that the Chief Executive must also take into account when deciding an application for a tree clearing permit.

Land clearing on **freehold land** is not subject to the *Land Act 1994* (Qld). It is instead controlled in a piecemeal fashion by provisions of the *Water Resource Act 1989* (Qld) (re clearing beds and banks of watercourses); the *Nature Conservation Act 1992* (Qld) (insofar as rare and endangered species are concerned); and the *Environmental Protection Act 1994* (Qld) (providing for Codes of Practice by industry) and local government laws. The main source of vegetation management is through local government laws made under the *Local Government Act 1993* (Qld) which enable local governments to make vegetation protection orders for the protection of significant vegetation on freehold land. Under such laws, a permit must be obtained to damage protected areas. The problem is that the controls vary between local government areas and not all local governments have produced laws dealing with vegetation management.

During 1999, the number of applications for vegetation clearing on leasehold land increased. The Queensland Premier reported that up to 21 December 1999, 496 permits had been approved for a total of 604,768 hectares. It is reported that between January and June 2000, permits were issued to clear 166,000 hectares of

virgin bush and 265,000 hectares of regrowth.[4] However, the Queensland Natural Resources Minister has said that the virgin bush in question was not in areas of 'endangered' ecosystems and that what had occurred was merely normal land clearing.[5] The Minister has, however, noted that about 57% of land clearing occurred on freehold land over which the Government had no regulatory control.[6]

Recently, the Queensland Natural Resources Minister intervened to prevent the DNR from issuing permits to allow clearing on leasehold land adjacent to a national park to make way for fodder crops (which included the virulent national weed hymenachne grass).[7] In another incident, it is alleged that contractors working for Ergon Energy destroyed replanting work in the Wet Tropics Heritage Area along a 10 kilometre powerline easement opening the way for proceedings being taken against that government agency.[8]

2.2 MOVES TOWARDS REFORM

In November 1997, the Borbidge Government signed a Partnership Agreement with the Commonwealth, concerning the availability of funds to Queensland under the Natural Heritage Trust. The Agreement committed the Queensland Government to *reverse the long-term decline in the quality and extent of Australia's native vegetation cover…* and, on both leasehold and freehold land, to have *effective measures in place to retain and manage native vegetation, including controls on clearing.* A task force was subsequently set up to examine the implications of that Agreement.

In March 1999, the Queensland Minister for Environment and Heritage and Minister for Natural Resources established the Vegetation Management Advisory Committee (VMAC), to consider native vegetation management across all land tenures. A number of key groups were represented on the VMAC including the Queensland Farmers Federation, the Queensland Conservation Council, the Local Government Association and the Urban Development Institute of Australia. The

---

4 Greg Roberts, 'Farmers to clear more Queensland bush', *Sydney Morning Herald*, 29 July 2000, downloaded from Internet Site http://www.smh.com.au/news .

5 Greg Roberts, 29 July 2000.

6 Hon P Beattie MLA, Queensland Premier, 'Queensland aims to have appropriate land clearing controls', Ministerial Media Statement, 7 October 1999.

7 Phil Dickie, 'Welford clamps down on clearing', *Courier Mail*, 20 July 2000, p 6; 'Tree clearing bonus for graziers', *Courier Mail*, 14 July 2000, p 5.

8 Siobhain Ryan, 'Tree clearing increases', *Courier Mail*, 29 August 2000, p 15.

VMAC produced a report indicating that action needed to be taken to protect 'endangered' and 'of concern' vegetation communities across freehold and leasehold land. The VMAC consulted with all relevant stakeholders regarding appropriate measures to address land clearing issues.

In August 1999, Senator Hon Robert Hill, Commonwealth Minister for the Environment and Heritage, indicated that the continuation of funding to Queensland under the Natural Heritage Trust was conditional upon Queensland taking action on land clearing. In a letter to the Queensland Natural Resources Minister, Senator Hill urged the Queensland Government to introduce measures to reduce the net loss of native vegetation in Queensland.[9]

3 LEGISLATIVE HISTORY

The *VM Act* was the outcome of widespread consultation with rural, environmental groups and local government bodies, including the extensive consultation programme engaged in by the VMAC.

3.1 THE VEGETATION MANAGEMENT ACT 1999

The Vegetation Management Bill was introduced into the Queensland Parliament on 8 December 1999 and passed on 10 December 1999. The Act is expressed to apply only to controlling the clearing of vegetation on **freehold land** (defined to also include land in a freeholding lease as defined in the *Land Act 1994*).[10] **Vegetation** is defined to mean a native tree or plant, other than a grass or mangrove.[11]

The *VM Act* was not immediately proclaimed in order to allow the Queensland Government to seek, from the Commonwealth Government, financial support to compensate affected landholders in meeting new obligations imposed upon them before they undertook clearing of vegetation on freehold land.

The *VM Act*, in its original form, sought to regulate the clearing of vegetation on freehold land to –

---

9 See Hon R J Welford MLA, Vegetation Management Bill 1999 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, p 6082, quoting from the letter from Senator Hill of 9 August 1999.

10 See *VM Act*, s 7(1) and the Schedule.

11 *VM Act*, s 8.

