



**EDO** Qld.

Environmental Defenders Office

*Using the law to protect  
our environment.*

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Protected Plants Review Project  
Business Reform Unit, Nature Conservation Services  
Department of Environment and Heritage Protection,

**By email only to: [plants.policy@ehp.qld.gov.au](mailto:plants.policy@ehp.qld.gov.au)**

Dear Sir/Madam,

### **Nature Conservation (Protected Plants) and Other Legislation Amendment and Repeal Regulation 2014**

Thank you for the opportunity to make a submission on these changes.

Whilst we generally support removing duplication and unnecessary regulation in Queensland's laws, we do not support a 'low/high risk' strategy for managing protected plants which ignores the precautionary principle and runs contrary to the 'ecologically sustainable use' of protected wildlife under the *Nature Conservation Act 1992* (Qld) (NCA).<sup>1</sup>

In our view, the exemptions are too broad and the overall framework doesn't take into account the impacts of other recent legislative changes which are likely to negatively impact on protected plant communities.

Ultimately, whilst we are, in principle, in favour of removing unnecessary regulation, the proposed changes appear to be aimed at making it easier to harvest, clear and trade in protected plants rather than to conserve protected plant communities – as is the overriding object of the NCA. The changes are therefore likely to deliver a poor ecological outcome.

#### **Who we are**

The Environmental Defenders Office, Qld (EDO Qld) is a non-profit community legal centre which helps disadvantaged people in coastal, rural and urban areas understand and access their legal rights to protect the environment. We also use our experience in interpreting environmental laws to deliver community legal education and inform law reform.

#### **Our Submission**

We wish to raise three main points in our submission:

1. The proposed changes do not take into account the cumulative impacts on protected plant species which will result from other recent related legislative changes;
2. The exemptions in the Wildlife Management Regulation are far too broad; and
3. The changes are contrary to the objects of the NCA and the State of the Environment Report 2011 findings.

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<sup>1</sup> *Nature Conservation Act 1992* (Qld), section 5(d).

Further detail on each of these points is provided below.

Should you require any further clarification or have any further questions, please contact Evan Hamman, Education Solicitor at EDO Qld on (07) 3211 4466.

Yours faithfully  
Environmental Defenders Office (Qld) Inc

A handwritten signature in black ink that reads "Jo-Anne Bragg." The signature is written in a cursive, flowing style.

**Jo-Anne Bragg**  
*Principal Solicitor*  
Environmental Defenders Office (Qld) Inc

**1. The proposed changes do not take into account cumulative impacts on protected plant species which will result from other recent related legislative changes**

**Changes to the Vegetation Management framework**

Already this year, the State Government introduced very significant changes to the vegetation management framework in Queensland.<sup>2</sup>

Those changes – which in our view wound back years of vegetation protection efforts – have now exposed many hundreds of thousands of hectares of mature and regrowth bushland as well as riparian vegetation to significant levels of clearing.<sup>3</sup> This will in turn likely affect many protected plant communities which have not yet been properly identified, or which will largely be overlooked when unregulated clearing takes place.

The connection between clearing of native vegetation and protected plant communities was highlighted in the State Government’s 2011 State of Environment Report:

*“The highest number of threatened species for vascular plants occurs in the more easterly bioregions of the state and is associated with those bioregions where vegetation clearing has been most extensive.”<sup>4</sup>*

Indeed, one of the most significant changes to vegetation clearing laws introduced this year was to allow for the clearing of ‘high value regrowth’ vegetation on freehold and indigenous land. This change alone exposed approximately 700,000 hectares of bush land to clearing.<sup>5</sup> Prior to the changes, about 79% of that area was protected due to the presence of essential habitat for threatened species or endangered ecosystems.<sup>6</sup>

