Parliamentary Committees



Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013

Report No. 27
Agriculture, Resources and Environment Committee

August 2013

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Acknowledgements

The committee thanks departmental officers, and the groups and individuals who provided submissions to the inquiry.

Contents

Abbreviations and definitions

DEHP	Department of Environment and Heritage Protection
DNRM	Department of Natural Resources and Mines
NCA	*Nature Conservation Act 1992*
NGIQ	Nursery and Garden Industry Queensland
QFF	Queensland Farmers Federation
QLS	Queensland Law Society
QRC	Queensland Resources Council
RIS	Regulatory Impact Statement
SO	Standing Orders
SPA	*Sustainable Planning Act 2009*
VMA	*Vegetation Management Act 1999*

Chair's foreword

This report presents the findings from the committee's inquiry into the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013 introduced on 21 May 2013 by Hon Andrew Powell MP, Minister for Environment and Heritage Protection.

I commend the report to the House.

Ian Rickuss MP
Chair

August 2013

Recommendations

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.[1]

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles.[2]

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of the consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

Fundamental legislative principles are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The referral

On 21 May 2013, Hon Andrew Powell MP, Minister for Environment and Heritage Protection, introduced the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013. The Legislative Assembly referred the Bill to the Agriculture, Resources and Environment Committee for examination. The committee was given until 19 August 2013 to table its report to the House, in accordance with SO 136(1).

The committee's processes

In its examination of the Bill, the committee:

- identified and consulted with likely stakeholders on the Bill
- sought advice from the Department of Environment and Heritage Protection (DEHP) on the policy drivers for each amendment proposed, a summary of consultation undertaken, and details of the outcomes of that consultation. The written brief prepared for the committee by DNRM is available from the committee's website
- invited public submissions on the Bill
- sought expert advice on possible fundamental legislative principle issues with the Bill
- sought further advice from DEHP on the issues raised in submissions and possible fundamental legislative principles issues with the Bill
- convened a private briefing by departmental officers on 5 June 2013, and
- convened a public briefing and public hearing on 7 August 2013.

A list of submitters is at **Appendix A**.

Briefing officers and hearing witnesses are listed at **Appendix B**.

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland as at 1 January 2013.
[2] Section 93 of the *Parliament of Queensland Act 2001*.

2. Examination of the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013

Policy objectives

The key objectives of the Bill, as set out in the explanatory notes,[3] are:

- to maintain or improve the current conservation status of all protected plant species in Queensland
- facilitate the taking, use and trade of protected plants, and
- ensure the new framework is efficient and does not impose a significant regulatory or administrative burden on business, government or the community.

Background

The two major legislative regimes for protecting vegetation in Queensland are the *Vegetation Management Act 2009* (Qld) (VMA) and the *Nature Conservation Act 1992* (Qld) (NCA).

Whereas the VMA focuses on broad scale clearing of mapped ecosystems, the NCA targets the protection of individual listed species. Queensland's protected plants framework also includes the *Nature Conservation (Administration) Regulation* 2006, the *Nature Conservation (Protected Plants) Conservation Plan 2000* ('Conservation Plan'), the *Nature Conservation (Wildlife Management) Regulation 2006* ('Wildlife Management Regulation'), the *Nature Conservation (Wildlife) Regulation 2006* and the *Nature Conservation (Protected Plants Harvest Period) Notice 2013.*

The VMA has recently been reviewed which led to the introduction and passing of the *Vegetation Management Framework Amendment Act 2013*. In continuing the review of Queensland's vegetation laws the Legislative Assembly has referred to the committee the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013.

Queensland has more than 12,800 species of native flora, the most diverse range in Australia. Under the NCA, 198 are listed as protected, 390 are listed as vulnerable, 461 are listed as near threatened and 23 are listed as extinct. The remaining species are classified as least concern plants.[4]

At the committee's public hearing, DEHP advised the committee why the changes proposed in the Bill were necessary. The department advised:

> *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.*[5]

[3] Explanatory Notes, Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013, p. 1.
[4] Clare, G. 2013. *Draft public hearing transcript*, 7 August, p. 1.
[5] Clare, G. 2013. *Draft public hearing transcript*, 7 August, p. 2.

The department also advised the committee that the majority of the framework will be introduced through subordinate legislation namely, the wildlife management regulations. The department advised:

> *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.*[6]

Point for clarification

The committee seeks clarification from the Minister as to exactly when the subordinate legislation to complete the framework will be completed, given its significance to the new protected plants regime and the stakeholders affected.

Consultation

The department advises that consultation on the proposed policy directions and options for the new framework was undertaken through the release of a public notice in July 2011 by the former Department of Environment and Resource Management. This notice announced a review of the protected plants framework, and the release of a Consultation Regulatory Impact Statement (RIS) in February 2013 entitled, *Review of the Protected Plants Legislative Framework under the Nature Conservation Act 1992*. The primary objective of the review was to deliver an outcome that would cut green tape and improve efficiency for business while at the same time delivering better conservation outcomes for native plants.[7]

The paper put forward three key options to address the 'complex and burdensome' nature of the current framework. The three options were:

1. Maintaining the current framework
2. Greentape reduction and regulatory simplification, and
3. Co-regulation.

The department received 102 submissions and, after their evaluation, recommended that option 2 (Greentape reduction and regulatory simplification) be implemented. This option forms the basis of the amendments proposed in the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013.

It would appear that no formal consultation has taken place in relation to the Bill itself with the department relying on the submissions received in relation to the RIS.

A number of stakeholders raised concerns with the committee that the subordinate legislation was not available for consideration together with the Bill given the crucial importance of these provisions to the regime provided for in the Bill. At the committee's public hearing, Powerlink submitted that further consultation with interested stakeholders was necessary given that a majority of the framework is still to be introduced through subordinate legislation. Powerlink submitted:

> *Powerlink considers it necessary that further consultation occur with the electricity entities to ensure that potential impacts of proposed changes are fully understood by electricity entities. Currently there is uncertainty with what is exactly proposed. Powerlink considers*

[6] Clare, G. 2013. *Draft public hearing transcript*, 7 August, p. 2.
[7] Department of Environment and Heritage Protection 2013, *Proposed protected plants legislation changes*, accessed 12 August 2013 http://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants-review.html

> *there is considerable benefit in further engagement and consultation with the electricity entities in the development of subordinate legislation but also in the supporting material including codes of practice and, potentially, the assessment guidelines where appropriate.*[8]

In their submission to the committee, Agforce also expressed concern that little is known about what the subordinate legislation will contain. Agforce submitted:

> *The explanatory notes to this Bill outline that it will form 'the first stage of amendments that are required to facilitate the implementation of the preferred regulatory option' however fail to provide any overview on what the subsequent amendments will be, what form and detail they will include, or over what timeframe they will be implemented. AgForce submits that it is difficult to make informed comment on a process which has not been outlined with any detail and requests this detail be made available prior to this Bill being passed.*[9]

The department advised the committee at its public hearing that consultation in relation to the provisions contained in the Bill and the forthcoming subordinate legislation was carried out through the consultation RIS process.[10] The department has also advised the committee that it welcomes feedback and will continue to consult with stakeholders on proposed amendments to the subordinate legislation.[11]

Committee Comment:

The committee does not accept that consultation through a RIS process can replace proper consultation with stakeholders on the Bill in its final form, and proper consultation with stakeholders on the associated subordinate legislation during its development and in its final form once it has been drafted.

The committee seeks assurances from the Minister that the department will consult stakeholders throughout the development of the subordinate legislation that will underpin the Bill.

Key clauses of the Bill

The key clauses of the Bill include the following:

- **Clause 9** (Amendment of Section 89 -Restriction on taking particular protected plants) will remove exemptions from the restriction on taking protected plants. Exemptions will be located in the Wildlife Management Regulations as part of the subordinate legislation process. Clause 9 amends section 89(1) to remove reference to the Conservation Plan. It also amends section 89(5) to replace references to 'rare' wildlife and introduces a new definition of 'special least concern plant'. This amendment means a plant is prescribed under a regulation as a special least concern plant if the taking or use of the plant is at risk of not being ecologically sustainable, including, for example, because of a high commercial demand for the plant or a part of the plant, or the biological traits of the plant.[12]
- **Clause 10** (Restriction on using particular protected plants) amends section 90(1) to clarify that a licence, permit or other authority can be issued 'or given', and to provide consistency with the use of this term throughout the Act. Clause 10 also amends section 90(2) to replace references to rare wildlife with references to 'special least concern plants'.

[8] Howard, T. 2013. *Draft public hearing transcript*, 7 August, p. 6.
[9] Agforce, 2013, *Submission No.20*, p. 2.
[10] McKeay, J. 2013. *Draft public hearing transcript*, 7 August, p. 6.
[11] Department of Environment and Heritage Protection, *Correspondence*, 18 July 2013.
[12] Explanatory Notes, Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013, p. 7.

