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Inquiry into the impact on the agricultural sector of vegetation and land management policies, regulations and restrictions

Joanne Rea - Chairman
PROPERTY RIGHTS AUSTRALIA INC

Property Rights Australia (PRA) is a non-profit organisation of primary producers and small business people from rural Queensland who are concerned about continuing encroachments on the rights of private property owners. The organisation was formed to seek recognition and protection of the rights of private property owners in the development, introduction and administration of policies and legislation relating to the management of land, water and other natural resources. Set up in South West Queensland in January 2003, PRA's membership now extends across most states and all major rural industries. PRA is not affiliated with any political party.

Property Rights Australia first submitted on the taking of property rights for community conservation concerns in 2003. That submission was made to the Productivity Commission's Inquiry into Impacts of Native Vegetation and Biodiversity Regulation.[1] Detailed analysis of effects on landowners of uncompensated restrictions on vegetation management are part of the submission.

A very detailed submission to the Senate Inquiry into Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures was made by Property Rights Australia in 2010 with case studies of likely losses to property value and productivity losses.[2] There is detailed case discussion of the tree grass relationship and the exponential decrease in pasture as tree cover increases.

Our Diminishing Legal Rights

It was widely discussed at the time of introduction that environmental laws such as those which restricted vegetation management and sought to protect biodiversity constituted a "taking" for community benefit for which compensation must be paid.

Many distinguished jurists and economists at the time certainly thought so and said so publicly.

Professor Suri Ratnapala Emeritus Professor of Public Law at the University of Queensland said of the Queensland Vegetation Management Act 1999 that,

> "*In searching for an illustrative case of a statute that comprehensively defeats the values of constitutional government, in particular the rule of law, democratic principle and the basic requirements of natural justice, one need look no further than this Act."*[3]

Professor Wolfgang Kasper[4] Emeritus Professor of Economics at the University of New South Wales (retired) has also written and spoken extensively on the subject.

In his 2003 submission to the Productivity Commission Inquiry into ***Impacts of Native Vegetation and Biodiversity Regulation*** he wrote,

> *Property rights are now being taken away by the visible, regulatory hand of the government. What government grasps is unpredictable, since it responds to political vagaries and diverse, single-issue pressure groups. The principles that made this country great, rich and optimistic are now gradually subverted by more and more encumbrances and controls, and a culture of complaint, dependency and social pessimism is spreading. History suggests that there are real dangers to economic growth, individual freedom and social harmony, if the regulatory proliferation is not stopped.*[5]

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[1] https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/171/sub171.pdf
[2] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/submissions (submission 14)
[3] https://www.propertyrightsaustralia.org.au/speeches/suri-ratnapala-2009/ para 4
[4] https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/sub013/sub013.pdf p 22
[5] https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/sub013/sub013.pdf p4

Acclaimed international jurist Lorraine Finlay, in her address to the Australian Law Reform Commission Freedoms Symposium said in regard to property rights,

> *"It is, however, important to note from the outset that property rights are not absolute. It has long been accepted that property rights may be qualified, and a good example of this is the recognized need for environmental protection measures. The question is always one of balance. My argument this evening is that Australia is not presently striking the ideal balance, and that we are insufficiently protecting property rights – primarily through the lack of an appropriate compensation mechanism."*[6]

This disregard of bundles of property rights is now so ingrained in our culture that governments now have no compunction in totally ignoring submissions of agriculturalists[7] and riding roughshod over such time honoured judicial expectations as the presumption of innocence, reversal of the onus of proof, entry without warrant or consent and the imposition of costly penalties which can lead to fines in the order of hundreds of thousands of dollars without appeal and more.

Although on the whole Labor governments have been the least concerned about loss of rights and erosion of natural justice, Liberal governments by no means have a spotless record.

It was a Liberal government which precipitated this decline in our Westminster regard for property rights and they must be part of the solution in amending that error of judgment.

The present NSW government is in the process of serving notices on numerous drought stricken producers in NW NSW[8]. Reports are that this represents a huge spike in prosecutions by overzealous OEH officers in an area where landowners are suffering financial hardship, are unable to defend themselves and are up against the reversal of onus of proof.

Similarly in WA, Peter Swift was pursued through the courts in a manner that was more about getting a prosecution than justice. It was obvious before the case even commenced that there was no chance of success and Mr. Swift was found not guilty, but not before he had exhausted all of his resources. He presently is awaiting foreclosure and eviction from his property.

This case was so blatantly unfair that federal Liberal MP Don Randall, took up his case and spoke about it in parliament on several occasions. His untimely death left Mr. Swift without his most vigorous advocate.

This extract from Hansard highlights, not only Mr. Swift's case but how extraordinarily confusing, lacking in transparency and inaccessible the WA vegetation laws are.[9]

Further, in spite of losing everything in a prosecution which should never have taken place, no ex gratia payment has been made, often with an excuse erroneously made by WA personnel and as cited in principle by Kasper.

> *Recently, a high-ranking official, with whom I had raised the question of property rights restrictions on Queensland farmers, miners and industrialists, lectured me that "failure to determine positive proof of guilt [that environmental damage is caused by producers] is not identical to positive proof of innocence". As if free citizens had to prove their innocence, when they enjoy lawfully what is theirs! — I took the opportunity of lecturing him that producers, who exercise their rights within the law, do not have to prove anything, until proven guilty beyond reasonable doubt of having caused damage to others*[10].

