



# ***AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE***

**Members present:**

Mr IP Rickuss MP (Chair)  
Ms MA Maddern MP  
Ms J Trad MP  
Mr MJ Trout MP

**Staff present:**

Mr R Hansen (Research Director)  
Mr M Gorringe (Principal Research Officer)

## **PUBLIC BRIEFING—INQUIRY INTO THE NATURE CONSERVATION (PROTECTED PLANTS) AND OTHER LEGISLATION AMENDMENT BILL**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 7 AUGUST 2013**

**Brisbane**

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Committee met at 8.31 am

**BARRY, Ms Alana, Policy Officer, Department of Environment and Heritage Protection**

**CLARE, Mr Geoff, Executive Director, Nature Conservation Services, Department of Environment and Heritage Protection**

**HERSE, Ms Karalyn, Policy Officer, Department of Environment and Heritage Protection**

**MCKEAY, Ms Jackie, Principal Policy Officer, Department of Environment and Heritage Protection**

**CHAIR:** Ladies and gentlemen, welcome and thank you for coming along this morning. I declare open this hearing of the Agriculture, Resources and Environment Committee. I acknowledge the traditional owners of the land on which this meeting is taking place. I am Ian Rickuss, the member for Lockyer and the chair of the committee. The other members here today are Jackie Trad, the member for South Brisbane and deputy chair; Michael Trout, the member for Barron River; and Anne Maddern, the member for Maryborough. Please note that these proceedings are broadcast live by the parliamentary website. The purpose of the meeting is to assist the committee in the examination of the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013 and the Agriculture and Forestry Legislation Amendment Bill 2013.

We will begin today with a briefing from the Department of Environment and Heritage Protection on the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013, followed by a public hearing with selected stakeholders and then further comments from the department. We will adjourn at 10.30 and resume at 10.45 for a public briefing and hearing of the Agriculture and Forestry Legislation Amendment Bill 2013. I remind honourable members and officers providing briefings today that they are here to provide factual information and not give opinions about the merit or otherwise of the policies behind the bill or alternative approaches. Any questions about the policy of the government that the bill seeks to implement should be directed in the first instance to the responsible minister, namely, Andrew Powell, the Minister for Environment and Heritage Protection and not these officers. Before we start, please ensure that all phones are switched to silent.

Welcome, Geoff. Would you like to introduce your officers who will be here today and make a start?

**Mr Clare:** Thank you, Mr Chair, and good morning to committee members and officers. I am the executive director of Nature Conservation Services within Environment and Heritage Protection, which has responsibility for the work on this bill. On my left I have Jackie McKeay, who is the principal policy officer on the project. To her left is Alana Barry and on my right is Karalyn Herse. They are both policy officers working on project.

My brief this morning is in two parts: firstly, to provide context to the bill and, secondly, then to run through the key highlights of the broader package that the bill actually involves. For the committee's benefit, all plants indigenous to Australia are declared as protected plants in Queensland under the Nature Conservation Act. Queensland actually has the most diverse array of native flora in Australia with more than 12,800 known species. Of those, 198 are listed under the Nature Conservation Act as endangered, 390 are listed as vulnerable, 461 are listed as near threatened and 23, unfortunately, are listed as extinct in the wild. The remaining species, some 11,700, are classified as least concern plants.

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The management and use of protected plants in Queensland is regulated through a suite of statutory and no statutory instruments. Collectively, we refer to them as the protected plants legislative framework. The primary aim of the framework is to manage the threatening processes and conserve biodiversity associated with these species, whilst allowing for their clearing, harvesting, growing and trade. Some of those species are traded internationally. The framework sits under the Nature Conservation Act 1992 and is made up of subordinate legislation including the Nature Conservation (Protected Plants) Conservation Plan 2000, the Nature Conservation (Administration) Regulation 2006, the Nature Conservation (Wildlife Management) Regulation 2000, the Nature Conservation (Wildlife) Regulation 2006, and the Nature Conservation (Protected Plants Harvest Period) notice 2013.

I would like to clarify at this point a matter that was raised by some stakeholders in the review process. I thought for the benefit of the committee I would clarify it. Some of our clients were confused as to why plant matters would be reflected in legislation pertaining to wildlife. I want to clarify that, simply put, the Nature Conservation Act, the NCA, defines 'wildlife' as both plant and animal species and has since 1992.