- preserve remnant **'endangered'** and **'of concern'** regional ecosystems and vegetation in areas of high conservation value and areas vulnerable to land degradation -

  As noted earlier, **'of concern'** regional ecosystems are those vegetation communities that have between **10% and 30%** of their original distribution intact (ie where between 70% to 90% of that original vegetation has been cleared), or more than 30% remains but the remnant vegetation remaining is less than 10,000 hectares. **'Endangered'** regional ecosystems are those with **10% or less** of their original vegetation intact, or where 10%-30% remains intact but the remnant vegetation remaining is less than 10,000 hectares.
- ensure that clearing does not cause **land degradation** (eg soil erosion, rising water tables, the expression of salinity, mass movement by gravity of soil or rock, stream bank instability, or a process that results in declining water quality);
- maintain or increase biodiversity;
- maintain ecological processes; and
- allow for ecologically sustainable land use: **section 3**.

The proposed provisions would have protected approximately 1.8 million hectares of freehold land, protecting threatened regional ecosystems as well as individual threatened species where species have shrunk to below 30% of their original state. However, clearing of regrowth would generally be exempt from development controls unless occurring in 'endangered' or 'of concern' regional ecosystems.[12]

The Premier gave two guarantees to farmers. The first was that the *VM Act* would not apply to existing permits to clear leasehold land and, second, that there would be no moratorium on broadscale clearing.

The Queensland Government committed $111 million over four years to support the arrangements under the *VM Act* (eg programmes to promote good farming practices; managing the permit approval system; and landscape mapping, planning, assessment and monitoring). However, to meet the level of funding required, $103.2 million was sought from the Commonwealth Government to support the legislation and to assist any affected landholders.[13]

---

[12] Hon P Beattie MLA, Queensland Premier, 'Beattie announces tree clearing regulations', Ministerial Media Statement, 8 December 1999.

[13] Hon R J Welford. MLA, Minister for Environment and Heritage and Minister for Natural Resources, Vegetation Management Amendment Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 24 August 2000, pp 2782-2784, p 273.

At the time, the Premier told the Queensland Parliament that he would be again appealing to the Commonwealth Environment Minister to make available "*Queensland's fair share of the hundreds of millions of dollars that is specifically included in his Budget for this purpose…*".[14] Senator Hill's response was that the Queensland Premier was incorrect in stating that $100 million was 'due' to Queensland or that the Commonwealth had agreed to providing that amount because the Commonwealth had never agreed to a figure. Senator Hill said that other states managed to introduce controls without Commonwealth assistance and, in any event, the Commonwealth had provided over $110 million to Queensland over the past three years through the Natural Heritage Trust as well as funding earmarked for greenhouse gas abatement measures.[15]

3.2 THE VEGETATION MANAGEMENT AMENDMENT BILL 2000

The Queensland Natural Resources Minister introduced the Vegetation Management Amendment Bill 2000 (the Bill) into the Queensland Parliament on 24 August 2000 when it appeared to the Queensland Government that no agreement with the Commonwealth Government over funding was about to happen. The Queensland Minister for Natural Resources said that this impasse over funding left the Queensland Government with no choice but to amend the *VM Act* insofar as controls on **freehold land** apply.[16]

The main function of the Bill is to temper those provisions in the *VM Act* that relate to remnant **'of concern'** regional ecosystems. The Act will still protect native vegetation on freehold land in **'endangered'** regional ecosystems and those declared to be areas of **high conservation value** or areas **vulnerable to land degradation**. The controls on leasehold land under the *Land Act 1994* (Qld) will not distinguish between 'of concern' and other areas.

The Minister stated that the amendments contained in the Bill were to ensure that the burden for protecting important vegetation communities and managing land sustainability does not fall unfairly on a few landowners.[17]

---

[14] Hon P Beattie MLA, Queensland Premier, 'Beattie announces tree clearing regulations', Ministerial Media Statement, 8 December 1999.

[15] Hon the Senator Robert Hill, Commonwealth Minister for the Environment and Heritage, 'Hill corrects Beattie on land clearing', Commonwealth Media Release, 8 December 1999.

[16] Hon R J Welford MLA, Vegetation Management Amendment Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, p 2784.

[17] Hon R J Welford MLA, Vegetation Management Amendment Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, p 2784.

As a consequence of changes made by the Bill, the purposes of the *VM Act*, spelt out in section 3, no longer includes the regulation of clearing on freehold land to preserve 'remnant of concern regional ecosystems': **clause 3**.

The Government intends to rely upon the regional vegetation planning process and regional vegetation planning committees to voluntarily extend protection to certain freehold land containing 'of concern' ecosystems.[18]

It appears that the Bill will protect about 5% of the State. However, according to the Queensland Conservation Council (QCC), while it will protect some endangered ecosystems, it does not address long-term degradation problems, such as salinity, and will still allow considerable areas of threatened bushland to be cleared.[19] The QCC also claims that because the *VM Act* was passed eight months ago, but not proclaimed, considerable 'panic clearing' has destroyed much of the States endangered bushland anyway.[20] Three other conservation groups have also expressed their disappointment in the amendments. A campaigner from the Wilderness Society has claimed that even before the changes were made, the *VM Act* provided only basic controls found in many other states' legislation.[21]

The Opposition Leader, Mr Borbidge, considers that the effect of the legislation is to place mandatory limits on nearly a million hectares of freehold land without any compensation and indicated that farmers were being forced to shoulder the cost of environmental measures.[22]

4 HOW DOES IT ALL WORK?

The framework for controlling clearing of native vegetation on **freehold land** is to be provided through the *Integrated Planning Act* 1997 (Qld) (the *IP Act*), as modified by the Bill. State land continues to be regulated through the *Land Act 1994* (Qld).

