

BACK TO THE FUTURE: PROPOSED CHANGES TO THE VEGETATION MANAGEMENT FRAMEWORK IN QUEENSLAND STILL CAUSING CONTROVERSY

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Legal Briefings - By **John Ware, Madeline Simpson**

The Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 (Qld) (**VMROLA Bill**) was introduced into Queensland Parliament on 17 March 2016. It proposes to significantly tighten vegetation management laws in Queensland by reinstating the framework which was in place prior to 2013.

OVERVIEW

Submissions on the VMROLA Bill close today but the controversy surrounding the Bill is far from over. With certain provisions set to apply retrospectively from 17 March 2016, those engaging in clearing activities are currently faced with considerable uncertainty, unsure if activities they conduct now will retrospectively be deemed unlawful.

Specifically, the VMROLA Bill proposes to:

1. reinstate the protection of high value regrowth vegetation in certain areas,
2. reintroduce a requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring, and
3. reduce the threshold at which an environmental offset may be imposed.

REINSTATING THE PROTECTION OF HIGH VALUE REGROWTH VEGETATION

The VMROLA Bill proposes three key changes in relation to high value regrowth vegetation under the *Vegetation Management Act 1999* (Qld) (**VMA**) which are to apply retrospectively from 17 March 2016:

- reinstating the protection of high value regrowth vegetation on freehold and indigenous land,
- removing provisions which permit applications for high value agriculture clearing and irrigated high value agriculture clearing, and
- broadening the protection of regrowth vegetation in watercourse areas to the Burnett-Mary, Eastern Cape York and Fitzroy Great Barrier Reef catchments.

In order to enforce these changes retrospectively, the Department of Natural Resources and Mines will issue 'restoration notices' to persons who have cleared during the period between 17 March 2016 and the date on which the VMROLA Bill receives assent if those clearing activities are deemed unlawful. Restoration notices require a person to rectify the damage caused by a vegetation clearing offence.

Other proposed changes to the VMA which will not commence until a date to be fixed by proclamation include:

- reinstating a reverse onus of proof for vegetation clearing offences, meaning that an occupier of land will be deemed responsible for clearing on that land unless evidence of the contrary can be produced, and
- reinstating a provision which expressly prevents a person from relying on the 'mistake of fact' defence for vegetation clearing offences.

EXPANDING THE GROUNDS FOR WHICH RIVERINE PROTECTION PERMITS ARE REQUIRED

Under the *Water Act 2000* (Qld), riverine protection permits are only required to excavate or place fill in a watercourse, lake or spring. The VMROLA Bill proposes to expand this by requiring riverine protection permits for activities which destroy vegetation in a watercourse, lake or spring. This reflects the position prior to reforms introduced by the previous government in 2013. This change is not intended to be retrospective and will instead commence on a date to be fixed by proclamation.

LOWERING THE THRESHOLD FOR THE IMPOSITION OF ENVIRONMENTAL OFFSETS

Under the *Environmental Offsets Act 2014* (Qld) (**EOA**), environmental offsets may be imposed where prescribed activities have a 'significant residual impact' on prescribed environmental matters. The VMROLA Bill proposes to remove the word 'significant' from this threshold, meaning that environmental offsets may be imposed where prescribed activities have only a 'residual impact' on prescribed environmental matters.

Additionally, the VMROLA Bill introduces amendments into the EOA designed to improve interoperability with Commonwealth environmental legislation, which include enabling:

- the establishment, management and use of legally secured offset areas relating to Commonwealth offset conditions, and
- an amount, as a financial settlement offset for a Commonwealth offset condition, to be paid into the offset account.

These changes to environmental offsets are not intended to be retrospective and will instead commence on a date to be fixed by proclamation.

CONCLUSION

If the VMROLA Bill passes, it will significantly tighten the vegetation management framework in Queensland. Greater protection of high value regrowth vegetation, an obligation to obtain a riverine protection permit for clearing in a watercourse, lake or spring and a lower threshold for the imposition of environmental offsets may have serious implications for entities engaging in clearing activities, especially when the retrospective nature of some of these changes is taken into account.

The VMROLA Bill has been referred to the Agriculture and Environmental Committee for report by 30 June 2016.

This article was written by John Ware, Partner and [Madeline Simpson](#), Special Counsel, Brisbane.

ENDNOTES

1. [*Vegetation Management \(Reinstatement\) and Other Legislation Amendment Bill 2016 \(Qld\)*](#).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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