In its current form, the framework is overly complicated. As I just listed, there are six or seven different forms of subordinate legislation. This places a significant regulatory burden on business and government. It is difficult for both proponents and regulators to effectively interpret, implement and administer this system. Estimates that we have made indicate that, based on full compliance, the current regulatory burden imposed on business totals approximately \$52.8 million a year and \$705,000 for government as the regulator per year. Whilst there are a number of exemptions, the framework operates from the principle that plants everywhere are regulated with limited consideration as to the level of risk or consequence of those plants being cleared or harvested. This has proved unrealistic and inefficient from a regulatory perspective. The framework initially commenced in 1994 and does not adequately recognise more recent legislative provisions that relate to the protection of native vegetation.

For these reasons, a review of the framework was initiated in 2011. The Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013 delivers the first stage of that review. The bill sets out the changes necessary to primary legislation, including the Nature Conservation Act, the Sustainable Planning Act and the Vegetation Management Act. Extensive amendments will also be required to subordinate legislation to complete the legislative review. For this reason, the bill itself contains relatively few amendments. The majority of the amendments to the framework in total will be in the regulations, which are currently in the process of being drafted.

While there is limited detail in the bill itself, the department has consulted on the proposed reforms as an overall package. This consultation included the release of a regulatory impact statement and discussion paper in February of this year. The results of this consultation have already been made available to the committee. The bill that is before the committee aligns with the recommended option that was endorsed by government following the public consideration of the regulatory impact statement. The plan is that the revised framework, complete with regulatory changes, will be completed by the end of this calendar year for implementation on 1 January 2014. In a summary of the context, this review of the framework is a significant piece of regulatory reform that will reduce environmental green tape, whilst also improving the efficiency of the system for both business and government and also ensuring a high level of protection for our most threatened plant species.

If I can move to the key elements of the revised framework, the existing framework will be overhauled to streamline assessment processes, remove unnecessary administrative and regulatory burden and simplify permit and licence requirements. A risk based approach to regulation will be adopted so that permits and licences will only be required for activities that pose a high risk to plant biodiversity. The number of permits and licences currently applying to the clearing, harvesting and growing of protected plants will be reduced from 11 down to three. This is significant: the requirement to undertake flora surveys will be removed except where the clearing activity poses a high risk. As I mentioned earlier, the current framework is premised on full regulation, which means that where a species is captured by the regulation, generally speaking, a flora survey is required before activities are conducted that may impact on it. Applicants will be provided with a flora survey trigger map that will identify high-risk areas and where a flora survey will be required. This is expected to reduce the number of flora surveys currently required by 97 per cent.

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All clearing assessed as low risk, which includes the clearing of least concern plants, will be exempt from a permit and regulatory requirements. The maximum allowable currency periods for clearing permits will also be increased from six months to two years so that industry will no longer need to keep reapplying through the course of a project. That has been a significant concern in terms of the level of green tape or red tape that is involved in maintaining the current system. The regulation of harvesting and growing will be focused on the sustainability of the activity, rather than the purpose of the activity. Existing blanket restrictions applying to whole plant harvest—that is, the taking of a whole plant live from its environment—will also be removed for restricted least concern plants.

A new category of special least concern has been developed to simplify the existing restrictions and classifications relating to restricted least concern plants and merge them into one defined category. This will apply to plants that are restricted under the conservation plan or as type A restricted plants in the administration regulation. Special least concern plants will be defined as least concern plants that face a unique type of harvesting pressure, primarily due to their high commercial demand or the particular biological traits of the plant, such as they are very slow growing. Whole plant harvesting of these special least concern plants will continue to be regulated by the framework. However, it will now be allowed in circumstances where the sustainability of the harvest can be demonstrated and not just under a salvage operation, 'salvage' meaning the plants are taken for another separate purpose. Special least concern plants generally do not face particular clearing pressures and, as such, will continue to be exempt from a clearing permit in almost all circumstances.

Two pieces of subordinate legislation will be repealed, including the conservation plan and the harvest period notice, and relevant provisions will be transferred into the act or wildlife management regulations. One of the concerns of both the department and clients with the current framework is the ability to understand it and comprehend it, as I mentioned it earlier. That is exacerbated by the number of pieces of subordinate legislation that are required to be understood to interpret it.