---

18 Hon R J Welford MLA, Vegetation Management Amendment Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, p 2784.

19 Simon Royal, 'Queensland faces backlash over moves to water down land clearing laws', *Transcript, 7.30 Report*, on the ABC Internet Site at http://www.abc.net.au/7.30/ , 23 August 2000.

20 Greg Roberts, 'Queensland yes to bush clearing', *Age*, 24 August 2000.

21 Brian Williams, 'Tree lobby fights back', *Courier Mail*, 25 August 2000, p 2.

22 Jacob Greber, 'Tree-felling laws aim to protect freehold land', *Courier Mail*, 24 August 2000, p 2.

The *VM Act* (as modified by the Bill) amends the *IP Act* to enable clearing of vegetation on freehold land to be brought within the development assessment system provided under the Integrated Development Assessment System (IDAS). IDAS was established under the *IP Act* for the integration of State and local government assessment and approval processes for development.[23] Note that this system only applies to freehold land, not to State land regulated under the *Land Act 1994*.

'**Development**' is defined to include a number of activities including 'operational work'.[24] The definition of '**operational work**' in s 1.3.5 of the *IP Act* previously excluded clearing of vegetation on freehold land, so that clearing on freehold land did not constitute 'development' for the purposes of the *IP Act*. Section 76 of the *VM Act* now ensures that clearing of vegetation (whether native or not) on freehold land is 'operational work', allowing it to be regulated under the *IP Act* through a local government planning scheme or as 'assessable development' in Schedule 8 of the *IP Act*. It will be an offence to clear land in breach of an approval or without an approval.[25]

4.1 NATIVE VEGETATION CLEARING IS ASSESSABLE DEVELOPMENT

Under the *IP Act*, all development is **exempt development** unless it is **assessable development** or **self-assessable** development.

Assessable development is that development which is set out in **Schedule 8 Part 1** of the *IP Act* or declared to be 'assessable development' in a local government planning scheme.[26] A development permit must be obtained for assessable development and carrying out of assessable development without such permit is an offence under the *IP Act*. The permit has the effect of controlling the development that occurs under it.

By virtue of amendments made by the *VM Act*, the clearing of native vegetation on freehold land **is** assessable development under the *IP Act*, except in designated circumstances: **Schedule 8, Part 1, Item 3A**. Thus, if one wishes to clear **any** native vegetation on freehold land, one must lodge an application under the *IP Act*

---

[23] *IP Act*, s 3.1.1.

[24] *IP Act*, s 1.3.2.

[25] See the *VM Act*, Part 3; *IP Act*, ss 3.1.4, 4.3.1.

[26] *IP Act*, Schedule 10 'Dictionary'.

for assessment under IDAS, unless any of the exceptions in **Schedule 8, Part 1, Item 3A** apply, or it is 'exempt development' not requiring approval.

Self-assessable development is defined as that development specified in **Schedule 8 Part 2** of the *IP Act* or that is declared to be such in a local government planning scheme. Under the *IP Act*, self-assessable development must comply with applicable codes or else an offence is committed.[27]

Exempt development is specified in **Schedule 8 Part 3** of the *IP Act*. No permit is needed to engage in that type of development.

Under IDAS there are two types of assessment which are applied in the process of determining applications for assessable development – **impact assessment** (a wider assessment of the environmental effects of development having regard to a range of matters eg the planning scheme and relevant State planning policies) and **code assessment** (where the application is assessed for its compliance with the applicable codes - eg the assessment of building work for its compliance with the Standard Building Law). The undertaking of operational work that is the clearing of native vegetation on freehold land is generally 'assessable development' under IDAS and must be assessed against any applicable codes.

4.1.1 Codes For IDAS

The Bill amends section 20 of the *VM Act* to make it clear that **applicable codes**, against which land clearing on freehold land is to be assessed under IDAS are:

- the Codes in the **regional vegetation management plans**; or
- if there is no plan, Codes in the **State Policy**; or –
- where relevant, Codes in an **interim declaration** where the declared area is not covered by a regional vegetation management plan.[28]

The regional vegetation management plans and State policies are the main vehicles for producing Codes used under IDAS to determine whether clearing of native vegetation should be approved. The Government considers that regional vegetation management plans are a crucial feature of the vegetation management framework.[29]

---

27 *IP Act*, s 4.3.2.

28 See Vegetation Management Amendment Bill 2000 (Qld), clause 10, amending s 20 of the *VM Act*.

29 Hon R J Welford MLA, Vegetation Management Amendment Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, p 2784.

A Code (in any of the relevant abovementioned documents) will set out what its purposes are eg to protect remnant endangered regional ecosystems; to protect areas of high nature conservation value; maintain sustainable productive potential and use of agricultural land. It then describes the ways in which those purposes are to be achieved eg the purpose of protecting remnant endangered ecosystems is achieved by not clearing in any such area except in extreme circumstances (which are then set out).