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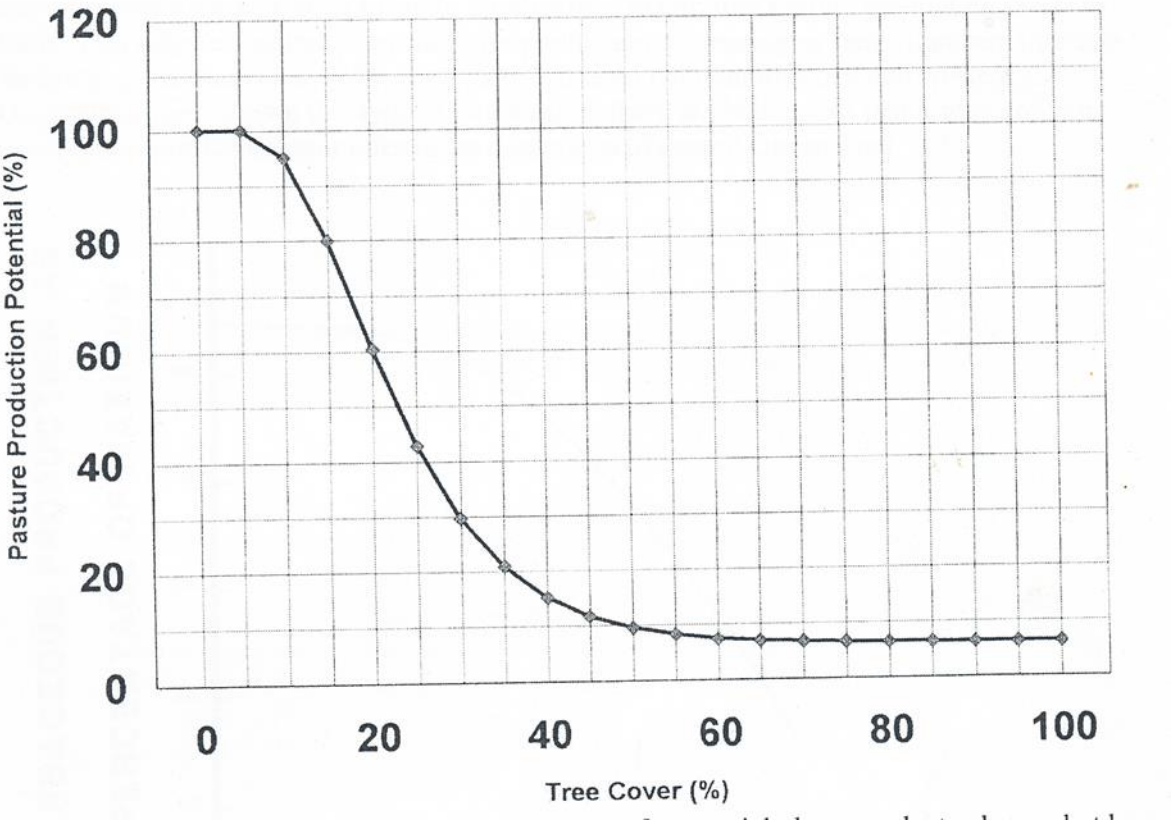
[6] https://www.alrc.gov.au/home-no-longer-castle-lorraine-finlay
[7] https://www.queenslandcountrylife.com.au/story/5376320/farmers-you-did-not-present-any-real-evidence/
[8] https://www.theland.com.au/story/5824689/desperate-plea-from-the-north-west-listen-be-fair/
[9] https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber/hansardr/83dad351-037c-4a7e-a123-81b1d0c8126d/0444;query=Id:%22chamber/hansardr/83dad351-037c-4a7e-a123-81b1d0c8126d/0000%22
[10] https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/sub013/sub013.pdf p 21

The progression of vegetation laws over time has been a blot on the copybook of our Westminster system and needs urgent reform.

Economics

Figure 3. Modified Tree Cover - Pasture Production Relationship
(Beale unpublished)



The tree-grass relationship is one of 'exponential decrease', meaning that grass yields and corresponding pasture productivity decrease exponentially (ie. at an ever increasing rate) as tree cover increases, so that relatively small changes in tree cover generate large changes in production.[11],[12]

The impacts of vegetation management laws on productivity and land asset value are driven by this relationship and the 'exponential decrease' shape of the curve. This exponential response of productivity to clearing is in practice also significantly amplified by two key changes to the production system that land clearing enables. These changes are not reflected in figure 3; they are:

1. Introduction of improved pasture species which further enhance pasture yields.

2. Intensification of pasture and livestock management techniques which increase the conversion efficiency of available pasture.[13]

Reduction in the ability to maintain the tree grass balance will eventually lead to limited pasture utility. This is supported by Burrows in his paper presented at the Harry Stobbs Memorial Lecture given in 2002:

[11] https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/171/sub171.pdf Property Rights Australia submission to Productivity Commission Inquiry into the Impacts of Native Vegetation and Biodiversity Regulation p4
[12] Beale, I. F., Vegetation Changes in South West Queensland, a summary of thirty years, QDPI Research (unpublished), (1999).
[13] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/submissions (submission 14) pp 8-9

> *"There is a widespread reluctance amongst government regulators and conservationists to openly acknowledge the general negative effect that tree grass competition has on pastoralism; in particular, that the woodland communities now protected from clearing could in time lose their livestock production capacity, with serious impacts on management of the remaining pasture on the landholding."*[14]

The Queensland Labor government does not bother with cost benefit analysis of landowner losses from vegetation laws but claims emphatically that there are none. This contention is not supported by the considerable evidence available.

The economic losses in production of these laws and costs of thickening over time were always estimated to be considerable. A detailed analysis of the Murweh Shire in Queensland (Slaughter 2004)[15] and detailed to the Productivity Commission in 2004 have been reiterated over various inquiries ad infinitum but with ever decreasing concern over time, about the property rights of landowners and principles of natural justice.

In submitting about woodland thickening in 2010 to the Senate Inquiry into Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures the authors of the Property Rights Australia submission quoted Burrows 2002.[16]

> *The importance of this issue to regulation is that it is only well understood by frontline rangeland managers and scientists, and is not well understood by regulators, who tend to have a simplistic view of trees and grasses and the relationships between them. In essence what woodland thickening means is that if grazing is to continue in Queensland's rangelands, vegetation must be able to be managed, as any regulatory regime which removes the ability to maintain the tree-grass balance will ultimately result in the eventual loss of all grazing utility and a reduction in biodiversity through the excessive proliferation of woody species.*[17]

Our 2003 submission quoting Burrows (1990) informs us that: -

> *"the gross productive capacity of a woodland from a landholder's perspective is at least doubled, and up to seven times, simply by removing the competitive effects of the woody vegetation. In addition, removal of native vegetation provides for excellent conditions to introduce pasture species capable of generating superior yields than the endemic species, further adding to the economic incentive."*[18]

This paragraph succinctly encapsulates what landowners have lost economically with the introduction of restrictions on vegetation management, but that is not the sum total of negative effects.

> *The regulatory taking of the right to manage vegetation requires that many landholders are now forced to accept that they will not be able to maintain economic viability through responsible development, and that they will have to accept forever a subsistence existence, with the real possibility of further erosion of their capital base and income through regulation and continued woodland thickening. There is an immeasurable social cost attached to this. Add to this the fact the landholder is then forced to sit and witness the vegetation that was supposedly to be 'protected', continually thicken and alter structurally and floristically into*

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[14] Burrows, W. H., Harry Stobbs Memorial Lecture, 2002, Seeing the woodland for the trees – An individual perspective of Queensland woodland studies (1965 - 2005). Tropical Grasslands, 36, p. 202 – 217, (2002).

