

INFORMATION AND CONSULTATION BRIEFING:

VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2018

**Prepared for: State Development, Natural Resources and
Agricultural Industry Development Committee
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Energy**

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PART 1 – Purpose and Background

1. Introduction

This report describes the purpose, scope and background to the Vegetation Management and Other Legislation Amendment Bill 2018 (the Bill). It gives a brief overview of the current vegetation management framework and the policy drivers for the Bill. It also documents the consultation the department has conducted in relation to the provisions of the Bill.

2. Purpose of the Bill

The Bill makes amendments to *the Vegetation Management Act 1999* (Vegetation Management Act), the *Water Act 2000* (Water Act), the *Planning Act 2017* (Planning Act), the *Planning Regulation 2017*, and *the Nature Conservation (Wildlife Management) Regulation 2006* to:

- remove provisions to clear for high-value agriculture and irrigated high-value agriculture;
- extend the protection of high conservation value regrowth vegetation on leasehold, freehold and Indigenous land;
- include near-threatened species in the Essential Habitat layer for remnant and high conservation value regrowth vegetation;
- protect riparian regrowth vegetation in all reef catchments;
- regulate the removal of vegetation in a watercourse under a riverine protection permit;
- enhance compliance measures; and
- allow vegetation mapped as Category X in a Property Map of Assessable Vegetation to be converted to Category A with the landholder's agreement.

The Bill, together with some non-statutory measures, delivers on the Government's 2017 election commitments to further protect remnant and high conservation value non-remnant vegetation; to maintain codes as long as they provide appropriate protections based on Queensland Herbarium advice; and align the definition of High Conservation Value with high-value regrowth vegetation.

3. The vegetation management framework

The purpose of Queensland's vegetation management framework is to conserve remnant vegetation and vegetation in declared areas, and ensure that clearing does not cause land degradation or loss of biodiversity, maintains ecological processes, reduces greenhouse gas emissions and allows for sustainable land use. It applies to the clearing of native woody vegetation, including trees and shrubs, but not non-woody plants such as grasses. The framework, delivered by the *Planning Act 2016* and the *Vegetation Management Act 1999*, regulates the clearing of remnant vegetation, high value regrowth vegetation on leasehold land for agriculture and grazing purposes and all native regrowth vegetation alongside watercourses in particular Great Barrier Reef catchments.

The framework uses land tenure and the Regulated Vegetation Management Map to determine how each area of vegetation is regulated. Areas are shown on the Regulated Vegetation Management Map as either:

- Category A areas which are areas subject to greater clearing restrictions, including areas subject to offsets, voluntary declarations, compliance notices, and exchange areas;

- Category B areas which are remnant vegetation. Remnant vegetation is mature native vegetation that has either never been cleared, or has regrown to a certain density and height;
- Category C areas which are high-value regrowth vegetation. High value regrowth vegetation is vegetation that has not been cleared for since 31 December 1989. In 2013, Category C was removed from freehold land and Indigenous land so that high-value regrowth is presently regulated only on leasehold land used for agricultural and grazing purposes;
- Category R areas which are regrowth located within 50 metres of watercourse areas in priority Great Barrier Reef catchments (Burdekin, Mackay, Whitsunday and Wet Tropics); and
- Category X areas which are none of the above – they are exempt from requiring approval to clear under the vegetation management framework.

As well as the statewide Regulated Vegetation Management Map, landholders may opt to obtain a 'Property Map of Assessable Vegetation' or PMAV, which shows areas of each vegetation category at a property scale.

PMAVs are an important tool to show landholders where they can, or cannot clear. Since PMAVs were introduced in 2004, the *Vegetation Management Act 1999* has contained a provision that ensures PMAVs override the Regulated Vegetation Management Map when determining if vegetation clearing is triggered. This has provided certainty for landholders who have 'locked in' category X on a PMAV, so that they retain the right to clear the area even if the vegetation regrows to high-value regrowth or remnant condition.

The framework allows clearing under various statutory exemptions (where there are no requirements for clearing under the framework); through accepted development codes or area management plans for lower impact activities; or through submitting a development application for certain higher-impact clearing activities. Exemptions exist for a range of purposes including making and maintaining fence lines, vehicle tracks, built infrastructure, firebreaks and public safety.