- **Clause 12** will amend section 95 (Payment of conservation value) to enable the chief executive to decide whether or not a conservation value is payable or instead impose payment of a value on an authority, or no payment at all. Clause 12 also provides a definition of 'authority', given under a regulation or conservation plan, to mean a licence, permit or other authority. [13]
- **Clause 14** amends section 126 so that the compensation provisions under section 126 can apply to landholders in specified circumstances, regardless of whether an area is designated as a critical habitat or an area of major interest under a conservation plan or a regulation such as the Wildlife Management Regulation.[14]
- **Clause 15** inserts a new part (Part 7A) and new section 126A (Local governments' decisions to be consistent with regulations) into the NCA to make it clear that, in relation to land that has been identified under a regulation as, or including, a critical habitat or area of major interest, a local government must not issue or give any approval, consent, permit or other authority for a use of, or a development on the land that is inconsistent with the regulation.
- **Clause 19** inserts a new section, 174B allowing the chief executive to make assessment guidelines, after section 174A. This new section provides that the chief executive may, by gazette notice, approve or make assessment guidelines about how applications for an authority are to be considered.[15]
- **Clause 20** amends section 175(2) to allow that a regulation may be made with respect to the use or development of land and activities in an area identified under the regulation as, or including, a critical habitat or an area of major interest. Critical habitat areas have previously been identified in conservation plans however with conservation plans being repealed the majority of provisions will be transferred to the Wildlife management Regulation.
- **Clause 23** amends the *Sustainable Planning Act 2009* (SPA). The purpose of this amendment is to clarify that harvesting sandalwood on freehold land is not classified as a native forest practice under the SPA. The amendment is a consequence of amendments made to the VMA and to ensure that definitions in the VMA and SPA are consistent. Also, this amendment will ensure that sandalwood harvesting on freehold land does not become assessable development under the SPA.
- **Clause 25** amends the VMA to redefine a native forest practice as a forest practice other than: a forest practice in a plantation; or the harvesting on freehold land of sandalwood. This amendment clarifies that harvesting sandalwood on freehold land is not classified as a native forest practice under the VMA. The amendment will also reduce duplication by ensuring sandalwood harvesting on freehold land is only regulated under the NCA, rather than both the VMA and the NCA.[16]

Issues identified by stakeholders

Education for Stakeholders

Submissions on the Bill from the Queensland Farmers' Federation (QFF) and Agforce contended that protected plant regulations have not been properly communicated to land holders and other

[13] Explanatory Notes, p. 8.
[14] Explanatory Notes, p. 9.
[15] Explanatory Notes, p. 10.
[16] Explanatory Notes, pp. 11-12.

affected stakeholders.[17] In particular they argued that there has been no simple fact sheet detailing exactly what a protected plant is.

Submitters also highlighted the fact that current information provided by the department listed plants by their scientific, botanical names that would be more relevant to an experienced botanist, and not their common name descriptions that would be more useful to stakeholders directly affected by the provisions. The committee questions how compliance can be achieved in the absence of clear, practical information with which non-scientists and plant experts can identify protected species.

In their submission, the QFF commented:

> *Communication and extension of compliance requirements has been less than adequate and must be improved, particularly in relation to the interactions between this framework and other legislation relevant to plant protection. QFF notes that the implementation of option 2 will address these concerns.*[18]

At the committee's public hearing, Agforce submitted that education and communication for its members was crucial if the framework was to work effectively. Agforce submitted:

> *Any regulation needs to be communicated effectively including an education and extension program. Any move to enforce greater compliance should only follow a significant communication campaign. If we are truly going to achieve compliance and have in place a compliance regime, we need to make sure that things are working and that it is not so complex that people cannot understand it. I think that is setting us up to fail.*[19]

Agforce further submitted that if education and communication to its stakeholders was better, positive outcomes could be achieved. Agforce advised the committee:

> *Our experience with talking to landholders for that 10-year period and travelling to those small towns and remote communities has been that, if we tell them they have something on their property that is sacred and that they need to protect and it forms a fundamental part of the way their system or property operates ecologically, they will by and large support that and go out of their way to protect those areas. We have seen that on property time and time again with people fencing out water and fencing out rugged country that has some ecological benefit. What we had thought is that, if it was truly a risk based strategy, even if we could identify the top 20, 30 or 40 species that were significantly under threat and communicate those, run an awareness campaign rather than a regulatory tool to talk to people about what these species are and how they had to manage them, then potentially we would see better outcomes on ground and better engagement by our producers of the need to protect these species.*[20]

The committee asked the department at the committee's public hearing how the new framework would be communicated to small land holders who do not have the support of a peak body:

> ***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*

[17] Agforce, 2013, *Submission No.20*, p. 1.
[18] Queensland Farmers Federation, 2013, *Submission No.13*, p. 3.
[19] Hewitt, L. 2013. *Draft public hearing transcript*, 7 August, p. 3.
[20] Hewitt, L. 2013. *Draft public hearing transcript*, 7 August, p. 2.

> *actually access that group of people. There are lots of them. There are probably more of them than there are graziers and farmers.*[21]

The department advised the committee that they would endeavour to advertise the new framework where possible through assessments under the *Vegetation Management Act 1999*, which is better known by a wide cross section of stakeholders.[22]

Committee Comment:

The committee supports the view of Agforce and the QFF that improved communication and education is necessary in order to better inform stakeholders as to the plants that are protected in Queensland.

Recommendation 1

The committee recommends the department produce a plain English fact sheet naming the protected plants in Queensland by both their common and scientific names, and liaise with peak bodies and interested stakeholders in order to develop a strategy to better communicate the new protected plants framework.

Integration with the Vegetation Management Act

Under the current framework, the VMA, SPA and NCA operate independently. The VMA currently sets out mapping layers for affected landholders, however, these maps do not reference the existence of a separate regulatory regime for protected plants under the NCA. The result is that affected persons need to refer to several pieces of legislation including the VMA, NCA and various regulations in order to confirm whether they are meeting their obligations under Queensland's vegetation laws.

The QFF submitted that the Bill represents a missed opportunity to integrate Queensland's vegetation laws into one single convenient Act for landholders and other affected parties. The QFF submitted:

> *QFF is disappointed to see that there is no change in option 2 to include integration with the Sustainable Planning Act 2009 (SPA) and Vegetation Management Act 1999 (VMA) as this is not supported across government at this time. QFF notes the integration with other assessment processes is essential. The opportunity to integrate the NCA with the VMA is now as the VMA is currently under review which presents the opportunity to align the compliance requirements of the Acts, and to present a single compliance framework for vegetation management which will enhance regulatory consistency across the state.*[23]

This view was supported by Growcom at the committee's public hearing. Growcom submitted:

> *...our biggest recommendation is that there needs to be better alignment across the multiple acts that govern vegetation management, so not only the Nature Conservation Act but also the Vegetation Management Act, which is the primary one for primary industries, the Sustainable Planning Act and the Commonwealth acts. Preferably we would like to see a single compliance framework for vegetation management. At this early stage of the development of the new legislation there is no sign that that is the intent as part of this review of the amendments. As Dan said, we are very disappointed with that particularly given there is a great opportunity here to align the requirements of this framework with the Vegetation Management Act given that it is under review at the moment as well. Similarly,*

[21] Maddern, A. 2013, *Draft public hearing transcript*, 7 August, p. 5.
[22] McKeay, J. 2013, *Draft public hearing transcript*, 7 August, p.5.
[23] Queensland Farmers Federation, 2013, *Submission No.13*, p.3.

> *we felt that the preferred option in the RIS was probably option 3 and that there were further opportunities to explore some variations to option 2 as well. Again, without having seen the new wildlife management regulation it is difficult at this point to say whether those options have been explored.*[24]

The committee asked the department to respond to the proposal by the QFF to create a common act that would integrate the VMA with the protected plants framework currently contained in the NCA. The department advised that it:

> *…notes the concerns raised by QFF and lack of integration with the Sustainable Planning Act 2009 and the Vegetation Management Act 1999.*
>
> *Alignment with the VMA and SPA exemptions will be achieved wherever possible. However, full integration with the VMA and the SPA is not possible at this stage, due to the timeframes of the protected plants review, and the significant amendments that are currently being progressed under both the VMA and SPA.*
>
> *The department will continue to pursue the option of integrating protected plant and vegetation management processes with the Department of Natural Resources and Mines, to determine how integration may be achieved once the current review is complete.*[25]

Committee comment:

The committee notes the department's response in relation to the proposal by stakeholders to integrate the Bill's provisions with the VMA and acknowledges its ongoing efforts in this regard. However, the committee is of the view that given the recent review of the VMA, the failure to integrate represents a lost opportunity to create a single compliance framework that would greatly assist all parties.

Recommendation 2

The committee recommends that the Minister liaise with the Minister for Natural Resources and Mines to formulate a strategy to create a single vegetation compliance framework, and invites the Minister to advise the House on progress to develop this framework within the next twelve months.

Special least concern plants

At clause 9 the Bill amends section 89(5) to replace the term 'rare wildlife' with 'special least concern plants' in the definitions for 'class 1 offence', 'class 2 offence' and 'class 3 offence'. The explanatory notes to the Bill advise that the removal of the term 'rare' is because this conservation category has not been applicable to protected plants for some time, and therefore is no longer relevant to these definitions.[26]

At the committee's public hearing the department explained in greater detail why this new term was introduced.

> *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*

[24] Putland, D. 2013. *Draft public hearing transcript*, 7 August, p. 3-4.
[25] Department of Environment and Heritage Protection, *Correspondence*, 18 July 2013.
[26] Explanatory Notes, Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013, p. 7.

> *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.*[27]

However, several submissions received by the committee, namely from Aurizon, the QRC, Ergon Energy, Queensland Rail and the Property Council of Australia, queried the new term 'special least concern plant' and how it would be used in the new framework.

At the committee's public hearing the committee sought clarification from the department as to what would be deemed a special least concern plant:

> ***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.*[28]

At the committee's public hearing the Nursery and Garden Industry Queensland (NGIQ) advocated for a categorisation system for protected plants to simplify the framework for stakeholders.

The NGIQ submitted:

> ***CHAIR:*** *You have said that the A, B and C categorisation of plants would provide more clarity. I would have thought your blokes would have a better understanding of plants than anyone. So if you are going to be a bit confused, it is a bit of a concern.*
>
> ***Mr McDonald:*** *Yes, that would be a fair comment. It is more to do with the fact that it is another piece of legislation. It is another regulatory framework that industry has to comply with across a whole range of things that businesses have to confront. It is easier for them to understand that you cannot touch type A. They will know what is within a type A. They will know what is within a type B. They will know what is within a type C et cetera. It is putting some sort of a simple title to those definitions. That would be our preference. Those businesses that are involved in that are used to that.*
>
> ***CHAIR:*** *So the species of least concern and that sort of thing—*
>
> ***Mr McDonald:*** *We would rather that be a type A or a type B. They are used to that sort of terminology within the protected plant environment and we would be keen to see that continue.*
>
> ***Mrs MADDERN:*** *So a kind of coding?*

[27] Clare, G. 2013. *Draft public hearing transcript*, 7 August 2013, p.3.
[28] Rickuss, I. McKeay, J. 2013, *Draft public hearing transcript*, 7 August, p. 4.

