



EDO-NQ FACTSHEET SERIES

LEGAL MECHANISMS FOR CONSERVATION ON PRIVATELY OWNED LAND

Private Conservation Mechanisms Factsheet #1: ***Overview of Legal Mechanisms for Private Conservation***

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*Private Conservation Mechanisms #1 – Overview of Legal Mechanisms for Private
Conservation*

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Legal Mechanisms for Conservation on Privately Held Land

Overview of Legal Mechanisms for Private Conservation

This factsheet is intended as a plain English guide to a particular area of law. It is not legal advice and is not intended as a comprehensive examination of the legislation. Whilst all care has been taken in its preparation, it is not a substitute for legal advice as legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

1. What are legal mechanisms for private conservation?

There are a number of legal options available for promoting conservation of native plants and animals on privately held land. These usually take the form of an agreement between a landowner and a government body. Some are binding on future owners (they are registered over the title) and some are not. Each type of legal mechanism comes with its own advantages and disadvantages, and each must be considered for their suitability in any one particular situation. This factsheet series aims to provide an overview of each of these options as a starting point for anyone interested in using them on their land.

There are six factsheets in this series:

1. Overview of Legal Mechanisms for Private Conservation
2. Nature Refuges and Coordinated Conservation Areas
3. Statutory Covenants
4. Voluntary Declarations under the *Vegetation Management Act 1999*
5. Conservation Agreements and Profit à Prendre Agreements
6. Comparative Table of Legal Private Conservation Mechanisms

This first factsheet – *Overview of Legal Mechanisms for Private Conservation* - aims to provide a brief introduction of these legal mechanisms and how they can be used to promote conservation on private land.

2. Why use a legal mechanism to promote conservation on your land?

There are two main reasons why someone may wish to use a legal option for promoting conservation on their land:

1. to ensure conservation of the land will continue after the land is sold or passes to someone else; and
2. to obtain incentives for pursuing conservation outcomes such as environmental management advice, financial assistance or tax concessions.

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3. How can a legal mechanism be used to protect the environment when the land passes to someone else?

Legal mechanisms such as nature refuges, statutory covenants, voluntary declarations and profit à prendre agreements all create a way for an agreement regarding environmental conservation to be attached to the land title through registration in the land registry. All agreements that are registered on the land title are said to 'bind' with the land, and come with the title when they are sold and bought in the future.

Purchasers looking to buy a property must first inspect the land title on the land registry. The agreements described above will show up on any title search, and the purchaser would be aware of them before buying the land (if they are prudent and did a proper search of the land title). When the purchaser buys land which has one of these agreements registered on the title (whether they are aware of the agreement or not), they are effectively buying into these agreements as well and will be bound by them.

Not all agreements can be registered on the land title. An agreement can only be registered on the land title if the legislation providing for the agreement allows it. Agreements that are not registered will not automatically apply to any new owners of the land who were not party to the original agreement.

4. How can a legal mechanism be used to obtain incentives for conservation?

Private conservation initiatives are often looked favourably on by government and so some government bodies offer incentives for entering into these legal mechanisms. For example, nature refuges come with the possibility of receiving financial assistance for environmental management programs from Queensland's Environmental Protection Agency ("EPA"). Some local councils also provide rates relief incentives for entering into conservation covenants. To find out more detail on possible incentives landowners should contact the relevant government bodies who administer the mechanisms directly, or speak to their own solicitor.

5. What are the alternatives to legal mechanisms?

There are a number of voluntary conservation programs which can be used to promote conservation on private land. One of the most well known is Land for Wildlife, which is a voluntary program that offers environmental management advice and a network of other landowners similarly interested in conservation.

The following are the main differences between voluntary programs such as Land for Wildlife and the legal mechanisms covered in this factsheet series:

1. voluntary programs have no binding legal obligations, but are based on a *voluntary* obligation to conserve the environment to remain in the program

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2. voluntary programs will not come with many of the additional incentives provided by the legal mechanisms
3. voluntary programs will not ensure the conservation practices continue on the land when it is sold to a new owner.

Voluntary programs are usually used by those landowners who do not wish to enter into binding legal agreements and have no plans to sell the property. However, voluntary programs such as Land for Wildlife can also be used in conjunction with the legal mechanisms and doing so may result in better environmental outcomes on a property.

6. What are the relative advantages and disadvantages of the legal mechanisms?

There is no one perfect mechanism that will always be useful in every situation. Each mechanism comes with its own advantages and disadvantages. We have produced a comparative table of the advantages and disadvantages of these legal mechanisms for easy reference (factsheet 6 in this series), but we also recommend that you see each individual factsheet in our series for fuller explanations of these advantages and disadvantages.

7. Further information

If you have any further questions or concerns about any of these matters, then please contact us on the details below. While we have limited resources, often we can give you quick advice over the phone or direct you to someone who may help on a free or reduced rate basis.

Stay in contact with your local Environmental Defenders Office. We try to run as many community workshops on as many useful legal issues as we can.

8. Useful Contacts

<p>EDO-NQ Suite 1, Level 1 96-98 Lake Street CAIRNS QLD 4870 Ph : 07 4031 4766; Fax: 07 4041 4535 Email: edong@edo.org.au</p>	<p>EDO (Qld) 30 Hardgrave Road, WEST END QLD 4101 Ph: 07 3211-4466; Fax: 07 3211-4655 Email: edoqld@edo.org.au</p>
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To become a member of the Environmental Defenders' Office of Northern Queensland, or for more information about factsheets and legal advice, please contact us at edong@edo.org.au or on 07 4031 4766. Our web address is www.edo.org.au/edong

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