[15] https://www.google.com/search?q=productivity+commission+2003+vegetation&oq=productivity+commission+2003+vegetation&aqs=chrome..69i57.15223j0j7&sourceid=chrome&ie=UTF-8

[16] Seeing the Wood(land) for the Trees – An Individual Perspective of Queensland Woodland Studies (1965 – 2005). Tropical Grasslands. V36 202-217 Burrows, W.H (2002)

[17] Seeing the Wood(land) for the Trees – An Individual Perspective of Queensland Woodland Studies (1965 – 2005). Tropical Grasslands. V36 202-217 Burrows, W.H (2002)
https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/171/sub171.pdf p12

[18] Ibid p14

> *something that is neither remnant nor diverse, and eventually loses any productive potential it may have had.*[19]

In 2003 PRA predicted many of the effects of these regulations which have now come to fruition. The "subsistence existence" referred to in the previous paragraph is amply demonstrated by landowners' lack of economic strength to prepare for substantial drought including significant regulatory impairment. These vary from state to state but restrictions and charges on water storage and the unexpected, unannounced and unscientific restriction on pushing Mulga for fodder from 70% permitted use to 40% permitted use in the midst of a six to seven year drought, must rate as one of the most vindictive acts perpetrated by a supposedly democratic government.

This alone is enough to demonstrate the hubris of the Labor/ Green government which can ignore human rights and animal welfare considerations under severe drought conditions with impunity.

Woodland thickening across Australia's grazed woodlands has been denied by environmental activists for years and they have denied any harm to grazing communities and businesses. This is flying in the face of a considerable body of work over decades and by a dedicated group of scientists which clearly shows as above that even a small increase in tree cover can cause a considerable decrease in pasture.

> *Liu et al. (2015) found that the woodlands of N.E. Australia increased aboveground biomass by c.1200 kg/ha/yr over a 20 year monitoring period (1993-2012). This result was obtained from passive microwave observations with calibrated sensors based on a range of satellite based platforms. It is net of any concurrent losses in biomass due to tree clearing, woody plant deaths and fires occurring during the monitoring period.*[20]
> *The result is in close agreement with detailed ground based measurements (c. 1060 kg/ha/yr increase in above ground biomass) over the same general area and for analogous and overlapping timeframes (Burrows et al. 2002).*[21]

The severe costs to the rural community of environmental laws and associated taking of bundles of property rights without compensation has been well documented with but with scant acknowledgement by governments that it is secure property rights which ensure the prosperity of the nation.

The burning question is, "Do governments care?"

Clearly not.

Economic arguments have all been brushed aside. Compensation in the vast majority of cases has been resisted and denied. The "precautionary principle" rather than proof of harm as espoused by Kasper is constantly being put forward as reason enough for environmental regulation.

> *Nowadays, private property is rarely endangered by outright expropriation (classical socialism). Instead, we observe a creeping erosion of individual property rights through costly regulations, which take private property rights away without compensation (neo-socialism). Individual rights of land owners, for example to harvest water or timber, are being taken away without compensation. And independent owners are turned into mere managers of centrally decreed plans. Frequently, governments interfere even without proof that*

[19] Ibid.

[20] Liu, Y.Y. *et al.* (2015) Recent reversal in loss of global terrestrial biomass. *Nature Climate Change* **5**: 470-474.

[21] Burrows, W.H. (2002) Seeing the wood(land) for the trees – An individual perspective of Queensland woodland studies (1965-2005). *Trop. Grasslds* **37**: 202-217

> *particular property uses are causing harm. Such 'regulatory expropriation' is supported by those who still believe that 'property is theft' – the irrefutable failures of socialism notwithstanding.*[22]

Left-leaning governments and their ideologically driven green advisors happily embrace the neo-socialism of which Kasper speaks.

Liberal governments who do not protest the taking of property rights, or the bundle of rights which attaches to them, are harder to fathom. No measure of ideology, no matter how sincerely felt, should be motivation enough for a liberal to repudiate the refining of property rights as has occurred over hundreds of years under our system of governance and which is the foundation stone from which our prosperity and affluence flows.

Both Kasper and Lorraine Finlay give credit to secure property rights as the source of economic prosperity with Lorraine Finlay opining that,

> *There is also an inextricable link between economic growth and property rights, with guaranteed property rights providing individuals with the security and incentive that is necessary to both save and invest.*[23]

Kasper is of the same view that *"secure property invariably produces prosperity, as was the case in 19th century Australia."*[24]

This refinement over the centuries, requires that for property rights to be taken, and this includes rights other than the property itself, harm must be proven and compensation paid. The element of compensation has been studiously ignored by governments of all colours.

Selected Sections of the Queensland Vegetation Management Act 1999 as amended

These comments are based on our submission on the Vegetation Management and Other Legislation Amendment Bill 2018[25]

Restoration Notices

Is the legislation unambiguous and drafted in a sufficiently clear and precise way—Legislative Standards Act 1992, section 4(3)(k)?

> *The application of restoration notices under clause 134 of the Bill arguably offends section 4(3)(k) of the Legislative Standards Act 1992 by remaining unclear about the scope of a restoration notice. This is unavoidable due to the nature of the content of restoration notices, which are case specific and in response to a particular instance of unlawful clearing. Landholders are sufficiently informed in advance of the possibility of receiving a restoration notice as a result of retrospective unlawful clearing resulting from the Bill and will also be aware that the restoration requirements will aim to negate the damage caused by the clearing. Landholders will be informed of the legislative changes to the vegetation management framework, which negates any ambiguity and inconsistency with the fundamental legislative principles.*[26]

Restoration Notices, have been promoted by both sides of government as a cost effective punishment and just like a "traffic fine".

Unlike a traffic fine and the equivalent section in the Planning Act, there is no right of appeal and they go on title and are binding on successors and assigns.

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[22] https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/sub013/sub013.pdf p Wolfgang Kasper
[23] https://www.alrc.gov.au/home-no-longer-castle-lorraine-finlay
[24] https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/sub013/sub013.pdf p 5
[25] https://www.parliament.qld.gov.au/documents/committees/SDNRAIDC/2018/5VegManagOLAB2018/submissions/193.pdf
[26] https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T300.pdf p

In the last round of amendments fines were increased, supposedly to bring that section in line with the equivalent in the Planning Act and sits at 4500 points or $587,475.[27]

> *This increase of the maximum penalty units ensures the Vegetation Management Act 1999 is consistent with the penalty units for contravening an enforcement notice under the Planning Act 2016, particularly given both restoration notices under the Vegetation Management Act 1999 and enforcement notices under the Planning Act 2016 serve the same purpose.*[28]

"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. This is 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."

"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 areas where this instrument breaches any notion of fairness or justice."[29]

This Notice is issued by an "authorised officer" who just has to have a "reasonable belief" that illegal clearing has occurred. There is no transparency with most landowners and the public being unaware of the severity of the fines and sheer impossibility of some of these notices which are issued with no reference to a court.