Exemption provisions prescribed in section 89 of the act and conservation plan will be consolidated within the wildlife management regulation. This will mean that exemptions will be located in the one statutory instrument instead of three, therefore making it easier for the public and clients to navigate. This is consistent with how the Nature Conservation Act currently operates and other how other exemptions are established in the act.

As the bill repeals the conservation plan, an amendment is required to the act to retain the ability of the chief executive to require payment of conservation value in certain limited circumstances. Conservation values are already prescribed in the wildlife management regulation but will generally not be required. In general, conservation value or the payment of money is not required because the impacts on protected plants under the framework is met by other measures such as avoiding the impact, mitigating the impact or offsetting the impact.

Amendments to the Vegetation Management Act and the Sustainable Planning Act are required to clarify that the harvesting of sandalwood on freehold land is not classified as a native forest practice, thereby reducing duplication by ensuring that the harvesting of sandalwood is only assessed under the Nature Conservation Act. For the benefit of those committee members who are not aware, sandalwood is a high-value species that grows in inland Queensland. It is a very slow growing, high-value species that is used particularly overseas. An existing loophole that allows sandalwood to be harvested under a timber exemption in the conservation plan will also be removed.

New fees will be included that are relative to the department's resources required to assess a permit or licence application to enable government to adequately resource the framework and expedite application processing times. This will result in reduced delay costs to business. Assessment guidelines and flora survey guidelines will also be developed and made publicly available so that applicants are provided with clear and consistent information on how their application will be assessed.

In terms of regulatory savings, as I mentioned before, the estimated full compliance cost to business is currently \$50.5 million per annum. It is anticipated that this new framework will reduce that cost by \$48.7 million per annum. That largely relates to the reduction in flora surveys for areas that are considered to be a lesser risk. These reforms will mean that government will no longer be attempting to provide comprehensive protection for all plants across Queensland. As I mentioned before, the rationale for that is that the current system has not proved to be feasible and efficient in the way it regulates.

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The reforms will enable the department to redirect resources to adequately assess high-risk activities and to do so in a more efficient and effective manner. That will result in more effective conservation outcomes than are currently the case. For example, in the majority of circumstances permits and licences will not be required for activities involving least concern plants. This means that government will no longer be required to assess these applications and will be able to focus on applications involving plants that at a greater risk of extinction. In addition, loopholes will be closed and regulatory requirements will be clearly stipulated so proponents will know with greater certainty when activities are considered low risk and when they are triggered as a high-risk activity.

In conclusion, as I mentioned, amendments to subordinate legislation are a significant part of delivering this overall package. Those amendments are currently being drafted. The department will continue to consult with key interest groups through that regulatory drafting process.

**CHAIR:** Thank you very much. I did notice in the submission from the Mycological Society that they felt that mushrooms are not covered as fungi. What is the department's feeling on that? I think there is a clause there that says that they may be covered under the term 'vegetation'.

**Mr Clare:** I will ask Jackie to comment on that.

**Ms McKeay:** The current definition of 'plant' in the Nature Conservation Act captures all varieties of plant. The definition of 'plant' in the Nature Conservation Act is 'any member of the plant or fungus kingdom (whether alive or dead and standing or fallen), and includes', inter alia, moss, liverwort, algae, fungus and lichen. When we say 'protected plants' that does include fungus and the reforms will cover plants including fungus.

**CHAIR:** How good are our trigger maps? Has the state got a good grasp of the trigger map?

**Mr Clare:** One of the reasons the current system is not as effective as it should be is that there is not perfect information as to the spread of plant species in Queensland. There is knowledge and there are verifiable records from previous surveys of where species exist. The trigger maps are based on that known information and are being developed in consultation with the Queensland Herbarium. We are confident that those maps are a sound reflection of what is known. But I would not purport to the committee that it is a perfect record of where all plants are in Queensland.

**CHAIR:** Is the department going to keep updating the trigger maps?

**Mr Clare:** There will be provision for updating the trigger maps. As is currently the case, part of that will come from information that is provided by various parties inside and outside government. The records that we are speaking of include records that are in a database called Wildnet which has been in place for some time. There are established protocols and relationships with the Herbarium, universities and various other groups to update records of those things. The other form of updating will actually come from the flora surveys that continue to be required under the legislation.

**CHAIR:** That should give us a better understanding of what is going on. I read in the submissions about the definition of special least concern. What was the other concern?

