

# Native Vegetation Regulation 2005

## Reprint history:

Reprint No 1

10 November 2009

## Part 1 – Preliminary

### 1 Name of Regulation

This Regulation is the *Native Vegetation Regulation 2005*.

### 2 Commencement

This Regulation commences on 1 December 2005.

### 3 Definitions

(1) In this Regulation: "**council**" means a council, or a county council, within the meaning of the *Local Government Act 1993*. "**development consent**" means development consent required by the Act for the clearing of native vegetation. "**former Act**" means the *Native Vegetation Conservation Act 1997*. "**managed area**" means an area of land set aside by a council for the purposes of protecting native vegetation in connection with a routine agricultural management activity as referred to in clause 18A. "**new Act**" or "**the Act**" means the *Native Vegetation Act 2003*. "**NRC**" means the Natural Resources Commission under the *Natural Resources Commission Act 2003*. "**offset**" means any natural resource management action or work required by a PVP for the purpose of ensuring that broadscale clearing proposed by the PVP improves or maintains environmental outcomes. "**private native forestry**" means the management of native vegetation on privately owned land for the purpose of obtaining, on a sustainable basis, timber products (including sawlogs, veneer logs, poles, girders, piles and pulp logs). "**private native forestry PVP**" means a PVP that provides for the clearing of native vegetation as part of private native forestry. "**PVP**" means a property vegetation plan. "**State protected land**" means State protected land within the meaning of the former Act, immediately before its repeal. "**western coastal region**" means land in the area of operations of the Northern Rivers, Hunter-Central Rivers, Hawkesbury-Nepean or Southern Rivers Catchment Management Authority that is within the local government area of Kyogle, Tenterfield, Clarence Valley (to the west of Summerland Way and Orara Way), Glen Innes-Severn, Guyra, Armidale Dumaresq, Walcha, Tamworth Regional, Uralla, Warrumbungle, Liverpool Plains, Gloucester, Upper Hunter, Mid-Western Regional, City of Lithgow, Dungog, Muswellbrook, Singleton, Cessnock, Blue Mountains, Oberon, Wollondilly, Wingecarribee, Upper Lachlan, Goulburn-Mulwaree, Palerang, Cooma-Monaro, Snowy River or Bombala. "**Western Division**" has the same meaning as in the *Crown Lands Act 1989*.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 – Development consent for clearing

### 4 Exclusion of matters for consideration

(1) Matters required to be considered under section 79C of the EPA Act are excluded from the matters required to be considered under Part 4 of that Act for the purposes of the Minister determining a development application for consent required by the new Act for

clearing native vegetation.

- (2) A development application for development consent required by the new Act for clearing native vegetation is not required to comply with clause 1 (d), (e), (f) or (h) or 2 (1) (b), (c) or (f) of Part 1 (Development applications) of Schedule 1 to the *Environmental Planning and Assessment Regulation 2000*.

This clause does not affect the operation of Part 4 of the EPA Act in respect of the granting of additional development consent by a council or other consent authority to any such clearing of native vegetation that is required by an environmental planning instrument made before the granting of consent for the clearing under the new Act (see section 17 of the new Act).

## **5 Conditions of development consent**

- (1) A condition of development consent for clearing native vegetation under the new Act may be imposed if it relates to any matter to which the Minister must or may have regard under the new Act in determining an application for that development consent.
- (2) This clause does not limit the conditions that may be imposed on development consent under the EPA Act.

## **6 Development consent for single dwelling authorises clearing**

Clearing of native vegetation that is clearing to the minimum extent necessary for the carrying out of development in accordance with a development consent under the EPA Act for the erection of a single dwelling is taken to be clearing in accordance with a development consent granted in accordance with the new Act.

## **6A Limitation on granting of development consent**

Development consent for broadscale clearing on any land is not to be granted under the new Act if the land is subject to a private native forestry PVP.