> ***Mr McDonald:*** *Yes, absolutely. It makes it easier for us as a peak body to communicate to them and say with regard to type As and type Bs these are the things you have to have around it. I could show you a diagram of the current system. That is the only way I could explain the licensing and how it all flows. It is very difficult at the moment to talk that out and explain how that impacts on industry. It is so convoluted. But they do understand type A plants, they do understand type B plants, and then the remainder are protected plants.*[29]

Committee Comment:

The committee believes that the categorisation system as advocated by the NGIQ would, along with better education and communication, improve and simplify the current framework.

Recommendation 3

The committee recommends that the Minister consider a categorisation system which identifies protected plants in terms of their vulnerability and that this be incorporated into a fact sheet as proposed in Recommendation No.2.

Should the Bill be Passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examining the form and policy intent of the Bill, the committee determined that the Bill should be passed.

Recommendation 4

The committee recommends that the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013 be passed.

[29] Rickuss, I. McDonald, J. Maddern, A. 2013, *Draft public hearing transcript*, 7 August, p. 4.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee sought advice from DEHP in relation to a number of possible fundamental legislative principles issues. The following sections discuss the issues raised by the committee and the advice provided by the department.

Clause 9, Amendment of section 89 (Restriction on taking etc. particular protected plants)

Clause 9 of the Bill amends section 89 of the NCA to remove exemptions from the restriction on taking protected plants. The explanatory notes advise that it is intended that exemptions currently set out in section 89 will be located in the *Nature Conservation (Wildlife Management) Regulation 2006*.[30] Further, class offences contained in section 89 will also be amended to remove reference to rare plants and include offences in relation to special least concern plants. The maximum penalty pursuant to section 89 for taking a plant 'in the wild' without being authorised is a fine of up to 3000 penalty units ($330,000) or two years imprisonment.

The effect of clause 9 is that it assigns legislative power to a regulation and raises the issue as to whether this delegation of power is appropriate pursuant to section 4 of the *Legislative Standards Act 1992*. Further, an affected stakeholder would have to refer to both the Act and the regulation to work out the conduct permitted. This raises the potential issue of whether the proposed amendment has sufficient regard to the institution of Parliament and authorises the amendment of an Act only by another Act.

The explanatory notes to the Bill advise that it is *generally* consistent with fundamental legislative principles and with subordinate legislation subject to the scrutiny of the Parliament. It is also consistent with how other exemptions are established and will make it simpler for the public to navigate.

However, the Queensland Law Society (QLS) expressed a concern in relation to section 89 and in particular the placement of offence provisions in subordinate regulations. The QLS submitted:

> *Concern is expressed about the prospect that a range of exemptions, amounting to defences to an offence - currently conveniently co-located with the offence creating provisions itself – will be relegated to a regulation. This concern needs to be understood in the context that s 89 is an offence punishable by imprisonment of up to 2 years.*
>
> *It is respectfully suggested that the amendments embodied in s 89 are inconsistent with fundamental legislative principles contained within the Legislative Standards Act 1992 and in particular, regard for the institution of Parliament', and the requirement that rights and liberties is subject to appropriate review.*
>
> *Whilst it is accepted that the regulation providing for the defences will be subject to parliamentary scrutiny and may be, by resolution, disallowed', it needs to be acknowledged that the review processes undertaken by the Legislative Assembly of subordinate legislation may not be as exhaustive as those undertaken for an authorising law. This is a matter of genuine concern when provisions amounting to defences to a term of imprisonment may*

[30] Explanatory Notes, Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013, p. 2.

> *be amended by executive action. It is understood that a regulation may commence prior to tabling in Parliament and may be in operation for a period of time before a disallowance motion is effected. It is therefore possible that the benefit of certain exemptions may be denied to an accused person even if a piece of subordinate legislation is subsequently disallowed.*[31]

The QLS's view was shared by the Queensland Resources Council (QRC) which also submitted that the exemption and offence provisions should not be contained in subordinate legislation. The QRC submitted:

> *QRC fails to follow the logic why it would be easier for the public to navigate the exemptions in subordinate legislation (conservation plans and a regulation) than if consolidated in the Act. We also do not follow the logic why a supposed general trend towards relocating defences or exemptions for very serious indictable offences out of legislation and into subordinate legislation is either 'appropriate' or the kind of trend that is worth following. It is simply not true that subordinate legislation is subject to the same level of scrutiny as legislation. For example, we would question whether all members of the Committee would have been aware, before the lodgement of this submission, that part of EHP's purpose in this regard was to remove a longstanding bipartisan exemption relating to one of the 'four pillars' of the economy.*[32]

The committee's request for advice:

The committee asked the department to respond to the concerns raised by the QLS and the QRC.

DEHP response:

> *The purpose of this amendment is to remove exemptions that are either no longer required under the new framework, or those that are better placed in the subordinate legislation. This also ensures the provisions remain relevant and applicable in the absence of The Nature Conservation (Protected Plants) Conservation Plan 2000.*
>
> *Exemptions are currently located in multiple statutory instruments, including in the subordinated legislation. These provisions will be transferred from the Act and the Protected Plants Conservation Plan, and consolidated in the Wildlife Management Regulation.*
>
> *The amendments to section 89 are a reasonable and appropriate way of handling the policy framework within the structure of the Nature Conservation Act 1992. Exemptions will be subject to the parliamentary scrutiny as per the requirements for subordinate legislation in the Statutory Instruments Act 1992. The approach is also consistent with how other exemptions are established in the Nature Conservation Act 1992 and aligns with the structure of the legislative framework.*
>
> *The department acknowledges the complexities of the existing structure of the Act, particularly in regards to other legislation. However, this is outside the scope of the review of the protected plants legislative framework. Changing the structure of the Act would require an extensive review of the legislation, which the department is not in the position to do at this time.*[33]

Committee Comment:

The committee notes that the delegation of power will mean that an affected stakeholder will need to refer to both the Act and the regulation in order to confirm whether they are complying with the regime.

[31] Queensland Law Society, 2013, *Submission No.16*, p.2-3.
[32] Queensland Resources Council, 2013, *Submission No.3*, p.3.
[33] Department of Environment and Heritage Protection, *Correspondence*, 18 July 2013.

Notwithstanding the department's advice, the committee has serious concerns that exemptions to an offence with a maximum penalty of $330,000 and/or two years imprisonment will be contained in a regulation and not the Act itself. This could have serious implications for an individual's rights and liberties.

Point for Clarification

The committee asks that the Minister better inform the House in relation to the delegation of the exemption and offence provisions into subordinate legislation and confirm that an affected person will not be adversely affected by this delegation.

Recommendation 5

The committee recommends that the Minister consider the option of removing clause 9 in order to keep the exemption and offence provisions in the *Nature Conservation Act 1992*.

Appendix A – List of submitters

1. Aurizon Operations Limited
2. Queensland Mycological Society Inc.
3. Queensland Resources Council
4. Mrs Olive Hockings
5. Ergon Energy Corporation Limited
6. Graham and Margaret Shooter
7. Logan City Council
8. Queensland Rail
9. Cement, Concrete & Aggregates Australia
10. Powerlink Queensland
11. Queensland Murray–Darling Committee Inc.
12. Property Council of Australia
13. Queensland Farmers' Federation
14. Local Government Association of Queensland
15. Energex
16. Queensland Law Society
17. Burnett Mary Regional Group
18. Ecosure
19. Wildlife Preservation Society of Queensland
20. AgForce Queensland
21. Ray Suter

Appendix B – Briefing officers and hearing witnesses

Briefing officers at a private briefing held on 5 June 2013 and a public briefing held on 7 August 2013

Ms Alana Barry, Policy Officer – Department of Environment and Heritage Protection

Mr Geoff Clare, Executive Director – Nature Conservation Services, Department of Environment and Heritage Protection

Ms Karalyn Herse, Policy Officer – Department of Environment and Heritage Protection

Ms Jackie McKeay, Principal Policy Officer – Department of Environment and Heritage Protection

Public hearing witnesses – 7 August 2012

Mr Dan Galligan, Chief Executive Officer – Queensland Farmers' Federation

Ms Lauren Hewitt, General Manager, Policy – AgForce Queensland

Mr John McDonald, Nursery Industry Development Manager – Nursery and Garden Industry Queensland

Mr David Putland, Policy Manager – Growcom

Ms Teresa Howard, Senior Corporate Lawyer – Powerlink Queensland

Ms Melissa Lunney, Environmental Strategist – Powerlink Queensland

Mr Matthew Dunn, Principal Policy Solicitor – Queensland Law Society

Mr Michael Connor, Deputy Chair, Planning and Environment Law Committee – Queensland Law Society

Mr Des Boyland, Policies and Campaigns Manager – Wildlife Preservation Society of Queensland

Appendix C – Summary of submissions

This summary compiled by committee staff includes advice provided by the Department of Environment and Heritage Protection on issues raised by submitters.