**Ms McKeay:** Essentially special least concern will be a category that basically defines all the currently restricted least concern plants. It is quite confusing at the moment because they are listed in different schedules in the act, in the Administration Regulation and in the Wildlife Management Regulation. What we are trying to do is make it very clear that these are special least concern plants. They do have some restrictions in place. We will be defining them as a special least concern plant for that reason. It is not a new restriction that is in place. It is really to make it easier and for people to know that those plants do have some form of restriction.

**CHAIR:** What is the difference between special least concern and least concern? Is there a category of least concern or not?

**Ms McKeay:** Yes. Special least concern will be defined as those least concern plants which face unique types of pressures such as they have high commercial value or they have particular biological traits—for example, they are slow growing. At the moment they are least concern because they are quite common, but if we were to allow them to be harvested and opened up because of those particular traits they would soon face threats.

A common example given is grass trees. They are quite common in the landscape. They are defined as least concern under the current conservation status. Because of their unique biological traits—they are very slow growing—if we were to allow everyone to go out and take those plants from their ecosystem they would soon face threats. They have that classification of special least concern.

**Mrs MADDERN:** One of the things that I am interested in knowing is this. If you are a grazier out there in the community and you want to do a bit of clearing how do you know about this regulation? How are we going to communicate this to Joe Bloggs out there in community who is not the least bit interested in going onto websites, he just wants to get on and do what he does best?

**Mr Clare:** We are conscious of concerns in rural communities about their level of awareness of the current system. We will be continuing to liaise with the peak groups—AgForce, QFF—in relation to that. I will ask Jackie to elaborate on the other ways that people can become aware of this system or we will help make people aware of the system. What I would say is that the benefit of this review is that the level of requirement placed on people will be less and it will be easier to interpret. If someone wishes to fully understand their legislative obligations there will be fewer pieces of regulation that will talk to each other better. Jackie, could you expand on how we will try to improve knowledge of the system within the rural community.

**Ms McKeay:** Sure. What we are intending to do is work very closely with the peak industry groups like AgForce, Growcom, the Queensland Farmers Federation to try to get the message out there that the framework is being reformed and that these requirements will be in place. We have consulted extensively already through the regulatory impact statement. We have had responses back from those key industry groups as well. We are in the process of developing a communication plan. One of the parts of that plan will be to make sure that we go out to the regions, we communicate the reforms and we make sure people are aware of their regulatory requirements.

**Mrs MADDERN:** Peak bodies are fine and a lot of good graziers and farmers are involved in peak bodies and read the documents that come out, but we have the blockies who own 20 or 50 hectares. They do not have any real association with peak bodies because this is not their livelihood it is their lifestyle. When they have 50 hectares they have a sizeable chunk of land that can have quite a lot of vegetation on it. They are probably the ones I am more concerned about not understanding their obligations. I am curious to know how you might actually access that group of people. There are lots of them. There are probably more of them than there are graziers and farmers.

**Ms McKeay:** What we will try to do is advertise where we can through assessment frameworks like the Vegetation Management Act which there is a lot of awareness of. We will make sure that we provide information about the Nature Conservation Act through the assessment processes with the Vegetation Management Act. Hopefully, that will get the message out there. There are also requirements under the Nature Conservation Act.

**Mr TROUT:** In the legislative framework have you looked to exempt fence lines and roads? These are two areas where I see the potential for breaking the law when the reality is that people are just getting on with earning a living.

**Mr Clare:** The short answer is yes, but I will ask Jackie to expand on the range of exemptions that we are talking about.

**Ms McKeay:** Just to clarify, we are still working through some of the detail behind the exemptions. The intention of the exemptions is to provide an exemption for the maintenance of existing infrastructure. That will include maintaining fence lines, maintaining road verges, maintaining electricity infrastructure and that kind of thing. There will be exemptions provided for the establishment of new fence lines where they are outside known records. Where they do fall on a known record of an endangered, vulnerable or near threatened plant they will be required to do a flora survey before they undertake any clearing.

**Mr TROUT:** If I heard you right you said that harvesting will be restricted from 11 species to three, is that correct?

**Mr Clare:** That was the number of permits and licences.

**Mr TROUT:** In terms of grass trees, the permit system for nurseries and so forth will not be restricting in any way, shape or form, will it?

