



## Queensland's Tree Clearing Laws and Decision-Making: *The Politics of Sustainability and Agricultural Systems*

**KEY WORDS:** Queensland; vegetation management act; tree clearing laws; sustainable land use; agriculture; biodiversity; conflict; unintended consequences; Kyoto Protocol

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### SUMMARY

1. Following the signing by over 170 countries of the “*Rio Declaration on Environment and Development*” in June 1992, Australia led the world during the “Hawke-Keating era” by implementing a landmark national environmental policy for sustainable development - followed by its subsequent incorporation into environmental protection legislation throughout Australia: [\*The National Strategy for Ecologically Sustainable Development\*](#) was endorsed by the Council of Australian Governments in December, 1992.
2. Although sustainability is undeniably critical to a quality future - and its appeal nearly universal - some commentators have observed that the concept has become so diluted and misapplied to be almost meaningless.
3. *The latter observation is part of the problem for achieving and advancing the “sustainable land use” purpose of Queensland’s Vegetation Management Act.*
4. Tree clearing laws should be a cornerstone for achieving environmental outcomes to address the needs and concerns of those holding competing interests for agricultural systems or the environment - and not be a source of conflict.
5. Valid decision-making power must not only advance the purpose of Queensland’s Vegetation Management Act - but also comply with fundamental legislation principles to avoid unintended adverse consequences of tree clearing laws.
6. *Under the Vegetation Management Act, potential unintended decision-making consequences may arise for sustainability of agricultural systems from the interpretation and compliance with “sustainable land use” under this Act; and for “reducing GHG emissions” in accordance with Kyoto.*
7. A conflict management process to resolve these potential information conflicts over sustainability should be a high priority goal for Government.

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## **Disclosure Statement:**

*Ted Christie does not work for, consult to, own shares in or receive funding from any company or organisation that would benefit from this article, and has no relevant affiliations.*

One [objective of Queensland's parliament](#)<sup>1</sup> for introducing tree clearing laws in 1999 was to “reconcile environmental objectives in vegetation management including the maintenance of regional biodiversity with the sustainable economic development of our State's lands...”

However, the situation, for tree clearing laws today for agricultural systems, is one of conflict - best summed up by the following statement:

“There's no other issue in Queensland politics that so clearly highlights the often bitter [ideological divide](#) between Brisbane and the bush”.

Resolving the information conflict over the interpretation and compliance with ‘sustainable land use’ and the regulatory control of tree clearing should be a high priority goal for Government.

...Read more on why achieving sustainable outcomes has been – *and continues to be* - a significant source of conflict for tree clearing laws.



The *Vegetation Management Act 1999 (Qld)* [“VM Act”] provides the foundation for regulatory control of tree clearing in Queensland. A wide range of decision-making powers are authorized under the VM Act.

Decision-making under the VM Act is administered by Queensland's Department of Natural Resources and Mines.

It is important to understand an area of public law related to valid decision-making for regulatory control under the VM Act.

In particular, that the [framework of public law](#) requires public statutory power be exercised “*lawfully*”, “*in good faith*”, “*rationally*” and “*fairly*”.

A lawful decision under the VM Act includes a requirement that the powers conferred under the statute are confined by the object (or “purpose”), subject matter and scope of the VM Act. They dictate those factors, or considerations, for which regard should be had in order to determine whether or not a power has been exercised unreasonably or “*ultra vires*” (i.e. “beyond power<sup>2</sup>”).

Section 4 of the VM Act - “*Advancing the Act's Purpose*” - recognizes the legal principle that all powers conferred under a statute are subject to the object or purpose of the statute as being paramount:

*“If, under this Act [the VM Act], a function or power is conferred on an entity, the entity must perform the function or exercise the power in a way that advances the purpose of this Act”.*

The Object of the VM Act [at Section 3(1)] – **at the time the Queensland Government passed the Act in December 1999** - had the following multiple purposes to regulate the clearing of vegetation:

“The purposes of this Act is to regulate the clearing of vegetation on freehold land<sup>3</sup> –

(a) [To] preserve the following—

- (i) remnant endangered regional ecosystems;
- (ii) vegetation in areas of high nature conservation value and areas vulnerable to land degradation; and

(b) ensuring that clearing does not cause land degradation; and

(c) **maintain or increase biodiversity**; and

(d) maintains ecological processes; and

(e) **allow for ecologically sustainable land use” (Author’s emphasis).**

It is quite clear that the scope of the purpose of the VM Act sought to achieve the objective parliament sought.