In the decision in the case Whyenbirra Pty. Ltd. v Dept. of Natural Resources (M201/06), the only case of a restoration notice to come before a court, Magistrate Cheryl Cornack gave the opinion that the one before her was, *"Confusing, unclear, uncertain, vague and impossible to comply with.*"[30]

Magistrate Cornack then detailed no less than 19 reasons why this was the case including describing two conditions as *"unduly oppressive*" and a third as *"totally and unduly oppressive*".

Several the Magistrate were unclear, some impossible to comply with and at least one she considered a danger to workplace health and safety.

Restoration Notices still feature these deficiencies. In so doing and in being unclear and not transparent about what conditions may be imposed this section does and has always breached 4(3)(k) of the Legislative Standards Act 1992 and yet this section has survived governments on both sides, with no appeal and fines for non-compliance (who adjudicates on non-compliance?) which have spiralled out of control.

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[27] A Queensland penalty point is $130.55 as of 1/7/18

[28] https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T300.pdf p 16

[29] https://www.parliament.qld.gov.au/documents/committees/SDNRAIDC/2018/5VegManagOLAB2018/submissions/193.pdf pp3-4

[30] https://www.propertyrightsaustralia.org.au/old-court-cases-downloads/ Whyenbirra decision at 30

There is scope for restoration notices to be used not only as a punitive action but to settle grievances.

Property Rights Australia has long called for transparency of conditions and a right of appeal.

Recommendations for Restoration Notices

Considering the huge magnitudes of fines for non-compliance (4500 penalty points) as a result of being drawn into line with the Planning Act it needs to reflect the equivalent sections of that Act.

1. Firstly, there MUST be a proper right of appeal in a court of law and those given a restoration notice must be informed of this at the time it is issued.
2. "Show Cause" notices and 20 business days to respond and make representations must be given.
3. If there is a case of failure to notify or gain a permit for an otherwise lawful clearing, the opportunity to do so must be given.
4. If there is an inaccuracy in the state based mapping where, for example, weeds are shown as remnant or high value regrowth, or other inconsistency, a permit must be given not an enforcement notice.
5. There must be a legislated process and timeframe for the enforcement notice to be removed from the title.
6. There must be a transparent set of principles which guide the conditions of the notice which should be not overly prescriptive and outcomes based, not impossible to comply with, not overly oppressive and not a breach of workplace health and safety.
7. As is the case in the Planning Act an "authorised officer" acts against the spirit of the Act is liable for the same fine as the landowner. (S168(7) Planning Act 2016 4500 penalty points).
8. It should not be possible for the state to double dip and impose a fine and a restoration notice.
9. It should not be possible to enforce restoration of an area greater than that cleared.

Considering some of the unreasonable, vindictive, over-punitive and unsafe Restoration Notices that have been issued these safeguards are not unreasonable.

There are cases of landowners being issued with restoration notices after discussions with the department have given them a clear idea that they are permitted to clear what precipitates the action.

Stop Work Notice

> *Amendment of s54A (Stop work notice) Clause 28 amends section 54A to make it clear that a stop work notice may be issued in situations where a person is either currently committing, or has committed a vegetation clearing offence, and there is a reasonable belief that further clearing will continue or that evidence of the clearing will be destroyed if a stop work notice is not issued. Where relevant, these amendments reflect section 168 (Enforcement Notices) of the Planning Act 2016. The amendments will provide for more timely and effective compliance action, and enforcement of vegetation management laws. The clause amends the maximum penalty for failing to comply with a stop work notice, from 1665 to 4500 penalty units. This creates a more appropriate level of deterrence for recidivist behaviour in circumstances where a person continues to ignore the direction and continues to commit the offence. It also aligns the Vegetation Management Act 1999 with the penalty level for contravening an enforcement notice under the Planning Act 2016, which serves the same purpose for stopping the continuance of a development offence for the clearing of native vegetation.*[31]

The penalty for failing to obey a stop work notice is 4500 penalty points or $587,475.[32]

There is anecdotal evidence that landowners in the Mulga areas are being issued with warnings or stop work notices. Since the changes to the Vegetation Management Act, the Fodder Harvesting Code was immediately replaced with a new one which reduced the harvestable area in a notification from 70% to 40%. In other words, they are required to conserve 60%. Under these restraints, seven years into drought, and departmental staff not allowing permits over

[31] https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T300.pdf
[32] Queensland penalty points at 1/7/18 were $130.55 per unit

areas that have been harvested at any time in the last ten years, many landowners have run out of fodder and are buying in hay, seeking agistment or they are likely to be issued with stop work notices, even though there are 60% of the trees still standing.

These landowners have been put into a situation where the stands of available mulga under these draconian laws, and the available water sources are not matching up, and already stressed animals are put into greater physical stress by having to walk longer and longer distances to water. This is particularly horrific in terrible heat conditions. Many animals are becoming increasingly weak as they are forced to walk further and further just to get a drink. Agistment is now impossible to find, and buying in hay is unsustainable. This is particularly ironic when the mulga lands standing haystack, the mulga tree is still in plentiful supply, but now unlawful to utilise. Managing animals in a protracted 7 year drought is stressful enough, without having the very fodder source that animals have been eating since settlement, now being an illegal undertaking outside the 40% of any given notification area.

Also, being enforced, is a provision which was only introduced in May is that once an area has been utilised for fodder harvesting (and subject to Notification) the whole area including the conserved area, is not to be used again for ten years. Some landowners are finding that areas they lawfully used at some time in the last ten years are being refused for notification.

This is retrospective law at its not so finest.

The Queensland Government has not considered at all the animal welfare implications of these restrictions.

Accusations from some sources have been that drought affected farmers failed to prepare adequately. It is impossible to prepare for drought when your well-considered plans are substantially declared illegal in the midst of an active, long term drought.

Also problematical with the fodder harvesting code was the failure to include many of the edible species of gidgee in areas such as the Desert Uplands.

Evidence suggests that the department believed all species to be harmful to livestock. This is not the case and is an incompetent error which also has animal welfare implication and cost implications for those who normally use this feed source.

Enforceable Undertakings

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. Given the unpredictable vagaries of restoration notices there is plenty of room for abuse and fines for noncompliance are huge. Protections should be built into the legislation. As it stands all protections are for the protection of the government and any errors of judgment they may make.

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 is 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 ($815,937.50 from 1/7/18) for a wilful breach. Costs and costs of investigation can also be added plus previous charges reinstated.[33]

Legal advice so far has been to approach this instrument with caution.

