



EDO-NQ FACTSHEET SERIES

LEGAL MECHANISMS FOR CONSERVATION ON PRIVATELY OWNED LAND

Private Conservation Mechanisms Factsheet #4: ***Voluntary Declarations under the Vegetation Management Act 1999***

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Management Act 1999*

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Legal Mechanisms for Conservation on Privately Held Land

Voluntary Declarations under the Vegetation Management Act 1999

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 is a voluntary declaration?

Voluntary declarations are a mechanism available under the *Vegetation Management Act 1999* (“VMA”) for protecting areas of native vegetation on privately owned land that have either a high land conservation value or are vulnerable to land degradation.¹ They are administered by the Queensland Department of Natural Resources and Water (“DNRW”).

A voluntary declaration protects vegetation from broadscale land clearing by mapping the declared area as “category 1” vegetation under the VMA². Category 1 areas generally require a person to apply for a permit in order to carry out any land clearing, unless the clearing is exempted under the *Integrated Planning Act 1997* (“IPA”).

A voluntary declaration also involves the preparation of a management plan to either protect the conservation values of the area or prevent further land degradation. This management plan can also further limit the circumstances in which a permit of vegetation clearing may be issued.

Some of the information in this factsheet has been taken from the DNRW publication “Guide to voluntary declarations under the *Vegetation Management Act 1999*”. This guide is available from DNRW offices and is worth reading if you are interested in this mechanism.

2. How does the VMA work and where do voluntary declarations fit in?

The VMA manages vegetation in Queensland using a system of regional ecosystem maps and property maps of assessable vegetation (“PMAV”). Regional ecosystem maps apply to larger regions, while PMAV’s map the vegetation on individual properties. These maps categorise the vegetation and apply a corresponding level of protection.

¹ Part 2, Division 4: VMA

² VMA Dictionary

There are 5 categories vegetation may be given under the VMA:

1. **Category 1:** generally endangered regional ecosystems, unlawfully cleared areas or declared areas
2. **Category 2:** “of concern” regional ecosystems
3. **Category 3:** “not of concern” regional ecosystems
4. **Category 4:** an area with a lease for agricultural grazing, which was cleared of vegetation before 1989, and does not contain remnant vegetation.
5. **Category X:** generally an area which does not fall into any of the other four categories³

Each of these categories gives increasing levels of protection to vegetation up from category X (the lowest level of protection) to category 1 (the highest level of protection). The exact level of protection given for each category in an area will be defined by the vegetation management plans and vegetation clearing codes for the area.

A voluntary declaration will declare an area as category 1 vegetation. To clear an area listed as category 1 vegetation will require a development permit under IPA. The application for this development permit will be taken to be for “assessable development” under IPA, and will be assessed against the declared area’s vegetation management plan, as well as any applicable vegetation clearing codes. For more information on how IPA works, the Queensland Environmental Defender’s Office (“EDO QLD”) publishes a range of IPA factsheets on their website, at:

<http://www.edo.org.au/edoqld/edoqld/factsheets/factsheets.htm>.

In general, it will be harder to get a permit to clear an area of category 1 vegetation than it will be for the lower categories. Category 1 vegetation is protected from most land clearing and is usually only allowed where the clearing is in accordance with the area’s management plan, or for the exempt clearing purposes in Schedule 8 of IPA.

For more information on how the VMA works, EDO QLD has also prepared the factsheet ‘*Queensland Vegetation Protection Laws*’, available from their website at:

<http://www.edo.org.au/edoqld/edoqld/factsheets/factsheets.htm>.

3. What vegetation can a voluntary declaration protect?

A voluntary declaration can be used to protect:

1. areas of native vegetation with a high land conservation value; or
2. areas which are vulnerable to land degradation.

³ Schedule – Dictionary: VMA

The VMA defines an area of high conservation value as having at least one of the following characteristics:

- a wildlife refugium – an area where a species or a group of species has retreated due to a threatening process
- a centre of endemism – an area containing concentrations of species that are largely restricted to the area
- an area containing a vegetation clump or corridor that contributes to the maintenance of biodiversity
- an area that makes a significant contribution to the conservation of biodiversity
- an area that contributes to the conservation value of a wetland, lake or spring
- another area that contributes to the conservation of the environment.⁴

An area which is vulnerable to land degradation must be subject to one of the following:

- soil erosion
- rising water tables
- the expression of salinity, whether inside or outside the area
- mass movement by gravity of soil or rock
- stream bank instability
- a process that results in declining water quality.⁵

More information on each of these categories can be obtained from either DNRW or the Environmental Defender's Office of Northern Queensland.

4. Why aren't these areas already protected under the VMA?

The VMA usually only maps and protects areas of remnant vegetation. Remnant vegetation is native vegetation which has either never been cleared, or has regrown to a specific canopy height and density to be regarded as if it had never been cleared.