But, the legal obligation - *for power to be exercised in a way that advances the purpose of the VM Act* – adds a layer of complexity for decision-making:

- Section 3 (1) has been drafted in a way that does not provide any discretion for the decision-maker to weight one purpose over another. All six purposes must be complied with to ensure a valid exercise of decision-making power had been exercised.
- This legal obligation has remained unchanged from the time the VM Act came into force in September 2000 to the present.
- Approvals for clearing of vegetation under the VM Act, in 2000, needed to “*maintain or increase biodiversity*”, “*not cause land degradation*”, “*allow for ecologically sustainable land use*”, “*preserve remnant endangered regional ecosystems*” ... Interactions between achieving all prescribed statutory purposes may be problematic for decision-making.
- Achieving the purpose of *ecologically sustainable land use* was uncertain for decision-making as the VM Act provided no definition for the legal meaning of this scientific concept. Nor were there any objective scientific criteria provided to evaluate this concept in the decision-making process.

**But, in 2004, the “Purposes” of the VM Act – along with some other sections – were amended. The “1999 objective of parliament” was “adjusted”!**

#### [Amendments to the Purposes of the Vegetation Management Act, 2004](#)

The VM Act now had [seven purposes under Section 3](#). The most significant amendments in 2004<sup>4</sup> were:

- **To remove one legislative purpose as a consideration for decision-making for clearing of vegetation: *ecologically sustainable land use*.**
- **To include a new legislative purpose: to regulate the clearing of vegetation in a way that reduces GHG emissions.**

There would be little dispute for the inclusion of a purpose to reduce GHG emissions under the VM Act. *Yet, as a climate change mitigation measure, it may not be in accordance with Australia’s Kyoto Protocol obligations*<sup>5</sup>.

On the other hand, the amendment to remove *ecologically sustainable land use* represents a very significant change to the VM Act.

The VM Act Section 3(1) amendments also included a new purpose: A purpose to manage the “*environmental effects*” of clearing to achieve all of the other prescribed purposes - except for the new purpose to reduce GHG emissions!

“*Environment*” was defined in the VM Act. The legal meaning for “environment” was very broad and included consideration of “*social, economic, aesthetic and cultural conditions...*” [\[at Section 3\(3\)\]](#).

The removal of *ecologically sustainable land use* as a legislative purpose is difficult to reconcile in Queensland - given that land uses where the tree clearing laws applied included extensive areas of agricultural land where grazing and crop production prevail.

**As a result, uncertainty arose over whether the objective of parliament for tree clearing laws in 2004 - compared to 1999 - had changed. Was the focus now on biodiversity at the expense of sustainable economic development?**

However, the amendments also presented a new issue for decision-making: Achieving some prescribed purposes for clearing included managing *environmental effects*<sup>6</sup>. The legal meaning of “*environment*” included ‘*social, economic and cultural conditions*’. Would decisions that were now made be equivalent to the previous purpose of *ecologically sustainable land use*?

As knowledge of the legislative changes diffused through the bush, it did not resonate with rural communities. Tree clearing laws were now seen by some as more appropriate for a national park - rather than for farms and grazing properties? The divide between Brisbane and the bush so emerged!

### **Tree Clearing Decision-Making: Sustainability ~v~ Environmental Effects**

Sustainable development has been a purpose of environment protection and planning legislation, throughout Australia, for the past two decades.

A key [guiding principle for sustainable development in an environmental policy](#)’ - adopted by all levels of Government in Australia in December 1992 - is that “*decision making processes should effectively integrate both long and short-term economic, environmental, social and equity considerations*”.

A sustainable solution for tree clearing would require the decision-maker to assess and balance the multiple and competing objectives for

sustainable development – *economic, environmental and social (including cultural)* – equitably; the decision should not be weighted inordinately in favour of one e.g. *economics* or *environmental*.

A sustainable solution is equitable in that it seeks to minimize the extent to which environmental costs and benefits will be shared disproportionately between Government, industry and the community.

In contrast, under the amendments to the VM Act purposes in 2004, any decision to manage the *environmental effects* of clearing on some prescribed purposes (e.g. *ecological impacts on biodiversity* or on *remnant vegetation*), would also need to consider impacts on *social, economic, aesthetic and cultural conditions*.

A sustainable solution could only be the outcome if there was a Government policy or statutory guideline that required the decision to be equitable. Nor should there be any discretion to weight the various impacts.

The pathway now created for decision-making under the VM Act may be uncertain. That is, whether it achieved the key guiding principle for sustainable development in Australia’s landmark, national environmental policy?