# **Part 3 – Property vegetation plans**

## **7 Form of PVPs**

A PVP must be in such form as the Minister may from time to time approve.

## **8 Draft PVPs**

- (1) The form and content of a draft PVP must comply with the requirements of clause 9 for PVPs.
- (2) A draft PVP may also provide information regarding the social and economic impacts (including on-farm impacts, impacts on the regional community and implications for any socio-economic targets established by the NRC or the relevant catchment management authority) of any matters provided for in the draft PVP, such as clearing proposals, proposed natural resource management activities, or proposals relating to the continuation of existing farming or other rural practices. While this information is not to be used in assessing whether proposed broadscale clearing improves or maintains environmental outcomes, it may be used for other purposes, including the following purposes:
- (a) assessing whether management of native vegetation is promoting the social, economic and environmental interests of the State in accordance with the principles of ecologically sustainable development,
  - (b) providing the NRC with social and economic information to which it can have regard when preparing recommendations and advice.

## **9 Content of PVPs**

- (1) A PVP must (subject to subclause (2) in the case of a continuing use PVP or subclause (2A) in the case of a private native forestry PVP):
- (a) contain a description of the land to which the PVP applies, and
  - (b) specify the period for which the PVP has effect, and
  - (c) specify the address of, and formal particulars of title to, the land to which the PVP applies, and

(d) include a rectified satellite or aerial photograph (indicating the date the photograph was taken), or (if such a photograph is not available) a topographical map of the largest scale reasonably available, identifying:

- (i) any land on which broadscale clearing is proposed by the PVP, and
- (ii) any land for which the PVP specifies a date for the purposes of the definition of "**regrowth**" in the Act, and
- (iii) any land on which native vegetation management activities are to be carried out under the PVP, and

(e) specify the nature of the clearing (if any) that is proposed by the PVP and the period within which the clearing may occur, and Section 30 of the Act provides that 15 years is the maximum period for which provisions of a PVP for the clearing of native vegetation can have effect.

(f) specify, in respect of any riparian buffer provided for by the PVP, the distance of the buffer measured from the banks of the relevant water course, and

(g) include details of any proposals (including management actions or works) provided for by the PVP for which financial incentives have been or are to be provided, and

(h) include details of any offsets that are proposed by the PVP and the period for which or within which they are required to be carried out, and

(i) include details of the extent (if any) to which provisions of the PVP exclude clearing for routine agricultural management or other activities from being permitted clearing, and

(j) include details of any other proposals for the protection and management of native vegetation provided for by the PVP, whether or not financial incentives have been or are to be provided.

(2) A continuing use PVP is not required to include the material referred to in subclause (1) (d) (i), (g), (h), (i) or (j).

(2A) A private native forestry PVP is not required to include the material referred to in subclause (1) (d) (ii), (f) or (h).

(3) In this clause: "**continuing use PVP**" means a PVP that provides only for any one or more of the following matters in relation to the land to which the PVP applies:

- (a) the identification of native vegetation on the land as regrowth,
- (b) identifying routine agricultural management activities that are to be carried out on the land,
- (c) identifying practices as existing cultivation, grazing or rotational farming practices (for the purposes of section 23 of the Act),
- (d) specifying a date for the purposes of the definition of "**regrowth**" in section 9 (2) of the Act,
- (e) the continuation of existing farming or other rural practices (but not so as to authorise broadscale clearing).

### **10 PVPs that change regrowth date**

A property vegetation plan that specifies a date for the purposes of the definition of "**regrowth**" in section 9 (2) of the Act that is earlier than the relevant date specified in section 9 (2) (a) of the Act is not to be approved under Part 4 of the Act unless the Minister is satisfied that:

(a) native vegetation on the land concerned has been cleared pursuant to existing rotational farming practices on at least 2 occasions since:

- (i) 1950 in the case of land not in the Western Division, or
- (ii) 1943 in the case of land in the Western Division, and

(b) the property vegetation plan contains a requirement that regrowth may only be cleared in a manner that is consistent with those existing rotational farming practices.

