

Property Rights Australia Notice December 21 2015

Federal Department of Environment letter to landowners with approved High Value Agriculture clearing permits.

Property Rights Australia (PRA) wishes to draw your attention to the matter outlined below and requests your assistance in bringing this matter to a prompt and satisfactory conclusion.

On Friday, December 18, as chairman of PRA I received an inquiry from a north Queensland rural landowner on how best to respond to a letter received from the Federal Department of Environment. This landowner had to sign for the letter sent by registered post on December 17 with a deadline in the letter for response by 23 December; that is, in only 4 business days.

The letter (**View Attachment A below**) had the appearance of having been sent to all landowners holding an approved high value agriculture clearing permit. This was established as being the case after talking to legal professionals and ecology and rangeland management consultants who also had clients who received this same letter.

Prior to the Queensland government issuing a high value agriculture clearing permit, a rigorous examination of the proposal is carried out to ensure that the development will comply with all Environmental Laws, Water Laws, Land and Soil Laws, Forestry and Botanical Laws of the State.

The ambiguous nature of the letters sent to landowners is not helpful. It has all the appearances of a broad brush fishing exercise. PRA believes that this approach is not fair governance by good policy and legislation – rather (very likely) it is attempted governance by activist public servants using innuendo and the threat of penalties under the EPBC Act. It must be reiterated that the landowners who have been granted these high value agriculture clearing permits have already been through a rigorous State-based process – a process conducted within the requirements of the EPBC Act as well as State legislative requirements. Yet landowners need to be careful to how they reply to such correspondence, to ensure that they do not incriminate themselves in a response to something which a Commonwealth public servant has decided to introduce “over the top”. Landowners need professional advice which is both costly and impossible to obtain in such a short time frame, running into the Christmas/ New Year period.

The whole crux of the advice from the Department of Environment turns on the meaning and interpretation of one word: that word is “significant”. There is nothing definitive or certain as to how “significant” is interpreted in the letter; i.e. this interpretation could be benign or impossible to comply with, depending on the level that the Act defines.

PRA believes at the very minimum that the Department should be directed to:

- Advise the precise and certain definition of the word “significant” according to the E.P.B.C. Act and the relevant Section where that is contained.

- Specify the Sections where Federal Legislation requires a different or higher standard of Environmental protection than that which the Queensland legislation specifies for the areas and issues that have been quoted.
- Acknowledge that where the permitted clearing is not prohibited until that clearing reaches a “significant impact” level - all clearing under the permitted level is not a concern.
- Acknowledge that their advice is totally ambiguous where they state that “Referral under the E.P.B.C. Act may be necessary”. Either referral is required or it is not. The Department must advise if formal referral is required and the Section of the Act that supports this statement.

The prospect of one branch of Government declaring a development lawful, while another suggests it may be unlawful – in this case, without any clear legal basis for doing so – is both preposterous and impossible to reconcile. Our elected representatives need to recognise that such a stance taken by a public servant is not simply unfair but unconscionable. Landowners who are acting within the law under a valid permit should be entitled to conduct their business unhindered by the personal agendas of government officers who may, for personal reasons, disagree with government policy.

High value agriculture permits have been issued for the main part in north Queensland where regional remanent vegetation remains at 90% and greater. The Queensland Government’s compliance officers have been undertaking activity in north Queensland with some vehemence, which suggests some personal agendas to stop clearing under these valid permits which have been issued by the State. The whole exercise makes a mockery of the efforts of the Commonwealth in developing the white paper on northern development and subsequent policy direction.

Yours, sincerely,

Dale Stiller

Dale Stiller
Chairman
Property Rights Australia Inc
pral@bigpond.net.au

Attachment A



Australian Government
Department of the Environment

Contact Officer: Claire Kimmings
Telephone: (02) 6275 9116

Our reference: HVA
Email: claire.kimmings@environment.gov.au



Dear Mr [REDACTED]

Environment Protection and Biodiversity Conservation Act 1999
Re: clearing vegetation for high-value agriculture at [REDACTED]

I am writing to provide you with information about the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). I understand that you hold permit [REDACTED] to clear native vegetation for High Value Agriculture purposes under section 334 of the *Sustainable Planning Act 2009* (Qld). I understand that approval to clear [REDACTED] hectares of native vegetation at [REDACTED] was granted by the Queensland Department of Infrastructure, Local Government and Planning on [REDACTED] 2015.

The Department has examined a number of other permits for High Value Agriculture purposes which have been issued by the Queensland Government and is concerned that some of the approved projects have the potential to impact on matters of national environmental significance which are protected under the EPBC Act. These matters include, for example, the Great Barrier Reef World Heritage Area, nationally listed threatened species, and listed migratory species, among others. More information about the EPBC Act and matters of national environmental significance is available on the Department's website at www.environment.gov.au.

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. Substantial penalties apply to a person who takes such an action without approval. An approval under the *Sustainable Planning Act* does not remove the need to refer under the EPBC Act if a significant impact is likely.

The Department is sympathetic to the needs of the farming community. The EPBC Act is not about preventing people from making a living on their land, nor does it apply to ongoing farming practices. My intention in writing to you today is to ascertain whether or not you have considered your potential obligations under the EPBC Act; and if not, to assist you in doing so to ensure that you do not unintentionally breach national environmental law.

Information available to the Department, and publicly available on its website, indicates that the proposed clearing has the potential to impact on protected matters. Given the potential for this action to impact on matters of national environmental significance, the Department considers that referral for formal consideration under the EPBC Act may be necessary.

Board: Dale Stiller (Chairman), Ashley McKay (Vice Chairman),
Kerry Ladbrook (Secretary), Joanne Rea (Treasurer), Tricia Agar, Peter Jesser

The Department would appreciate any information you may have which demonstrates that clearing at the site has been planned to avoid significant impacts on matters of national environmental significance. This could include, for example:

- Any information you have which is relevant for determining the potential for this action to impact on matters of national environmental significance (for example any environmental reports prepared or advice received);
- Information as to whether clearing under [REDACTED] has commenced and, if so, the extent of vegetation cleared to date; and
- If clearing has not yet commenced, your intentions in relation to referral of the proposed clearing for formal consideration under the EPBC Act.

We would appreciate a response at your earliest convenience or by close of business on 23 December 2015 by email or by post to:

compliance@environment.gov.au

Claire Kimmings
Compliance
Environment Standards Division
Department of the Environment
GPO Box 787
Canberra ACT 2601

Should you have any queries about the matters raised in this letter please call the contact officer, Ms Claire Kimmings, on (02) 6275 9116. Alternatively, if you would like further information about the referral process, you may contact the Department on 1800 803 772.

Yours sincerely



Trish Rendell
A/g Director
Compliance Section

10 December 2015