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
Clauses 9	1.Aurizon	Section 89 – special least concern plants	Aurizon submits that it is not clear how 'near threatened' plants are different from 'special least concern' plants as introduced by the Bill at clause 9. They seek clarification regarding the differences between the two plant classes in terms of the legislative application of the Nature Conservation Act (NCA). Aurizon advises that it currently holds a class exemption that relates to the taking of 'least concern' plants in the course of an activity under a rail manager or rail operator accreditation pursuant to section 126 of the *Transport Infrastructure Act 1994* and section 99 of the *Transport (Rail Safety) Act* 2010. Aurizon inquires whether this current exemption will apply to 'special least concern' plants or whether the taking of such plants would require separate approval. Aurizon submits that the class exemption should extend to cover the taking of 'special least concern' plants.	The department notes the concerns raised by Aurizon, Special least concern plants is a new category that will apply to least concern plants that are currently restricted under the following statutory instruments, including – *Nature Conservation (Protected Plants) Conservation Plan 2000,* (section11 and Schedule 1) *Nature Conservation (Administration Regulation) 2006* (type a restricted) and the *Nature Conservation (Protected Plants Harvest Period) Notice 2013*. As stated in section 88D in the Bill, special least concern plants are least concern plants that have high commercial value or have particular biological traits (such as they are slow growing). These plants are already restricted under the current legislation as they face unique types of harvesting pressure and threats. The category for special least concern plants has been developed to simplify the current classifications and restrictions that are in place. Harvesting of these plants will no longer have a blanket restriction – special least concern plants will be able to be harvested, if the sustainability of harvest can be demonstrated through a sustainable harvest plan. In almost all circumstances the clearing of special least concern plants will be exempt under the framework. The clearing and harvesting of near threatened plants will not be exempt under the framework. A clearing permit will be required if the clearing activity impacts on a near threatened plant; and a harvesting licence will be required for any near threatened plants that are harvested from the wild (and will also be required to demonstrate the sustainability of harvest).
Clause 9	2.Queensland Mycological Society (QMS)	Section 89 – special least concern plants, Amendment of the definition of fungi in the *Nature Conservation Act 1992 and the*	The Queensland Mycological Society (QMS) strongly opposes the Bill and how it deals with fungi. They submit that the Bill's proposed changes will allow the clearance of large areas of land for agricultural development without scientific assessment or public scrutiny.	The department notes the concerns raised by the Queensland Mycological Society. The proposed framework will be adopting a risk based approach, and all clearing activities impacting on plants that are endangered, vulnerable and near threatened (EVNT) and their supporting habitat will be regulated

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
		Vegetation Management Act 1999	The QMS submit that the body of the *Nature Conservation Act 1992* and the *Vegetation Management Act 1999* should be changed so that it is clear that both Acts cover fungi as well as plants. They further submit that under section 89 of the Bill it would appear that no fungi will be protected, even in cases where they are vital to the survival of threatened plants e.g orchids. The QMS has submitted that a review of the regulations should take place whereby new regulations protect the following: 1. Those fungal species that are unique to Queensland and where at the present time there are less than 10 known sites for their occurrence or less than 25 records in the last 100 years; and 2. Those fungal species that are mycorrhizal associates of threatened, vulnerable or near threatened plants and therefore necessary to their continued survival. The collection of fungi is currently the subject of a permit system. The QMS seek clarification has whether the permit system will remain.	under the framework. Clearing that is proposed in an area of a known EVNT record or special mapped biodiversity area will be triggered under the framework. Triggered clearing activities will be required to undertake a flora survey to identify EVNT plants in the impact area prior to any clearing being undertaken. Scientific assessment will be focussed on high risk areas, and where there area known records of EVNT plants. The definition of plants in the *Nature Conservation Act 1992* clearly states that *plant* means any member of the plant or fungus kingdom (whether alive or dead and standing or fallen) and includes, inter alia,- (a)(v) moss; or (vi) liverwort; or (vii) alga; or (viii) fungus; or (ix) lichen. Section 89 outlines restrictions on taking etc particular protected plants. This covers all protected plants - as defined in the dictionary in the Act - which as stated above, includes fungi. Consistent with harvesting restrictions under the current framework, it is intended that all least concern fungi will be recognised as special least concern and therefore, as with EVNT species, collection will be subject to a harvesting licence. The department will continue to engage with the QMS through the drafting of subordinate legislation, to ensure that all issues relating to fungi have been adequately considered. The department will also explore ways for raising awareness of the role of the NCA in relation to fungi and other cryptic plant species as part of the implementation of the new framework.
Clause 8, Clause 9, Clause 20	3.Queensland Resources Council (QRC)	Section 88D, Section 89 – special least concern plants, section 175, subordinate legislation	The Queensland Resources Council (QRC) supports the intent of the Bill to achieve simplification however, they submit that the Bill does not tackle the real issue of multiple layers of regulation dealing with much the same issue. The QRC submit that the present system is complicated by inconsistencies between the list of species protected at the commonwealth level with those listed as protected at the state level. The aim should be to achieve with the commonwealth a single consolidated list. The QRC notes that the Bill proposes to amend section 89 of the *Nature Conservation Act 1992* by removing all exemptions from the Act to subordinate legislation i.e in either a conservation plan or a regulation. They cannot understand the logic whereby the public will have to navigate the exemptions by way of subordinate legislation (conservation plans and	The department notes the concerns raised by the QRC. The department also acknowledges that consolidating the state and Commonwealth lists of protected species may provide additional benefits; however this is outside of the scope of the review of protected plants framework under the *Nature Conservation Act 1992*. Exemptions will be transferred from the Act and the Protected Plants Conservation Plan, and consolidated in the Wildlife Management Regulation. Many of the provisions in the Wildlife Management Regulation currently relate to protected plants and animals, and others specifically to animals. Therefore, consolidating the provisions specific to plants into the Wildlife Management Regulation is a reasonable and appropriate way of handling this policy framework. The exemptions will

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
			regulation) as opposed to a consolidated Act. Further, the QRC submits that subordinate legislation is not subject to the same level of scrutiny as legislation. The definition of 'special least concern plants' in the amendments to the Dictionary fails to give any certainty or clarity to the scope of the term. The QRC submits that contrary to what the explanatory notes suggest is the intent of the term, there is no scope or limit in either section 88D or the Dictionary for which the plants can be prescribed. The QRC notes that clause 20 inserts a new head of power at section 175 – *Regulation of the use or development of land*. The explanatory notes state that this is necessary 'because critical habitat and areas of major interest have previously been identified only in conservation plans, and the conservation plan for protected plants is being repealed, with the majority of protected plant provisions being transferred to the Wildlife Management Regulation'. The QRC submits that this is incorrect and the explanatory notes are misleading, with no such provision currently existing in the conservation plan for protected plants. They also submit that the power is extremely broad and is not restricted to the 'critical habitat' or 'area of major interest', but instead covers an entire parcel of land. The QRC submits that in remote areas where parcels of land can be very large, this is of particular concern. Other points raised by QRC: • There are numerous references to the conservation plan being repealed however DEHP has advised the QRC that the plan will be extended to 2014. The QRC believe that this should be stated ion the explanatory notes; • The QRC have queried the Act's definition of 'in the wild'. The question is whether this includes circumstances where plants sprout up on different type of tenure, including brownfields industrial developments; and • The QRC understands that after the Bill is passed a new combined regulation will be produced called 'Wildlife Management Regulation' covering both animals and plants. The QRC submits that consultation has only occurred in relation to plants and the use of the term 'wildlife' usually only refers to animals, not plants. Therefore, to use this term in relation to plants is misleading.	be located in the regulations as part of the subordinate legislation process and subject to the parliamentary scrutiny as per the requirements for subordinate legislation in the *Statutory Instruments Act 1992*. The approach is also consistent with how other exemptions are established in the *Nature Conservation Act 1992* and aligns with the structure of the legislative framework, but simplifies this for protected plants in that all exemptions will be located in the one statutory instrument (instead of in three statutory instruments) - thereby making it easier for the public to navigate. The category of special least concern plant will apply to least concern plants that are currently restricted under the regulations including *Nature Conservation (Protected Plants) Conservation Plan 2000,* (section 11 and Schedule 1) *, Nature Conservation (Administration Regulation) 2006* (type A restricted plants) and the *Nature Conservation (Protected Plants Harvest Period) Notice 2013*. As stated in s88D in the Bill, special least concern plants are least concern plants that have high commercial value or have particular biological traits (such as they are slow growing). These plants are already restricted under the current legislation as they face unique types of harvesting pressure and threats. The category of special least concern plant has been developed to simplify the current restrictions relating to the harvesting of these plants and merge these into one defined category. This will make clear that these least concern plants have additional restrictions, because of their characteristics and the unique harvesting pressures they face. However, under the new framework, the harvest of these plants will no longer be totally restricted; a harvesting licence will now be allowed if the sustainability of harvest can be demonstrated. In most circumstances the clearing of special least concern plants will be exempt under the framework. Under the current legislative framework, an area may be identified under a Conservation Plan as, or including, a critical habitat or an area of major interest and may make provisions about the use or development of land, and activities, in relation to these areas. Section 175 inserts a new provision in the Act in order to retain the existing authority currently held under a Conservation Plan, as the Protected Plants Conservation Plan is being repealed (and the majority of provisions being transferred into the

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
				Wildlife Management Regulation). This amendment is necessary because critical habitat or an area of major interest may still need to be declared in future due to its protected plant values, and will be able to be identified as such in a regulation, including for example, the Wildlife Management Regulation. Other points: • The Protected Plants Conservation Plan is due to expire in August 2013. However, as amendments to the subordinate legislation are also required, the new framework will not be in place by this time. As such, the Protected Plants Conservation Plan will be extended for another 12 months or until such time as the new framework is in place (and the Conservation Plan is repealed) – which is consistent with most transitional arrangements. • Definition of 'in the wild' is not being reviewed as part of this review as it applies to all wildlife (i.e. both plants and animals). • The *Nature Conservation (Wildlife Management) Regulation 2006* is already in place and relates to all wildlife. Wildlife is defined in the *Nature Conservation Act 1992* as any taxon or species of an animal, plant, protista, prokaryote or virus, and has been defined as such since the inception of the NCA nearly 20 years ago. It is therefore consistent and appropriate to refer to plants as 'wildlife' and consolidate provisions relating to protected plants into the Wildlife Management Regulation.
No specific clause	4.Olive Hockings	No specific section	Mrs Hockings does not comment on any specific section of the Bill. However, she submits that the following should occur in relation to the protected plants framework: • Recognition of the environmental value of and scientific and commercial interest in rare native plant species; • Establishment of National Parks for the purpose of protecting rare native species in the wild habitat; • Encouragement and facilitation of research into conditions required for survival of Queensland's rare plants; • Establishment of repositories for the protection of rare native species e.g. Captive breeding programmes are established for threatened animals, so equivalent programmes need to be established for threatened plants; • Provision for authorized access to limited amounts of propagation material of all rare and endangered plants; • Establishment of rare plants in Regional Botanic Gardens; and	The department notes the comments provided by Mrs Hockings. The reforms of the framework aim to adopt a risk based approach and facilitate improved conservation outcomes by no longer restricting the harvest, propagation or cultivation of endangered, vulnerable or near threatened plants (EVNTs) if sustainability and an overall conservation gain can be demonstrated. It is anticipated that this will address many of the issues that Mrs Hockings has raised.