### **11 Variation and termination of PVPs**

(1) A property vegetation plan cannot be terminated by the Minister under section 30 of the Act unless the following procedure has been followed:

(a) the landholder must be provided with the proposed notice of termination and must be given at least 14 days in which to make written submissions to the Minister with respect to the proposed termination,

(b) before proceeding to determine whether to terminate the property vegetation plan the Minister must have regard to any written submission made by the landholder within the period allowed for submissions.

(2) If a PVP was approved by the Minister under section 29 (Plans proposing broadscale clearing) of the Act as a PVP that proposes broadscale clearing of native vegetation:

(a) the Minister is not to approve a variation of the PVP unless the PVP as varied could have been approved under that section, and

(b) the Minister is not to approve the termination of the PVP unless the Minister is satisfied that any clearing that has occurred under the PVP has improved or maintained environmental outcomes and any offsets that are required by the PVP have been completed.

## **12 Information about PVPs and development consents**

(1) The Minister is to make publicly available on the Internet:

(a) the Global Positioning System ("**GPS**") coordinates of the location of land that is the subject of a development consent or PVP that provides for broadscale clearing of native vegetation on the land or that is the subject of a PVP that specifies a date for the purposes of the definition of "**regrowth**" in section 9 (2) of the Act, and

(b) a statement of the area (expressed in hectares) of land:

(i) in the case of a private native forestry PVP--to which the PVP applies, or

(ii) in any other case--that is authorised to be cleared by the development consent or PVP concerned, and

(c) a statement of the area (expressed in hectares) of land that is land to which offsets apply under the PVP concerned and the GPS coordinates of the location of that land.

(2) The following information is to be available for inspection without charge at the principal office of the catchment management authority in the area of operations in which the relevant land is situated:

(a) detailed information as to the clearing authorised by a development consent or PVP that provides for broadscale clearing of native vegetation on the land, including details of the location (by providing GPS coordinates only) of the land authorised to be cleared,

(b) detailed information as to the offsets provided for by a PVP that provides for broadscale clearing of native vegetation on the land, including details of the location (by providing GPS coordinates only) of the land to which any offsets apply,

(c) the date specified in a PVP for the purposes of the definition of "**regrowth**" in section 9 (2) of the Act.

(3) A catchment management authority may charge a reasonable fee for providing a copy of any information that is available for inspection under subclause (2).

(4) The Minister is to make the following information concerning a PVP available to a person who satisfies the Minister that the person is a bona fide prospective purchaser of the land to which the PVP applies:

(a) details of the provisions made by the PVP in respect of proposals to enable the landholder to obtain financial incentives for the management of natural resources,

(b) details of the provision made by the PVP for the provision and expenditure of

those financial incentives.

(5) Information required to be made available under this clause must be available within 10 days after the development consent or PVP concerned is granted or approved.

(6) Subclauses (1) (c), (2) and (3) do not apply in relation to a private native forestry PVP.

### **12A Limitation on approval of PVPs**

A PVP that provides for broadscale clearing is not to be approved under Part 4 of the Act in relation to any land if the land is subject to a private native forestry PVP.

### **12B Consent for submission of draft PVPs**

A forestry right within the meaning of section 87A of the *Conveyancing Act 1919* is prescribed as an interest in land for the purposes of section 26 (2) (b) of the Act.

## **Part 4 – Routine agricultural management activities**

### **13 Control of pest animals**

The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include anything done pursuant to an obligation arising under an eradication order or pest control order under Part 11 of the *Rural Lands Protection Act 1998*.

### **14 Crown land management infrastructure**

(1) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the construction, operation and maintenance of infrastructure by an instrumentality of the Crown or a reserve trust in the exercise of its land management activities, including roads, tracks, viewing platforms, signs and recreational facilities (such as picnic and barbecue facilities).

