Vegetation Management and Other Legislation Amendment Act 2018
Changes to Compliance and Enforcement

10 May 2018

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Introduction

- *Vegetation Management and Other Legislation Amendment Bill Act*
- Introduced 8 March 2018, passed 3 May 2018, assent 9 May 2018
- Changes to the vegetation management compliance/enforcement framework
  - Increasing the penalty units for offence provisions
  - Introducing enforceable undertakings as a new compliance tool
  - Broadening the instances when a stop work notice can be issued
  - Expanding powers of entry
  - Clearing that became unlawful as at 8 March 2018
Increasing Penalty Units

- Changes to increase the maximum penalty for a number of offences in the VMA
- The increases range from 1.7x to 10x current penalties
- Said to “consistently align” penalties with the maximum penalties issued under other natural resource Acts.
- For the current financial year, 1 penalty unit = $126.15
## Increasing Penalty Units

<table>
<thead>
<tr>
<th>Clause</th>
<th>Amendment</th>
<th>Previous penalty</th>
<th>Proposed penalty</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Amendment of s 28 (Failure to return identity card)</td>
<td>10 penalty units</td>
<td>50 penalty units</td>
<td>Explanatory notes state: Aligns with penalties issued under other natural resource Acts, such as the Water Act</td>
</tr>
<tr>
<td>22</td>
<td>Amendment of s 37 (Failure to help authorised officer)</td>
<td>50 penalty units</td>
<td>200 penalty units</td>
<td>Explanatory notes state: Aligns with penalties issued under other natural resource Acts, such as the Water Act</td>
</tr>
<tr>
<td>23</td>
<td>Amendment of s 38 (Failure to give information)</td>
<td>50 penalty units</td>
<td>200 penalty units</td>
<td>Explanatory notes state: Aligns with penalties issued under other natural resource Acts, such as the Water Act</td>
</tr>
<tr>
<td>25</td>
<td>Amendment of s 51 (Power to require information)</td>
<td>50 penalty units</td>
<td>200 penalty units</td>
<td>Explanatory notes state: Aligns with penalties issued under other natural resource Acts, such as the Water Act</td>
</tr>
<tr>
<td>26</td>
<td>Amendment of s 53 (Failure to certify copy of document)</td>
<td>50 penalty units</td>
<td>200 penalty units</td>
<td>Explanatory notes state: Aligns with penalties issued under other natural resource Acts, such as the Water Act</td>
</tr>
<tr>
<td>27</td>
<td>Amendment of s 54 (failure to produce document)</td>
<td>50 penalty units</td>
<td>200 penalty units</td>
<td>Explanatory notes state: Aligns with penalties issued under other natural resource Acts, such as the Water Act</td>
</tr>
<tr>
<td>28</td>
<td>Amendment of s 54A (Stop work notice)</td>
<td>1665 penalty units</td>
<td>4500 penalty units</td>
<td>1.7x increase Explanatory notes state: provides appropriate level of deterrence and aligns with the VMA</td>
</tr>
</tbody>
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**Vegetation Management Act 1999**
## Increasing Penalty Units

|   | Amendment of s 54B (Restoration notice) | 1665 penalty units | 4500 penalty units | 1.7x increase  
Explanatory notes state: provides appropriate level of deterrence and aligns with the VMA and Planning Act |
|---|-----------------------------------------|--------------------|--------------------|--------------------------------------------------|
| 30 | Amendment of s 58 (False or misleading statements) | 50 penalty units | 500 penalty units | 10x increase  
Explanatory notes state: creates a more appropriate level of deterrence and aligns with VMA |
| 31 | Amendment of s 59 (False or misleading documents) | 50 penalty units | 500 penalty units | 10x increase  
Explanatory notes state: creates appropriate deterrence and aligns with the VMA and other Queensland natural resources legislation (e.g. Water Act) |
| 32 | Amendment of s 59A (Impersonation of authorised officer) | 50 penalty units | 200 penalty units | 10x increase  
Explanatory notes state: creates appropriate deterrence and aligns with the VMA and other Queensland natural resources legislation (e.g. Water Act) |
| 33 | Amendment of s 60 (Obstructing an authorised officer) | 100 penalty units | 500 penalty units | 10x increase  
Explanatory notes state: creates appropriate deterrence and aligns with the VMA and other Queensland natural resources legislation (e.g. Water Act) |
# Increasing Penalty Units

|   | New section 68Cl (Contravention of enforceable undertaking) | Wilful offence  
- 6250 penalty units  
Otherwise - 4500 penalty units | Explanatory notes state: Maximum penalty units are reflective of the offence being an aggravation of the original non-compliance of the substantive offence |
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<tbody>
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<td><strong>35</strong></td>
<td><strong>Water Act 2000</strong></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Amendment of s 814 (Excavating or placing fill without permit)</td>
<td>1665 penalty units</td>
<td>1665 penalty units</td>
</tr>
</tbody>
</table>
Enforceable Undertakings

- Voluntary tool
- Written agreement to secure compliance with, or advance the purpose of the VMA
- Can be accepted after prosecution proceedings have commenced
- Published on the Department’s website
- If not complied with, proceedings can be commenced for the original offence and also for contravening an enforceable undertaking
- Can be withdrawn, varied or suspended
Enforceable Undertakings

- Decision to enter into an enforceable undertaking requires careful consideration
- Application requirements
- The making of an enforceable undertaking does not constitute an admission of guilt
- However, there is no privilege or protection in respect of admissibility of documents submitted and their use
- Part of compliance history of person/company
Stop Work Notices

- Can now also be issued where a person 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.
- Potential issues with requirement of “demolishing or removing development.”
Expanded Powers of Entry

• Subject of considerable debate
• Allows an authorised officer to enter a place:
  – To monitor compliance for clearing of vegetation under an accepted
    vegetation clearing code or an area management plan;
  – Where an authorised officer believes on reasonable grounds that a
    vegetation clearing offence is happening, or has happened.
• 24 hours written notice
• Not extend to entry of a building used for residential purposes
• Natural justice and safety issues?
Exemption for Unlawful Clearing

- The *Planning Act 2016* offences relating to unlawful clearing will not apply for clearing that became unlawful by operation of the Bill and undertaken during the period between 8 March 2018 and commencement of the amended VMA.
- Instead of being prosecuted the chief executive can give a restoration notice in relation to unlawful clearing.
- Restoration Notices are recorded on title.
- If a Restoration Notice or Enforcement Notice directs clearing to occur, there is an exemption from being prosecuted for unlawful clearing provided the clearing occurs as directed.
Concluding thoughts
Thank you

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