Accepted development codes, which were introduced in 2013, are made by the Minister. Currently, codes exist for managing encroachment, managing a native forest practice, managing Category C regrowth vegetation, managing Category R regrowth vegetation, extractive industry, clearing for necessary property infrastructure, improving the operational efficiency of existing agriculture, fodder harvesting, necessary environmental works, managing thickened vegetation, and managing weeds. Landholders may clear without an approval for these activities provided they notify the Department of Natural Resources Mines and Energy (DNRME) and comply with the codes.

A development application can only be made for clearing that is for a "relevant purpose". The relevant purposes are listed in s22A of the Act. Since 2013, they have included clearing for high value agriculture and irrigated high value agriculture. A landholder must obtain a determination from DNRME that their proposed clearing is for a relevant purpose before they can apply for a development approval. Once the application is accepted, it is assessed by the State Assessment and Referral Agency under the *Planning Act 2016*, DNRME conducts the technical assessment of these applications.

Essential Habitat for protected wildlife is subject to a higher level of protection under the framework. Offsets are required under the *Environmental Offsets Act* for unavoidable significant residual impacts caused by clearing of remnant vegetation that is Essential Habitat. Under the accepted development codes, clearing of high value regrowth that is Essential Habitat requires provision of an exchange area. Essential Habitat originally included habitat

for species that are endangered, vulnerable or near-threatened. In 2013, near-threatened species were removed from Essential Habitat.

DNRME provides the compliance and enforcement functions for the framework using enforcement provisions under the *Vegetation Management Act 1999* or where relevant, the *Planning Act 2016*. Extensive use is made of remote sensing for compliance purposes. The Department of Environment and Science maintains the remnant vegetation management mapping on which the Regulated Vegetation Management Map is based, and also produces an annual report on land cover and clearing rates, the Statewide Landcover and Trees Study (SLATS Report).

DNRME also regulates activities in watercourses, many of which are land not regulated under the *Vegetation Management Act 1999*. Originally, a riparian protection permit was required to excavate, place fill or clear vegetation in a watercourse. In 2013, clearing vegetation was removed from the scope of riparian protection permits.

PART 2 – Policy Drivers

In 2015, the Queensland Government made election commitments to:

- protect the Great Barrier Reef by strengthening vegetation management laws to protect remnant and high value regrowth native vegetation (including in riparian zones);
- reduce Queensland’s carbon emissions by re-instating vegetation protection laws repealed by the previous government; and
- retain existing self-assessable codes as long as they provide appropriate protection; and
- re-introduce riverine protection permits to guard against excessive clearing of riparian vegetation.

In November 2015, the government introduced legislation to Parliament to reinstate a responsible vegetation management framework. This Bill proposed to reinstate the major elements of the framework as it existed before amendments in 2013, by:

- reinstating the Category C protection of high-value regrowth on freehold and indigenous land;
- removing provisions that allow broadscale clearing of remnant vegetation for high-value agriculture and irrigated high-value agriculture;
- reversing the onus of proof and remove the mistake of fact defence for vegetation clearing offences; and
- re-introducing provisions to regulate the destruction of vegetation in a watercourse under a riverine protection permit.

It also sought to broaden protection of regrowth vegetation in watercourse areas (category R) to cover all Great Barrier Reef catchments. This Bill was defeated in the Legislative Assembly in 2016.

The latest clearing figures contained within the SLATS 2015-16 Report¹ showed significant increases in the rate of vegetation clearing in recent years. These increases follow the reinstatement of broadscale clearing for agricultural purposes in 2013 and clearing under the self-assessable vegetation clearing codes.

The SLATS Report shows that the total statewide woody vegetation clearing rate in 2015-16 was approximately 395 000 hectares per year (Figure 1). This represents an increase of about 33 percent from the 2014-15 clearing rate of 296 000 hectares. It is the highest clearing

¹ Queensland Department of Science, Information Technology and Innovation. 2017. Land cover change in Queensland 2015–16: a Statewide Landcover and Trees Study (SLATS) report. DSITI, Brisbane.

rate since 2003-04. This represents approximately 0.45 percent of the total area of woody vegetation in Queensland (which is approximately 87 million hectares or about 50-51 percent of the State).

In terms of remnant clearing, in 2015-16, clearing of remnant vegetation increased by approximately 21 percent to 138 000 hectares, from 114 000 hectares in 2014-15. The proportion of total statewide clearing that is remnant vegetation has also increased, from 22 percent in 2012-13, to 35 percent of total statewide clearing in 2015-16.