(2) This clause does not authorise the clearing of native vegetation that comprises:

(a) a threatened species, or a component of a threatened population or threatened ecological community, under the *Threatened Species Conservation Act 1995* or is likely to comprise habitat of such a threatened species, or

(b) habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.

### **15 Telecommunications infrastructure on Crown land**

The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the construction, operation and maintenance on Crown land of telecommunications infrastructure.

### **16 Obtaining construction timber**

(1) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the clearing of native vegetation on land for use in the construction or maintenance of rural infrastructure on the land within whichever of the following time periods is applicable to the land:

(a) 18 months after the clearing for land in the area of operations of the Western, Lower Murray-Darling, Border Rivers-Gwydir, Namoi, Central West, Lachlan, Murrumbidgee or Murray Catchment Management Authority,

(b) 18 months after the clearing for land in the western coastal region,

(c) 12 months after the clearing for any other land.

(2) This clause authorises clearing of native vegetation only if the clearing:

(a) will not cause land degradation (including soil erosion, rising water tables, the expression of salinity, mass movement by gravity of soil or rock, stream bank instability, and any process that results in declining water quality), and

- (b) is carried out in conjunction with a restoration program or other arrangements that will ensure the restoration of native vegetation on the cleared land of the same or a similar species as the native vegetation cleared and to the same or a similar extent as existed on the cleared land.
- (3) This clause authorises the clearing of native vegetation only if the native vegetation does not comprise:
- (a) a threatened species, or a component of a threatened population or threatened ecological community, under the *Threatened Species Conservation Act 1995* or is likely to comprise habitat of such a threatened species, or
  - (b) habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.
- (4) This clause does not authorise the clearing of native vegetation to provide timber for use as described in subclause (1) if timber suitable for the purpose could be obtained from clearing permitted as a routine agricultural management activity (otherwise than under this clause) comprising the construction or maintenance of the rural infrastructure concerned.

### **17 Clearing of feral native plant species**

- (1) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the clearing of a species of native vegetation on land for which that species is listed under this clause as a feral species and in accordance with any conditions of that listing. This clause does not permit the clearing of species other than the listed species.
- (2) The Minister may by order list a species of native vegetation as a feral species for specified land (or all land in a specified area), or extend the area for which a species is listed, only if:
- (a) the Minister is satisfied that the species is outside of its natural range on the land or in the area for which it is to be listed, and
  - (b) the Minister has consulted with the NRC and the Minister for the Environment on the proposed listing, and
  - (c) the catchment management authority in whose area of operations the land or area is located has recommended the listing of the species as a feral species for that land or area.
- (3) A listing may be made subject to conditions that restrict how clearing of the species may be undertaken under this clause (including conditions as to the time of year in which clearing may or may not be undertaken, allowable methods of clearing and maximum area of clearing).
- (4) The Minister may revoke the listing of a species of native vegetation as a feral species.
- (5) A catchment management authority must publish on its website an up-to-date list of the species of native vegetation that are listed for the time being under this clause as a feral species for land or an area in its area of operations.

### **18 Gardens**

The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the clearing of native vegetation planted as part of a garden.

### **18A Infrastructure works by councils**

- (1) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the construction, operation or maintenance of any of the following (referred to in this clause as "**infrastructure works**") by a council:
- (a) sewerage treatment works,