Entry Without Warrant or Consent

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 who frequently allege illegal clearing when it is not, there is the huge potential here for mischievous abuse and harassment.
Some of the most dramatic incursions onto property with police in bullet-proof vests and weapons of their own have been at the behest of green groups with no subsequent illegality evident.
It is still the case that police officers are much more likely to be killed or injured in attending a domestic violence incident than a vegetation incident.
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.
In criminal cases where entry is required by circumstances without a warrant, law enforcement officers are required to get one within 24 hours after the event.
There is no such provision in the Vegetation Management Act. This must be rectified.

The Need for Reform Australia Wide
Ignored by all governments to a greater or lesser extent is the legal protections which have been hard fought, for even the most violent and intractable of criminals.
Land management laws which include water as well as vegetation, have violated many of the principles of natural justice upon which criminal law relies and are often unfair, dispensed by unqualified people in the eyes of the law, are not transparent and do not always rely on publicly documented principles and are not visible to the public.
In the 2016 Vegetation Management (Reinstatement) Bill presented by a Labor government, which eventually failed to pass, Bill Potts, Chair of the Queensland Law Society, campaigned heavily against the reintroduction of reversal of the onus of proof, the elimination of Mistake of Fact as a defence and the retrospective aspects of the bill.[34]
Some effort was made in the Vegetation Management and Other Legislation Amendment Bill 2018 to keep the law society happy so reversal of the onus of proof was removed and Mistake of Fact allowed as a defence. Retrospectivity still featured but the right to silence was negated by a series of fines for each issue of "failure to

[33] https://www.parliament.qld.gov.au/documents/committees/SDNRAIDC/2018/5VegManagOLAB2018/submissions/193.pdf pp 4-5 PRA submission 2018
[34] http://www.qls.com.au/About_QLS/News_media/News/Headlines/Changes_to_vegetation_clearance_laws_unjust_and_backward_QLS

co-operate" in spite of a disclaimer. These fines stood at $26,110 for each breach (such as failing to produce a document or failing to co-operate) from 1/7/18. There are five separate listed breaches.
With noted jurists writing learned papers about acquisition of property rights without compensation and state based Law Societies campaigning against perversion of the principles of natural justice, it should be enough to spark a broad ranging review of all the legislation.
However, in addition to legislation which raised these concerns, we have even more provisions such as entry without warrant or consent, imposition of notices which are oppressive without reference to a courtroom or indeed any transparency, fines which are overly oppressive, impediments on title with no way of removal, landowners being left with non-living areas with restrictions on grazing (WA), landowners being left with unproductive and uneconomic areas due to restrictions on clearing and managing regrowth, charges for water in farm dams (SA) and water plans being written which seek to limit the amount of water available for stock and domestic use as guaranteed by the Australian Constitution. It is obvious that our rights have been severely diminished.

The Productivity Commission Report 2004 recognised that,

> *With uncompensated regulation, retention of native vegetation on private land essentially is a 'free good' for everyone except adversely affected landholders.*[35]

The Commission also recognised that,

> *"Over the past twenty years or so legislation to prevent clearing of native vegetation on private land has been relied upon heavily to achieve biodiversity and other environmental objectives. The current evaluation suggests that this approach has serious design and implementation deficiencies, in many cases leading to inefficient, ineffective and inequitable outcomes."*

It is also the case (unrecognised) that agriculture is doing the heavy lifting on climate emissions with it being the only sector to reduce emissions while all others have increased emissions, some substantially.

Extreme Environmental Ideology in Governance of the State

Wolfgang Kasper as early as 2003 accurately signalled the environmental groups' emerging power and affluence. Sadly, uncalled for attacks on individuals and their business implying illegality which does not exist, has proliferated to such an extent that green groups and green leaning media make their entire livings from it.

> *The media should, incidentally, also be expected to presume property owners innocent until proven guilty. The 'politically correct' and the advocacy journalists these days frequently violate this principle, instigating modern versions of McCarthyism and public show trials! People, who caution against hasty expropriation and point to human rights, are all too readily reviled as scheming to wreck the environment.*[36]

Landowners have seen quite a few instances of this in recent years with uninformed people, the vast urban voters, believing that many have acted illegally as a result of pejorative and emotive media when they were operating under legal permits. This deceptive game continues apace.

In 2015 WWF published on the internet for full public consumption a map which they labelled the "Map of Shame", the names, addresses, GPS points, hectareage applied for and proposed crops of 93 landowners who had applied for High Value Agriculture or Irrigated High Value Agriculture permits. They were, by this action, releasing information into the public arena which could and did lead to criminal damage, harassment and intimidation. That harassment still continues.

Although the "Map of Shame" and its detail is harder to find these days, The WWF blurb which makes specious claims and implies wrongdoing on the part of landowners and their consultants still exists.[37]

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[35] https://www.pc.gov.au/inquiries/completed/native-vegetation/report/overview.pdf p 22
[36] https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/sub013/sub013.pdf Wolfgang Kasper p 22
[37] https://www.wwf.org.au/news/news/2015/queenslands-tree-clearing-map-of-shame#gs.kLSh8s1q

When Scott Harris applied for and was granted a High Value Agriculture permit which had the ability to create 300 local jobs, little did he know that he would have visits by the tree police accompanied by two carloads of police with bullet proof vests and guns.[38] Mr. Harris has done nothing wrong but suffers harassment at the behest of green groups who do not want such development and prosperity in the North.

For sheer inaccuracy (58,000 acres have not been cleared), emotiveness and implied breaches of the law one need look no further than this shocking piece of ABC reporting.[39]

Trial by media has been a feature of his life since obtaining the permit. Is it any wonder landowners feel that they are under siege?

Also suffering trial by media and huge business losses was Warren Jonsson and his family. The environmental organisations have a great skill in making behaviour which they do not like sound illegal even if it is not.[40]

Independent legal advice is that a landowner does not need to get permission under the EPBC Act if he does not believe he will be affecting a species of national concern.[41] All reports are that such species will not be disturbed on the subject property. One would never know this from green press releases.

The green vigilantes also targeted Augathella grazier Noel Chiconi.[42] After a media splash in numerous city based publications implying his guilt a state government audit showed that he was within the law. No retraction or apology is ever issued.

Drone footage of thinning, probably obtained illegally, was used by WWF to allege illegal broadscale clearing by Alpha graziers Paul and Janeice Anderson who were thinning to restore open woodland under a self-assessable code. They were investigated at the behest of WWF but no illegality had occurred.[43]

A lazy media and environmental groups are complicit in this defamation of landowners and there seems to be no redress. Individuals and their businesses are defamed in multiple media before they are cleared by government but the urban population are not disabused of the fact that there are not multiple instances of illegal clearing occurring.

Just as an illustration of the power and funding of dangerous and defamatory virtue signalling groups which cannot be matched by agricultural groups, I include this Facebook post and map by an animal rights organisation.

