



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

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LAWYERS

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

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

Increasing Penalty Units

29	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	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	Explanatory notes state: creates appropriate deterrence and aligns with the VMA and other Queensland natural resources legislation (e.g. Water Act)

Increasing Penalty Units

35	New section 68CI (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
<i>Water Act 2000</i>				
55	Amendment of s 814 (Excavating or placing fill without permit)	1665 penalty units	1665 penalty units	No change to penalties. The clause adds to the activities that are prohibited, but does not change the penalty.

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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