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
			• Encouragement of distribution of rare native plants from Regional Botanic Gardens to researchers, commercial and recreational growers.	
Clause 8	5.Ergon Energy	Section 89- special least concern plants, subordinate legislation	Ergon advises that in the first instance the Bill proposes a structure which makes taking a protected plant an offence. The structure then proposes a series of exemptions to this offence. One of those is if a permit is issued under the *Nature Conservation (Wildlife Management) Regulation 2006*. Another exemption is if an exemption applies under this regulation. Ergon submits that this structure does not initially tell the reader of the legislation and what must be done in order to take a protected plant. Rather, the reader must look at the subordinate legislation to determine what must be done in order to take a protected plant. Ergon submits that this is one of the key difficulties with the current legislative framework. Ergon also submits that the proposed structure as proposed by the Bill is not the usual structure for regulating these types of activities. The usual structure is to require a permit for particular regulated activities. The offence would then be to carry out a regulated activity without *a* permit. There would then be a definition of regulated activities which would exclude activities that the State does not wish to regulate. This is the process used under the *Sustainable Planning Act 2009* (and its predecessor legislation) for all development, including vegetation clearing. A similar structure is adopted for authorising resource activities and environmental authorities, although it is a slightly different structure. Implementing the usual structure would require more amendment than is currently proposed. However, it would not require significantly more work and would simplify the regime. Since the aim of the Bill is to simplify the protected plants regime, it would be sensible to adopt a structure with which most of the affected industry is familiar. Ergon Energy currently has an approved protected plant exemption under section 41 (1)(a)(ii) of the *Nature Conservation (Protected Plants) Conservation Plan 2000.* Ergon advise that this exemption has been operating effectively however, they submit that there is scope to streamline and reduce the record keeping obligations placed on electricity entities. Ergon asks that this exemption is carried forward in the regulation's provisions. Ergon also submits that it is still unclear what is proposed in relation to special least concern plants and whether an exemption will exist for the clearing of special least concern plants and whether harvesting these plants will require a permit.	The department notes the concerns raised by Ergon Energy. The department acknowledges the complexities of the existing structure of the Act. However, this is outside the scope of the review of the protected plants legislative framework. Changing the structure of the Act would require an extensive review of the legislation, which the department is not in the position to do at this time. The Bill proposes amendments to lay the foundations for a new, simplified protected plants framework and is in keeping with the existing structure of the Act. Under the proposed framework, all least concern plants will be exempt, and therefore class exemptions issued under section 41 (1)(a)(ii) of the *Nature Conservation (Protected Plants) Conservation Plan 2000* will no longer be required. The existing mitigation and record keeping obligations as they apply to least concern plants will also be removed in most instances. The category of special least concern plant has been developed to simplify the current restrictions relating to the harvesting of these plants and merge these into one defined category. These plants face a unique type of harvesting pressure, and because of their special characteristics, are currently completely restricted. Under the new framework, these plants will be able to be harvested under a harvesting licence, if the sustainability of the harvest can be demonstrated through a sustainable harvest plan. In most circumstances the clearing of special least concern plants will be exempt under the framework. The new framework adopts a risk based approach, and provides for a consistent approach to regulating high risk activities. High and low risk activities will be defined in the subordinate legislation and the department will continue to consult with stakeholders during the drafting process. As outlined in the Decision RIS, it is proposed that high risk clearing activities will include: • A clearing activity undertaken in an area where there is a known record of an EVNT plant; or

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
			Ergon suggests that a definition should be included in relation to 'low risk clearing activities for electrical infrastructure' as it would provide consistency across different frameworks that regulate clearing activities. It would also assist Ergon in reducing regulatory burden and lower Ergon's costs in dealing with protected plants.	• A clearing activity undertaken in an area where there is a mapped special biodiversity area. Special biodiversity areas are areas that are identified by the department (often in response to advice from expert panels) as containing special biodiversity values, such as multiple taxa (including EVNT plants) in a unique ecological and often highly biodiverse environment. All clearing defined as low risk will be exempt from a permit and licencing requirements under the proposed framework. To achieve consistency, the impact of clearing for linear infrastructure will be assessed according to the risk based approach. It is not considered necessary to provide for a specific exemption for this type of clearing activity under the new risk based model. All exemptions will be consolidated and listed in the Wildlife Management Regulation.
No specific clause	6.Graham and Margaret Shooter	No specific section	No specific comments on the Bill. However, Mr and Mrs Shooter advise that they have previously been able to sell/relocate the *Livstonia Australias* (cabbage palm tree) which has in the past provided them with an alternative source of income when there has been a downturn in the farming industry. They advise that the practice of removing/relocating palm trees has been banned in Queensland in circumstances where they are being brought in from interstate. They submit that public education is needed generally in the area of vegetation management.	The department notes the concerns raised by Mr and Mrs Shooter. Under the proposed framework, cabbage tree palms will be defined as a 'special least concern' plants and the existing restriction that applies to the harvest of this plant will be relaxed. Under the new framework, the harvest of this plant can be authorised under a harvesting licence, if the sustainability of harvest can be demonstrated through a sustainable harvest plan.

	7.Logan City Council	Framework for flora and clearing permits and amendment of section 95 (payment of conservation value)	Logan City Council (LCC) made a submission to the Review of the Protected Plants Legislative Framework and reiterates the comments made in their submission to that review.
			
			In relation to the Bill the LCC understands that under the new framework flora surveys and clearing permit requirements will only be triggered in areas where clearing poses a 'high risk' to plant biodiversity. As this was one of the specific questions posed in the initial consultation, clarification is sought by the LCC as what the State defines 'high risk'.
			
			The LCC notes that the Bill proposes to enable the chief executive to require a 'person' impacting on a protected plant to pay the relevant conservation value assigned to the plant in certain circumstances. The LCC submit that in addition to 'person' the terms 'organisation, company, entity' be included. As these entities are not legally deemed to be 'people', they would not therefore be subject to payment of conservation value. Given these entities would be
				The department notes comments provided by Logan City Council on the Decision Regulatory Impact Statement (RIS).
				
				High and low risk activities will be defined in the subordinate legislation and the department will continue to consult with stakeholders during the drafting process.
				As outlined in the Decision RIS, it is proposed that high risk activities will include:
				• A 'high risk area' is an area that contains either a known record of an EVNT plant or a mapped special biodiversity area.
				• A 'high risk clearing activity' is:
				  o A clearing activity undertaken in an area where there is a known record of an EVNT plant; or
				  o A clearing activity undertaken in an area where there is a mapped special biodiversity area.
				• Special biodiversity areas are areas that are identified by the

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
			conducting business within the realm of the Bill it should be amended as such to include them.	department (often in response to advice from expert panels) as containing special biodiversity values, such as multiple taxa (including EVNT plants) in a unique ecological and often highly biodiverse environment. Under the Nature Conservation Act, a 'person' is taken to be that which is defined under the Acts Interpretation Act 1954. Section 32D states references to persons generally (1) In an Act, a reference to a person generally includes a reference to a corporation as well as an individual. Therefore this amendment to the definition of person is not necessary.
	8.Queensland Rail	Definition of 'special least concern plants', subordinate legislation	Queensland Rail (QR) advises that it currently holds an exemption for the removal of "least concern" plants. This approval is currently granted under section 41 (1) (a) (ii) of the *Nature Conservation (Protected Plants) Conservation Plan 2000.* The Bill indicates that the *Nature Conservation (Protected Plants) Conservation Plan 2000* is to be repealed. QR seeks clarification that this exemption and others like it will now be granted under the amended *Nature Conservation (Wildlife Management) Regulation 2006.* QR notes that the suggested amendments result in the omission of references to 'least concern plants' and the insertion of references to 'special least concern plants'. To reduce confusion, QR suggests that the protected plant definition in the Act also be amended to reflect this change. QR supports the development and public release of guidelines for the assessment of authority applications. However they submit that flexibility needs to be retained within the assessment process to deal with species management requirements that do not fit within the standard fold. QR notes that the Bill outlines the need for considerable changes to be made to subordinate legislation and in particular the *Nature Conservation (Wildlife Management) Regulation 2006*. QR would appreciate the opportunity to review and comment on the proposed changes to subordinate legislation.	The department notes concerns raised by Queensland Rail. Under the proposed framework, all least concern plants will be exempt, and therefore class exemptions issued under section 41 (1)(a)(ii) of the *Nature Conservation (Protected Plants) Conservation Plan 2000* will no longer be required. The existing record keeping and mitigation obligations as they apply to least concern plants will also be removed in most instances. The department notes the omission of references to special least concern plants in the definition of protected plants. This will be reviewed and amended if required. The department welcomes comments from QR on the proposed amendments to subordinate legislation and will continue to engage with industry on the proposed reforms.
	9.Cement Concrete & Aggregates Australia	Increased timeframe for clearing permits	Cement Concrete & Aggregates Australia (CCAA) is supportive of a more streamlined regulatory framework for the management of protected plants and in particular its understanding that the timeframe for clearing permits will be increased from 6 months to 2 years. CCAA submits that in establishing the new framework strong consideration should be given to the unique nature of the heavy construction materials industry.	The department welcomes comments from CCAA on the proposed reforms and will continue to consult with industry on the proposed amendments to subordinate legislation.
Clause 9, Clause	10. Powerlink	Section 89- special least concern plants,	Powerlink is supportive of the Bill's policy objectives however submits that it is difficult to comment on whether the Bill is effective in achieving its policy	The department notes concerns raised by Powerlink on the difficulty in commenting on the Bill without the changes proposed to subordinate