- (b) waste disposal landfill operations,
  - (c) waste management facilities,
  - (d) water supply works,
  - (e) gravel pits,
  - (f) cemeteries,
  - (g) outdoor playgrounds, playing fields, netball courts, tennis courts, volleyball courts, basketball courts, swimming pools, skateboard ramps or similar outdoor recreation areas or facilities, that are normally open to the public, including any buildings that are ancillary to any such area or facility.
- (2) This clause authorises the clearing of native vegetation only if:
- (a) the clearing is, in each case, limited to a single area of land of no more than 2 hectares, and
  - (b) the native vegetation does not comprise (or is not likely to comprise):
    - (i) a threatened species, or a component of a threatened population or threatened ecological community, under the *Threatened Species Conservation Act 1995*, or
    - (ii) habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*, and
  - (c) the native vegetation does not comprise an overcleared vegetation type as determined in accordance with the Assessment Methodology, and
  - (d) the catchment management authority ("CMA") for the area of operations in which the relevant areas are situated is satisfied that arrangements are in place to ensure that the native vegetation on the managed area set aside by the council in connection with the routine agricultural management activity will be protected in perpetuity.
- (3) Before any clearing that is authorised by this clause is carried out, the council must:
- (a) provide detailed information to the CMA of:
    - (i) the alternative areas of land on which the infrastructure works could be constructed, operated or maintained, and
    - (ii) the proposed managed area (including the means by which it will be protected), and
  - (b) consult with the CMA as to the following:
    - (i) the location of the relevant areas,
    - (ii) the presence of any overcleared vegetation types in the relevant areas,
    - (iii) the presence of any threatened species, populations or ecological communities (including in relation to fish) in the relevant areas, and
  - (c) provide to the CMA the Global Positioning System ("GPS") coordinates, and a statement of the location and size (expressed in hectares), of the relevant areas, and
  - (d) provide evidence to the CMA that all approvals or licences required under relevant legislation for the construction, operation or maintenance of the infrastructure works have been obtained, and
  - (e) obtain from the CMA a statement in writing to the effect that the managed area proposed is appropriate and that it is satisfied as to the arrangements referred to in subclause (2) (d).
- (4) The Minister is to make publicly available on the Internet the following information as to the clearing authorised under this clause:
- (a) the name of the council involved,
  - (b) the type of infrastructure works involved,
  - (c) the Global Positioning System ("GPS") coordinates, and a statement of the location and size (expressed in hectares), of the relevant areas,
  - (d) the means by which the relevant managed area set aside by the council is to be

protected.

(5) Subclauses (2) (b) and (c) and (3) (a) (i) and (b) do not apply if:

(a) the area of land on which the infrastructure works are to be constructed, operated or maintained was owned by the council on or before 31 August 2006, and

(b) that area was identified, on or before 31 August 2006, by the council as the area of land on which the infrastructure works are to be constructed, operated or maintained, and

(c) the council provides evidence to the CMA of any such ownership and identification.

(6) In this clause, the **"relevant areas"** means:

(a) the area of land on which the infrastructure works are to be constructed, operated or maintained, and

(b) the area of land that is to be cleared, and

(c) the area of land comprising the managed area.

### **19 Definition of "small holding"**

For the purposes of section 11 (1) (a) (ii) of the Act, a **"small holding"** is defined as a holding that comprises a contiguous area of land in the same ownership that has an area:

(a) in case of land in the Western Division--of less than 40 hectares, or

(b) in any other part of the State--of less than 10 hectares.

### **20 Infrastructure buffer distances**

This clause is subject to clause 32 in the case of land identified as protected riparian land.

(1) The activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act in the Western Division, being the construction, operation or maintenance of any of the following rural infrastructure are limited so as to permit clearing only within the distances or areas indicated:

(a) permanent fence--20 metres either side,

(b) access trail, cut line for stock movement, road, telephone line or cable, power line or cable, drain to a water storage, bore drain, pipeline, or irrigation channel--30 metres total width of clearing,

(c) firebreak, except where mallee species predominate--30 metres total width of clearing,

(d) firebreak where mallee species predominate--100 metres total width of clearing,

(e) airstrip--distances and area sufficient to meet civil aviation standards for construction of an airstrip,

(f) house, shearing or machinery shed, ground tank, dam or stock yards, or similar utility--5 hectares.