However, one of the key uses of a voluntary declaration is to protect regrowth vegetation – growing native vegetation that has not yet become remnant. A voluntary declaration can be made over an area of regrowth vegetation with the aim of managing it until it becomes remnant and so then falls under the normal provisions of the VMA.⁶

⁴ s.19G(1)(b): VMA

⁵ s.19G(2)(b): VMA

⁶ s.19G(3): VMA

5. How does a landowner apply for a voluntary declaration?

To make a voluntary declaration, the landowner must first contact DNRW and request a voluntary declaration. This form is available from a DNRW office, and it is recommended that a landowner interested in making a declaration should contact them to discuss their individual application. DNRW's contact details are on their website, which is located at:

<http://www.nrw.qld.gov.au/>.

The completed form must include:

- written consent to the making of the declared area from all owners of the land
- a record of all registered interest holders over the declared area
- an explanation of why the area is either an area of high conservation value or an area vulnerable to land degradation, and which criteria the declaration is proposed to be made under (see above under heading "3. What vegetation can a voluntary declaration protect?")
- a proposed management plan signed by the proponent.⁷

6. How does a landowner prepare a management plan?

At a minimum the management plan must:

- be signed by the proponent; and
- include sufficient information to allow DNRW to map the boundary of the stated area; and
- state the proponent's management intent and proposed outcomes for the conservation of the high nature conservation value of the area or the prevention of land degradation in the area; and
- state the activities that the proponent intends to carry out, or refrain from carrying out, to achieve the management outcomes for the conservation of the high nature conservation value of the area or the prevention of land degradation in the area; and
- state the restrictions, if any, to be imposed on the use of, or access to, the area by other persons to achieve the management outcomes for the conservation of the high nature conservation value of the area or the prevention of land degradation in the area.⁸

⁷ s.19E: VME; *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 2

⁸ s.19E(3): VME

DNRW has a template management plan available from their offices which may be of assistance to landowners. However, as a general rule, the management plan should contain as much information as possible. DNRW have also indicated their willingness to assist landowners with the preparation of management plans.

7. How does a landowner prepare a map for the voluntary declaration?

The request for a voluntary declaration must also be accompanied by a map containing enough information to prepare a PMAV of the declared area. DNRW have indicated that a survey is not necessary to produce the map, but the map needs to be 'scalable' (capable of being scaled), and clearly show the proposed declared area and its relationship with the boundaries of the property.⁹

A digital GIS format is preferred by DNRW for that map, and DNRW has indicated that the following information on the map would also be of assistance:

- a property boundary defined by reference points with a Map Grid of Australia 1994 ("MGA94") coordinate and zone reference for each point acquired by a Global Positioning System ("GPS")
- existing and proposed infrastructure
- all regional ecosystems mapped out in the proposed declared area
- drainage lines
- topography
- soil types
- areas of weed infestation
- areas with land degradation
- any other useful information.¹⁰

There is no minimum area which the voluntary declaration must cover.

8. How does DNRW assess the application for a voluntary declaration?

DNRW will assess the request for a voluntary declaration. If they are satisfied with it, they will send an offer to the landowner, which will include *drafts* of the following:

- declaration notice;
- declared property map of assessable vegetation ("PMAV");
- declared management plan, including a map of the declared area; and
- if proposed, a declared area code.¹¹

⁹ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 4

¹⁰ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 4

¹¹ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 7

The landowner then has the opportunity to accept the offer, or reject it with reasons. If rejected, DNRW will consider the reasons and *may* make a new offer. If the landowner accepts the offer, DNRW will make the declaration and prepare the final PMAV. The declaration and management plan will then be registered on the land title by DNRW and so will continue to apply even if the property is later sold to a new landowner.¹²

9. What effect does a voluntary declaration have?

A voluntary declaration:

1. will place a PMAV over the declared area and implement a vegetation management plan for the declared area; and
2. *may* also result in a specific vegetation clearing code for the declared area that any future applications for vegetation clearing would be assessed against (this may be done if the vegetation covered by the PMAV requires a different code to protect it than that used for the regional ecosystem covering the area).

The PMAV defines the area covered by the voluntary declaration, and that area will be classed as a “category 1” area under the VMA. Category 1 areas are exempt from most broadscale clearing and require a development permit granted under IPA that will be assessed as “assessable development” which is the highest level of assessment under IPA and provides members of the public with an opportunity to comment on any applications for land clearing. If a landowner clears vegetation on their land without a development permit then they may be prosecuted for committing an offence against IPA.

Applications for development permits will be assessed against the relevant vegetation clearing codes and the management plan, and may only be issued for vegetation clearing in a voluntary declaration area if it is:

- for a ‘significant project’ under the *State Development and Public Works Organisation Act 1971*
- necessary to control non-native plants or declared pests
- to ensure public safety
- to establish a necessary fence, firebreak, road or other built infrastructure, if there is no suitable alternative site
- for thinning
- for clearing in an urban development area under the *Urban Land Development Authority Act 2007*
- for clearing of an encroachment.¹³

¹² s.19K: VMA

¹³ s.22A(2): VMA

In contrast, permits cannot be issued for the following in a declared area:

- fodder harvesting
- an extractive industry
- clearing regrowth on leases issued under the *Land Act 1994* for agriculture or grazing purposes
- a natural and ordinary consequence of other assessable development for which a development approval under the *Integrated Planning Act 1997* was given, or a development application was made before 16 May 2003.
- special Indigenous purpose under the *Cape York Peninsula Heritage Act 2007*.¹⁴

The management plan may also prohibit permits being granted for certain uses which may otherwise have been allowed under the VMA.