A second major change to the vegetation management framework was to allow clearing of native vegetation for a wide range of new ‘relevant purposes’ including allowing clearing for ‘high value agriculture’, ‘irrigated high value agriculture’, and allowing for ‘necessary environmental clearing.’ Expanding the range of purposes for which clearing can occur has exposed a wide range of threatened species to clearing – including several types of vulnerable and endangered plants – which currently occur in mature bushland and regrowing bushland.<sup>7</sup>

A third major change to the vegetation management framework was the introduction of *self-assessable vegetation clearing codes* which will simply mean many protected plant species will likely never be located or identified before they are cleared. Self-assessable codes are, or will soon be available, for maintaining fences or firebreaks; fodder harvesting; property infrastructure; thinning; and managing encroachment. If any of these activities comply with a code, then a permit is not required only ‘notification’ of the clearing to the relevant department.

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<sup>2</sup> The *Vegetation Management Framework Amendment Act 2013* - which passed on 21 May 2013 - makes substantial changes to the *Vegetation Management Act 1999* (Qld) and the *Sustainable Planning Act 2009* (Qld) concerning vegetation management.

<sup>3</sup> See the projected impacts set out in this report: Martin F J Taylor, WWF-Australia, ‘Bushland at risk of renewed clearing in Queensland’ May 2013

<sup>4</sup> *State of the Environment Report 2011*, page 114, accessed here: <http://www.ehp.qld.gov.au/state-of-the-environment/report-2011/pdf/state.pdf>

<sup>5</sup> Martin F J Taylor, WWF-Australia, ‘Bushland at risk of renewed clearing in Queensland’ May 2013 at page 3

<sup>6</sup> Martin F J Taylor, WWF-Australia, ‘Bushland at risk of renewed clearing in Queensland’ May 2013 at page 3

<sup>7</sup> Martin F J Taylor, WWF-Australia, ‘Bushland at risk of renewed clearing in Queensland’ May 2013 at page 12 and pages 16-17

In practice, how will the Department monitor the impacts of self-regulation on protected plant communities as a result of these activities? Many plant species will likely be negatively impacted by the increased risk of unregulated clearing.

### **Removal of Riverine Protection Permits**

Also in 2013, the *Land, Water and Other Legislation Amendment Act 2013* (Qld) was introduced.<sup>8</sup> That Act removed the requirement for a *riverine protection permit* under the *Water Act 2000* (Qld) to destroy vegetation in a watercourse or spring.

Whilst a permit to clear vegetation may still be required under the *Sustainable Planning Act 2009* (Qld) it may be exempt if it falls under a new ‘self-assessable clearing code’ (above) or if another exemption applies for instance if it involves the clearing of an area of vegetation (less than 0.5 ha) in a watercourse, lake or spring where the clearing is a necessary and unavoidable part of excavating or placing fill in a watercourse.<sup>9</sup>

WWF-Australia foreshadows the possible impacts of these changes to riparian vegetation:

*“As a result of removal of the requirement for riverine protection permits under the Queensland Water Act, we estimated that about 85,000km of regrowing native bushland along streams is being opened to clearing...”<sup>10</sup>*

Again, much of this unregulated clearing is likely to result in the destruction of protected plant communities that thrive in or near riparian environments such as watercourses or natural springs. How will the Department monitor the impacts on riparian plant communities as a result of these activities? Where are the impacts of these changes accounted for in the new protected plants framework?

### **Significant increase in ecotourism and recreation in national parks**

Also this year, changes to the objects of the NCA allowed for a very significant increase in recreation and commercial use of national parks and other protected areas which may negatively impact on threatened plant communities. These changes include allowing for the construction of new ‘ecotourism facilities’ which were previously not allowed in national parks.<sup>11</sup>

The legislation gives little indication of what might constitute an ecotourism facility but says that it will not include (rather extraordinary) examples like ‘a casino, a golf course or an amusement park.’<sup>12</sup>

With such a broad conceptualisation of what constitutes an ‘ecotourism facility’, and no public participation during assessment required by the NCA, it is difficult to envisage what these facilities might end up looking like, and what the long term impact on the parks and protected plants within those parks might be.<sup>13</sup>

In addition, the move to downplay ‘conservation’ of protected areas in favour of increased ‘recreation’ and ‘commercial use’ of protected areas is a disturbing trend.