(2) The activities that comprise a routine agricultural management activity under section 11 (1) (a) (construction, operation and maintenance of rural infrastructure) of the Act in the area of operations of the Southern Rivers, Hawkesbury-Nepean, Hunter-Central Rivers or Northern Rivers Catchment Management Authority, other than in the western coastal region, are limited to the following rural infrastructure only and are further limited so as to permit clearing only within the distances or areas indicated:

(a) permanent boundary fence--6 metres either side,

(b) permanent internal fence--6 metres total width of clearing,

(c) temporary fence--1 metre total width of clearing,

(d) road or track--6 metres total width of clearing,

(e) pipeline--3 metres total width of clearing,

(f) habitable buildings--the asset protection zone identified for the land in a bush



- fire risk management plan in force under the *Rural Fires Act 1997*,
- (g) shearing or machinery shed--20 metres from the outer edge of the structure,
- (h) ground tank--15 metres from the outer edge of the structure,
- (i) dam--15 metres from the outer edge of the structure,
- (j) stockyards--20 metres from the outer edge of the structure,
- (k) bore--10 metres from the outer edge of the structure,
- (l) pump--3 metres from the outer edge of the structure,
- (m) water point--3 metres from the outer edge of the structure,
- (n) tank--3 metres from the outer edge of the structure,
- (o) windmill--10 metres from the outer edge of the structure.

(3) The following activities that comprise a routine agricultural management activity under section 11 (1) (a) (construction, operation and maintenance of rural infrastructure) of the Act are limited in the area of operations of the Western, Murray, Murrumbidgee, Lachlan, Central West, Namoi or Border Rivers-Gwydir Catchment Management Authority (other than in the Western Division) and in the western coastal region so as to permit clearing only within the distances indicated:

- (a) permanent boundary fence--10 metres either side,
- (b) permanent internal fence--10 metres total width of clearing,
- (c) temporary fence--3 metres total width of clearing,
- (d) road or track--6 metres total width of clearing.

Subclauses (1) and (3) only impose distance clearing restrictions on the activities listed and do not limit the kinds of activities that can be carried out under section 11 (1) (a) of the Act in the areas mentioned.

(4) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the construction, operation and maintenance of rural infrastructure on small holdings (as defined in clause 19) and land in an area zoned as rural-residential under an environmental planning instrument, but limited in the case of the following rural infrastructure so as to permit clearing only within the distances or areas specified:

- (a) permanent boundary fence--6 metres either side,
- (b) permanent internal fence--3 metres either side,
- (c) temporary fence--1 metre total width of clearing,
- (d) roads and tracks--4 metres total width of clearing,
- (e) windmills and bores--3 metres,
- (f) stockyards--3 metres,
- (g) habitable buildings--the asset protection zone identified for the land in a bush fire risk management plan in force under the *Rural Fires Act 1997*,
- (h) buildings other than habitable buildings--5 metres.

(5) The Minister may, by order in writing, on application by the landholder and after consultation with the Minister for the Environment, increase a distance specified in this clause in its application to the land concerned, but only if the Minister is satisfied that:

- (a) the proposed increase is minor, and
- (b) the proposed increase is for a legitimate purpose associated with the management of the land concerned, and
- (c) the increase is necessary in the circumstances.

(6) The Minister is to make details of any order issued under subclause (5) publicly available on a register kept by the Minister for the purpose and is to include in the register a statement of the reasons for the increase concerned.

(7) The distances and areas provided for by this clause are maximum distances and areas and do not affect the operation of section 22 of the Act which provides that clearing for routine agricultural management activities is not authorised if it exceeds the minimum extent necessary for carrying out the activity.

