

Property Rights Australia Notice December 26 2015

State & Federal engagement to delay approved High Value Agriculture clearing

Landowners throughout Queensland who have been issued development approval to clear native vegetation for high value agriculture have all recently received correspondence from the State Department of Environment and Heritage Protection and/or the Federal Department to Environment.

These two Departments are working in concert to engage landowners in a process designed to prevent or delay the lawful clearing of native vegetation approved pursuant to s334 of the *Sustainable Planning Act 2009*.

State delaying tactic

In the case of the State, landowners are being advised by the State that they will be in breach of the *Nature Conservation Act 1992 and Regulations* unless they prepare a **Species Management Plan** to protect rare and threatened species and habitat or they are able to demonstrate that practices were employed that sought to avoid protected wildlife being taken.

Section 88(2) of the Nature Conservation Act 1998 provides that a development approval constitutes a lawful activity and provided the landholders act reasonably they are unlikely to breach the provisions of the *Nature Conservation Act 1992* and the *Nature Conservation (Wildlife Management) Regulation 2006*.

Whilst a landowners may develop a Species Management Plan or take other action to ensure they remain compliant with the *Nature Conservation Act 1992* there is **no compulsion** for them to do so.

If landowners are aware of a rare and threatened species in the proposed works area they should seek further advice before proceeding with the clearing.

Federal delaying tactic

The Federal Department has misrepresented the *Environment Protection and Biodiversity Conservation Act 1999* in its correspondence when it states "A person proposing to take an action that is likely to have a significant impact on a matter of national environmental significance must refer their proposal for assessment and approval under the EPBC Act."

Section 68 of the EPBC Act S68(1) *A person proposing to take an action that the person **thinks** may be or is a controlled action **must** refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.*

If the person does not think the action is a controlled action then the person need act no further and **may** refer the matter to the Minister under S68(2) but there is no obligation to do so.

The Federal Department goes on to detail significant penalties for failing to comply and requires a response within a very short and unreasonable timeframe. The Department does however invite the landowners to request an extension.

Whilst the landowners may refer the tree clearing activity to the Federal Department for assessment there is no compulsion to do so and they should not request an extension but should seek further information before responding.

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By applying for an extension of time the landowners are engaging in a process over which they have no control.

If a landowner refers the lawful activity (ie clearing of native vegetation) to the Federal Environment Department it will result in a lengthy process of investigation, assessment and reporting all at the landowners cost and the delay of the clearing works by months, if not years.

Ambiguity by State & Federal Departments

Neither the State nor Federal Departments can provide landowners with specific advice as to what it is they are trying to protect and how it will be impacted by the lawful activity being undertaken by landowners.

This is a concerted effort by the State Government Department of Environment and Heritage Protection to enlist the support of the Federal Department of Environment to halt tree clearing in Queensland notwithstanding valid and current approvals.

Landowners have expended a lot of resources in gaining these approvals and should not be coerced into delaying or ceasing works.

Seek Advice

Landowners are urged to seek advice before engaging the State or Federal Departments or if in doubt before clearing any native vegetation.

Property Rights Australia can put landowners in touch with vegetation management experts and legal advisors



Thickening in North Qld, Open Grassy Woodlands. Photo sourced Pinnacle Pocket Consulting