> *JUST LAUNCHED: The Aussie Farms Map*
> *https://map.aussiefarms.org.au*
>
> *In development for over 8 years, the Aussie Farms Map is a comprehensive, interactive map of factory farms, slaughterhouses and other animal exploitation facilities across Australia. Until now it's been a resource for a relatively small number of activists and organisations, but from today we're opening it up to the public in an effort to force transparency on an industry dependent on secrecy.*
>
> *We believe in freedom of information as a powerful tool in the fight against animal abuse and exploitation. We believe consumers have a right to know of the existence, location and operations of these businesses. We believe whistleblowers have the right to a platform where their anonymity can be respected.*

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[38] https://www.northqueenslandregister.com.au/story/3984056/cropping-is-a-success-at-strathmore/
[39] https://www.abc.net.au/news/2015-11-22/land-clearing-investigated-for-legal-breaches-environment-damage/6961108
[40] https://www.cairnspost.com.au/business/far-north-agribusiness-seeks-justice-for-allegations-of-unauthorised-land-clearing/news-story/db052f9200259db8917bf5c1d066ce7a
[41] https://www.northqueenslandregister.com.au/story/4559365/wwf-runs-fear-and-intimidation-campaign/?fbclid=IwAR2po6FTtcejjYIDSAYZAvEtQzgSwFxZOTrah0guNX3ndOIXqJpB4ruOspU
[42] https://www.abc.net.au/news/rural/2015-08-21/augathella-tree-clearing-wwf/6714560
[43] https://www.theguardian.com/australia-news/2016/aug/02/queensland-farmers-bulldoze-thousands-of-hectares-of-native-vegetation

> *Open for contribution, anyone can create an account to submit information, photos, videos, documents and campaign materials. Our aim is to open the doors to every broiler farm, piggery, egg farm, slaughterhouse - every facility where animal cruelty is seen as a business model - to allow any member of the public to see inside without having to leave their chair.*

I would also like to point out the small fines, a slap on the wrist only, meted out to these activists who trespass on people's property, breach biosecurity, release animals resulting in their deaths, harass property owners and their employees and steal animals which also often results in their deaths and the huge fine imposed on landowners for simply failing to notify for what would otherwise be legal such as clearing weeds.

The need for reform is great and it can only be done with support from government.

Proposed Great Barrier Reef Regulation

Any discussion of land management regulation cannot be complete without comment about the foreshadowed Great Barrier Reef regulation.

It has always been my opinion that, as a community, we have taken this too lightly.

The 2018 amendments to the Vegetation Management Act designated extra catchments as Barrier Reef Catchments. This is the start of what is proposed to be several tranches of legislation introduced over time.

Considering that the cost to agriculture (explanatory notes and cost/benefit analysis no longer available) is estimated in the hundreds of billions of dollars, there needs to be much closer independent scrutiny of the modelling assumptions, the estimates and uncertain assertions on which this legislation is based.

Property Rights Australia is concerned that the approach to this point in time has mostly been to throw large amounts of money at the same researchers and research organisations who produced the original modelling with little to no independent scrutiny.

Considering the cost to agriculture it is not an unreasonable expectation to have some independent scrutiny.

> *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."[44]
>
> *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."*[45]

There is no publicly available evidence for this.

Vegetation Management Act, Underlying Regulation, Fire and Other Practical Considerations

[44] http://www.ehp.qld.gov.au/assets/documents/reef/enhancing-reef-protection-regulations-ris-summary.pdf p3/11
[45] Property Rights Australia submission on the Great Barrier Reef

Geoscience Australia has a very concise summary of the factors which contribute to the severity of a fire.[46] They include such things a fuel load, fuel moisture, ambient temperature, wind speed, relative humidity and slope angle.

Only ambient temperature and possibly relative humidity were addressed by the Queensland government in media coverage with even these being passed off as climate change. Regardless of the cause, they have been warned for years, including by Property Rights Australia that a "lock up and leave" approach to national parks and other government land, allowed the build-up of fuel which would exacerbate a wildfire.

Geoscience Australia also notes that,

> *Fires pre-heat their fuel source through radiation and convection. As a result, fires accelerate when travelling uphill and decelerate travelling downhill. The steepness of the slope plays an important role in the rate of fire spread. The speed of a fire front advancing will double with every 10 degree increase in slope, so that on a 20 degree slope, its speed of advance is four times greater than on flat ground.*[47]

Clearly, the fire in Eungella National Park in particular, which has multiple escarpments approaching 90 degrees (some idea can be gleaned from the photo below) is one where it was extremely dangerous for people, which included volunteers and landowners to be in the rugged and unkempt national park. This danger, and government neglect of its responsibilities, has never been acknowledged.

Due to workplace health and safety considerations, it is not usual to fight fires on the ground in steep terrain. It is safer to construct worthwhile fire breaks on flatter ground and back burn into the fire.

Geoscience Australia also outlines the difference between a grass fire and a bushfire.

> *Bushfires and grassfires are common throughout Australia. Grassfires are fast moving, passing in five to ten seconds and smouldering for minutes. They have a **low to medium** intensity and primarily damage crops, livestock and farming infrastructure, such as fences. Bushfires are generally slower moving, but have a higher heat output. This means they pass in two to five minutes, but they can smoulder for days. Fire in the crown of the tree canopy can move rapidly.*[48]

The government (Qld) claims unequivocally that the Vegetation Management Act has done nothing to exacerbate the fire risk.

Clearly the risk of a forest fire has an entirely different profile to a grass fire and the increasing thickening (referenced above) and encroachment into open forests and grasslands has, and will, make firefighting more intense in the future.

This is particularly the case in sclerophyll (eucalypt) forests where the fire can race through the crowns of trees at great speed, fuelled by volatile oils from the trees and spraying embers for large distances in front of itself.

The Nature Conservation Act 2015 legislated that around 90 forestry leases which had surreptitiously been declared national parks would not have their leases renewed on expiry.

> *Many of the so called “national parks” were previously forestry areas and were converted to national parks in name only and unbeknown to most of the lease holders. The process of not renewing leases over these former forestry areas has already started and involves considerable areas carved out of livestock producer's business.*[49]

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[46] http://www.ga.gov.au/scientific-topics/hazards/bushfire
[47] Ibid.
[48] Ibid.
[49] https://www.pc.gov.au/inquiries/completed/agriculture/submissions Submission 45 pp7-8

In the 2016 Productivity Commission Inquiry into Regulation in Agriculture, Property Rights Australia, as it has often over the years, submitted that,

> *Property Rights Australia would also like it noted that no credit or thought is given to the stewardship of these areas and that Governments have been repeatedly warned that a "lock up and leave" attitude will cause a multitude of problems (weeds, feral pests, high and dangerous fuel loads).*[50]

It is obvious that the Codes which sit under the Vegetation Management Act are designed to minimise tree loss. Let there be no mistake however that this is not always the best outcome for ecological processes and biodiversity and nor do they necessarily maintain regional ecosystems.