## **21 Maintenance of public utilities--electricity transmission**

(1) The activities that comprise the maintenance of public utilities associated with the transmission of electricity (as referred to in section 11 (1) (h) of the Act) include the following activities but only when those activities are being undertaken by or at the written direction of the body in which the public utility concerned is vested or that has the responsibility for that public utility's safe operation:

- (a) maintaining the necessary safety clearances under powerlines (conductors and structures) and around communication sites associated with the supply of electricity,
- (b) minimising fuel loads under powerlines to minimise the chance of smoke from a fire resulting in a line trip,
- (c) maintaining existing access roads and tracks.

(2) The activities that comprise the maintenance of public utilities associated with the transmission of electricity (as referred to in section 11 (1) (h) of the Act) do not include any of the following activities:

- (a) construction of new access roads or tracks,
- (b) removal of low growing groundcover,
- (c) maintaining safety clearances from powerlines that exceed either of the following:
  - (i) the distance (measured from the centreline of the powerline) set out in Column 2 of the Table to this clause opposite the nominal operating voltage of the powerline set out in Column 1 of the Table,
  - (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

**Table**

Column 1	Column 2
Nominal operating voltage of powerline	Maximum clearing distance
not more than 11 kV	10 metres
above 11 kV up to 33 kV	12.5 metres
33 kV up to and including 66 kV	15 metres
above 66 kV up to and including 132 kV	22.5 metres
above 132 kV up to and including 330 kV	30 metres
above 330 kV	35 metres

## **22 Land set aside for management or protection of native vegetation by PVP**

The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are limited so as not to apply to clearing of native vegetation on land identified in a PVP as land set aside for the management or protection of native vegetation, except for any activity that is specifically authorised for that land by the PVP.

## **23 Land subject to direction for remedial work**

The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are limited so as not to apply to clearing of native vegetation on land that is the subject of a direction under section 38 (Directions for remedial work) of the Act to the extent that the activity conflicts with the work directed to be carried out by the direction.

## **23A Restrictions on RAMAs--land to which a private native forestry PVP applies (excluding critical environmental areas)**

- (1) This clause does not apply in respect of land within a critical environmental area.
- (2) Despite any other provision of the Act or this Regulation, obtaining timber for use in

the construction of rural infrastructure does not comprise a routine agricultural management activity on land to which a private native forestry PVP applies.

(3) Without limiting subclause (2) but subject to subclauses (1) and (4), the activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act are limited, in the case of land to which a private native forestry PVP applies, to the construction, operation or maintenance of the following types of rural infrastructure only, and are further limited so as to permit clearing only within the distances or areas specified:

- (a) permanent boundary fence--6 metres either side,
- (b) permanent internal fence--6 metres total width of clearing,
- (c) roads and track--in accordance with the PNF code of practice,
- (d) pipeline--3 metres total width of clearing,
- (e) ground tank--15 metres from outer edge of structure,
- (f) pumps--3 metres from outer edge of structure,
- (g) tanks--3 metres from outer edge of structure,
- (h) water point--3 metres from outer edge of structure,
- (i) dam--15 metres from outer edge of structure,
- (j) bore--10 metres from outer edge of structure,
- (k) stockyard--20 metres from outer edge of structure.

(4) The Director-General may, by order in writing, on application by the landholder, increase a distance specified in this clause in its application to the land concerned, but only if the Director-General is satisfied that:

- (a) the proposed increase is minor, and
- (b) the proposed increase is for a legitimate purpose associated with the management of the land concerned, and
- (c) the increase is necessary in the circumstances.

(5) The Director-General is to make details of any order issued under subclause (4) publicly available on a register kept by the Director-General for the purpose and is to include in the register a statement of the reasons for the authorisation or increase concerned.

(6) The distances and areas provided for by this clause are maximum distances and areas and do not affect the operation of section 22 of the Act which provides that clearing for routine agricultural management activities is not authorised if it exceeds the minimum extent necessary for carrying out the activity.

(7) In this clause, "**critical environmental area**" has the same meaning as it has in clause 29C (5).

### **23B Restrictions on RAMAs--land to which a private native forestry PVP applies (critical environmental areas only)**

(1) This clause applies only in respect of land within a critical environmental area.