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<sup>8</sup> The Bill was passed by the Queensland Parliament on 2 May 2013

<sup>9</sup> *Sustainable Planning Regulation 2009* (Qld) schedule 24, part 1, item 1(2)

<sup>10</sup> Martin F J Taylor, WWF-Australia, ‘Bushland at risk of renewed clearing in Queensland’ May 2013 at page 3

<sup>11</sup> *Nature Conservation Act 1992* (Qld), see new section 35

<sup>12</sup> See Definition of ‘ecotourism facility’ in schedule to the *Nature Conservation Act 1992* (Qld)

<sup>13</sup> EDO Qld made two submissions at the time: <http://www.edo.org.au/edoqld/wp-content/uploads/2013/01/2012-12-20-joint-submission-of-Qld-EDOs.pdf> and also here for the second round of changes: <http://www.parliament.qld.gov.au/documents/committees/H CSC/2013/NatureCon2-2013/submissions/198.pdf>

How will increased numbers of visitors to the parks be made aware of different categories of protected plants within the parks? How will the impacts on protected plants be appropriately managed?

### **Allowing grazing in national parks and on NRS properties**

Also this year, amendments to the NCA allowed ‘emergency grazing’ in five of Queensland’s national parks.<sup>14</sup>

This grazing is in addition to grazing which has already been permitted in state forests, resources reserves and conservation parks. The State Government acknowledges those areas; “have been used for many years by graziers across the State for cattle agistment or lease.”<sup>15</sup>

National park grazing has been occurring for up to six months already in the nominated national parks, and although it must end by 31 December 2013, the activities (which include the building of ‘associated infrastructure’ such as fences, water troughs, pipes, roads etc.) are not required to be consistent with any management plan for the park or indeed the cardinal principle for the management of national parks under the NCA.<sup>16</sup>

Furthermore, grazing has also recently been allowed on certain ‘National Reserve System’ (NRS) properties,<sup>17</sup> not through changes to the NCA, but likely through an agreement between the State and Federal Government. The NRS properties are essentially ‘national parks in waiting’ as they had been purchased as national park, but were yet to be formally gazetted.<sup>18</sup>

As with the state forests, resources reserves and conservation parks, there are likely to be protected plant communities vulnerable to grazing activities in national parks and on NRS properties. Whilst under the NCA, grazing in national parks must expire by 31 December 2013, there is no indication when grazing on the NRS properties will end.

The cumulative risks of grazing on protected plant communities in these areas should have been considered before introducing these protected plant changes. At the very least, the trigger maps and broad exemptions should be urgently reviewed in the areas most at risk from continued grazing.

### **The new State Planning Policy only protects certain categories of plants**

The new single State Planning Policy (SPP) released in December 2013<sup>19</sup> sets out the State Interests in development in Queensland. Whilst ‘Biodiversity’ is included as a State Interest, the SPP only seeks to protect ‘threatened wildlife’ under the NCA.<sup>20</sup>

The categories of ‘threatened wildlife’ are limited and include native wildlife prescribed as:

- extinct in the wild; or
- endangered; or
- vulnerable.<sup>21</sup>

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<sup>14</sup> *Nature Conservation Act 1992* (Qld), section 173S

<sup>15</sup> See FAQs here: <http://www.nprsr.qld.gov.au/managing/national-park-grazing-faq.html>

<sup>16</sup> *Nature Conservation Act 1992* (Qld), section 173S(4)

<sup>17</sup> See FAQs here: <http://www.nprsr.qld.gov.au/managing/national-park-grazing-faq.html>

<sup>18</sup> <http://www.npaq.org.au/latest-news/grazing-to-continue-in-8-national-park-reserves>

<sup>19</sup> <http://www.dsdp.qld.gov.au/about-planning/state-planning-policy.html>

<sup>20</sup> See definition of MSES in the SPP

<sup>21</sup> See definition of ‘threatened wildlife’ in the schedule to the *Nature Conservation Act 1992* (Qld). Note ‘wildlife’ means any taxon or species of an animal, plant, protista, procaryote or virus.