The Clearing for Infrastructure Code dictates the permissible widths of firebreaks around various sorts of infrastructure. Nowhere do the objectives of the DRAFT Code (no longer available) nor the present code[51] have as an objective the effective protection or management of fire nor the workplace health and safety aspects of fire for employees or volunteers. This is typical of the skewed and impractical nature of most of the codes.

> *Objectives of the **Draft** Clearing for Infrastructure Code under consideration by the Qld government but withdrawn from the web site.*
>
> *The objective of this code is that clearing to establish or expand infrastructure achieves the following environmental outcomes:*
>
> - *Avoids and minimises impacts on regulated vegetation*
> - *Prevents land degradation*
> - *Maintains ecological processes and biodiversity*
> - *Maintains bank stability, water quality and habitat of wetland, watercourse and drainage features*
> - *Maintains regional ecosystems*

Property Rights Australia submitted on the draft code, that in light of the recent catastrophic fires, guidance on widths be lifted and a moratorium on prosecutions be put in place until this inquiry and advice on effective widths from rural firefighters who spent time on the firelines was available.

Some principles to take into account are that: -

- Fire containment lines and firebreaks must be of sufficient width and be at numerous enough intervals to actually be useful in stopping a fire in the ecosystem. Ten metres is not sufficient. In the present code this reduces to five metres in endangered and of concern bioregions in Category B areas. The new DRAFT code forbids clearing for a firebreak on coastal lots
- Breaks and containment lines must be wide enough to allow a fire truck to turn and flee without having to reverse. One CSIRO publication advises that they should be wide enough that firefighters can safely step outside their vehicles to fight the fire from the other side of the break. Considering that there can be fatal radiant heat for 100m that calls for a substantial fire break.
- The present code informs us that "to establish or maintain a fire break to protect infrastructure **other than a fence** the maximum width is equivalent to 1.5 times the height of the tallest adjacent tree or 20 metres, whichever is the greater."[52] The provision to allow 1.5 times the height of the tallest tree has been removed

[50] Ibid.

[51] https://www.qld.gov.au/environment/land/management/vegetation/codes Managing clearing for necessary property infrastructure

[52] https://publications.qld.gov.au/dataset/self-assessable-vegetation-clearing-codes/resource/0e4c101c-0538-46ff-bfd9-3d3a3a8950a4 p7

from the DRAFT code. It must be reinstated and increased particularly on a slope. CSIRO gives consideration to four times.

- **F**ences are not considered important infrastructure and only 10 metres on a boundary is allowed. At $8,000-$10,000 possible replacement cost, with many thousands of kilometres lost during the recent fires, many landowners would beg to differ. It is also the case that trees which fall over fence lines often exacerbate or cause relighting of fires.
- The 20 metres for other infrastructure applies to a coastal lot while non-coastal lots are allowed 30 metres. The hazard mapping shows that many of the coastal lots are intrinsically more fire prone than non-coastal lots. [53]
- The new DRAFT code **does not permit** clearing for a firebreak at all unless it is to protect particular built infrastructure excluding fences roads tracks and other linear infrastructure.
- Particular care needs to be taken with fire mitigation strategies on rugged or sloping sites such as Eungella national park.

One clear lesson from the November fires is that the present and proposed draft code which advises on fire containment lines is not fit for purpose, puts lives at risk and does not protect infrastructure.

Basic land management, in areas for which they were responsible, such as adequate boundary firebreaks, internal fire containment lines and maintenance of access tracks for the safety of firefighters has been ignored.

Fuel reduction burns under safe conditions are unknown in national parks.

For many decades they have been known as poor neighbours and they rarely, if ever construct firebreaks on their side of a boundary fence. They are also very poor at managing weeds, many of which are highly flammable.

There is no excuse for this mismanagement and incompetence and the lives of residents and firefighters including landowners and volunteers which were put at risk.

Firebreaks should be set with the advice of rural firefighters including volunteers, who were actually on the ground **ONLY**, and not environmental groups whose poor advice has overseen one of the biggest environmental disasters this state has seen.

Added to the objects of the codes need to be aims for the effectiveness for land management and workplace health and safety considerations.

There have been reports of koalas perishing at the tops of their trees, kangaroos and wallabies looking for any muddy puddle when they usually cope very well in a fire in open country, large snakes, possums and other iconic native wildlife.

At the time of the introductions of the amendments to the Vegetation Management Act environmental groups accused landowners of killing thousands of koalas from land management, based on the deaths from clearing for infrastructure and housing in the SE corner and extrapolated all over the state. Not only was their methodology suspect with a very skewed result, I would be prepared to bet that there was nothing like the animal deaths which occurred under our green influenced management on government land. The government and environmental groups have been very silent on the loss of iconic species in the fires which were undoubtedly exacerbated by poor government management and vegetation laws and regulations which restrict landowners' ability to meaningfully protect their property and infrastructure which must include, but is presently given no importance, fencing.

[53] https://publications.qld.gov.au/dataset/self-assessable-vegetation-clearing-codes/resource/0e4c101c-0538-46ff-bfd9-3d3a3a8950a4

No longer can environmental groups claim that loss of habitat is the greatest cause of koala deaths. It is poor government land management.

Photo ABC https://www.abc.net.au/news/2018-12-04/eungella-rainforest-future-questioned-by-expert/10578802

Managing Weeds[54]

There are many different exotic weeds in Australia. Some seed prolifically or multiply prolifically by other means. Some climb trees or form thick and impenetrable layers over the ground. Importantly, dead or alive some are highly flammable.

There are also a range of native weeds which need to be recognised and able to be cleared without jumping through regulatory hoops.

Just a quick scan of the code shows how impractical and uneconomic trying to clear any reasonable area of weeds would be. It would be like weeding your garden with a teaspoon and being expected to leave a good portion of the weeds behind, just to make sure there is a good seed bed for next time. If one is to clear weeds, it has to be EVERY weed or you are wasting your time.

The no go areas where mechanical clearing or herbicide is not allowed within 5m of a retained tree or habitat tree and the embargoes on mechanical clearing and herbicide use within 10m or a watercourse means that an effective clean is impossible.

[54] https://www.qld.gov.au/environment/land/management/vegetation/codes

Along watercourses is exactly where one sees large tangled, deep rooted thick layers of weeds or huge mats of weeds often deposited there from upstream during a flood event. It is in the interest of a whole catchment to destroy these weeds to the greatest extent possible, not leave them to spread. This is an impossible task over acreage without mechanical and herbicide treatment.