Before the amendments to the *VM Act* effected by the Bill, the Code parts of the abovementioned documents would have made the protection of remnant 'of concern' ecosystems a purpose of the Code. It would have then indicated that no clearing should take place (except in limited situations) in areas containing remnant 'of concern' regional ecosystems as well as in remnant 'endangered' regional ecosystems, or in declared areas of high nature conservation value, or in declared areas vulnerable to land degradation.

Thus, the effect of the Bill is that the Codes will not include 'of concern' regional ecosystems as part of the assessment process so it is more likely that an application to clear land in 'of concern' areas may be approved, unless it falls foul of other assessment criteria.

State Policies

Section 10 of the *VM Act* obliges the Minister to prepare a **State policy for vegetation management** on freehold land, which includes a Code for land clearing. It will be gazetted once approved by the Governor in Council. A draft State policy is currently undergoing consultation with stakeholders, particularly with respect to the contents of the Code.

Regional Vegetation Management Plans

Division 3 of the *VM Act* provides for the Minister to make **regional vegetation management plans** applying to freehold land in regions of the State and each plan must include a Code for land clearing. Regional vegetation management plans may declare an area of a region to be an area of high conservation value or an area vulnerable to land degradation. Previously, only freehold land could be shown on a regional vegetation management plan but the Bill now provides that other land, eg leasehold land, can be included.[30]

In preparing a plan, the Minister must consult each local government whose area is affected by it; and any advisory committee or regional vegetation management

---

[30] Vegetation Management Amendment Bill 2000 (Qld), clause 4.

committee set up by the Minister to advise about vegetation management: **section 13**. In addition, the Bill now obliges the Minister to give each landowner within the area proposed for declaration under the plan, written notice inviting submissions. Thus, landowners will have the opportunity to comment on matters such as the scientific validity of aspects of the plan or aspects of the Code against which applications for land clearing will be assessed.[31]

It is anticipated that the development of the Code part of the plans, against which applications for land clearing would be assessed, would have input from local communities.

Declarations

The Minister can also prepare a declaration that an area is one of high conservation value or is an area vulnerable to land degradation.[32] The intention is that the declaration will inform landholders and interested persons about the location of the relevant areas and that the process of making the declaration is a transparent one.[33]

The Minister must engage in the same consultation process as for making regional vegetation management plans and, again, provide written notice to landowners inviting submissions about the declaration. The Minister must also prepare a proposed Code for clearing vegetation in the declared area. Section 19 sets out the relevant criteria upon which the Minister's decision to make a declaration must be assessed.

The Governor in Council may then make the declaration by way of gazettal notice. If there is a regional vegetation management plan for the declared area, the declaration amends that plan.[34]

Interim declarations may be made, to apply only where urgent action is needed to protect an area. They remain in force a maximum of three months: **section 18**. It is an offence to clear vegetation in the declared area for the duration of the interim declaration.[35]

---

31 Vegetation Management Amendment Bill 2000 (Qld), clause 5 amending s 13 of the *VM Act*.

32 *VM Act*, s 16.

33 Vegetation Management Bill 1999 (Qld), Explanatory Notes, pp 2118-2146, p 2123.

34 Vegetation Management Amendment Bill 2000 (Qld), clause 7 amending s 17 of the *VM Act*.

35 Vegetation Management Amendment Bill 2000 (Qld), clause 8.

4.1.2 Situations Where No Approval to Clear is Necessary

If any of eight exceptions in **Schedule 8, Part 1, Item 3A** of the *IP Act* apply, no development application needs to be made to clear freehold land (ie it is not assessable development), unless there is an applicable local government planning scheme or local law.

A development application is **not** required to clear native vegetation on freehold land if the clearing is:

- prior to 5 March 2001, the natural and ordinary consequence of other assessable development (ie the clearing itself is not assessable development even though the other development is);
- to the extent necessary to build a single residence and associated structures eg a shed. Thus, it is not intended to prevent land clearing to build a house;
- necessary for essential management (eg maintaining fire breaks for protection of buildings and to prevent vegetation falling on persons – see definition in section 84(5));
- necessary for routine management (eg establishing a necessary fence, road, or other infrastructure on less than five hectares; or is not remnant vegetation; or is for supplying fodder for stock during drought) but not in:
  - an area of high nature conservation value; and
  - an area that is vulnerable to land degradation; and
  - a remnant endangered regional ecosystem shown on a regional ecosystem map;
- in urban areas other than in an area of high nature conservation value or in a remnant endangered regional ecosystem shown on a regional ecosystem map;
- in a non-urban area for the reconfiguration of a lot (not involving the opening of a road), or the natural and ordinary consequence of carrying out other development on an area of less than five hectares in an area that is outside:
  - an area of high nature conservation value; and
  - an area that is vulnerable to land degradation; and
  - a remnant endangered regional ecosystem shown on a regional ecosystem map.

A 'regional ecosystem map'[36] is one which is certified by the Chief Executive of DNR and shows, for the area:

- remnant endangered regional ecosystems; and

---

[36] Defined in Vegetation Management Amendment Bill 2000 (Qld), clause 25 amending the Dictionary in the Schedule of the *VM Act*.

- remnant 'not of concern' regional ecosystems; and
- numbers that reference regional ecosystems; and
- declared areas of high nature conservation value; and
- declared areas vulnerable to land degradation.

