



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Queensland Vegetation Protection Laws

1. Summary

The *Vegetation Management Act 1999* (VMA) is the state-wide law regulating native vegetation clearing in Queensland. It is administered by the Department of Environment and Resource Management (DERM), and applies on all land tenures – private (freehold) land as well as leasehold and unallocated State land.

The VMA gives most protection to remnant vegetation. This is vegetation which has either never been cleared, or has regrown to a specific canopy height and density to be considered to have the same values as if it had never been cleared. Clearing of high value regrowth and regrowth around certain watercourses is also now regulated under 2009 amendments¹.

In 2004 the state government revised the VMA and phased out broadscale clearing (mostly for agriculture) by 31 December 2006 in Queensland, which was an excellent outcome for biodiversity protection and climate change mitigation. There are now only 11 purposes for which clearing will be permitted, including clearing for necessary built infrastructure where the clearing cannot be avoided or minimised, fodder harvesting, public safety and weed control.

However, the VMA still has its limitations for protecting biodiversity as only the most threatened vegetation (an “Endangered Regional Ecosystem”) is protected in urban areas, and some industries are exempt from complying with the VMA, like mining, transport, electricity and community infrastructure.

Where vegetation clearing does require a permit, the clearing will need to meet the criteria in the four Regional Vegetation Management Codes which cover the state. The Codes protect the habitat of threatened wildlife, but also allow clearing of an area as long as an offset of sufficient merit is provided elsewhere.

The public have no appeal rights against the grant of tree clearing permits, but can take action in the Courts if clearing is done in breach of permit conditions or without a permit when one is required.

Local governments can also have local laws about vegetation, which operate in conjunction with the VMA. Many Councils still have not done so, and constituents should lobby their Councils to introduce them, to supplement the limited application of the VMA in urban areas.

¹ Clearing of mapped high value regrowth (regrowth vegetation which is an endangered, of concern or not of concern regional ecosystem that hasn't been cleared since 1990) or regrowth that is within 50m of certain watercourses in the Burdekin, Mackay Whitsunday and Wet Tropics catchments must comply with a Regrowth Code unless certain exemptions apply.

Other State permits under different legislation, and sometimes federal approval, may also be required before vegetation can be lawfully cleared.

2. EDO Qld's vegetation law reform work

Since then Premier Beattie's announcement in May 2003 that he would reform vegetation clearing laws, EDO Qld has worked with conservation groups The Wilderness Society, Queensland Conservation Council, The Australian Conservation Foundation and WWF Australia on the issue.

EDO Qld helped those groups to draft and co-ordinate three major submissions to government outlining requirements for legislative change. EDO Qld also scrutinised drafts of Bills and provided detailed comments to the department on drafting changes to further protect vegetation and better achieve policy commitments. Major gains were made, including exclusion of Cape York Peninsula from the 500,000 hectare remnant broadscale clearing ballot, improvements to the purpose statement of the Bill, the reigning in of the thinning exemption to exclude thinning by chaining, and the requirement for demonstrated proof of thickening before thinning could be considered.

EDO Qld later analysed and proposed improvements to two drafts of the regional vegetation management codes (against which applications are assessed) and the Regulations. EDO Qld will continue to work with other environmental groups to further improve in the vegetation laws.

3. What does the Vegetation Management Act 1999 (Qld) do?

The *Vegetation Management Act 1999* (VMA) regulates native vegetation clearing on both freehold and leasehold land in Queensland. The VMA does this by working in conjunction with the *Sustainable Planning Act 2009* (SPA) and *Regulation* (SPA Reg), so that vegetation clearing for purposes listed in Schedule 3 of the SPA Reg and not exempted under Schedule 24 of the SPA Reg is "assessable development" which requires a permit to be done lawfully.

The vegetation clearing laws do not apply in areas which are protected by the *Nature Conservation Act 1992* (such as national parks) or in forest reserves which are governed by rules in the *Forestry Act 1959* – compliance with the native forest practice code is sufficient compliance with the VMA for forestry activities.