### **Amendments to the Vegetation Management Act Purposes: 2013-2016**

Following a change of Government, the purpose of the [VM Act was amended in 2013](#). Parliament’s objective was to provide for the clearing of native vegetation for sustainable development: “*The proposed reforms provide a balance between the conservation of vegetation and biodiversity values and the economic development of the State.*”

An [additional purpose](#) was added to the VM Act: To regulate clearing of vegetation in a way that ‘*allows for sustainable land use*’.

This provision was similar to the provision originally contained in the VM Act when it came into force in 2000 – but removed nine years earlier, in 2004.

The VM Act now had eight purposes - but, still, had no legal meaning prescribed for “*sustainable land use*.”

Significantly, the purpose to manage the “*environmental effects*” of clearing, did not apply to the new purpose, ‘*to allow for sustainable land use*’<sup>7</sup>.

In 2016, the [purposes of the VM Act](#) remain unchanged from 2013. “To allow for sustainable land use” continued as a purpose – but still not defined.

An [external, technical Review of the VM Act](#) was undertaken for QDNRM; the outcomes of the review were initially presented to QDNRM in November 2015. The Review proposed definitions for concepts and terms that were not defined in the VM Act. “Sustainable land use” was a case in point: -

The Review gave **sustainable land use** the following “effective definition”:  
“Use of the land so as not to cause irreversible damage to the environment or deplete natural and productive resources for future generations”.

Adoption and application of the Review’s definition is unsettled:

- Whether the criteria to *assess sustainable land use* are consistent with the standards and criteria of science: Testable, objective (*not subjective*) and impartial - together with the enduring test for acceptance, widespread consensus within the scientific community following publication and peer review.
- The Review acknowledged the social, economic and ecological considerations for sustainability – but not equity. However, the purpose of the VM Act for “*managing environmental effects*” has been drafted in a way that, in ‘*allowing for sustainable land use*’, consideration of “*social, economic, aesthetic and cultural conditions*” are excluded! For tree clearing, this results in a focus on ecological considerations only.
- In effect, this is the Review’s most significant limitation: *In failing to understand sustainable land use, in the context of regulatory control of tree clearing for agricultural systems*. Specifically, the impacts in space and time that must be considered: -
  - ☑ At the **paddock level**, impacts are ecological.
  - ☑ At the **property level**, economic/financial impacts prevail.
  - ☑ At the **regional level**, socio-economic impacts arise e.g. employment, rural drift; provision of services (*transport, education, medical*); regional economy and State economy.

**Decision-making for clearing of vegetation under the VM Act, for agricultural systems, must recognise that sustainability and land use are interdependent and mutually supporting.**

## End Notes:

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<sup>1</sup> Hansard, Queensland, 8 December 1999 at 6082.

<sup>2</sup> Describes actions taken by government bodies that exceed the scope of power given to them by laws.

<sup>3</sup> The *Vegetation Management Act* commenced operation on 15 September 2000. It applied to native vegetation on freehold land. Queensland's *Land Act 1994* continued to apply to clearing on leasehold land.

Amendments to the *Vegetation Management Act* in 2004 introduced new purposes and also allowed the VM Act to be applied to freehold land and tenures previously regulated under the tree clearing provisions of the *Land Act* e.g. leasehold tenures. The tree clearing provisions in the *Land Act* were repealed.

<sup>4</sup> Other amendments to the purposes were *to conserve "remnant of concern"* and *"remnant not of concern"* regional ecosystems. The original term *"preserve"* was replaced by *"conserve"*. *"Conserve"* was not defined in the amended *Vegetation Management Act*.

The purpose *"to maintain or increase biodiversity"* was also replaced with a purpose *"to prevent loss of biodiversity"* 'to make the purpose more achievable'.

<sup>5</sup> VM Act Section 3(3) defines the legal meaning for 'environment'. Under the VM Act, the statutory purpose to manage the *"environmental effects"* of clearing – in particular, *social, economic, aesthetic and cultural conditions* - does not apply in order to achieve the purpose *"to reduce GHG emissions"*.

This outcome may be inconsistent with the [Kyoto Protocol](#). Article 2 requires measures taken by forestry and agriculture to reduce GHG emissions, *"to promote sustainable development"*.

<sup>6</sup> VM Act Section 3(1) Purposes for which managing environmental effects of clearing applied were for 'remnant regional ecosystems', 'vegetation in declared areas', 'land degradation', 'biodiversity' and 'ecological processes'.

VM Act Section 3(3) defines the legal meaning for 'environment'.

<sup>7</sup> Of the eight statutory purposes prescribed, managing the *"environmental effects"* on vegetation clearing did not apply to *"sustainable land use"* or *"to reduce GHG emissions"*.