



Hon Stephen Robertson MP  
Member for Stretton



Queensland  
Government

Minister for Natural Resources and  
Minister for Mines

24 SEP 2003

Mr N J Laurie  
The Clerk of the Parliament  
Parliament House  
Alice and George Streets  
Brisbane Qld 4000

Dear Mr Laurie

I refer to your letter of 21 August 2003 forwarding a copy of two Petitions (5655 and 5779) lodged in the Queensland Legislative Assembly on 19 and 20 August 2003, requesting the House to rescind the amendments to the *Vegetation Management Act 1999* and the *Land Act 1994* that were passed by Parliament on 27 March 2003 and commission an open and independent review of the State's vegetation management laws.

The Beattie Government is committed to the protection of the health of our landscapes to promote sustainable economic development, maintain biodiversity and prevent land degradation. Illegal clearing undermines the regulatory framework designed to achieve those objectives and threatens the use and enjoyment of our natural resources by future generations.

In determining how best to deter illegal clearing the Government has weighed the rights of individuals against the need to protect the interests of the community as a whole. In this case, that balance has been preserved by the inclusion in the recent legislation of safeguards to ensure that individuals are appropriately protected. The new laws will only affect those that engage in illegal clearing.

The Petitions raise a number of issues, which I will deal with in turn.

#### **Entry to private property**

The amendments make only a limited change to the pre-existing powers of entry. Warrantless entry has always been available with respect to State land. Section 400A of the *Land Act 1994* now enables an authorised person to apply for a warrant to enter a place where evidence of a tree clearing offence is suspected to exist, for example, in an office within a dwelling house. This provision brings the *Land Act 1994* into line with the existing arrangements under the *Vegetation Management Act 1999*.

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Prior to the amendments, entry to freehold land was either by consent or by warrant. Section 30 now permits warrantless entry to check compliance with a development approval, compliance notice or enforcement notice. The provision is justified for two reasons. Firstly, illegal clearing can result in land degradation and serious and potentially irreversible impacts on biodiversity. Secondly, it can be impossible to verify compliance with the conditions of an approval via remotely sensed imagery, making a physical inspection essential.

### **Reversal of the onus of proof**

The amendments do not remove the presumption of innocence. The effect of sections 431F of the *Land Act 1994* and section 67A of the *Vegetation Management Act 1999* is to create a rebuttable presumption of law that an occupier is responsible for clearing that occurs on the land they occupy unless there is evidence to the contrary. The sections do not remove the need for the prosecution to prove each element of the offence and in particular to establish that the person or entity charged is in fact an occupier of the land in question.

The amendments do not in any way prevent an occupier from raising issues to rebut the presumption concerning an occupier's responsibility for clearing. If credible issues are raised the presumption is rebutted and the prosecution must prove beyond reasonable doubt that the occupier was in fact responsible for the clearing. This is no different to the operation of Criminal Code defences, where the defendant must raise the specific defence, such that the prosecution is then called upon to negate the defence. There must be some basis for the defence.

The sections above are modelled on the legislation dealing with camera detected traffic offences. It is important to understand the context in which the sections operate. Illegal clearing often occurs in remote areas. Apart from remotely sensed imagery, there is often little additional evidence, for example witnesses tend to be rare. In addition, clearing is a costly exercise often involving heavy machinery and large quantities of fuel. It is extremely unlikely that an unknown third party would deliberately conduct unauthorised clearing operations on an unsuspecting landholders property.

### **Removal of the defence of mistake of fact**

My Department applies the guidelines of the Director of Public Prosecutions in determining whether any particular breach of vegetation clearing laws should be prosecuted. In every case the circumstances of both the breach and the defendant are closely examined. Prosecution is reserved for the more serious clearing offences and does not occur unless all evidentiary and public interest guidelines have been met. Other enforcement options include warning notices, infringement notices and remediation orders.

The removal of the defence of honest and reasonable mistaken belief is designed to promote a duty to take reasonable care when undertaking activity which impacts on native vegetation to ensure that the activity is conducted strictly in accordance with the regulatory framework.

### **Removal of the right to remain silent**

The recent amendments preserve the balance between the rights of the individual and the protection of the community's wider interests by providing safeguards for individuals whilst still enabling information to be obtained to facilitate effective investigation of alleged illegal vegetation clearing.

Often the subject of a vegetation clearing investigation is a corporate entity. The High Court has determined that corporate entities are not entitled to protect themselves against the self-incrimination. The amendment is designed to overcome the situation where employees refuse to give information in relation to an investigation into their employer, thus making it extremely difficult to obtain evidence regarding an alleged offence. Whilst the privilege against self-incrimination has been removed, individuals have been safeguarded because the information they provide cannot be used against them in either criminal or civil proceedings.

I note the concerns expressed by the Petitioners, however they can be reassured that the full impact of Queensland's vegetation management laws will only be felt by those who engage in unlawful clearing.

Thank you for bringing this matter to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Robertson', with a long horizontal flourish extending to the right.

**STEPHEN ROBERTSON MP**