If the development falls under **Schedule 8 Part 3** as '**exempt development**', no permit is required. The most relevant exemptions to land clearing, as amended by provisions of the Bill, are:

- operational work associated with agricultural use, other than the clearing of native vegetation that is 'assessable development'; and
- weed or pest control, unless it involves the clearing of native vegetation that is 'assessable development'; and
- the 'use of fire under the *Fire and Rescue Authority Act 1990* (Qld)'. The amendment effected by the Bill makes it clear that fire hazard reduction is not the only circumstance in which vegetation can be cleared; and
- the use of premises for forest practices. 'Forest practice' is comprehensively defined in the Dictionary in the Schedule to the *VM Act* to include planting, felling, or removing trees in plantations or in native forests in accordance with certain controls.

4.1.3 The IDAS Process

The stages under IDAS through which a development application progress are:

- the application stage – where application by way of an approved form, accompanied by the relevant **fee**, is made to the **assessment manager**. The 'assessment manager' is normally the local government.

Under the *VM Act*, the 'assessment manager' is usually the Chief Executive of the DNR. If the clearing is associated with other development the assessment manager will be the relevant local government, with the Chief Executive as the concurrence agency.

The *VM Act* modifies certain aspects of the *IP Act* so that if the Chief Executive is the assessment manager or concurrence agency for the application, the applicant must submit a **property vegetation management plan**. That requirement parallels the need for leaseholders to develop tree management plans (now renamed 'property vegetation management plans')[37] for applications

[37] See Vegetation Management Amendment Bill 2000 (Qld), cls 18-20 amending the *Land Act 1994* (Qld).

to clear vegetation on leasehold land. The property vegetation management plan must supply details of proposed clearing on the entire property;[38]

- the information and referral stage – where the assessment manager and any concurrence agency may ask the applicant for further necessary information and may obtain advice from other referral agencies. Each concurrence agency (for the purposes of the *VM Act*, will be the Chief Executive) must assess the development application against its laws and policies, having regard to any planning schemes in force, State planning policies, land designation, and any applicable code;
- the notification stage – where people have an opportunity to lodge submissions and objections that must be taken into account in deciding the application; and
- the decision stage – where the assessment manager assesses the application to determine whether approval should be given. If any part of the application requires code assessment it must be assessed against applicable codes.[39] The *VM Act* modifies the *IP Act* so that if the clearing is not in accordance with the Code, the assessment manager cannot make a decision conflicting with that Code.

On and after 5 March 2001, if a person wishes **only** to clear native vegetation, which is 'assessable development' pursuant to Schedule 8 of the *IP Act*, application is made to the Chief Executive as assessment manager.[40] The *IP Act* time limits on the assessment made by the Chief Executive do not apply until 1 January 2001.[41]

On and after 5 March 2001, where the clearing is associated with other development, such clearing will be 'assessable development.' Application must be made to the local government, which is the assessment manager, and the Chief Executive is a concurrence agency for the land clearing part of the application. Prior to 5 March 2001, clearing of vegetation as a natural and ordinary consequence of other assessable development is not itself 'assessable development'.[42]

The example given in the *VM Act* of what occurs prior to 5 March 2001 is that of a person wishing to build a piggery on one hectare and also to clear 100 hectares of

---

38 *VM Act*, s 21.

39 See *IP Act*, Chapter 3.

40 It is intended that the Chief Executive of DNR be the assessment manager where the clearing of vegetation is the only development applied for.

41 Vegetation Management Amendment Bill 2000(Qld), clause 11 amending *VM Act* s 23.

42 *VM Act*, Schedule 8, Item 3A.

vegetation to grow grain for the pigs. That person has to make two applications – one to the local government to build the piggery (of which the clearing of the one hectare to build it is a natural and ordinary consequence of the building of the piggery) and the vegetation clearing will not be assessable development, and one to the Chief Executive for the clearing of the 100 hectares to grow the grain (that clearing not being a natural and ordinary consequence of building the piggery) and, prior to 1 January 2001, there is no time limit on the assessment.

The extended timeframes are to meet local government concerns regarding the need to adjust to being able to assess development applications with a native vegetation clearing aspect. It is anticipated that the extended transitional period will allow local government opportunity for obtaining relevant information, necessary maps and training for officers.[43]

4.1.4 Some Consequential Amendments

The opportunity was also taken in the Bill to make some other consequential amendments to the *VM Act* and other legislation including provisions to:

- ensure similar terminology and consistency in both the freehold and leasehold system and to ensure an integrated approach is taken, examples being –
  - requiring that a prescribed **fee** must now accompany an application under the *Land Act 1994* for a tree clearing permit on leasehold land;
  - increasing **penalties** for tree clearing offences on leasehold land under the *Land Act 1994* in line with that under the *VM Act*; and
  - replacing requirements for the preparation of a **tree management plan** with that of a **property vegetation management plan**; and
- preserve the power of local government to make local laws relating to vegetation clearing until 1 July 2001 even though the *IP Act* would apply.