**Mr Clare:** We think that we are actually making it more suitable and more purpose specific.

**Ms McKeay:** They are restricted under the existing framework. You are not allowed to take whole plants from the wild. What we will be allowing is for those whole plants to be harvested where sustainability can be demonstrated. Applicants will be required to provide a sustainable harvest plan. Through that plan we will be able to determine whether the harvesting of those plants is sustainable.

**Ms TRAD:** Just to clarify, the criteria for sustainability includes offsets, not harvesting in the first place and one other element?

**Mr Clare:** Mitigation.

**Ms TRAD:** So what are we talking about in terms of mitigation?

**Mr Clare:** That could potentially involve reducing the impact by changing the design of the harvesting perhaps. Changing the intensity of the harvesting would be one way of doing that. So you could just not harvest an area—just leave it out—or you could potentially—

**Ms TRAD:** That is a bit weird, isn't it, having a non-harvesting element to an application to harvest?

**Ms McKeay:** With the harvesting application, applicants will be asked to provide a sustainable harvest plan. So it will be up to the applicants to demonstrate how the sustainability can be demonstrated through that harvest plan. We are developing guidelines so that applicants are provided with guidance as to how they can develop a sustainable harvest plan. But we are now saying to the applicants, 'It is up to you to demonstrate how sustainability can be demonstrated.' That will be through a range of measures including mitigation or whether they can offset any impacts or whether there is an extensive number of trees in that area and taking potentially five per cent of those trees will not impact the viability of that species in the wild.

**Ms TRAD:** Is the offset part of the whole-of-government offset policy that is being formulated?

**Ms McKeay:** It will be linked to that, yes.

**Mr Clare:** Yes.

**Ms TRAD:** Who does the assessment of the applications?

**Mr Clare:** The Department of Environment and Heritage Protection.

**Ms TRAD:** At a local level?

**Mr Clare:** It is done by wildlife officers. They may be local or Brisbane based depending on the application. Through you, Mr Chair, can I give you an example of a mitigation strategy? Particularly with grass trees one of the biggest sustainable issues or concerns is the loss of soil because you are taking the whole plant with the soil and sometimes these are very thin soils. So a mitigation measure might include, apart from what Jackie mentioned about moderating the number of plants you take and the size of the plants you take, some measure that assures us that the soil profile will not be disturbed or that it might be maintained through replacement.

**Ms TRAD:** In terms of sandalwood and the removal of sandalwood from the VMA and the other piece of legislation you referenced, why was it included in the first place if it is not native?

**Mr Clare:** Sorry, it is native. I did not mean to suggest that it was not.

**Ms TRAD:** So it is being excluded from the Vegetation Management Act.

**Mr Clare:** So that it is only regulated under one piece of legislation, being this. Sorry, it is native.

**Ms TRAD:** I might just ask about permits quickly. You said the reduction of permits is from 11 to three. Is that right? Is that a consolidation of the permits or are some permits being removed?

**Ms McKeay:** It is essentially a consolidation of the permits. So what we have at the moment is different types of permits relating specifically to purpose. So there is a scientific purposes permit, an educational purposes permit, and off the top of my head I cannot list them all. What we are doing is consolidating those permits so that there will be three standard types of permit. There will be a clearing permit, a harvesting licence and a growing licence, instead of having different types of permits associated with the purpose of the activity.

**Ms TRAD:** Would that be covered under the regulations further?

**Ms McKeay:** Yes, it will.

**Ms TRAD:** When will the regulations be finished?

**Ms McKeay:** We are anticipating that they will be finished in the next couple of months. We are working through the regulations at the moment.

**Ms TRAD:** Who is being consulted on the regulations?

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**Ms McKeay:** As Geoff mentioned earlier, what we have done is we have consulted through the regulatory impact statement on the proposed reform package, and that included the amendments to the primary legislation as well as what we are proposing in the regulations.

**Ms TRAD:** But this is only the first tranche of the legislative reform. Is that right?

**Ms McKeay:** Yes, that is correct.

**Mr Clare:** This is, but the regulatory impact statement was an expression of the broader package that we were intending because the act itself is essentially enabling legislation.

**Ms TRAD:** I understand.

**CHAIR:** Thank you very much, Geoff, and your team for answering those questions. You can come back and talk to us a bit later.

**Committee adjourned at 9.04 am**