

Vegetation management more complicated than ever

By Ari McCamley, Partner

Despite vocal opposition from primary producers, the *Vegetation Management and Other Legislation Amendment Act* (Act) was passed on 3 May 2018.

The changes arose from election promises made by the Queensland Government in 2015 and followed the Government's failed attempt to tighten the State's vegetation management laws in the minority-government days of 2016.

The Act extends the protection of high value re-growth to freehold land, includes vegetation that has not been cleared for 15 years within Category C (high value re-growth) vegetation, removes the ability to apply for a permit for developing high value and irrigated high value agriculture projects and removes the code for managing thickened vegetation so that a permit is now required.

To obtain a permit to manage thickened vegetation, landholders first need to apply for a "relevant purpose determination" with the risk that such an application can stall, with no right of appeal, if the Department does not accept that the proposed clearing is for a "relevant purpose". A landholder who obtains a relevant purpose determination will then need to make a development application and pay an application fee of at least \$3,240.

The Act also removes the ability to obtain an area management plan to regulate vegetation management on an individual property or broader scale, phases out any existing area management plans relating to clearing for encroachment, thinning or fodder harvesting by 8 March 2020 and revokes any permits obtained under the Mulga Lands Fodder Area Management Plan. The Government's discarding of the area management plan concept is particularly disappointing to those landholders who saw area management plans as the last remaining tool for collaboration with the Government on scientific-outcomes-based vegetation management.

Further, the Act expands Category R areas so that clearing of native vegetation is now prohibited within 50 meters of a watercourse in the entire Great Barrier Reef catchment and re-introduces the requirement to obtain a riverine protection permit to clear vegetation in a watercourse.

At the same time, the Department's enforcement powers have been expanded. Entry by authorised officers without consent or a warrant to investigate clearing activities requires only 24 hours' written notice, evidence can be seized and stop work notices can be issued. Maximum penalties for failing to comply, providing false information and failing to stop work or restore land have also increased.

Following 41 successive amendments to the Vegetation Management Act since its introduction in 1999, there is a justifiable sentiment amongst landholders that the current legislative approach has failed. The underlying framework that prohibits management practices unless they fall within State-based codes or are approved by a Brisbane-centric bureaucracy (at significant expense, if at all) prioritises process over outcomes.

It is time for a comprehensive review of the Vegetation Management Act and for Government and industry resources to be devoted to a better scientific understanding of management practices that simultaneously enhance the grazing potential and the environmental values of our landscape.



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Winds of change - the renewable energy boom in Queensland

By Alex Ramsey, Partner

Rising electricity prices and a change in the political climate have led to a boom in renewable energy projects across Queensland.

In the north, wind turbines are rising from the earth where sugar cane was once grown. On the Darling Downs and in Western Queensland, solar farms are spreading across cropping or grazing land. These projects are funded by both energy companies and the Federal Government from the \$100 million Australian Renewable Energy Fund, and the growth of the industry since 2015 is remarkable.

For example, east of Longreach, Canadian Solar has built a \$29 million project which will export enough energy to power 5,000 homes when fully operational in the next few years. Outside Barcaldine, a Spanish energy company has completed the first stage of a \$70 million project that currently includes 78,000 solar panels and will shortly expand to accommodate a battery storage facility. Further, with recent approvals from the State Government, work will begin shortly on the Clarke Creek Wind Farm west of Marlborough including almost 200 wind turbines over 50,000 hectares of land capable of producing 3% of the State's electricity needs.

More and more landholders are being approached with the opportunity to diversify their incomes. Arrangements with landholders usually involve an initial investigation period in which the project proponent is granted access and/or exclusivity followed by long-term leases or licences. Landholders securing the best outcomes consider the whole of the project when negotiating with a project proponent.

For example, while the operating rent or licence fee is important, so too are the payments during the investigation, construction and decommissioning phases of the project and landholders can also negotiate to be protected from unexpected consequences of the project on their businesses.

Our agribusiness lawyers are experienced in these negotiations and can assist landholders to reach a sound outcome before, during and after the life of a renewable energy project.



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Update on foreign investment in agricultural land

By Hannah Barbour, Associate

Earlier this year the Australian Government announced changes to and recently updated its guidance notes on the rules governing the acquisition of agricultural land by foreign investors.

Foreign investors now need to demonstrate that the agricultural land they intend to acquire has been part of a public sales process and marketed widely to potential Australian bidders for a minimum of 30 days (within the six months immediately prior to the agreement date) and that Australian bidders have had an opportunity to participate in the sale process.

The few exceptions to the new rules include where the foreign investor has a 50% or more Australian ownership share, is undertaking an internal re-organisation, is allowing Australian investors to participate (for example, under a leaseback arrangement that includes a pre-emptive right to buy back the property) or is acquiring a leasehold interest for a wind or solar farm.

The second report on the Register of Foreign Ownership of Agricultural Land has also recently been released.

The report shows that the proportion of agricultural land with a level of foreign ownership has fallen from 14.1% at 30 June 2016 to 13.6% at 30 June 2017. The United Kingdom remains the largest foreign agricultural land holder, followed by China and the United States of America.



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Carbon – where to from here?

By Hannah Barbour, Associate

The Clean Energy Regulator (CER) held the seventh Emissions Reduction Fund (ERF) auction on 6 and 7 June 2018. At the auction, the CER contracted a further 6.67 million tonnes of abatement in 32 transactions.

With the eighth ERF auction announced for 10 and 11 December 2018 and only \$250 million in funding remaining (from the \$2.5 billion committed to the ERF) the question is, where to from here?