5 THE FUNDING IMPASSE

Following a meeting between the Queensland Premier, the Prime Minister and Commonwealth Ministers in February 2000, the Prime Minister established a task force, led by the Hon Mr Warren Truss, Commonwealth Minister for Agriculture, Fisheries and Forestry, to advise him on options for supporting Queensland's approach and indicated that a proposal would be forthcoming in three to six

---

[43] Hon R J Welford MLA, Vegetation Management Amendment Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, p 2784.

months. At the Prime Minister's request, affected landholders were represented on the taskforce. The Premier considered that Queensland had a good case for compensation on the basis that, in introducing the *VM Act*, the State had cooperated with the Commonwealth Government to meet Australia's commitments under the Kyoto Protocol on greenhouse gas emissions, which included a commitment to reduce land clearing.[44]

At a Community Cabinet meeting in Roma earlier this year, the Premier made a commitment to landholders that, if Commonwealth funding was not forthcoming, the *VM Act* would be watered down to lessen the impact of regulatory provisions applying to clearing of vegetation freehold land.[45]

In a speech delivered to the Central Queensland Council of the National Party in April 2000, Senator Hill again noted that other states had accepted the responsibility for compensating landowners affected by land clearing controls and that the Queensland Premier had 'ducked his responsibility' in this regard. The Commonwealth Environment Minister also confirmed that effective land clearing controls were needed in Queensland before the salinity problems became too severe and that the Commonwealth "*…has already indicated that it is willing to consider support for the Queensland Government if it gets serious about this issue.*"[46] He said that the Commonwealth's view was that there needed to be an authorisation system for broadacre clearing of native vegetation, to be assessed on a regional basis, but with State-wide benchmarks on clearing. An example of how such a benchmark would work is that there should be no clearing of areas at risk from land degradation.[47]

It is reported that Senator Hill, Commonwealth Minister for the Environment and Heritage, is amenable to compensating farmers (through a 'buy-back' of land clearing permits) if they first agree to a State-wide cap on the total area allowed for

---

44 Hon P Beattie MLA, Queensland Premier, 'Beattie: why Howard should pay his fair share', Ministerial Media Statement, 18 February 2000.

45 Hon R J Welford MLA, Vegetation Management Amendment Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, p 2784.

46 Senator the Hon R Hill MP, Commonwealth Minister for the Environment and Heritage, *Learning the lessons – towards a sustainable future*, Speech delivered to the Central Council of the Queensland National Party, Longreach, 8 April 2000 downloaded from Internet Site http://www.environment.gov.au/minister .

47 Senator Hill, *Learning the lessons – towards a sustainable future*.

clearing.[48] However, it is also claimed that Mr Truss, Commonwealth Minister for Agriculture, is opposed to the proposal in line with the policy position taken by the Queensland National Party.[49] The Queensland Nationals are opposed to any controls on farmers' ability to clear their own land.[50] Mr Bob Katter, National Party MP, has stated that if the Commonwealth Government participates in the clearing issues, there will be enormous electoral backlash.[51]

In early August 2000, Federal Cabinet deliberations to consider Queensland's request for the $103 million compensation package ended in a decision to consult further with Queensland farmers before finalising its position on its funding negotiations with the Queensland Government.

In mid-August, leaders from rural industries (such as Agforce, Canegrowers, Queensland Farmers Federation and Cotton Australia) met with the Prime Minister and the Deputy Prime Minister, the Hon Mr John Anderson MP, to discuss whether they would agree to the proposal for a cap on clearing and the interplay between that and the Queensland *VM Act*. Those leaders indicated that they were not prepared to accept a reduction in land clearing to approximately 50,000 hectares per year by 2007, that had been proposed in earlier deliberations.[52] A decision should be reached very soon.

In the meantime, it has been reported that there has been widespread 'panic clearing' and that a DNR survey shows that 408,000 hectares were cleared in both 1998 and 1999. The Queensland Natural Resources Minister has not confirmed that figure but has stated that it reflects similar results obtained in an official survey.[53] The Deputy-Chief of CSIRO Land and Water claims that there is

---

48 Greg Roberts, 'Greenies threaten to boycott AMP over bush clearing, *Sydney Morning Herald*, 9 August 2000 downloaded from Internet Site http://www.smh.com.au/news ; Lenore Taylor, 'Cabinet to move on land degradation', *Australia Financial Review*, 23 August 2000.

49 See eg Hon R E Borbidge MLA, Leader of the Opposition, Vegetation Management Bill 1999 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 10 December 1999, p 6322.

50 Greg Roberts, '*Sydney Morning Herald*, 9 August 2000.

51 Lenore Taylor, 'Howard stumped on land clearing', *Australian Financial Review*, 22 August 2000, p 5.

52 Lenore Taylor, 22 August 2000.

53 Sam Strutt, 'Chop for Queensland (tree clearing)', *Australian Financial Review*, 12 July 2000, p 11; Siobhain Ryan, 'Record clearing tests federal law', *Courier Mail*, 12 July 2000, p 6; Greg Roberts, 'New calls for Queensland's land clearing', *The Age*, 2 August 2000, downloaded from Internet Site http://theage.com.au/news .

scientific evidence of large accumulations of salt over much of the State and that broadscale land clearing with little or no regard for salinity problems will lead to the same critical environmental issues faced in the central and lower areas of the Murray-Darling Basin.[54]

Environmentalists have called on the Commonwealth Government to use its powers under the new *Environment Protection and Biodiversity Conservation Act 1999* (Cth) to protect nationally threatened species and ecological communities to prevent clearing of land which may have significant impact on those species or communities. A difficulty is that the Act is triggered mainly by actions significantly impacting upon listed threatened species or listed threatened ecological communities and, presently, only a few of Queensland's ecological communities are listed. In any event, the Commonwealth Environment Minister has indicated that while the Act might be used in individual cases, it was no substitute for action on land clearing at a State level.[55]

The six month period, nominated by the Prime Minister in February 2000, elapsed on 20 August 2000 with no Commonwealth assistance or any commitments yet forthcoming. On 24 August 2000, the Bill was introduced into Parliament.