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
12, Clause 19		Section 95 – Payment of Conservation Value, New section 174B	objectives without reviewing the further changes proposed through subordinate legislation. They submit that further consultation should occur prior to the implementation of this subordinate legislation. Powerlink notes that clause 9 of the Bill amends section 89 to remove certain exemptions. Powerlink advises they have no objection to these amendments provided they allow for the same efficiencies that are currently in place. Powerlink supports the approach put forward by Ergon Energy for a new definition of 'low risk clearing activities for electrical infrastructure'. This new definition would exempt certain low risk activities for electrical infrastructure. Powerlink notes that pursuant to clause 12, financial payments could be made to offset the loss of conservation value for taking protected plants to meet requirements under an applicable offset policy, where providing an environmental offset is a condition of an authority or other approval under another Act. In light of this, Powerlink submits that for the amendment to effectively achieve the policy objectives of reducing costs and unnecessary regulatory or administrative burden on business, the exemption needs to be sufficiently broad to avoid potential duplication of payment of conservation value in all instances. Powerlink submits the following as a more appropriate definition for the term "authority" for the purposes of section 95:- *authority means* a *licence, permit or other authority issued or given under this Act or another Act, regulation or conservation plan.* Powerlink also notes that the explanatory notes to the Bill provide that the intention of the amendments to section 95 is that payment for a conservation value will not be required in most circumstances however the amendments will allow the chief executive to continue to exercise limited discretion to decide that a monetary payment is payable in some instances. The Bill does not provide guidance regarding the type of circumstances the chief executive may exercise the discretion to require payment of conservation value and whether payment could be required where an exemption applies. Powerlink submits that payment for conservation value should be specifically excluded where an exemption applies. In relation to new section 174B (clause 19) Powerlink is concerned that the clause as currently drafted would not allow for integration with other assessment processes as the clause appears to limit the application of the	legislation. The department refers Powerlink to the Decision Regulatory Impact Statement (RIS) and the recommended option for reform for further information, which is available from the EHP's website. The department is currently in the process of drafting the subordinate legislation and will continue to consult with industry on the amendments proposed. Exemptions will be transferred from the Act and the Protected Plants Conservation Plan, and consolidated in the Wildlife Management Regulation. Exemptions will allow for the same efficiencies that are currently in place and significant improvements. The new framework adopts a risk based approach, and provides for a consistent approach to regulating high risk activities. High and low risk activities will be defined in the subordinate legislation. As outlined in the Decision RIS, it is proposed that high risk clearing activities will include: • A clearing activity undertaken in an area where there is a known record of an EVNT plant; or • A clearing activity undertaken in an area where there is a mapped special biodiversity area. *Special biodiversity areas:* Areas that are identified by the department (often in response to advice from expert panels) as containing special biodiversity values, such as multiple taxa (including EVNT plants) in a unique ecological and often highly biodiverse environment. All clearing defined as low risk (the clearing of least concern plants) will be exempt from a permit and regulatory requirements under the proposed framework. To achieve consistency, the impact of clearing for linear infrastructure will be assessed according to the risk based approach. It is not considered necessary to provide for a specific exemption for this type of clearing activity under the new risk based model. Section 351 of the *Nature Conservation (Wildlife Management) Regulation 2006* outlines the conservation values for protected wildlife and states that a value does not apply if a conservation plan for protected wildlife states a different or no conservation value. Payment of a conservation value for protected plants is currently not required under section 57 of the Conservation Plan. However, as the

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
			assessment guidelines to applications and specifically, authorities considered under the NCA. Powerlink submits that further consideration needs to be given to the drafting of the proposed clause174B to allow for a broader application of the assessment guidelines and to facilitate further streamlining opportunities.	*Nature Conservation (Protected Plants) Conservation Plan 2000* is being repealed, the amendment to section 95 is required in order to retain the ability for the chief executive to decide that a monetary payment is appropriate for protected plants in certain circumstances. The payment of a sum of money will not generally be required in exchange for taking protected plants, as is currently the case. This is because most of the impacts to threatened species will be managed through regulatory requirements to avoid, mitigate and offset. The payment is not intended to restore or replace an ecosystem and the payment will not replace impact management requirements. The proposed reforms seek to streamline assessment processes and reduce duplication with assessment frameworks where possible. However this is considered best achieved through providing for an exemption (in the subordinate legislation), if protected plant impacts have been assessed in accordance with the assessment guideline under another assessment framework. The assessment guideline will be made publicly available, and other assessment frameworks will be able to adopt this guideline if desired. It is proposed that an exemption [for a clearing permit] will be provided for where clearing impacts have been assessed in accordance with the assessment guideline. Assessment guidelines will be developed in consultation with interest groups during the regulatory drafting process. The department will also consult with interested parties on proposed amendments to exemptions and further streamlining opportunities.
Clause 12, Clause 19	11. Queensland Murray-Darling Committee	New section 174B	In relation to new section 174B the Queensland Murray Darling Committee (QMDC) submits that the ability for the chief executive to approve or make assessment guidelines about how applications for an authority are to be considered will provide for consistency and transparency in decision-making processes. QMDC submits that amendments to section 95 (payment of conservation value) raises the potential issue of whether the Bill has sufficient regard to conservation values. QMDC argues it does not. Money cannot restore or replace an ecosystem that is beyond the point of return.	The department notes the comments provided by the QMDC. Section 351 of the *Nature Conservation (Wildlife Management) Regulation 2006* outlines the conservation values for protected wildlife and states that a value does not apply if a conservation plan for protected wildlife states a different or no conservation value. As the *Nature Conservation (Protected Plants) Conservation Plan 2000* is being repealed, the amendment to section 95 is required in order to retain the ability for the chief executive to decide that a monetary payment is appropriate for protected plants in certain circumstances. The payment of a sum of money will not generally be required in exchange for taking protected plants, as currently outlined in the Conservation Plan under section 57 which states that no conservation

Cl.	Sub No. and Submitter	Section/[Issue]	Key Points	Departmental response
				value is payable for a protected plant. This is because most of the impacts to threatened species will be managed through regulatory requirements to avoid, mitigate and offset. The payment is not intended to restore or replace an ecosystem and the payment will not replace impact management requirements.
Clause 8,Clause 10, Clause 19	12. Property Council of Australia	Section 88D - Regulation may prescribe special least concern plants, Insertion of new Section 174B	The Property Council of Australia (PCA) notes that the Bill is designed to lay the foundation for future amendments to the *Nature Conservation Act 1992* (NCA). However, they submit that as these proposed amendments are not available, it is difficult to provide meaningful commentary on their appropriateness, or otherwise. They seek an assurance that there will be further opportunity for stakeholders to be involved in the review of proposed amendments before they are presented to Parliament. The PCA notes that section 88D of the Bill seeks to allow the regulation to prescribe a least concern plant as a 'special least concern plant'. While the explanatory notes outline that the term 'rare' will no longer be used, this new category of least concern plant will not replace the term 'rare', rather seeks to introduce an expanded category. The PCA submits that this amendment will have implications for industry, as under Clause 10 of the Bill, a proponent will now need to obtain a permit or other form of permission to deal with special least concern plants. Section 88D also seeks to introduces a risk assessment, whereby the 'ecological sustainability' of a least concern plant has to be determined. The PCA submits that it is unclear who will make this assessment, or what the term 'ecological sustainability' means in this context. This new section of the Bill does not support the Government's commitment to green tape reduction, as along with allowing for a new category of least concern plant, additional assessments will be required. Section 174B of the Bill intends to introduce a power whereby the chief executive of the Department will be able to publish assessment guidelines that must be taken into account in considering applications made under the Act. As the chief executive is currently able to publish administrative guidelines at any time, the need for this provision is questioned by the PCA. They believe that making guidelines mandatory considerations, through the operation of the legislation, will provide less flexibility for both Government and industry. Further, a draft of the assessment guidelines have not been made available for consultation, so it is difficult to comment on their potential impact on the industry.	The department notes the concerns raised by the PCA. The department is currently in the process of drafting the proposed amendments to subordinate legislation and will continue to consult with industry over the proposed regulatory amendments. The department also refers PCA to the Decision Regulatory Impact Statement and the recommended regulatory reform option endorsed by Government for an overview of the proposed amendments. Special least concern plants is a new category that will apply to least concern plants that are currently restricted under the following statutory instruments, including – *Nature Conservation (Protected Plants) Conservation Plan 2000,* (section11 and Schedule 1) *Nature Conservation (Administration Regulation) 2006* (type a restricted) and the *Nature Conservation (Protected Plants Harvest Period) Notice 2013*. As stated in section 88D in the Bill, special least concern plants are least concern plants that have high commercial value or have particular biological traits (such as they are slow growing). These plants are already restricted under the current legislation as they face unique types of harvesting pressure and threats. The category for special least concern plants has been developed to simplify the current classifications and restrictions that are in place. Harvesting of these plants will no longer have a blanket restriction – special least concern plants will be able to be harvested, if the sustainability of harvest can be demonstrated through a sustainable harvest plan. This will be assessed by assessment officers, against the assessment guidelines. In almost all circumstances the clearing of special least concern plants will be exempt under the framework. This will be further considered through the drafting of subordinate legislation. Section 174B of the Bill adds a new section to make clear the ability of the chief executive to make guidelines for how applications are to be assessed, and that these are to be made publicly available. The purpose of the assessment guidelines is to improve consistency for how

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				applications are considered and provide greater transparency in the decision making process. Assessment guidelines are a matter for subordinate legislation, and will be developed in consultation with interest groups and accredited experts during the regulatory drafting process. The department welcomes feedback from the PCA and will also continue to consult with interested parties on proposed amendments to subordinate legislation.
No specific clause	13. Queensland Farmers' Federation	Integration with other Acts	The Queensland Farmers' Federation (QFF) is generally supportive of the Bill and particularly supports the exemption of low-risk activities from permit and licence requirements. However, the QFF is disappointed that the Bill does not include integration with the *Sustainable Planning Act 2009* (SPA) and *Vegetation Management Act 1999* (VMA). QFF submits that integration with other assessment processes is essential. This would result in a single compliance framework for vegetation management which will enhance regulatory consistency across the state. The QFF also submits that communication and extension of compliance requirements has been less than adequate and must be improved, particularly in relation to the interactions between this framework and other legislation relevant to plant protection.	The department notes the concerns raised by QFF and lack of integration with the *Sustainable Planning Act 2009* and the *Vegetation Management Act 1999*. Alignment with the VMA and SPA exemptions will be achieved wherever possible. However full integration with the VMA and the SPA is not possible at this stage, due to the timeframes of the protected plants review, and the significant amendments that are currently being progressed under both the VMA and SPA. The department will continue to pursue the option of integrating protected plant and vegetation management processes with the Department of Natural Resources and Mines, to determine how integration may be achieved once the current review is complete. The department acknowledges the issues of communication and the compliance with the existing framework, and opportunities for improvement. The Decision RIS further outlines the department's communication and implementation plan for the new framework. Compliance requirements are a matter for subordinate legislation and will be reviewed through the drafting process. Consultation will be undertaken with relevant stakeholders and the department will continue to engage with the QFF and more broadly the primary industry sector.
No specific clause	14. Local Government Association of Queensland (LGAQ)	No specific section	The LGAQ is supportive of the Bill and submits that it will provide the appropriate head of power to implement the outcomes of the Regulatory Impact Statement (RIS). They also submit that the new legislative framework presents opportunities for cost savings for land managers, industry and the State Government; however, it will also present some risks to the objects of the Act, particularly during the transition to the new regime. The LGAQ is seeking an assurance from the State that the resources saved as a result of reduced administrative burden within the State are retained and redirected into awareness raising,	The department notes the concerns raised by LGAQ and will seek to reduce risks to the object of the Act, during transition to the new regime. Adopting a risk based approach will enable the department to re-direct resources to the assessment of high risk activities, and where they are most needed. The proposed amendments will establish clear heads of power, and simplify the existing permitting and licencing system, which in addition to supporting improved compliance will simplify monitoring and enforcement effort.