10. How can a voluntary declaration be amended?

A voluntary declaration can be amended in one of two ways:

1. amendment of the management plan; or
2. amendment of the declared area code.

The management plan can be amended if the Chief Executive of DNRW and the landowner agree.¹⁵ DNRW have advised that this option will generally be used to keep the management plan up to date and respond to previously unforeseen circumstances. It is not intended to be used to reduce the effectiveness of the management plan in providing conservation outcomes.¹⁶

The declared area code can be amended according to the provisions and processes in sections 19A, 19B and 19C of the VMA. In general, minor amendments to correct errors can be done directly by the Governor in Council, while amendments that change the substance of the code have to be approved by the Minister overseeing DNRW. Any amendments to the substance of the declared area code must also be notified to each local council in the area and published in a newspaper to provide an opportunity for members of the public to comment.¹⁷

¹⁴ s.22A(2C): VMA

¹⁵ s.19I: VMA

¹⁶ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 9.

¹⁷ s.19A: VMA

11. When will a voluntary declaration end?

The voluntary declaration will end when the Chief Executive of DNRW declares it to end in one of the following circumstances:

1. The declaration is not in the interests of the State, having regard to the public interest.¹⁸

These grounds will usually include when the Minister considers that the declaration would hinder the development of a state significant project¹⁹ State significant projects are usually large projects which the Coordinator General considers important for Queensland's economic development, and are declared so under the State Development and Public Works Organisation Act 1971 (Qld).

2. The management outcomes of the management plan have been achieved.²⁰

These management outcomes will usually be considered to have been achieved when the vegetation in the voluntary declaration area can be classified as "remnant" vegetation under the VMA.²¹ The VMA gives remnant vegetation protection in that clearing it will require a development permit and this permit will be assessed against the relevant vegetation clearing codes.

However, in some cases a voluntary declaration will not be ended even if the outcomes of the management plan have been achieved. This will most likely happen where the voluntary declaration includes a specific vegetation clearing code for the declared area, and it is necessary to achieving the outcomes of the VMA that this code continues to apply.²²

12. What are the advantages of a voluntary declaration?

The following are the main advantages of voluntary declarations as a conservation mechanism:

1. Voluntary declarations are registered on the land title. This means that if a landowner sells the land while the voluntary declaration is still in effect, both the voluntary declaration and associated management plan will continue to apply to the new landowner.
2. DNRW have indicated that they would be reluctant to remove a voluntary declaration without good reason. This increases the likelihood of the voluntary declaration remaining in force after the land is sold and the new landowner requests that the voluntary declaration be removed.
3. A voluntary declaration is easier to get than the other main legal mechanisms that bind on title – nature refuges or statutory covenants. For example, a voluntary

¹⁸ s.19L(a): VMA

¹⁹ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 9

²⁰ s.19L(b): VMA

²¹ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 9

²² *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 9

declaration is less expensive to get than a statutory covenant, DNRW is willing to enter into them, and is available to more properties than a nature refuge would be.

4. A voluntary declaration comes with an environmental management plan which is prepared with the assistance of DNRW and therefore may offer more guidance as to how the land will be managed than would be the case for a statutory covenant.
5. Enforcement of a voluntary declaration is clearer than enforcement of a statutory covenant. While a statutory covenant depends largely on the willingness of the local government covenantee for its enforcement, a voluntary declaration is enforced directly through IPA through increased assessment requirements for any vegetation clearing applications and therefore does not depend on the will of the relevant local government.

13. What are the disadvantages of a voluntary declaration?

The following are the main disadvantages of voluntary declarations as a conservation mechanism:

1. The protection granted by a voluntary declaration is not quite as strong as a nature refuge or properly enforced covenant. In particular, a nature refuge gives more protection against state significant mining activities and construction of infrastructure.
2. The strength of a voluntary declaration is limited to the strength of the VMA. The VMA contains some important exemptions to its protections against land clearing. The most significant of these are the exemptions to assessable development under IPA; for example, a development permit is not needed to clear vegetation for a firebreak or for a single residence.

In general, a voluntary declaration may be an attractive option for landowners who are looking for a mechanism without the expense or onerous application process of other mechanisms (particularly, statutory covenants, nature refuges and coordinated conservation areas). They will not offer the same level of protection as a nature refuge, but are far easier and quicker to obtain. Voluntary declarations attempt to strike a balance between protecting an area, while being accessible and still leaving room for some development.

14. 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.

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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.

15. Useful Contacts

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	EDO (Qld) 30 Hardgrave Road, WEST END QLD 4101 Ph: 07 3211-4466; Fax: 07 3211-4655 Email: edoqld@edo.org.au
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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