6 CONCLUSION

Once the Bill comes into force, authorisation will be required for native vegetation clearing on both leasehold land (regulated by the provisions of the *Land Act 1994*) and freehold land (under the *VM Act*, as amended by the Bill to make it less likely that approval will be needed to clear areas containing remnant 'of concern' regional ecosystems.

It appears that there may now be difficulties with Australia meeting its international obligations under the Kyoto Protocol in reducing greenhouse gas emissions, of which reductions in land clearing is a vital element. It is apparent that the Commonwealth Government may have to act to ensure that the states, including Queensland, cooperate in achieving the Kyoto target requiring gas emissions to increase by no more than 8% between 1990 and 2010.[56]

---

54 Dr John Williams, Deputy-Chief, CSIRO Land and Water, letter to the *Courier Mail*, 24 August 2000, p 16.

55 Siobhain Ryan, 12 July 2000; Senator Hill, *Learning the lessons – towards a sustainable future*.

56 Lenore Taylor, 'Beattie prunes federal plan to slow Queensland land clearing', *Australian Financial Review*, 26 August 2000, p 7. See Appendix - 'Clippings'.

It seems that the Premier is still hopeful that some funding will be forthcoming from the Commonwealth Government but regards the Bill as having fulfilled Queensland's responsibilities. Some conservation groups also agree that the Commonwealth should be providing some assistance to farmers to move towards sustainable practices because the environmental problems with which Australia will be faced are ones on a national scale.[57]

In the meantime, the Commonwealth Government is waiting for Queensland agricultural leaders to respond to the proposal by the Prime Minister and the Deputy Prime Minister to buy back clearing permits issued within a State-wide cap. At the same time, the Australian Conservation Foundation is threatening to embarrass the State and Commonwealth Governments over the issue at the September 2000 Olympic Games.[58]

---

[57] Simon Royal, *7.30 Report*.

[58] Lenore Taylor, 26 August 2000, Greg Roberts, 24 August 2000.

APPENDIX - NEWSPAPER ARTICLES

Title **Death by a thousand cuts.**

Author **Phil Dickie**

Source ***Courier Mail***

Date Issue **14 July 2000**

Page **19**

With tree clearing rates rising in Queensland, it is timely to recall the first warnings of dire environmental consequences, delivered 120 years ago.

Phil Dickie reports.

'There are vast plains stretching into the distance ...that was standing scrub when we came here'.

When the issue of clearing the brigalow belt first hit the Queensland parliament 116 years ago, it became a notable victory for the cause of conservation.

Former explorer and surveyor-general A.C. Gregory had something of a monopoly on scientific knowledge in the legislative council.

His opinion that “it was really very doubtful whether the extensive destruction of those scrubs would conduce to the benefit of the colony” carried the day.

The legislative council rejected settlement on the basis that “extensive destruction of the acacia forests will certainly decrease the grazing capabilities of the country in seasons of drought”.

Parliament discarded its premonitions 15 years later but brigalow scrub proved fairly resistant to wholesale clearing by axe and oxen.

And what was cleared, rapidly became unusable because of prickly pear.

Government determination to settle the brigalow belt soon attracted critics.

The most influential, attacking the land allocation and clearing policies of a succession of governments for more than a decade, was the state's own Conservator of Forests, Edward Swain.

The Land Administration Board, according to Swain in 1924, had “no perception of the developmental importance of natural resources, no appreciation of conservation principles, no idea of land economics or of land utilisation, no policy at all except to parcel out the country into individual blocks regardless of consequences or of topography”.

Opposition to wholesale tree clearing around the state became known as “Swainism” and the short-lived Moore government went so far as to establish a Royal Commission which found that “Queensland needs no forestry science for present requirements”.

Swain himself was finally induced by way of dismissal to continue his distinguished career elsewhere in Australia and overseas.

Even when the cactoblastis moth was finally procured to take care of the prickly pear, development of the brigalow belt continued to be described as “a war of attrition” against regrowth in departmental publications.

When clearing accelerated after World War II, much of the credit was due to an inventive farmer and peanut processor, Joh Bjelke-Petersen, who started with the notion that surplus army tanks towing steel cable would be able to knock the bush flat.

They couldn't, and proved prohibitively expensive to run.

But bringing the largest available bulldozers into the South Burnett and rigging shipping anchor chain in place of cable gave the firm of Joh and sister Agneta a march on their competitors.

Joh later noted to biographer Hugh Lunn that “there are vast plains stretching into the distance west of Rockhampton that was standing scrub when we came here.

Others followed and you can go right up to Blackall today, hundreds and hundreds of miles, its all development, all opened up”.

In 1962, the state introduced a requirement for a permit to clear leasehold land with permission never, if ever, denied.

