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Submission on

The review of the Protected Plant Legislative Framework under the *Nature Conservation Act 1992*

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About Growcom

Growcom is the peak representative body for the fruit and vegetable growing industry in Queensland, providing a range of advocacy, research and industry development services. We are the only organisation in Australia to deliver services across the entire horticulture industry to businesses and organisations of all commodities, sizes and regions, as well as to associated industries in the supply chain. We are constantly in contact with growers and other horticultural business operators. As a result, we are well aware of the outlook, expectations and practical needs of our industry.

The organisation was established in 1923 as a statutory body to represent and provide services to the fruit and vegetable growing industry. As a voluntary organisation since 2003, Growcom now has grower members throughout the state and works alongside other industry organisations, local producer associations and corporate members. To provide services and networks to growers, Growcom has about 30 staff located in Brisbane, Bundaberg, Townsville, Toowoomba and Tully. We are a member of a number of state and national industry organisations and use these networks to promote our members' interests and to work on issues of common interest.

Introduction

Growcom welcomes the opportunity to provide comment on the review of the legislative framework for protected plants under the *Nature Conservation Act 1992*.

We are pleased to see the recognition that the current framework is complicated, burdensome, and difficult to interpret, implement and administer. The Consultation Regulatory Impact Statement (RIS) suggests that these issues with the framework have led to a lack of compliance and poor conservation outcomes. To this list of problems, we would add poor communication and extension of the compliance requirements, particularly on the interactions (or lack of) between this framework and other legislation relevant to plant protection (mainly the *Vegetation Management Act 1999*).

Growcom strongly supports the goal of the review; to reduce business and government costs, and to improve environmental outcomes by adopting a risk-based approach to regulation where low-risk or routine activities will be either self-assessable or exempt from permitting or licensing requirements. However, we believe there are several additional improvements and efficiencies not clearly identified in the RIS that will further reduce costs to both business and government.

Protected plants and the production horticulture industry

Production horticulture employs intensive production systems that typically occupy small areas of high-quality agricultural land. In addition, horticultural enterprises are usually reliant on supporting services and infrastructure, such as irrigation, electricity, labour, transport etc. As a result, production horticulture enterprises are usually located in well-established agricultural regions in which large-scale clearing of vegetation (EVNT or not) is unlikely.

Despite this, the Protected Plants Legislative Framework is highly relevant for the industry. The existing framework places a high compliance burden on small businesses with limited resources. Multiple Acts result in layers of compliance for even simple and routine farm management operations, such as maintenance of existing cleared areas. Aspects of the existing framework make it difficult or even impossible to conduct some routine operations, such as preventing the encroachment of EVNT species into existing agricultural areas.

In providing feedback on the RIS, the horticulture industry's primary policy objective is to ensure that the framework is as efficient as possible and does not impose a significant or unnecessary compliance burden on businesses or the government.

Government's preferred option (Option 2)

Growcom agrees that Option 2 presents a simplified framework that should reduce the compliance burden on horticultural producers, in comparison to the existing framework. In particular, the exemption of low-risk activities from permit and licence requirements is very welcome.

However, there are areas in which the compliance burden can be further reduced without compromising the management of EVNT species. For example, the RIS notes that exemptions from clearing permit requirements will be provided in instances where the impacts on protected plants have been approved as part of another assessment process. It proposes amendments to the *Environmental Protection Act 1994* to ensure protected plant impacts are considered during the assessment process for mining and petroleum activities. However, there is no mention of aligning the framework with the *Vegetation Management Act 1999* (*VMA*), another major piece of legislation that regulates the management of vegetation on agricultural land. Given that the *VMA* is also under review (the Vegetation Management Framework Amendment Bill 2013 was introduced to Parliament on 20 March 2013), this presents an ideal opportunity to align the compliance requirements of the Acts and to present a single compliance framework for vegetation management.

Specific comments:

We strongly support the exemption of low-risk clearing activities from flora survey and permitting requirements, as described in the RIS. Limiting permit requirements to high-risk activities will result in a significant reduction in compliance costs for businesses.

The proposed clarification of legislative provisions, streamlining of application processes and the reduction in the number of permit types will deliver a much simpler framework.

In addition, the proposed exemption for high-risk activities where a flora survey does not indicate threatened plant species are present is also a positive step. The requirement for the proponent to provide evidence to the department to demonstrate the absence of EVNT species is acceptable, provided that it is simple and cheap to do so. We seek additional information on how proponents will be expected to demonstrate the absence of EVNT species within the proposed project area.

The current definition of ‘high risk clearing activities’ refers to clearing ‘over a certain size’. This must be clarified. In addition, ‘low risk clearing activities’ are simply defined as those that are not high risk clearing activities. The framework must include a ‘positive list’ of accepted low risk activities to simplify the assessment of the compliance requirements for project proponents.

Similarly, it will be helpful to see a clearer definition of ‘supporting habitat’ and required evidence for the classification to allow a better assessment of this aspect of the framework.

The RIS states that “application requirements, flora survey requirements and criteria for clearing approvals will be clear…”. This is certainly not the case under the existing framework. While we welcome this goal, we would like to see additional information on how these requirements will be communicated to landowners and industry. The RIS also contains an acknowledgement that the process for obtaining a permit to clear protected plants under the *Nature Conservation Act* sits entirely outside other permitting and approvals processes related to land clearing. Principal among these where agricultural land uses are concerned is the *Vegetation Management Act*.

While we welcome the provision for exemptions where the clearing of protected plants will be mitigated and/or offset as part of another process, we seek further

information on how these exemptions will be implemented, and particularly on the evidence required to support an exemption.