4. Types of vegetation and maps

The VMA applies to all native vegetation except grasses and mangroves.

The VMA gives most protection to remnant vegetation. This is vegetation which has either never been cleared, or has regrown to cover more than 50% of the undisturbed predominant canopy, more than 70% of the undisturbed height and is composed of

species characteristic of the undisturbed predominant canopy. Clearing of high value regrowth and regrowth around certain watercourses is also now regulated under 2009 amendments².

‘Regional Ecosystems’ (REs) are the communities of remnant vegetation that make up each Bioregion in Queensland. Each remnant Regional Ecosystem has a conservation status based on its current extent in that bioregion. An RE can be an Endangered Regional Ecosystem (less than 10% of pre-European extent remaining, or 10-30% remaining but less than 10,000 hectares), an Of Concern Regional Ecosystem (less than 30% of pre-European extent remaining, or more than 30% remaining but less than 10,000 hectares) or a Least Concern Regional Ecosystem (more than 30% of pre-European extent remaining and more than 10,000 hectares).

There are now maps for all of Queensland (some areas at finer scales than others) showing non-remnant vegetation as white, and remnant vegetation in different colours according to which category (Endangered, Of Concern or Least Concern) it belongs to.

There are also now property scale maps called PMAVs, which stands for Property Scale Map of Assessable Vegetation. Landholders can apply for a PMAV to lock in non-remnant vegetation (so that even if it regrows and would otherwise be treated as remnant, the map locks it in as legally considered non-remnant), and a PMAV is automatically produced as a result of a clearing application. PMAVs categorise vegetation into four categories: Category A (including offset areas or illegally cleared areas), Category B (remnant vegetation), Category C (high value regrowth vegetation) and Category X (regrowth vegetation which is not mapped as high value).

Maps of essential habitat (remnant and regrowth) and ‘registered area of agriculture’ maps in wild river areas are also maintained.

Maps of regional ecosystems, remnant vegetation, essential habitat, regrowth vegetation and PMAVs can all be requested online at www.derm.qld.gov.au/wildlife-ecosystems/biodiversity/regional_ecosystems/introduction_and_status/regional_ecosystem_maps/index.php.

The VMA also allows the DERM Minister or the Governor-in-Council to declare that a certain area is an ‘area of high nature conservation value’ or an ‘area vulnerable to land degradation’ if it meets criteria in section 19 VMA. Such an area must then have a special Code to regulate clearing within that area. A landholder may also request that their land be declared an area of high nature conservation value or an area vulnerable to land degradation and propose a management plan for the land. At the date of writing, no such areas have been declared.

² Clearing of mapped high value regrowth (regrowth vegetation which is an endangered, of concern or not of concern regional ecosystem that hasn’t been cleared since 1990) or regrowth that is within 50m of certain watercourses in the Burdekin, Mackay Whitsunday and Wet Tropics catchments must comply with a Regrowth Code unless certain exemptions apply.

5. When is vegetation protected?

The laws about vegetation clearing are some of the most complex environmental laws.

To work out when vegetation is protected from clearing by the state laws, we use a 3 step process:

1. Does the clearing require a permit or is it exempt? (see Schedules 3 and 24 SPA Reg)
2. If a permit is required, is the clearing for one of the allowed purposes? (see section 22A VMA)
3. If the clearing is for an allowed purpose, what conditions does the relevant clearing code require to be met for a permit to be granted? (see regional clearing codes)

Step 1 – when is a permit is required to clear vegetation?

Schedules 3 and 24 of the SPA Reg set out when clearing vegetation will be considered “assessable development” for which a permit is required, on all different land tenures.