In any case, leases usually were issued subject to clearing requirements and large amounts of public money were pumped into clearing such as a $22 million programme announced by the Commonwealth for brigalow clearing in 1962.

In the mid 1970s, the Martel family, of the Willandspey property near Clermont, were faced with the requirement to clear 5000 hectares of the last remaining pristine gidgee forest in their area.

They took the then radical step of agitating for the forest to be excised from their lease as a conservation reserve.

The Willandspey Conservation Park thus marks the first feeble stirrings of a conservation ethos among Queensland graziers and land administrators.

In other states, the consequences of past tree clearing began to hit home in the 1980s.

South Australia tried to get farmers to enter voluntary conservation agreements in 1980.

Farmers continued bulldozing.

A ban on clearing was introduced without warning in 1983 and legislation providing for payments to be made to eligible farmers entering into the “voluntary” Heritage agreements which followed in 1985.

Broadscale clearing has effectively ceased in South Australia and permits for minor clearing are tied to replanting.

In Victoria, clearing dropped by two thirds after the overnight introduction of permit requirements on blocks over 0.4 hectares in 1989.

There was no provision for compensation to landholders.

In Western Australia, where nearly 3 million hectares of valuable wheat belt has been damaged or lost to salination, a lax permit system with an 80 percent approval rate for clearing was replaced, in 1995, with controls meant to hold vegetation cover at 20 percent of properties and shires.

Controversial interim clearing controls were introduced in New South Wales in 1995 by way of a planning policy followed up by legislation in 1998.

Observers agree that the NSW situation is messy, with management plans still being prepared and illegal clearing continuing in the absence of significant enforcement.

Queensland also moved in 1995 to strengthen a lax permit system for clearing leasehold land, although the legislation was not proclaimed until 1997.

The legislation has so far had only a muted impact, as permits are valid for five years and the Queensland way is apparently to give plenty of warning for panic clearing.

Australian environment ministers were told last August that Queensland has 32 percent of Australia's native forest and accounted for 80 percent of national tree clearing activity in 1990-95.

More recently, the satellite eye in the sky and the State Landcover and Trees Study that analyses the pictures have produced an estimate that clearing has accelerated from 289,000 hectares annually in 1991-95 to 340,000 hectares in 1995-7.

The SLATS team has been beavering away on its estimates for 1997-99 and recently provided them to the State Government which decided to try to sit on them for as long as possible preferably until some time in September.

The estimate, of a new clearing rate of 400,000 hectares a year, was instead released yesterday in *The Courier-Mail*.

In the absence of any better explanation, it seems a reasonable bet that the state was not keen for the figures to become available to the federal and other state governments in time for the Murray Darling Basin commission meeting in late August.

Queensland's Natural Resources Minister Rod Welford is expected to be given a very hard time at this meeting over water and land management issues.

Welford does, however, have a line of defence available to him.

The finger is currently being pointed at Queensland because of the destruction now going on.

But most of the bills now being delivered up to Australian taxpayers for environmental restoration are to recover landscapes and catchments destroyed in southern states decades ago.

In Queensland, we still have time to avoid at least some of the mistakes of the past..

Title **Beattie prunes federal plan to slow Queensland clearing.**

Author **Lenore Taylor**

Source **Australian Financial Review (88)**

Date Issue **26 August 2000**

Page **7**

Article: The Federal Government is caught between the wrath of the international community and the wrath of its Queensland rural electorate, after the Queensland Government this week backed away from central elements of its proposed land-clearing prohibitions.

The Federal Government had been hoping that the Queensland Premier, Mr Peter Beattie, would take responsibility and bear most of the political pain for the task of curbing Queensland's extremely high rates of land clearing.

But Mr Beattie now says he'll only enact the prohibitions on clearing of 500,000 hectares of “endangered” bushlands, leaving out about 2 million hectares covered by “of concern” bushland.

But the Federal Government has to put a much firmer brake on Queensland land clearing if it is to have any hope of meeting its commitments under the Kyoto protocol on greenhouse gases.

Stopping land clearing, particularly in Queensland, has always been the Government's main hope of reaching its Kyoto target which required gas emissions to grow by only 8 per cent between 1990 and 2010.

In 1990 land clearing in Australia, mostly in Queensland, was responsible for about 100 million tonnes of greenhouse gas emissions, about the same tonnage by which energy emissions were predicted to grow over the Kyoto measuring period, 1990 to 2010.

At the time it seemed relatively simple slow land clearing in Queensland and the task suddenly became easier.

Back then national emissions from the forestry sector had fallen by 37 per cent, but over the past three years clearing has actually escalated.

Now the Federal Government is waiting for Queensland agricultural leaders to respond to a federal plan proposed by the Prime Minister, Mr John Howard, and the Deputy Prime Minister, Mr John Anderson, which would introduce a cap on clearing.

The Commonwealth is also proposing a scheme to “buy back” clearing permits issued within the cap.

But the Queensland National Party leader, Mr Rob Borbidge, and outspoken federal backbenchers such as Mr Bob Katter, are warning that any Commonwealth involvement in taking away what the Nationals see as a “right” of landholders to clear their land would be tantamount to political suicide in crucial rural electorates.

At the same time the Australian Conservation Foundation is gearing up to embarrass the State and federal governments over the issue using the international spotlight of the Olympic Games.


PARLIAMENT OF
QUEENSLAND