We also welcome the provision where an exemption will apply if a plant species had been cleared legally within the preceding 5 years and/or where clearing is required to maintain existing infrastructure and complies with a code of practice. This provision should allow for the prevention of encroachment and the maintenance of cleared production areas, particularly those with irrigation infrastructure. If we have misinterpreted the intention of this section and this is not the case, we would welcome further consultation on this issue.

A stated goal of the review is for clearing of protected plants to be captured through existing approval process under other Acts wherever integration can be achieved. However, there is no further detail on whether this integration can be achieved with the *Vegetation Management Act*. Given the high level of overlap of compliance requirements between the *NCA* and the *VMA* for management of vegetation on agricultural land, we strongly argue that this integration must be pursued as a matter of priority. This integration, more than any other measure outlined in the RIS, will result in a substantial reduction in red tape and compliance burden for agricultural businesses. From a technical perspective, the addition of a layer for protected plants to a Property Map of Assessable Vegetation (PMAV) is straightforward; the only obstacles are policy and an unwillingness of departments to cooperate. Growcom would welcome an invitation to consult further on how this integration could be achieved.

Fees: The proposed increase in costs (from $0 to $2500 application fee for a clearing permit) seems excessive, especially given that Option 2 will result in a substantial reduction in costs to government over the existing framework. While the RIS states that these increases are required to recover assessment costs, we trust that all avenues to reduce those costs and seek greater efficiencies have been explored.

Because of the current ambiguity in the definitions of high and low risk activities, it appears that it may cost $2500 to remove a single EVNT plant that has encroached into an established production area and that only exists because of weaknesses in the existing framework. If we have misinterpreted this section, we would welcome clarification or correction.

Classification of 'high risk clearing activities':

Q. If clearing is undertaken outside of a known record for a threatened or special least concern plant (a known record area), when should this be considered a 'high risk clearing activity'?

A. It shouldn't. By definition, any activity in an area without records of threatened or special least concern plants has a low risk of impacting on those species.

Q. When should a fauna survey be triggered for this type of clearing?

A. Our preferred option would be a flora survey to not be triggered for project areas beyond the known range of threatened plants, as flora surveys are a major contributor to compliance costs. However, if the clearing activity is proposed within a regional ecosystem that typically contains threatened or special least concern plants

species, despite there being no records for those species within the project area, it could be argued that a flora survey is required to determine the presence/absence of the species within the area.

Q. Should a flora survey to identify threatened plants be required for any clearing over 2 ha, or should another threshold be applied?

A. The flora survey should only be required if the presence of a threatened plant is indicated by existing data, or if (as above), there is a reasonable expectation that a threatened plant may exist within a project area (i.e. for a combination of a 'high risk clearing activity' and a 'high risk regional ecosystem').

Industry preferred option (Option 3)

Growcom believes that the option of co-regulation and a self-assessable code should be explored in more detail and reassessed. We are pleased to see that the department left open the option of implementing Option 3 (or parts thereof) as part of further reforms at a later date.

The RIS suggests that Option 3 will have greater costs for both business and government than Option 2. However, we argue that small changes to Option 3 can result in significant cost savings for all parties. For example, general exemptions are yet to be determined in consultation with industry, and it may be that a greater number of activities will not require permits and that further opportunities to cut compliance costs may be identified.

Specific comments:

Under the description of Option 3 in the RIS, all persons proposing a clearing activity that is not exempt under the framework will be required to apply to the department to conduct a site-specific protected plant evaluation. All proposed clearing activities will be exempt the resulting protected plant map shows no protected plants in an area. The requirement for all non-exempt activities to require an on-site assessment by departmental staff is excessive and results in no effective reduction in red tape. The first stage of an evaluation should be completed based on known records of EVNT plants, with an on-site evaluation only required if records suggest the presence of EVNT species.

The RIS suggests that businesses and landholders will be solely accountable for protected plant outcomes and will be subject to penalties if their actions lead to plants becoming endangered or extinct. What is not made clear is whether landholders will have this liability if they can demonstrate that they have followed the accepted code of practice.

Given the expertise required to conduct accurate flora surveys, and that they may be required over extensive areas in regional locations, does the department have the capacity to complete these surveys in a timely manner? In addition, has the department considered the costs of these surveys if conducted by 3rd party consultants?

Fees: As with Option 2, the suggested fees are excessive. For example, the minimum application fee for an on-site assessment and protected plant map of $2500 may apply to production areas as small as 1ha. The suggested fee structure will result in astronomical costs for clearing projects in the grazing and broadacre sectors.

Option 4: no regulation

The RIS states that, if the existing framework was allowed to expire and there was no protected plant framework, threatening processes such as land clearing would be unmanaged and cause irreversible environmental damage. This is simply not the case, as land clearing would continue to be managed under other Acts and management codes. Removal of the framework would not necessarily lead to increased clearing with these other restrictions currently in place.

Given the protection for EVNT species offered by other state and Commonwealth Acts (e.g. *The Environment Protection and Biodiversity Conservation Act 1999*), we wonder whether the Protected Plant Framework under the *NCA* offers significant additional protection that warrants the cost and compliance burden for all parties. This question has not been adequately addressed in the RIS.

Summary

Growcom strongly supports the intention of the review of the Protected Plant Legislative Framework. However, we believe there are opportunities for additional changes that will drive efficiencies and cost reductions for both business and industry.

Key points:

- The department's preferred option, Option 2, is a vast improvement on the current situation
- We recommend further investigation of Option 3, particularly on efforts to reduce costs, and a reassessment of the relative costs and benefits of these two options
- Integration with other assessment processes (especially the *Vegetation Management Act*) is essential and must be pursued as a matter of priority
- Communication and extension of compliance requirements must be improved.