On **freehold land** (private property), all clearing will need a permit unless the clearing is:

- (i) on premises to which structure plan arrangements, a development control plan or a special facilities zoning apply (Schedule 3 SPA, s 74(1) VMA);
- (ii) for a forest practice;
- (iii) for residential clearing³;
- (iv) for essential management (eg firebreaks and burning off, removing dangerous vegetation and clearing necessary to maintain infrastructure such as buildings and fences – full definition in Schedule 26 SPA Reg);
- (v) clearing of regrowth vegetation which is not “regulated regrowth”;
- (vi) **for urban purposes⁴ in an urban area⁵ (does not include rural residential) that is not an Endangered Regional Ecosystem. This is the major exemption relied on by urban developers;**
- (vii) for urban purposes in an urban area in a wild river high preservation area that is not an Endangered Regional Ecosystem;

³ Defined as clearing for a single dwelling house on a lot and any reasonably associated building or structure if approved under the building laws; public housing; or clearing for building work carried out by or on behalf of the state government/ local government/ public sector entity.

⁴ “Urban purposes” are defined in Schedule 26 of SPA Reg to mean “purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes, but not including environmental, conservation, rural, natural or wilderness area purposes”.

⁵ “Urban area” is defined in Schedule 26 SPA Reg to mean an area identified in a planning scheme as an area for urban purposes, including future urban purposes, but not rural residential or future rural residential purposes.

- (viii) for routine management in regulated regrowth or a Least Concern Regional Ecosystem (eg to establish a new necessary fence or road less than 10m wide, to establish necessary infrastructure on less than 2 hectares – full definition in Schedule 26 SPA Reg);
- (ix) for a what was called a “specified activity” under the *Integrated Planning Act* (eg clearing for a non-commercial Aboriginal or TSI cultural activity, mining or petroleum activities, geothermal exploration, lawful fire activities, activities for electricity provision, road works on State-controlled roads, routine transport corridor management, on airport land, small scale clearing in a watercourse in certain circumstances, or lawful forestry activities) (Schedule 24 Part 1 Item 1 SPA Reg);
- (x) for a subdivision (Reconfiguration of a Lot) where the lot contains remnant vegetation and the size of the lot before the subdivision is smaller than 2 hectares, or the size of the lots created are bigger than 25 hectares (per Schedule 7, Table 2, Item 4 SPA Reg);
- (xi) for a rezoning (Material Change of Use) where the lot contains remnant vegetation and is less than 2 hectares (per Schedule 7, Table 3, Item 10 SPA Reg);
- (xii) in an urban development area under the *Urban Land Development Authority Act 2007*;
- (xiii) on airport land consistent with the land use plan;
- (xiv) clearing of regulated regrowth in accordance with the regrowth vegetation code, except if the vegetation is in a Category A area;
- (xv) clearing regulated regrowth (except Category A vegetation) for an extractive industry in a Key Resource Area; or
- (xvi) clearing regulated regrowth (except Category A vegetation) for a significant community project⁶.

On **leasehold land**, all clearing will need a permit unless the clearing is:

- (i) for residential clearing⁷;
- (ii) for essential management (eg firebreaks and burning off, removing dangerous vegetation and clearing necessary to maintain infrastructure such as buildings and fences – full definition in Schedule 26 SPA Reg);

⁶ Defined in s 10(5) VMA as a project which the chief executive considers to have an aesthetic, conservation, cultural or economic benefit to a local or regional community or the State, including a project that serves an essential need of the community (such as essential infrastructure or a school) or a project that significantly improves the community’s access to services (such as a hospital or a State or local government library or museum).

⁷ Defined as clearing for a single dwelling house on a lot and any reasonably associated building or structure if approved under the building laws; public housing; or clearing for building work carried out by or on behalf of the state government/ local government/ public sector entity.