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			monitoring the success of the approach and where required enforcement for non-compliance.	
No specific clause	15. Energex	Integration with other Acts	Energex believes that the new protected plants legislative framework should recognise the following: • the role that electricity entities have as essential community infrastructure providers; and • the low impact of clearing for linear infrastructure. Energex proposes that the new legislative framework should be amended to: • have greater integration and consistency with existing approval frameworks and exemptions; and • have a framework that recognises key exemptions within the *Nature Conservation Act (*NCA*)* rather than subordinate legislation. Like the QFF, Energex notes that the Bill does not propose to integrate the decision making process for protected plants with existing approval frameworks like the *Sustainable Planning Act (*2009). Energex submits that this creates a regulatory and administrative burden by having disparate and inconsistent permitting requirements for business and government. Any administrative process relating to permitting should align with existing approval processes and have clear decision making timeframes, considerations and conditioning powers and appeal processes. Energex submits that the principal criticism of the existing framework is that it is complex and burdensome (see the Regulatory Impact Statement-page 6). The Bill does not change the complex nature of the legislation by maintaining the structure of a blanket prohibition in the Act and relying on subordinate legislation to provide for exemptions and permitting processes. This is inconsistent with other environmental legislation which does not seek to provide a prima facie prohibition to a*ll activities.* Energex requests a definition of *"low risk clearing activities for electrical infrastructure '*be included as an exemption within the Bill (rather than subordinate legislation). This approach would provide consistency across the different frameworks that currently regulate clearing activities.	The department notes the concerns raised by Energex, The new framework adopts a risk based approach, and provides for a consistent approach to regulating high risk activities. High risk and low risk activities will be defined in the subordinate legislation and the department will continue to consult with stakeholders during the drafting process. It is proposed that high risk activities will be defined as: • A clearing activity undertaken in an area where there is a known record of an EVNT plant; or • A clearing activity undertaken in an area where there is a mapped special biodiversity area. *Special biodiversity areas:* Areas that are identified by the department (often in response to advice from expert panels) as containing special biodiversity values, such as multiple taxa (including EVNT plants) in a unique ecological and often highly biodiverse environment. All other activities are proposed to be defined as low risk. To achieve consistency, the impact of clearing for linear infrastructure will be assessed according to the risk based approach. It is not appropriate or considered necessary to provide for a specific exemption for these activities. Exemptions will be transferred from the Act and the Protected Plants Conservation Plan, and consolidated in the Wildlife Management Regulation. Exemptions will allow for the same efficiencies that are currently in place and significant improvements. Transferring exemptions from the Act and Regulations and consolidating these into one regulation are a reasonable and appropriate way of handling this policy framework. The approach is also consistent with how other exemptions are established in the *Nature Conservation Act 1992* and aligns with the structure of the legislative framework, but simplifies this for protected plants in that all exemptions will be located in the one statutory instrument - thereby making it easier for the public to navigate. Exemptions will be provided for clearing associated with relevant development activities in areas that have previously been legally cleared

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				such as under the Electricity Act 1994. Such exemptions recognise the role of electricity entities as essential community infrastructure providers, and the ongoing maintenance requirements for such infrastructure. For new infrastructure projects there will be no requirements for clearing of least concern plants and areas outside of known EVNT records. Alignment with the VMA and SPA exemptions will be achieved wherever possible. However full integration with the VMA and the SPA is not possible at this stage, due to the timeframes of the protected plants review, and the significant amendments that are currently being progressed under both the VMA and SPA. The department will continue to pursue the option of integrating protected plant and vegetation management processes with the Department of Natural Resources and Mines, to determine how integration may be achieved once the current review is complete The proposed reforms will significantly reduce regulatory burden and simplify the legislative framework by consolidating and clarifying dispersed and ambiguous provisions across multiple statutory instruments related to protected plants. The permitting and licencing system will also be simplified, reducing the number of permit and licence types from 11 down to 3. The department acknowledges that complexities of the existing structure of the Act. However, this is outside the scope of the review of the protected plants legislative framework. Changing the structure of the Act would require an extensive review of the legislation, which the department is not in the position to do at this time.
Clause 9	16. Queensland Law Society (QLS)	Section 89 – special least concern plants	The Queensland Law Society's (QLS) chief concern is in relation to clause 9 of the Bill which amends section 89 whereby the range of exemptions, amounting to defences to an offence - currently conveniently co-located with the offence creating provisions itself, will be relegated to a regulation. They submit that this concern needs to be understood in the context that s 89 is an offence punishable by imprisonment of up to 2 years. The QLS suggests that the amendments embodied in s 89 are inconsistent with fundamental legislative principles contained within the *Legislative Standards Act 1992* ("LS *Acf')* and in particular, regard for the institution of Parliament', and the requirement that rights and liberties is subject to appropriate review.	The department notes concerns raised by the Queensland Law Society. The purpose of this amendment is to remove exemptions that are either no longer required under the new framework, or those that are better placed in the subordinate legislation. This also ensures the provisions remain relevant and applicable in the absence of The *Nature Conservation (Protected Plants) Conservation Plan 2000.* Exemptions are currently located in multiple statutory instruments, including in the subordinated legislation. These provisions will be transferred from the Act and the Protected Plants Conservation Plan, and consolidated in the Wildlife Management Regulation. The amendments to section 89 are a reasonable and appropriate way of

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			The QLS submits that whilst it is accepted that the regulation providing for the defences will be subject to parliamentary scrutiny and may be, by resolution, disallowed', it needs to be acknowledged that the review processes undertaken by the Legislative Assembly of subordinate legislation may not be as exhaustive as those undertaken for an authorising law. This is a matter of genuine concern when provisions amounting to defences to a term of imprisonment may be amended by executive action. It is understood that a regulation may commence prior to tabling in Parliament and may be in operation for a period of time before a disallowance motion is affected. It is therefore possible that the benefit of certain exemptions may be denied to an accused person even if a piece of subordinate legislation is subsequently disallowed. Secondly, the QLS submits that whilst the explanatory notes say that this approach is consistent with how other exemptions are established and also aligns with the structure of the legislative framework, they disagree with this having regard to both the Act and other legislation in Queensland. For example, in legislation which seeks to regulate related issues, like the *Sustainable Planning Act 2007* ("SPA"), and the *Environmental Protection Act ("EPA")* provide for defences in the authorising law. The QLS also submits that the suggestion made in the explanatory notes that the changes will make the provisions easier to navigate, seems to be without foundation and contrary to experience and common sense. The QLS suggests that to the greatest extent practicable, all well recognised exemptions which amount to defences should be retained in the Act.	handling the policy framework within the structure of the *Nature Conservation Act 1992*. Exemptions will be subject to the parliamentary scrutiny as per the requirements for subordinate legislation in the *Statutory Instruments Act 1992*. The approach is also consistent with how other exemptions are established in the *Nature Conservation Act 1992* and aligns with the structure of the legislative framework. The department acknowledges the complexities of the existing structure of the Act, particularly in regards to other legislation. However, this is outside the scope of the review of the protected plants legislative framework. Changing the structure of the Act would require an extensive review of the legislation, which the department is not in the position to do at this time.
No specific clause	17. Burnett Mary Regional Group	No specific section, general comments in relation to framework	The BMRG submits that the amendments have eroded the vital protection provided to plant species within Queensland and approve a relaxed approach to clearing. To further reduce the risk to threatened species we believe that surveys of probable habitat will be a critical inclusion to maintain existing populations and have some chance of recovery. It has not been identified how and when the special biodiversity areas (SBA) will be developed. This will be a critical component as it provided a trigger mechanism for the legislation. There is a risk that limited SBA's will be identified which will see a further reduction in protection under Option 2. It is a priority that the finalised criterion is made available so that additional areas can be identified at the regional and local scale with Local Government and Regional Groups having the option of submitting new SBA's.	The department notes concerns raised by the BMRG. Although current legislation provides a perceived high level of protection, in practice it is poorly complied with and difficult to enforce and therefore does not result in better conservation outcomes. The proposed reforms will adopt a risk based approach, and will not result in a relaxed approach to clearing. Endangered, vulnerable and near threatened plants will still be provided with the highest level of protection, while activities that pose little or no risk to threatened plants will be exempt. The department is in the process of developing mapped special biodiversity areas for protected plants and determining the data that will be included. This will be a matter for subordinate legislation. However, the department also refers the BMRG to the Decision RIS, which proposed the definition of special biodiversity areas as: • Areas that are identified by the department (often in response to