While it was hoped that the auctions would attract bids from big industrial polluters with projects to curb their emissions, that interest does not appear to have eventuated. Instead, 29 of the 32 transactions in the most recent auction were for vegetation projects. Of the 739 ERF projects registered at 31 August 2018, 402 were for vegetation projects with 189 registered in New South Wales and 141 in Queensland. These figures show the ERF is primarily being utilised by landowners for vegetation projects (such as human induced regeneration of native forests and avoided clearing of native regrowth).

The average price at the most recent auction was \$13.52 per tonne. The lowest average price was \$10.23 at the third auction resulting in an average price across the seven auctions of \$11.97.

It is unclear whether the funding for the ERF will be increased any time soon.

While some of our clients are starting to see the benefits of this new revenue stream, participation in the ERF and entry into a contract to sell carbon credits are not without risk. Landholders who wish to participate in the ERF should always seek legal advice before deciding whether to participate and before contracting with the CER or any aggregators in this area.

Our agribusiness lawyers have assisted landholders to secure services agreements on fair terms and to understand their obligations under carbon trading arrangements.



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PPS Act – better finance for agribusiness

By Peter Mills, Special Counsel

The Personal Property Securities Act (PPS Act) gives priority to those who assist in the acquisition or production of crops and livestock. Common situations where the PPS Act can help your business include where you sell livestock or equipment on terms, supply feed or fertiliser, provide agistment or other services, sell grain to resellers or under consignment agreements. The PPS Act can be used whenever a person wishes to obtain a right in assets to secure payment of a debt or other obligations.

The PPS Act generally operates on the basis that a person in possession of property (other than land), even if they do not own it, has the legal right to sell or mortgage it, subject to properly documented and registered interests on the PPS register. Some examples of how the PPS Act operates are:

- **Example 1:** John sells cattle to Mike from time to time, but always on the condition that Mike does not own the cattle until he has paid John in full. A single suitable document and PPS registration by John can cover all of the sales made to Mike, giving John first rights over the cattle for the debt owed to John, even if Mike becomes bankrupt.
- **Example 2:** John and Mary are directors of a family company, which is the trustee of a family trust. The trust conducts a grain growing enterprise but is a little low on cashflow. Mary's parents lend some money to the trust to grow and harvest this and future years' crops, but want to make sure they have first rights over any crops and proceeds from the sale of the crops. By suitable documents and registration under the PPS Act, Mary's parents can rank ahead of all other creditors and get paid first.
- **Example 3:** John agists cattle on Mike's property from time to time. Mike wants to make sure that if John does not pay the agistment fees, Mike can sell the cattle (whether or not they are owned by John) to recover the debt without having to go through a prolonged court process. Mike can do this by using the PPS Act, helping him to be paid ahead of John's other creditors.

- **Example 4:** John's son Paul borrows John's equipment to do some work on Paul's property. Paul does work on John's farm from time to time in return for being able to use the equipment. The equipment is normally stored on Paul's property for lengthy periods, but John has not registered on the PPS register to make sure he has the right to get his equipment back. Paul gives a mortgage over all of his farm to his bank (as is often the case), which the bank registers on the PPS register. The bank now has first rights over the equipment, despite Paul not owning the equipment, as no PPS documents and registration had been created by John.

Farmers and graziers should consider undertaking a "PPS Act audit", to understand, verify and protect their rights over assets. This does not need to be a burdensome process, as many transactions between the same parties (for example, related entities or regular customers) can be covered by the one agreement and a single registration (registrations cost as little as \$6). We can undertake this audit for you, provide you with more detailed information on how you can make the PPS Act work for your business and create the suitable agreements and registrations.



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The importance of having a Will

By Brianna Hockey, Lawyer

A Will is a legal document which sets out who will receive your property and possessions when you pass away.

If you pass away without a valid Will, the intestacy rules under the *Succession Act 1981 (Qld)* will determine how your assets will be distributed and may result in a very different outcome to what you may have wanted or intended. Further, an application to the Court will be required to authorise a person to be able to deal with your estate. This process is expensive.

By having a valid Will, you give yourself the best chance of ensuring your estate is distributed how you wish and allows you to nominate a person or persons you trust to administer your estate. It also gives you the opportunity to provide for the succession of any businesses that you control through other structures such as companies and trusts.

Ensuring your Will is drafted correctly and takes into account your current circumstances is also important. For example, if your Will fails to consider survivorship rules, does not appropriately deal with liabilities of the estate, or is made when there are questions around your mental capacity, it can have drastic unintended consequences.

Once you make a Will, you should review it regularly to ensure that it is up to date, particularly if you marry or divorce, a long-term relationship ends, children or grandchildren are born, your assets or financial circumstances change or a beneficiary passes away or is at risk of bankruptcy. You should also review your Will if a person you have appointed to be your executor passes away, becomes unable or is unwilling to act due to age or ill-health or is at risk of bankruptcy.



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Rural Financial Counselling Services Southern Queensland Seminar – 21 August

On Tuesday 21 August, Ari McCamley, Partner, Senior Associate, Michael Mayes and Lawyer, Brianna Hockey attended the Rural Financial Counselling Service Southern Queensland seminar, which was held in Brisbane. Brianna spoke on the importance of having a Will and the consequences of having a Will that no longer suited current circumstances. Michael presented on how the Personal Property Securities Act / Personal Property Securities Register apply in practice in Agribusiness transactions.

With over 20 Rural Financial Councillors in attendance from across Southern Queensland, it was an ideal opportunity to support the organisation through the provision of sound and easy to understand legal advice.

The Rural Financial Counselling Services - Southern Queensland is a not for profit body which provides rural financial counselling services across Southern Queensland, with offices in Biggenden, Biloela, Charleville, Emerald, Gatton, Goondiwindi, Gympie, Kingaroy, Miles, Rockhampton, Roma, St. George, Toowoomba and Warwick.