- (iii) clearing of regrowth vegetation which is not “regulated regrowth”;
- (iv) clearing of regulated regrowth in accordance with the regrowth vegetation code, except if the vegetation is in a Category A area;
- (v) for routine management in regulated regrowth which is Endangered, Of Concern or Least Concern, or in a remnant Least Concern Regional Ecosystem (eg to establish a new necessary fence or road less than 10m wide, to establish necessary infrastructure on less than 2 hectares – full definition in Schedule 26 SPA Reg);
- (vi) clearing regulated regrowth (except Category A vegetation) for an extractive industry in a Key Resource Area;
- (vii) clearing regulated regrowth (except Category A vegetation) for a significant community project⁸;
- (viii) for non-agricultural and grazing leases: residential clearing, essential management, or regrowth vegetation not mapped as high value regrowth,

If clearing of regulated regrowth⁹ on any tenure is not exempt under any of the points listed above, the Regrowth Vegetation Code must be complied with, with some exceptions for primary producers¹⁰. The Regrowth Vegetation Code is available here www.derm.qld.gov.au/publications/docs/p203735.pdf. A landholder need not seek a permit to clear¹¹ but must notify DERM that they will be clearing regulated regrowth in accordance with the Code. A register of clearing notifications is required to be kept on the DERM website. If the landholder breaches the requirements of the Code, the clearing will be considered illegal clearing. However under the Code, an offset area (called an exchange area) is able to be provided if the detailed Code requirements cannot be met on the land wished to be cleared.

⁸ Defined in s 10(5) VMA as a project which the chief executive considers to have an aesthetic, conservation, cultural or economic benefit to a local or regional community or the State, including a project that serves an essential need of the community (such as essential infrastructure or a school) or a project that significantly improves the community’s access to services (such as a hospital or a State or local government library or museum).

⁹ Regulated regrowth is vegetation which is mapped as high value regrowth (regrowth vegetation which is an endangered, of concern or not of concern regional ecosystem that hasn’t been cleared since 1990) or vegetation that is within 50m of certain watercourses in the Burdekin, Mackay Whitsunday and Wet Tropics catchments.

¹⁰ There are exceptions for primary producers who were carrying out a primary production business (including agricultural, apicultural, aquacultural, horticultural and pastoral industries) at 8 October 2009 which entails clearing regulated regrowth and where compliance with the regrowth code would cause the business to stop operating. In that instance the primary producer has two years (until 8 October 2011) to apply to clear vegetation in a way not envisaged by the regrowth code, which the chief executive may grant. Transfer of ownership of the land voids the right to clear other than in accordance with the regrowth code.

¹¹ Except if the proposed clearing is of regulated regrowth mapped as Category A (a declared area, offset area or exchange area, has been previously unlawfully cleared, or is subject to a restoration notice or enforcement order from the Planning and Environment Court). Such clearing will require a permit application to be made, which requires the clearing to be for one of 11 purposes listed in s 22A of the VMA in order to be eligible for assessment against the relevant regional code.

Step 2 – can a permit be given to clear for that purpose?

If none of the exemptions at Step 1 apply, a permit to clear will need to be sought. When broadscale clearing was phased out in 2004, the government limited the types of activities for which a clearing permit could be sought. If the clearing is not for one of the 11 purposes listed in section 22A of the VMA, a permit cannot be sought and so the clearing cannot occur.

Section 22A of the VMA limits clearing permit applications to the following purposes:

1. Clearing for significant projects declared under the *State Development and Public Works Organisation Act 1971* (Qld);
2. Clearing necessary to control non-native plants or declared pests;
3. Clearing to ensure public safety;
4. **Clearing to establish a necessary fence, firebreak, road or vehicular track for constructing necessary built infrastructure and the clearing cannot be reasonable avoided or minimised. This is the one most urban developers rely on;**
5. Clearing which is a natural and ordinary consequence of other assessable development for which a development approval was given or application made before 16 May 2003;
6. Clearing for fodder harvesting¹²;
7. Clearing for thinning¹³;
8. Clearing of encroachment;
9. Clearing for an extractive industry;
10. Clearing regrowth in a registered area of agriculture in a wild river high preservation area; or
11. Clearing for a special indigenous purpose under the *Cape York Peninsula Heritage Act 2007*.

Step 3 – what conditions do the clearing codes require to be met for a permit to be granted?