It does not, however, include other classes of 'protected wildlife' including those classed as:

- rare; or
- near threatened; or
- least concern.<sup>22</sup>

There is therefore no requirement for a local government planning scheme to identify or seek to avoid development in any areas with those 'lesser' categories of protected plants.<sup>23</sup> Nor is there a requirement for the State Government, when it assesses a development application, to seek to avoid impacts on any of those categories of plants.<sup>24</sup>

**The cumulative effect of all of the above changes represents significant challenges to protected plant communities in Queensland. There is no indication that the changes take any of these recent legislative amendments into account at all.**

**Solution:**

In areas which have been made significantly more vulnerable by the recent changes described above, applicants for land clearing or grazing or proponents for resource activities should be required to undertake flora surveys. If their actions are determined to have an acceptable level of risk to protected plants - when considering cumulative impacts across Queensland - then they should obtain relevant licences through transparent legislative processes. The current trigger map and exemptions should also be reviewed to consider the anticipated cumulative impacts on protected plant communities as a result of these recent changes.

## **2. The exemptions in the Wildlife Management Regulation are too broad**

There is a very wide variety of exemptions proposed for taking or interfering with protected plants. Some of those exemptions include:

- Section 258 allows for a person to take and use a least concern plant, other than a special least concern plant, without a protected plant licence.

Whilst the government considers that 'least concern' plants are not considered to pose a significant risk to plant biodiversity,<sup>25</sup> ultimately, these plants will quickly become elevated to a higher threatened status if such a broad exemption is permitted.

What measures does the Department have in place to review the long term impacts of this exemption? Further, how will a person know, in practice, what is a least concern plant or special least concern plant?

- Section 261G allows a landholder of private land to take or use near threatened or special least concern plant parts for fodder without a licence.

Again, these threatened and special least concern plants will quickly become elevated to a higher threatened status without regulation. Indeed, the Department has acknowledged that should special least concern plants not be protected they risk becoming elevated to a higher risk category. The explanatory notes state:

<sup>22</sup> See definition of 'protected wildlife' in the schedule to the *Nature Conservation Act 1992* (Qld)

<sup>23</sup> State Planning Policy page 27 and see definition of MSES

<sup>24</sup> State Planning Policy page 46 and see definition of MSES

<sup>25</sup> Explanatory Notes to Nature Conservation (Protected Plants) and Other Legislation Amendment and Repeal Regulation 2014 section 258

*“Special least concern plants have been recognised by the State as plants that are commercially valuable or are known to have sensitive reproductive biology and are therefore at risk of becoming threatened should they not be protected.”<sup>26</sup>*

Further, native vegetation can already be cleared for fodder harvesting under a self-assessable clearing code (see above). Why does there need to be an additional exemption for protected plants?

How will the Department accumulate data or monitor these activities and thereby avoid threatened and special least concern plants being elevated to a higher level? Why is there not a requirement to notify the Department or conduct even a basic flora survey to ensure no ‘higher risk’ plants are affected?

- Section 261O (a) provides an exemption where a person is undertaking clearing in a high risk area, where a flora survey report was undertaken within the previous 2 years, which identifies that the clearing of endangered, vulnerable and near threatened plant species, including supporting habitat can be avoided by an area of at least 100 metres.

The validity of the previous report can’t be guaranteed. There may be many more threatened plant species on the site that were missed in the original survey, or which may have appeared since that date. These areas are considered ‘high risk’ and the government should adopt a precautionary approach by requiring new flora survey reports to be undertaken in all high risk areas.

