

LAID UPON THE TABLE OF THE HOUSE	
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Powell.	
Clerk's Signature: _____	

AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

Report No. 27 on the

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

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 21 May 2013, the Honourable Andrew Powell MP, Minister for Environment and Heritage Protection, introduced the Nature Conservation (Protected Plants) And Other Legislation Amendment Bill 2013 into the Legislative Assembly.

The Bill was subsequently referred to the Agriculture, Resources and Environment Committee (the Committee) for consideration and report to the Parliament by 19 August 2013.

On 19 August 2013, the Committee tabled its report (No. 27) about the Bill (the report).

The Queensland Government response to the Committee's recommendations as outlined in the report is provided below.

RESPONSE TO RECOMMENDATIONS:

The Queensland Government thanks the Committee for its detailed consideration of the Bill and its recommendations.

Point for Clarification 1 – 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.

Queensland Government response:

The Department of Environment and Heritage Protection ('the department') is currently working with the Office of Queensland Parliamentary Council to draft the *Nature Conservation (Protected Plants) and Other Legislation Amendment and Repeal Regulation 2013* in accordance with the framework described in the Regulatory Impact Statement (RIS) process. An exposure draft will be formally circulated to relevant interest groups for consultation in October 2013.

While consultation occurred through the RIS process, EHP accepts that further consultation is required, and is committed to consulting stakeholders throughout the development of the subordinate legislation that will underpin the Bill.

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.

Queensland Government response:

The Government supports the Committee's recommendation.

The Minister for Environment and Heritage Protection shares the view that improved communication and education is necessary in order to better inform stakeholders of protected plants and the legislative requirements.

The department will provide supporting information on threatened plant species as part of the implementation process of the proposed framework. The department is committed to improving information and descriptions of protected plants, to address issues raised by stakeholders. A publically available repository of information on plants will be produced, including common names, descriptions and photographs of protected plant species where available.

It should be noted that not all plants have a common name, and as such the department will only provide common names where available. Many plants cannot be listed with a common name as there may be different names associated with that species in different regions.

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.

Queensland Government response:

The Government supports the Committee's recommendation.

The Minister for Environment and Heritage Protection will continue to liaise with the Minister for Department of Natural Resources and Mines, to determine how a single vegetation compliance framework may be achieved once the current review of legislation is complete, and will advise the House on progress to achieve this.

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.

Queensland Government response:

The Government supports the Committee's recommendation.

A categorisation system currently exists with the listing of threatened species in terms of their vulnerability, provided under the *Nature Conservation Act 1992* (the Nature Conservation Act) and there are restrictions in place for the harvesting of certain types of plants, most namely Type A and Type B.

The government acknowledges that this existing terminology relating to plant restrictions is already well understood by some plant harvesters and creating new terms relating to restricted least concern plants may provide some confusion.

The new categorisation system relating to harvest is designed to simplify the current classifications for restricted least concern plants. The department will provide factsheets for plant harvesters which will list species according to their vulnerability and build on existing terminology such as Type A and Type B plants that is already familiar and well understood by proponents.

Recommendation 4 - The committee recommends that the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013 be passed.

Queensland Government response:

The Government supports the Committee's recommendation.

Point for clarification 2 - 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.

Queensland Government response:

This amendment will not change an individual's rights or liberties under the Act, and an affected person will not be adversely affected by the delegation.

Placing exemption provisions in the subordinate legislation is consistent with how exemptions are currently established under the Nature Conservation Act, which provides for exemptions relating to plants and other wildlife within the subordinate legislation.

Section 89 of the Nature Conservation Act states:

*s89(1) Subject to section 93, a person, other than an authorised person, must not take a protected plant that is in the wild unless—
(h) the plant is taken under—*

- i. a conservation plan applicable to the plant; or*
- ii. a licence, permit or other authority issued or given under a regulation; or*
- iii. an exemption under a regulation.*

M. J. Ker Powell
Tabled 14/10/13
S. J. Marshall

As per section 89, the Nature Conservation Act already has the power to delegate an exemption to a regulation, and, accordingly, the majority of exemption provisions that allow the taking of protected plants are currently prescribed in the subordinate legislation. Some exemptions are, however, currently included in the Act and it is intended that these be consolidated in a single regulation along with all other existing exemptions.

Retaining these exemptions in the Act may provide for more visibility in limited circumstances so that a person needs only refer to the Nature Conservation Act to know if they are compliant. However, for most circumstances this will not be the case, as all other exemptions are currently contained in the subordinate legislation within three different instruments. Therefore, most affected persons would have to refer to multiple statutory instruments to know if they are in breach of their regulatory requirements.

Locating all exemption provisions into one consolidated statutory instrument—that also contains provisions relating to how persons who are not exempt can comply with the Act's requirements—is currently provided for under the primary legislation and is expected to enhance a proponent's ability to clearly determine their obligations under the framework and make the legislation easier to navigate and comprehend.

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*.

Queensland Government response:

The government notes this recommendation, however it is not considered necessary to remove Clause 9.

The transfer of exemption and offence provisions from the Act, into a regulation where other exemption and offence provisions are listed, is considered to be fair and reasonable, as it is consistent with the current and predominant structure of Nature Conservation Act framework.

It should be noted that the Bill does not change the existing ability for exemptions to be prescribed in a regulation, and most exemptions relating to the take of a protected plant are currently prescribed in the subordinate legislation. Accordingly, placing relevant exemption provisions into the subordinate legislation will not result in anyone being disadvantaged or made worse off by these changes.

Clause 9 simplifies the legislative framework by placing all the exemptions into a single location in a single regulatory instrument. In total, proponents will only need to refer to an Act and one regulation, rather than multiple statutory instruments as is currently the case.