Where Steps 1 and 2 say that a permit is required to be cleared, the application to clear is assessed against one of four Regional Vegetation Management Clearing Codes, or one of

¹² This means clearing of vegetation, predominantly consisting of fodder species (*Acacia aneura*; *Acacia cibaria* (*Acacia brachystachya*); *Acacia excelsa*; *Acacia pendula*; *Acacia stowardii*; *Alphitonia excelsa*; *Flindersia maculosa*; *Geijera parviflora*) necessary to provide fodder for stock; and carried out in a way that conserves the vegetation in perpetuity; and conserves the regional ecosystem in which the vegetation is situated; and results in the woody biomass of the cleared vegetation remaining where it is cleared.

¹³ This means the selective clearing of vegetation at a locality to restore a regional ecosystem to the floristic composition and range of densities typical of the regional ecosystem surrounding that locality. The term does not include clearing using a chain or cable linked between 2 tractors, bulldozers or other traction vehicles.

two planning policies if the clearing is associated with subdivision (now called reconfiguration of a lot) or rezoning (now called material change of use). These planning policies essentially refer back to the criteria in the Regional Codes. The Regional Codes contain the rules about what impacts are unacceptable on things like soil stability, wildlife corridors, wetlands and so on.

The four Regional Codes cover the South East Queensland Bioregion, Coastal Bioregions, Western Bioregions and the Brigalow Belt and New England Tablelands Bioregion. The Regional Codes, along with a map of Queensland showing which Regional Code applies in which area, are available for download from www.derm.qld.gov.au/vegetation/regional_codes.html.

The codes contain detailed rules which must be complied with. For example, in the South East Queensland bioregion, clearing for fodder harvesting or to control encroachment is not permitted, clearing for public safety and infrastructure must not occur within 100m of a natural wetland (or 200m of a significant wetland) or within essential habitat or certain listed Endangered and Of Concern REs. However, the Codes allow for an applicant for a clearing permit to propose an offset to allow them to clear.

An offset is an arrangement whereby an applicant can propose to protect a *different* area of land in exchange for being allowed to clear the area of land applied for. A statewide offsets policy applies and is available from www.derm.qld.gov.au/about/policy/documents/3450/veg_2006_2888.pdf. Amongst other things, that policy says:

- offsets are not a suitable option where the impacts of development have an irreversible effect on biodiversity;
- offsets must be areas of land that are not already protected from clearing;
- offsets must be ecologically equivalent to the land proposed to be cleared;
- offsets must be legally protected from themselves being able to be cleared.

6. Which government department administers the vegetation protection laws?

If an application is just for vegetation clearing, the Department of Environment and Resource Management (DERM) issues permits and regulates clearing.

If an application is for clearing and other development (eg building a factory), the local Council takes the lead role (is the “assessment manager”) and DERM has input into the clearing aspect (is a “concurrence agency”, which can require the application to be refused).

7. What happens if someone is clearing illegally?

Clearing without a permit when you need one, or not complying with the conditions of your clearing permit are both development offences under SPA, with huge penalties¹⁴. Departmental officials can issue stop work notices if they think illegal clearing is occurring, and a restoration notice requiring rehabilitation or a restoration plan to be submitted, and it is an offence not to comply with those notices. Additionally, the Department or local government could prosecute the offender for illegal clearing or take civil action for enforcement orders within time limits¹⁵, however, due to under-resourcing not all illegal clearing is challenged by DERM or Council. Illegal clearing is taken to have been done by the occupier of the land in the absence of evidence to the contrary.

The public can also go to Court within time limits¹⁶ if a person is clearing without a permit when one is required, or is not complying with the conditions of their clearing permit. Members of the public could seek an enforcement order from the Planning and Environment Court to remedy or restrain the development offence under section 601 SPA. Each side usually pays their own costs in that Court.

The public do not have any legal rights to make a formal submission on a permit application which DERM would have to consider, and no appeal rights against the grant of a vegetation clearing permit.

Being convicted of a vegetation clearing offence is grounds for refusing subsequent vegetation clearing applications made up to 5 years after the conviction.