**Overall, the exemptions are too broad and risk elevating lower risk categories of plants to higher risk categories. Without accumulating accurate data on ‘lower risk’ plant communities those communities will likely soon be elevated to higher protected statuses.**

**Solution:**

The exemption concerning flora reports two years prior to clearing should be removed. There should not be an exemption to use threatened or special least concern plants for fodder without a licence as there is already a self-assessable code for clearing vegetation for fodder harvesting. At the very least, a basic flora survey should be undertaken to ensure high risk plant communities aren’t present in the area.

The Department should publish and distribute clear information, including accurate photographs and maps on what plants fall into what categories and how they can be properly identified. The department should require notification before lower risk plants are taken and undertake regular audits for those activities which will likely impact on communities currently assessed as ‘low risk’.

**3. The proposals are contrary to the objects of the NCA and the State of the Environment Report 2011**

The overriding object of the *Nature Conservation Act 1992* (Qld) (NCA) is the conservation of nature (while allowing for the various uses of protected areas, however this has no real relevance to the proposed framework for protected plants).<sup>27</sup>

The NCA provides that the object of the conservation of nature is to be achieved by, *inter alia*.<sup>28</sup>

<sup>26</sup> Explanatory Notes to Nature Conservation (Protected Plants) and Other Legislation Amendment and Repeal Regulation 2014 at page 29

<sup>27</sup> *Nature Conservation Act 1992* (Qld), section 4.

- s.5(a): The gathering of information and community education etc.;
- s.5(d): Protection of native wildlife and its habitat; and
- s.5(e): Use of protected wildlife and areas to be ecologically sustainable.

Many experts in the field recognise that there is much we don't know about protected plant communities in Queensland. For instance, the Queensland Herbarium has acknowledged in 'listing advices' to the Federal Government on endangered plants that data on plants can often be insufficient.<sup>29</sup> Indeed, a species may be considered 'least concern' in Queensland merely because:

*"there is insufficient information about the wildlife to conclude whether the wildlife is common or abundant or likely to survive in the wild."*<sup>30</sup>

But it is not also about lack of information on plants we know about, the Herbarium estimates that in Queensland, "we discover more than 50 new species of plants, algae, lichens and fungi each year."<sup>31</sup>

We simply do not have the data on protected plants to not adopt a precautionary approach. How can we possibly create sound policy with such a broad range of exemptions and classification of high/low risk categories without being reasonably certain about the locations of protected plant species?

In our view, the mere absence of records should not be extrapolated to a conclusion that these are low risk areas. Ultimately, using an absence of data to inform important nature conservation policy is contrary to the "gathering, researching, analysing, monitoring and disseminating information on nature"<sup>32</sup> as well as the precautionary approach to managing our environment, which the State Government is required to implement<sup>33</sup> and which is integral to the concept of ecological sustainability.

### **Solution:**

Review the exemptions and future practices of the Department to take into account the 'ecologically sustainable use' of wildlife and how little we actually know about plant communities in Queensland.

It is clear that much data on protected plant communities in Queensland is not available, and many communities are yet to be discovered. The trigger map and associated policies should take a precautionary approach to conserving our protected plant species by listing plant communities as high risk unless data is available to the contrary.

<sup>28</sup> *Nature Conservation Act 1992* (Qld), section 5.

<sup>29</sup> See for example: <http://www.environment.gov.au/biodiversity/threatened/species/pubs/64652-listing-advice.pdf> and <http://www.environment.gov.au/biodiversity/threatened/species/pubs/56133-listing-advice.pdf>

<sup>30</sup> <http://www.qld.gov.au/environment/plants-animals/endangered/>

<sup>31</sup> <http://www.qld.gov.au/environment/plants-animals/plants/new-plants/index.html>

<sup>32</sup> *Nature Conservation Act 1992* (Qld), section 5(a).

<sup>33</sup> Intergovernmental Agreement on the Environment at Clause 3.5.1 available at: <http://www.environment.gov.au/node/13008>