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			To ensure species diversity and persistence it is essential that a process is developed to identify 'least concern' species that are on a trajectory of becoming threatened. It is not clear how this process will be managed under the new system and how often an assessment will be conducted to identify the risk of extinction imposed on 'least concern' species. Flora surveys need to be thorough and aim to identify not only observable species but also the more cryptic species.	advice from expert panels) as containing special biodiversity values, such as multiple taxa (including EVNT plants) in a unique ecological and often highly biodiverse environment. The department acknowledges the importance of monitoring risks to least concern species to ensure that these species do not become threatened. This will be further considered through the drafting of subordinate legislation. It should also be noted that the species listing process is a separate function undertaken by the department and the species technical committee, and is outside the scope of this review. Flora survey requirements are a matter for subordinate legislation. The department will further consider flora survey requirements and minimum criteria, and will consult with interested parties and experts in the field to determine appropriate legislative provisions during the regulatory drafting process. It is intended that flora survey guidelines will be developed and will include expert advice from the herbarium and other accredited professionals.
No clause	18. Ecosure	No specific issue – concerns with RIS	Ecosure have raised several concerns in their submission in relation to the Regulatory Impact Statement (RIS) and option 2 in the RIS that has directly influenced the contents of the Bill, rather than the Bill itself, as they submit that the current Bill represents only a small proportion of the legislative changes the Government is proposing.	The department notes concerns raised by Ecosure. Issues regarding the proposed framework raised during consultation were addressed in the Decision Regulatory Impact Statement (Decision RIS). The Bill forms the first stage of amendments that are required to facilitate the implementation of the new legislative framework for protected plants, as outlined in the Decision RIS. The purpose of the Bill is to amend primary legislation in order to lay the foundations for subsequent changes to relevant subordinate legislation. The department will continue to consult with interested parties on the proposed amendments to the subordinate legislation.
Clause 12,Clause 15, Clause 18	19.Wildlife Preservation Society of Qld	Section 126A, section 173, section 95	The Wildlife Preservation Society of Queensland (WPSQ) does generally not support the Bill. The WPSQ submits that expenditure of funds is required to undertake comprehensive and statistically sound floristic surveys to reduce knowledge gaps and enhance confidence levels in relation to the data on hand. The WPSQ also note that the legislation will enable the chief executive to make assessment guidelines against which any application for clearing, harvesting or growing protected plants can be assessed. However the guidelines are not available for perusal. The WPSQ submit that enabling the chief executive to require a person impacting on a protected plant to pay the	The department notes the concerns raised by the WPSQ. Assessment guidelines are a matter for subordinate legislation. The department is in the process of developing assessment guidelines and will continue to consult with interested parties on the guidelines and all other proposed amendments to subordinate legislation. Section 351 of the *Nature Conservation (Wildlife Management) Regulation 2006* outlines the conservation values for protected wildlife and states that a value does not apply if a conservation plan for protected wildlife states a different or no conservation value.

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			relevant compensation would appear to be positive but when followed by the statement in the Explanatory Notes that payment will not generally be required causes concern. WPSQ do support the amendment to ensure Local Government decisions are not inconsistent with the regulations now that the conservation plan is to be repealed. They also support clause 18 that amends s173 specifying that the planting and nurturing of or the restoration and rehabilitation of, a protected plant or population of protected plants can be required by enforcement.	Payment of a conservation value is currently not required under section 57 of the Conservation Plan. However, as the *Nature Conservation (Protected Plants) Conservation Plan 2000* is being repealed, the amendment to section 95 is required in order to retain the ability for the chief executive to decide that a monetary payment is appropriate for protected plants in certain circumstances. The payment of a sum of money will not generally be required in exchange for taking protected plants, as is currently the case. This is because most of the impacts to threatened species will be managed through regulatory requirements to avoid, mitigate and offset. The payment is not intended to restore or replace an ecosystem and the payment will not replace impact management requirements.
Clause 12	20. AgForce	Section 95, co-regulation, public awareness	Agforce submit that the absence of clear information on this regulatory framework and the lack of engagement and communication by the regulator has led to a general lack of awareness of the framework. This has likely led to poor compliance rates with the regulation by the broadacre sector. Because of this Agforce's preference is for a radical review of the framework rather than placing emphasis on retaining elements of the current flawed process. Agforce note that the explanatory notes to the Bill outline that it will form 'the first stage of amendments that are required to facilitate the implementation of the preferred regulatory option' however fail to provide any overview on what the subsequent amendments will be, what form and detail they will include, or over what timeframe they will be implemented. AgForce submits that it is difficult to make informed comment on a process which has not been outlined with any detail and requests this detail be made available prior to this Bill being passed. Agforce submit that there is little detail in the explanatory notes explaining or justifying the expansion of conservation values to plants. Whilst the explanatory notes state that payment of conservation values will not generally be required AgForce requests that any proposal to set additional costs is explained in detail. AgForce disagrees that the review of the framework has been genuine for the purpose of achieving its policy objectives. In particular, it:	The department notes the concerns raised by Agforce. The amendments required to facilitate the implementation of the preferred regulatory option were discussed in the Decision RIS. The proposed reforms will significantly reduce regulatory burden and simplify the legislative framework by streamlining assessment processes, adopting a risk based approach and consolidating and clarifying dispersed and ambiguous provisions relating to protected plants. The permitting and licencing system will also be simplified, reducing the number of permit and licence types from 11 down to 3. Cost efficiencies to both government and business will be substantially improved. The department is currently in the process of drafting the proposed amendments to subordinate legislation and will continue to consult with industry over the proposed regulatory amendments. The department also refers Agforce to the Decision Regulatory Impact Statement and the recommended regulatory reform option endorsed by Government for an overview of the proposed amendments. Section 351 of the *Nature Conservation (Wildlife Management) Regulation 2006* outlines the conservation values for protected wildlife and states that a value does not apply if a conservation plan for protected wildlife states a different or no conservation value. Payment of a conservation value is currently not required under section 57 of the Conservation Plan. However, as the *Nature Conservation*

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			1. Failed to fully investigate the benefits of co-regulation. The Consultation RIS merely outlines in response to this aspect that 'integration with *Sustainable Planning Act* and the *Vegetation Management Act* is not supported across government at this time and is thus out of the scope.' AgForce's assessment is that DEHP's and the Department of Natural Resources and Mines' inability to work together will now mean that landholders are forced to jump through multiple legislative processes rather than enjoying true streamlining. 2. The review did not consider an approach for a combination of co-regulation and public awareness which AgForce purports could have gained support from a substantial range of stakeholders if included. AgForce outlined in its submission to the RIS that if a public awareness campaign was to outline the top 10 at-risk plant species that should be protected and landholders became aware that they had one of these plants on their property, they would be likely to voluntarily protect it at no cost (and without any legislative requirement). However, by legislating the protection of hundreds of native plants which are communicated only by a scientific name in a separate legislative framework to the predominant piece of native vegetation legislation in Queensland then the risk of not meeting the Act's purpose is increased. Under a joint co-regulation/public awareness program the department's requirement to licence commercial harvesters could still be maintained.	*(Protected Plants) Conservation Plan 2000* is being repealed, the amendment to section 95 is required in order to retain the ability for the chief executive to decide that a monetary payment is appropriate for protected plants in certain circumstances. The payment of a sum of money will not generally be required in exchange for taking protected plants, as is currently the case. This is because most of the impacts to threatened species will be managed through regulatory requirements to avoid, mitigate and offset. The payment is not intended to restore or replace an ecosystem and the payment will not replace impact management requirements. The review of the protected plants framework considered in detail three regulatory reform options, which were circulated for consultation with industry and the community. The Bill aligns with the regulatory reform option of achieving greentape reduction and regulatory simplification, as recommended in the Decision RIS. Alignment with the VMA and SPA exemptions will be achieved wherever possible. However full integration with the VMA and the SPA is not possible at this stage, due to the timeframes of the protected plants review, and the significant amendments that are currently being progressed under both the VMA and SPA. The department will continue to pursue the option of integrating protected plant and vegetation management processes with the Department of Natural Resources and Mines, to determine how integration may be achieved once the current review is complete Co-regulation was explored through the RIS process, however received minimal support from industry. The department welcomes working with the Agricultural sector to identify priority species, and protecting those considered most at risk. However, the nature of threatened plant species in Queensland means that plants identified as endangered, vulnerable and near threatened are considered to be at serious risk of becoming extinct in the wild if there is no protection in place. The proposed reforms seek to adopt a risk based approach so that regulatory efforts are only focused on those high risk activities that may compromise the viability of threatened plants in the wild. The protected plants framework is required to adequately protect those individual threatened plant species that may or may not be part of a broader regional ecosystem or area of high environmental value, which are regulated under other frameworks.

Statement of Reservation

Jackie Trad MP offers the following statement of reservation on the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill.

The Nature Conservation (Protected Plants) and Other Legislation Amendment Bill (the Bill) proposes significant changes to the protection, management and use of Queensland's diverse array of native flora.

The Bill forms part of the protected plants legislative framework (the framework). The former Labor Government initiated a review of the framework to address concerns that the suite of statutory and non-statutory instruments posed a complicated system for land users and businesses to navigate.

In its current form, the Bill is consistent with the LNP State Government's generally hostile approach to environmental protection and conservation. The Bill cannot be supported in its current form as it significantly reduces the regulated protection, use and management of protected plants.

Significantly, the Bill removes the necessity for flora surveys before undertaking clearing in all circumstances except where records or specific biodiversity areas suggest such clearing poses a 'high risk' to endangered, threatened or near threatened protected plants. The Department of Environment and Heritage Protection expects that this will slash the requirement for flora surveys by some 97% or by an analysis of the figures presented through consultation on the Bill, some 11,700 of Queensland's 12,800 known flora species are not of sufficient concern to necessitate flora surveys prior to land clearing.

This move from a rigorous regulatory approach to a 'risk based' approach represents a significant risk to the protection of important native Queensland flora and an abandonment by the LNP Government of evidenced-based and scientifically robust decision making.

Finally, the Labor Opposition has significant concerns with the removal of offence exemptions presently detailed in Section 89 of the Nature Conservation Act 1992. Currently, Section 89 establishes the offence of removing a protected plant from the wild, which may attract a penalty of two-years imprisonment. The Explanatory Notes provide the advice that exemptions will be relocated in the wildlife management regulation.

The Opposition is not of the view that this proposed amendment is consistent with the fundamental legislative principles of regard for the institution of Parliament and the requirement that rights and liberties should be subject to appropriate review, as outlined in the Legislative Standards Act 1992.

Further concerns will be outlined in the debate on the Bill.

Jackie Trad MP

Member for South Brisbane