8. Strengths and weaknesses of the VMA

In 2004 the state government phased out broadscale clearing in Queensland, and from 8 October 2009 the state government partially protected high value regrowth vegetation (vegetation uncleared since 1989 and some vegetation close to watercourses in Great Barrier Reef catchments), which were excellent outcomes for biodiversity and water quality. However, the VMA still has its limitations for protecting biodiversity in the urban context, as:

- In urban areas, the state-wide clearing rules only apply where vegetation is part of an Endangered Regional Ecosystem, so there is no protection given to Of Concern or Least Concern Regional Ecosystems in urban areas.

¹⁴ Without affecting the maximum penalty that can be imposed under SPA, the VMA says that the Court may take into account the following sentencing guidelines – 30 penalty units (\$3,000) per hectare of remnant endangered RE or offset area, 24 penalty units (\$2,400) per hectare of remnant of concern RE, 18 penalty units (\$1,800) per hectare of remnant not of concern RE, and 12 penalty units (\$1,200) per hectare of regulated regrowth.

¹⁵ Court action must happen within 1 year of the offence, or within 1 year of knowledge of the offence coming to the Department's knowledge but within 5 years of the offence being committed.

¹⁶ Court action must happen within 1 year of the offence, or within 1 year of knowledge of the offence coming to the complainant's knowledge but within 5 years of the offence being committed.

- Even where an urban area does contain an Endangered Regional Ecosystem, there are still many exemptions from the need to get a tree clearing permit, such as where the clearing is for a single residence or for a firebreak.
- Major industries like mining, transport, electricity and even community infrastructure (like hospitals, roads, and any other facility to accommodate government functions) are exempt from the VMA.

9. Other permits necessary to clear vegetation – State, federal and local laws

Council may have local laws about vegetation clearing as well as the state-wide VMA. Generally Council laws allow clearing if vegetation is a threat to property or safety. There is no public enforcement for breaches of local vegetation clearing laws so only the Council can prosecute someone who breaches the local laws. Some Councils do not have any local laws to protect vegetation, so constituents should lobby for these to be introduced to supplement the limited application of the VMA in urban areas.

Commonwealth laws (the *Environment Protection and Biodiversity Conservation Act 1999*, or ‘EPBC Act’) may also apply if there is a matter of national environmental significance likely to be significantly impacted upon by the clearing.

Other state laws can regulate vegetation clearing too, such as the *Water Act* (which covers clearing vegetation in the beds or banks of rivers) or the *Fire Act* (rules about burning off).

A person may require permits under all these other laws as well as the VMA, to lawfully clear.

10. How can the public participate?

- You can write letters to DERM about clearing applications and give reasons why permits should not be granted (eg habitat for threatened species). Even though DERM is not legally obliged to take your views into account, your letter may provide them with useful information to help them assess the application. Copies of vegetation clearing applications are available from website <http://www.derm.qld.gov.au/vegetation/search.php>
- You can watch for clearing you think is illegal (no permit, or breaching permit conditions) and report it to DERM on Hotline 1800 999 367. If they do not take action, you can seek legal advice as to whether you should take your own Court action to stop and rehabilitate the land by seeking enforcement orders in the Planning and Environment Court.
- Call the Queensland Herbarium to ask them to amend inaccurate maps.

- The public do not have any legal rights to make a formal submission on a permit application which DERM would have to consider, and no appeal rights against the grant of a vegetation clearing permit.

11. Further information

- Copies of the VMA, VM Regulations, SPA and SPA Reg and are available from www.legislation.qld.gov.au.
- Copies of vegetation clearing Codes are available from www.derm.qld.gov.au/vegetation/legislation.html.
- Copies of remnant regional ecosystems maps are available from www.derm.qld.gov.au/wildlife-ecosystems/biodiversity/regional_ecosystems/introduction_and_status/regional_ecosystem_maps/index.php

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Ph: 1300 130 372, or see contact details for your local centre regarding vegetation here www.derm.qld.gov.au/contactus/vegetation_management.html

Website: www.derm.qld.gov.au/vegetation/index.html

Online factsheets:

www.derm.qld.gov.au/vegetation/information_sheets.html#fact_sheets