



**Australian Government**  

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**Department of the Environment**

**Dr Gordon de Brouwer PSM**  
**Secretary**

Ref:

Senator Barry O'Sullivan  
Senator for Queensland  
PO Box 3135  
Toowoomba Qld 4350

Dear Senator

***Environment Protection and Biodiversity Conservation Act 1999***  
**Queensland high-value agriculture permits**

I am writing in response to your letter dated 3 February 2015 requesting further information about the genesis of correspondence sent by the Department of the Environment on 10 December 2015 to holders of High Value Agricultural Permits in Queensland.

As you are aware, these permits were issued by the Queensland Government to clear native vegetation under Queensland's legislation.

I also take this opportunity to provide you with further information in response to questions at the recent Senate Environment and Communications Legislation Committee additional estimates hearing held on Monday, 8 February 2016.

I trust that the information contained in this letter will answer your questions on notice about the Minister's responsibilities to investigate potential contraventions of national environmental law and the process undertaken by the Department in deciding to seek additional information from permit holders.

**The *Environment Protection and Biodiversity Conservation Act* regulatory approach**

In meeting the object of the the *Environment Protection and Biodiversity Conservation Act 1999* to protect the environment and particularly matters of national environmental significance, the Act includes provisions which make certain conduct illegal. These prohibitions include taking an action that has a significant impact on a matter of national environmental significance (for example, an action that has a significant impact on a listed threatened species or endangered community).

In some cases the conduct is always illegal and in others it may be legal if an appropriate approval (which may be subject to conditions) is granted by the Minister or his delegate. For

this purpose the Act provides an assessment and approval regime for actions that may significantly impact matters of national environmental significance.

The Act applies nationally, and can apply to activities approved by state governments under state laws.

In complying with the Act, landholders undertaking actions that could affect a matter of national environmental significance must be mindful of both the Act's offence provisions and the rules around referring matters and obtaining approvals. In general terms, the EPBC Act places an obligation on landholders to consider whether their actions could significantly impact a matter of national environment significance. The fact that a person is unaware of such a matter does not mean that the offence provisions are not relevant or that the referral process does not apply.

### **The Department's compliance and enforcement approach**

As Departmental officers outlined at the 8 February 2016 hearing, the EPBC Act does not specifically require the Minister to investigate every potential civil or criminal breach of the Act.

The Administrative Arrangements Orders provide that the Minister for the Environment is responsible for the administration of the EPBC Act. In doing this, the Minister must administer the legislation as passed by the Parliament and in accordance with its objects.

The Minister delegates certain responsibilities and powers set out in the Act to officers of the Department. These responsibilities and powers include compliance and enforcement powers. Failure to effectively administer the Act may result in the Minister not meeting the objects of the Act, creating the potential for legal exposure.

The Department undertakes its compliance and enforcement activities in accordance with its *Compliance and Enforcement Policy*<sup>1</sup> and *EPBC Act Compliance and Enforcement Policy*<sup>2</sup>. The *EPBC Act Compliance and Enforcement Policy* outlines how the Department promotes a consistent, transparent and fair approach when administering the Act.

In undertaking its regulatory responsibilities, the Department, like other Commonwealth regulators, promotes self-regulation by the regulated community and encourages compliance with the law. It does this through targeted communication, education and engagement activities, which we seek to do in a collaborative way.

When this does not achieve compliance with the EPBC Act, the Department directly engages with the relevant person or entity (and, in some cases, industry sector bodies) with a view to resolving the issue. If this does not work, then the Department may use its powers under the Act to seek an administrative remedy or obtain specific information.

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<sup>1</sup> On-line at <http://www.environment.gov.au/system/files/pages/a57ff3f5-7617-4889-8a61-3629cb22261a/files/compliance-enforcement-policy.pdf>

<sup>2</sup> On-line at: <http://www.environment.gov.au/epbc/publications/epbc-compliance-and-enforcement-policy>

In the most serious cases, where all other measures have failed, the Department will seek to enforce the Act through the courts, which can result in civil penalties and criminal sanctions being imposed.

In its compliance and enforcement activities, the Department seeks to ensure the most appropriate response to encourage compliance or to deal with a breach of the Act.