The rate of non-remnant (or regrowth) woody vegetation clearing in 2015-16 was 257 000 hectares, an increase of approximately 39 percent from the 185 000 hectares cleared in 2014-15.

WOODY VEGETATION CLEARING

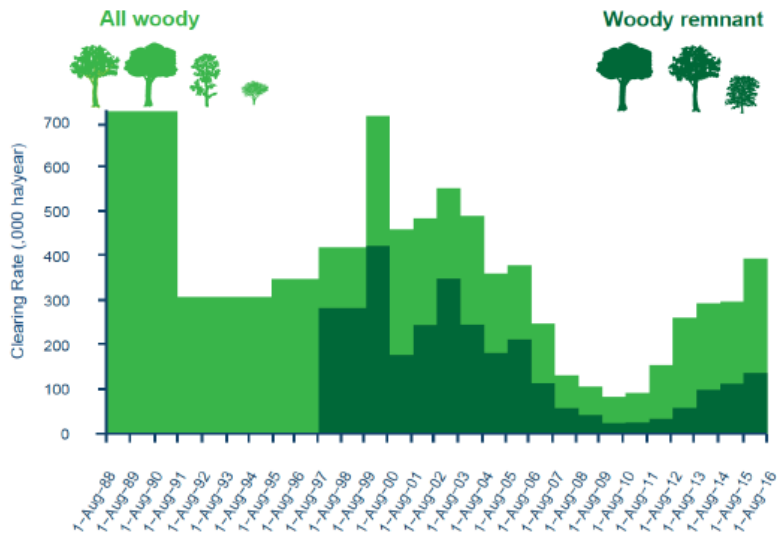


Figure 1: Historic woody vegetation clearing in Queensland

Table 1: Clearing by woody vegetation type (,000 ha/year)

Period	Non-remnant	Remnant	Total clearing
2015-16	257 (65%)	138 (35%)	395

Figure 1: Historic rates of woody vegetation clearing in Queensland, and clearing in 2015-16. Source: SLATS Report 2015-16

Clearing in Great Barrier Reef catchments also increased from approximately 31 000 hectares per year in 2009-10, to over 100,000 hectares per year in both the 2012-13 and 2013-14 periods. In the 2015-16 period 158 000 hectares were cleared in Great Barrier Reef catchments, which represents a 45 percent increase from the previous year.

Election commitments were made in the Labor Party 2017 Policy Document ‘Saving Habitat, Protecting Wildlife and Restoring Land: ending broadscale tree clearing in Queensland (again)’. The Amendment Bill delivers the Government’s 2017 election commitments to protect remnant and high conservation value non-remnant vegetation; maintain codes to where they are providing appropriate protections based on Queensland Herbarium advice; and align the definition of high value regrowth vegetation with the international definition of High Conservation Value.

PART 3 –Scope of the Bill

3.1 High Conservation Values

High Conservation Values have been internationally defined, and while many of these values are afforded protection under existing Queensland legislation, some categories are not addressed in the assessment framework for clearing regulated vegetation.

The Bill will extend the protection of high value regrowth vegetation to align with High Conservation Values by:

- Reinstating the regulation of high value regrowth on freehold land and indigenous land (removed in 2013) and occupational licences (not previously regulated) by including these areas in Category C;
- Reinstating the definition of protected wildlife covered by Essential Habitat regulation to include near-threatened wildlife species removed in 2013, which will again be protected in remnant and high value regrowth vegetation; and
- Amending the definition of high value regrowth to be vegetation that has not been cleared for 15 years.

The *Vegetation Management Act 1999* defined high value regrowth vegetation as vegetation in an area that had not been cleared since 31 December 1989 – which at the time applied to regrowth about 10 years old or more. With the passage of time, regrowth up to 28 years old is now unprotected, although scientific studies indicate that it has generally acquired significant values before this time. The Bill amends the definition to mean vegetation in an area that has not been cleared for 15 years, and this will be supported by annual release of mapping to identify these areas.

3.2 High value agriculture and irrigated high value agriculture

Since high value agriculture and irrigated high value agriculture were introduced as relevant purposes for clearing in December 2013, 68 development applications have been approved. These allow clearing of about 114 517 hectares, of which 108 904 hectares was for high-value agriculture clearing, and about 5613 hectares was for irrigated high-value agriculture.

