



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Queensland Vegetation Protection Laws

1. Summary

The *Vegetation Management Act 1999* (VMA) is the state-wide law regulating vegetation clearing in Queensland. It is administered by the Department of Natural Resources and Water, 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. Non-remnant vegetation ('regrowth') is mostly unprotected, even where it has habitat value.

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 10 purposes for which clearing will be permitted, including clearing for necessary built infrastructure where there is no suitable alternative site, 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 Regional Vegetation Management Codes. New codes have just been released, which 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.

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, to protect high nature conservation value regrowth and urban bushland.

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

The *Vegetation Management Act 1999* (VMA) regulates vegetation clearing on both freehold and leasehold land in Queensland. The VMA does this by working in conjunction with the *Integrated Planning Act 1997* (IPA), so that clearing for purposes listed in Schedule 8 of IPA is "assessable development" which requires a permit to be done lawfully.

4. Types of vegetation and maps

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. Non-remnant vegetation ('regrowth') is mostly unprotected¹.

'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), an Of Concern Regional Ecosystem (less than 30% of pre-European extent remaining) or a Not Of Concern Regional Ecosystem (more than 30% of pre-European extent remaining).

¹ Only on agricultural and grazing leases is regrowth vegetation protected, and only if it hasn't been re-cleared since 1 January 1990.

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 Not Of Concern) it belongs to. These maps can be viewed online at www.epa.qld.gov.au/nature_conservation/biodiversity/regional_ecosystems/introduction_and_status/regional_ecosystem_maps/.

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.

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 Schedule 8 IPA)
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?

Schedule 8 of IPA and Schedule 2 of the *Integrated Planning Regulation* sets 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:

- for a forest practice;
- to build a lawful single residence on a lot and any reasonably associated building or structure;
- for essential management (eg firebreaks and burning off, removing dangerous vegetation and clearing necessary to maintain infrastructure such as buildings and fences);
- clearing of non-remnant vegetation;

- **for urban purposes² in an urban area³ (does not include rural residential) that is not an Endangered Regional Ecosystem. This is the major exemption relied on by urban developers;**
- for routine management in a Not Of 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);
- for a specified activity (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, or lawful forestry activities).
- 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 only 1 other lot will be created, or the size of the lots created are bigger than 25 hectares.
- for a rezoning (Material Change of Use) where the lot contains remnant vegetation and is less than 2 hectares, or the existing use is not a rural or environmental use.

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 10 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;

² “Urban purposes” are defined in Schedule 10 of IPA 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”.

³ “Urban area” is defined in Schedule 10 of IPA to mean:

- an area, other than a rural residential or future rural residential area, identified as a priority infrastructure area in a priority infrastructure plan; or
- if no priority infrastructure area exists, an area identified in a gazette notice by the chief executive under VMA as an urban area; or
- if no priority infrastructure area exists or gazette notice has been published—an area **identified on a map in a planning scheme as an area for urban purposes, including future urban purposes, but not rural residential or future rural residential purposes.**

The definition does not clarify whether maps of Strategic Plans in Planning schemes are relevant, or just maps of current zonings.

4. **Clearing to establish a necessary fence, firebreak, road or other built infrastructure if there is no suitable alternative site. 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 harvesting;
7. Clearing for thinning;
8. Clearing of encroachment;
9. Clearing for an extractive industry; or
10. Clearing regrowth on agricultural or grazing leases.

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 regional vegetation management clearing codes. These codes contain the rules about what impacts are unacceptable on things like soil stability, wildlife corridors, wetlands and so on.

Those codes were under review for the last 18 months and EDO Qld's Larissa Waters was the legal advisor and proxy to the Qld Conservation Council and The Wilderness Society on the Ministerial advisory panel which reviewed the codes. New codes have just been released and came into legal effect on 20 November 2006. The four codes are available for download from www.nrw.qld.gov.au/vegetation/regional_codes.html, including one for the South East Queensland Bioregion.

The codes contain detailed rules. In some instances they protect the habitat of threatened wildlife, but a contentious issue with the codes is the ability 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 new offsets policy was released with the new codes and is available from www.nrw.qld.gov.au/vegetation/pdf/offsets_policy_20_nov_06.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 Natural Resources and Water (DNRW) 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 DNRW 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 IPA, with huge penalties. The Department or local government could prosecute the offender for this. The public can also go to Court if a person is clearing without a permit when one is required (seek an enforcement order from the Planning and Environment Court to remedy or restrain the development offence). Each side usually pays their own costs in that Court.

The public have no appeal rights against the grant of tree clearing permits, but can take action in the Courts if clearing is not done in accordance with the conditions on the permit.

8. Strengths and weaknesses of the VMA

In 2004 the state government revised these laws and phased out broadscale clearing in Queensland, which was an excellent outcome for biodiversity. However, the VMA still has its limitations for protecting biodiversity in the urban context, as:

- The Act does not protect non-remnant⁴ or riparian vegetation, which can serve important habitat or soil conservation functions. Such vegetation could be protected by declarations of High Nature Conservation Areas, but the Minister has not used those powers to date.
- 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 Not of Concern Regional Ecosystems in urban areas.
- 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.

⁴ Only on agricultural and grazing leases is regrowth vegetation protected, and only if it hasn't been re-cleared since 1 January 1990.

- 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 *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 the DNRW about clearing applications and give reasons why permits should not be granted (eg habitat for threatened species). Copies of applications are available from website www.nrw.qld.gov.au/vegetation/public_query.php.
- You can watch for clearing you think is illegal (no permit, or breaching permit conditions) and report it to the DNRW on Hotline 1800 999 367.
- Call the Queensland Herbarium to ask them to amend inaccurate maps.

11. Further information

- Copies of the VMA, VM Regulations and IPA are available from www.legislation.qld.gov.au.
- Copies of vegetation clearing Codes are available from www.nrw.qld.gov.au/vegetation/regional_codes.html.
- Copies of remnant regional ecosystems maps are available from www.epa.qld.gov.au/nature_conservation/biodiversity/regional_ecosystems/introduction_and_status/regional_ecosystem_maps/

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