### **Circumstances that led to the enquiries into permit holders.**

The Department monitors compliance with the Act by receiving, assessing and prioritising information from many sources, including inspections by authorised officers and inquiries and complaints generated by the general public, the media, industry, non-government organisations and other government agencies. The Department is not required to look at only those matters specifically drawn to its attention by a complainant and, consistent with the practice of Commonwealth regulators, undertakes its own inquiries where necessary.

In the recent land clearing matters in North Queensland, the Department became aware of a number of proposed clearing activities by holders of High Value Agricultural permits issued by the Queensland Government as early as April 2014. A chronology of the key events is attached.

Consistent with other Commonwealth regulators, where the Department receives information that a group of people are at risk of breaching the Act, then it not only looks at the causes of the potential non-compliance but is also obliged to consider whether any other people may be at risk of also breaching the Act.

s47B(a), s47E(d)

### **The Department's approach to the permit holders**

By early December 2015, the Department had reviewed the available information about the permits and concluded that that a number of permit holders may be at risk of breaching the EPBC Act. The relevant officers formed the view that it was appropriate, and consistent with the Department's standard operating procedures, to contact all permit holders to inform them of the Department's interest in this matter.<sup>3</sup>

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<sup>3</sup> Letter from DoE to HVA landholders sent 10 December 2015. There are 59 HVA permits which are held by 54 landholders. Certain HVA permits holders were not sent this correspondence as those properties were the subject of current substantive compliance actions.

The Department's letters were aimed at engaging with each permit holder and informing them about how the Act may apply to their specific actions. The Department also sought information to assist officers to evaluate the risk to matters of national environmental significance, and to permit holders from the proposed land clearing.

I acknowledge that these letters have caused some concern about the Department's role in native vegetation management, in circumstances where permits had been granted by the Queensland Government. Consistent with good regulatory practice, the Department is currently reviewing the content of letters of this nature to ensure that our engagement with landholders is as clear as possible in future.

The Department has had significant engagement with permit holders since sending the December 2015 letters. With information received since that time, including that provided by the landholders who have engaged with the Department, the Department has been able to advise the holders of 27 High Value Agricultural permits (45 per cent) that their activities did not require approval under the Act. We expect that this number will increase as further information is received.

For those landholders who have not yet communicated with the Department, the Department will endeavour to obtain information about the potential impact of their works in other ways.

It remains the Department's priority, wherever possible, to prevent potential non-compliance with the EPBC Act through early engagement with the regulated community. This is particularly important in the case of High Value Agricultural permit holders, as landholders may have been misinformed about the nature of their obligations under the EPBC Act, or are not aware of the potential application of the Act to their proposed actions.

### **Freedom of Information Request and Questions on Notice relating to documents**

I note your request for documents at the additional estimates hearing held on 8 February 2016 and subsequent FOI request of 24 February 2016. I understand that your request is quite broad and covers a range of correspondence between the Department and various Queensland agencies. I am advised that the Department is currently compiling the documents and will need to consider whether the documents are subject to FOI exemption or public interest immunity claims. As we are aware that you may be interested in a more limited range of correspondence, I am willing to provide Departmental officers to work with your office to ensure that your request covers documents relevant to the issues set out in this letter. Through this approach I hope to provide you with the relevant documents in a more timely fashion.

Yours faithfully

Gordon de Brouwer

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**Chronology of Key Events  
Land clearing in Queensland**

DATE	PROPERTY	SUMMARY
<h1>s22</h1>		
March 2014	CrystalBrook Station	The Department made enquiries into the proposed clearing on request of the Minister.
<h1>s22</h1>		

# s22

DATE	PROPERTY	SUMMARY
		s22
September 2015	WWF Report	The Department became aware of a WWF report <sup>11</sup> that clearing associated with HVA permits was in-train across Queensland.
s47B(a), s47E(d)		
November 2015	Increased concerns about HVA	The Department became aware that clearing had commenced on a number of HVA permit sites. This clearing was previously unknown to the Department. Landholders therefore were at increasing risk of inadvertently breaking national environmental law by significantly impacting on protected matters.
December 2015	Bulk mail out to HVA permit holders	Mail out to HVA permit holders aimed at engaging with each permit holder and informing them how the Act may apply to their action. Information was also sought to assist officers to evaluate the risk posed to matters of national environmental significance from the proposed HVA clearing.

s22

<sup>11</sup> "Bushland destruction rapidly increasing in Queensland" Martin Taylor WWF September 2015  
<http://www.wwf.org.au/?14520/Queenslands-tree-clearing-map-of-shame>

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