High value agricultural clearing is defined as clearing carried out to establish, cultivate and harvest crops, other than clearing for grazing activities or plantation forestry. Irrigated high value agricultural clearing is defined as clearing carried out to establish, cultivate and harvest crops, or pasture, other than clearing for plantation forestry, that will be supplied with water by artificial means.

The Bill removes the ability to apply for a development approval for clearing for high-value and irrigated high value agriculture.

3.3 Consistent protection to regrowth vegetation in all Great Barrier Reef catchments

The Bill provides consistent protection to regrowth vegetation near watercourses in all Great Barrier Reef catchments, by extending category R to include regrowth vegetation in watercourse and drainage feature areas in three additional Great Barrier Reef catchments– Eastern Cape York, Fitzroy and Burnett-Mary catchments.

3.4 Protecting vegetation in watercourses

The Bill further protects riparian vegetation by reintroducing provisions that were removed from the *Water Act 2000* in 2013. Since 2013, riverine protection permits have not been required for removing vegetation in a watercourse, which is land not always regulated by the *Vegetation Management Act 1999*. The reintroduced provisions require landholders to obtain permits for clearing vegetation in a watercourse.

3.5 Compliance measures

The Bill also provides enhanced compliance measures that will assist with enforcement of vegetation management laws consistent with other similar contemporary natural resource legislation.

These measures are detailed in the Explanatory Notes to the Bill (Attachment 2). The Bill aligns maximum penalty units for the same offences under the Planning Act 2016 and the Water Act 2000, and expands the powers of entry and the scope of application of stop work notices. The Bill also introduces enforceable undertakings, a new compliance tool which can be used as an alternative to prosecution where this is an offence or an alleged offence. An enforceable undertaking is a voluntary tool, whereby a person can request the chief executive to enter into a written agreement to deliver agreed environmental outcomes, for example revegetating an area connecting a strategic environmental corridor.

Unlike the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* (the Reinstatement Bill), this Bill does not propose to reinstate the reverse onus of proof offence provision nor does it propose to remove application of the mistake of fact defence provisions under the Criminal Code 1899 from the *Vegetation Management Act 1999*.

3.6 Property Maps of Assessable Vegetation

The Bill meets an election commitment to provide an option to landholders to request an area mapped as a category X area to be converted to a category A area, where the area contains remnant vegetation or high value regrowth vegetation on the ground.

The Bill makes no change to the status of Category X on a Property Map of Assessable Vegetation. Clearing of Category X will continue to be exempt of any requirements under the framework.

3.7 Accepted development codes and Area Management Plans

The Vegetation Management Act prescribes that the Minister must make accepted development codes for specific activities and areas. These codes are for controlling non-native plants or declared pests, relevant infrastructure, fodder harvesting, thinning, encroachment, extractive industry, necessary environmental clearing, a category C area, a category R area, and native forest practice.

The Bill removes the prescriptive element within the current provision so that the Minister may elect to make a code. The reference to specific codes will be amended to reflect general types of codes which may be developed. This creates a more balanced and responsive vegetation management framework.

The Bill also removes the ability for landholders to initiate area management plans, as these plans have been superseded by the accepted development code process.

Further details on the measures contained within the Bill are provided in the Explanatory Notes.

PART 4 – Consultation

Consultation on many of the measures contained within the present Bill began in 2015. Throughout 2015 and prior to the defeat of the Reinstatement Bill in 2016, the then Department of Natural Resources and Mines (DNRM) held discussions with key stakeholders, including Queensland Farmers Federation, AgForce, Canegrowers, World Wildlife Fund, The Wilderness Society and Environmental Defenders Office. A broad range of issues were discussed with stakeholders, including broad approaches to achieving the government's 2015 election commitments.

The Government has continued to communicate and consult with stakeholders on its policy commitments and clearly indicated its policy commitments as part of its 2017 election platform.

DNRME did not undertake public consultation as part of the development of the Amendment Bill. This was due to the need to avoid both panic clearing and pre-emptive applications for approvals that would negate the effect of the legislative changes to which the Government has committed.

Stakeholders are divided on many aspects of the Bill. AgForce, Queensland Farmers' Federation are concerned about impacts of the changes to the vegetation management framework on the development of agricultural industries. The conservation sector supports the Government's commitment to end broadscale clearing.