Scythes became redundant sometime last century and brush cutters are for civilised weeds on small acreages. Somewhat less than one football field I imagine.

The 5m requirement is a nonsense.

The code for managing weeds states,

> *This is a self-assessable vegetation clearing code (code) for controlling non-native plants or declared pests, made in accordance with the Vegetation Management Act 1999. It is based on the purposes of the Vegetation Management Act 1999 and the principles and outcomes of the State policy for vegetation management. It sets out the required outcomes and practices for clearing vegetation to control weeds.*
>
> ***Required outcomes***
>
> *The code will achieve the following required outcomes for clearing to control non-native plants or declared pests:*
>
> - *regional ecosystems maintained in either a remnant or near remnant state, or in a state that will regenerate*
> - *wetland and watercourse bank stability, water quality and habitat maintained*
> - *landscape stability maintained*
> - *ecological processes and biodiversity maintained or restored.*

One of our most pervasive weeds is Lantana. It is extremely flammable alive or dead. It can climb to the top of trees, form an impenetrable mat on the ground and have a thick layer of leaf litter and dead brush which just requires a spark to ignite it.

Wildlife such as koalas cannot operate in and access habitat trees with such a groundcover layer and the government is well aware of that having given Australia Zoo a grant to clean up lantana in their koala refuge.[55]

[55] "A further $40,500 will also be going to Australia Zoo Wildlife Warriors, which manages the hospital, to improve koala habitat through land restoration.
"The project will involve the removal of Lantana from 260 hectares east of Blackbutt, and pest management to reduce feral animal attacks on koalas and other wildlife." http://statements.qld.gov.au/Statement/2018/11/22/palaszczuk-government-announces-new-koala-advisory-council

It is not difficult to see from the photos why koalas and other wildlife find it difficult to operate through Lantana which is prevalent in national parks, other government land and on private property. The limitations on mechanical clearing make it impossible to eliminate.

Photos: Lantana Queensland






The severity of the recent fires should be sounding a warning bell that there ARE regulatory processes which are impeding management. Fuel loads including weeds contributed in no small part to the severity of the fires.

4.3 of the schedule instructs that tracks constructed to access weeds must be no wider than 5m. Considering the severity of recent fires it must be obvious to even the most casual observer that all tracks and roads MUST be capable of being quasi fire containment line and must conform to the principle that it must be wide enough for the heaviest machinery likely to be at the site of a fire (it will not always belong to the property owner) without reversing and for the operator who is likely to be in an open cab to be safe from radiant heat. Five metres is not sufficient.

Dead standing trees (which must be retained if they are a habitat tree whether being used or not) are a fire hazard.

> ***4.6 Dense regional ecosystems***
>
> *Dense regional ecosystems include rainforests; vine thickets; heath lands; and regional ecosystems that are closed (the canopies of individual trees overlap); or that are dense in comparison with the surrounding vegetation, such as some Melaleuca (tea tree or paperbark) and Brigalow communities. Dense regional ecosystems are listed in Appendix 4. Practice In a dense regional ecosystem:*

- *mechanical weed control must not result in opening the tree canopy, unless the weed species dominates the tree canopy*

- *herbicide use is limited to the following application methods: cut stump, basal spray, injection, splatter gun or foliar spray.*

It is important not to disturb the canopy of dense regional ecosystems. Regional ecosystems are shown on the vegetation management supporting map. You should use the map to assist identifying any dense regional ecosystems within the area proposed for weed control.

In situations where weeds such as Camphor laurel dominate the canopy, clearing in the canopy is permitted where more than 50% of the canopy is comprised of the weed species, provided the operation is part of a planned restoration operation overseen by a local authority, NRM body or similar organisation.

Section 4.6 is a prime example of the sheer impracticality of this code. In dense regional ecosystems it is only possible to break the canopy if the weed species constitutes more than 50% of the canopy. This is a perfect example of allowing a problem to get out of control before any action is taken. This is how the government manages woodlands, not responsible land managers who should be onto Camphor Laurel, another highly flammable species, and other species long before they get anywhere near 50%.

It also illustrates why it was so difficult to get a fire under control either in national parks where poor management is endemic or on private property where land managers are constrained by impractical codes which do not allow for an effective weed kill before a problem becomes unmanageable.

Section 4.7 ***Wetland and Watercourse Protection*** reinforces the impracticality of the code for weed control with the no machinery zones (and limits on spraying) ensuring that a 100% kill cannot be achieved. The writers of these codes obviously believe that landowners have a football field only to clear of very civilised weeds.

Landowners are usually mindful of protecting soils and of protecting against soil erosion but to be prescriptive about leaving clearing debris on the soil in some boiregions can do two things. It can leave a seed or cutting bed and most should probably be burnt under good conditions and it is a fire hazard which adds to the fuel load with catastrophic results.

It would be far better to be outcomes based and allow pushing, burning and reseeding without departmental interference.

Some native weeds such as black wattle also need to be included in the accepted development codes and not just passed off as intermediate vegetation. Such weeds can become impenetrable walls and almost impossible to get rid of.

“Ecological processes and diversity”, objects of many of the codes, were totally destroyed in some areas during the recent fires with total wildlife kills, and reports of koalas being burned alive in their trees or falling to the ground.

To claim that the Vegetation Management Act did not exacerbate the fires is to be ignorant of the facts.

Also, not evident in the objects is any thought of workplace health and safety of those who must operate in the environment whether it is trying to deal with the weeds in a piecemeal fashion with inefficient equipment allowed, or fighting the fire that occurs as a result of excess fuel loads.

Make no mistake, the fires that we saw in November were very dangerous to those fighting them.

There is also a draft “Managing for Weeds” code but a visit to the website no longer gives a copy of the draft code but the message that “The consultation period is now closed and responses are being considered.”

This code is even more restrictive with restricted areas allowed to be treated with no thought of effectiveness and still with no progress towards being outcomes based or more useful for fire mitigation.

It was the skill and local knowledge of landowners, their dedication to the job often without a break or sleep for days and communities supporting one another and a lot of luck which meant that there was no loss of life on the fire fronts.

I had reports of dozens of volunteers just turning up to a fire as a result of listening to radio chatter, many with trucks carrying their own personal dozers and graders to help a group of landowners who were up against it. Soon after Rotary volunteers arrived with water and refreshments.

This Premier and Ministers, is the type of community you would label as criminals, impose outrageous fines upon and ruin their businesses.

Some personal stories

These very personal accounts have been included because they give some context to the human and environmental cost of the state's policies, both from the point of view of formal regulation and management or non-management of government land.

They also reinforce the positions that Property Rights Australia has put for more than a decade.