(2) Despite any other provision of the Act or this Regulation, obtaining timber for use in the construction of rural infrastructure does not comprise a routine agricultural management activity on land to which a private native forestry PVP applies.

(3) Without limiting subclause (2) but subject to subclauses (1) and (4), the activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act are limited, in the case of land to which a private native forestry PVP applies, to the operation or maintenance of the following types of rural infrastructure only, and are further limited so as to permit clearing only within the distances or areas specified:

- (a) permanent boundary fence--6 metres either side,
- (b) permanent internal fence--6 metres total width of clearing,
- (c) roads and track--in accordance with the PNF code of practice,
- (d) pipeline--3 metres total width of clearing,
- (e) ground tank--15 metres from outer edge of structure,

- (f) pumps--3 metres from outer edge of structure,
  - (g) tanks--3 metres from outer edge of structure,
  - (h) water point--3 metres from outer edge of structure,
  - (i) dam--15 metres from outer edge of structure,
  - (j) bore--10 metres from outer edge of structure,
  - (k) stockyard--20 metres from outer edge of structure.
- (4) The Director-General may, by order in writing, on application by the landholder, authorise the clearing of land for the construction of the types of rural infrastructure specified in subclause (3), within the areas or distances specified in subclause (3), but only if the Director-General is satisfied that:
- (a) the proposed clearing is minor, and
  - (b) the proposed clearing is for a legitimate purpose associated with the management of the land concerned, and
  - (c) the clearing is necessary in the circumstances.
- (5) The Director-General is to make details of any order issued under subclause (4) publicly available on a register kept by the Director-General for the purpose and is to include in the register a statement of the reasons for the authorisation or increase concerned.
- (6) The distances and areas provided for by this clause are maximum distances and areas and do not affect the operation of section 22 of the Act which provides that clearing for routine agricultural management activities is not authorised if it exceeds the minimum extent necessary for carrying out the activity.
- (7) In this clause, "**critical environmental area**" has the same meaning as it has in clause 29C (5).

## **Part 5 – Assessment of broadscale clearing--environmental outcomes**

### **24A Part does not apply to clearing for private native forestry purposes under PVP**

This Part does not apply in relation to the clearing of native vegetation for the purposes of private native forestry if the clearing is carried out in accordance with a PVP.

See Part 5A for clearing for private native forestry purposes under a PVP.

### **24 Adoption of Minister's Assessment Methodology**

- (1) The Assessment Methodology is adopted for the purposes of this Regulation.
- (2) In this Part: "**Assessment Methodology**" means the methodology titled *Environmental Outcomes Assessment Methodology* approved by the Minister for the purpose of providing a methodology for assessing and determining whether proposed broadscale clearing will improve or maintain environmental outcomes, as in force and as published in the Gazette on 2 March 2007.

### **25 Procedure for amendment of Assessment Methodology**

- (1) The following procedure applies for the purposes of any amendment of the Assessment Methodology:
  - (a) the Minister is to seek the advice of the NRC about a proposed amendment before making a decision about the proposed amendment,
  - (b) the Minister must allow the NRC not less than 30 days in which to give its advice,
  - (c) the NRC is to provide its advice as formal recommendations to the Minister,
  - (d) the advice of the NRC is to be made public within a reasonable time after it is provided to the Minister and no later than the date of publication in the Gazette of the amendment,
  - (e) the Minister is not to make an amendment that relates to the assessment of biodiversity without the concurrence of the Minister for the Environment and the

Minister for Primary Industries,

(f) an amendment is to be published in the Gazette,

(g) an amendment does not take effect until the definition of "**Assessment Methodology**" in clause 24 is amended to give effect to the amendment.

(2) The NRC may propose amendments to the Assessment Methodology to the Minister.

## **26 Proposed broadscale clearing to be assessed using Assessment Methodology**

(1) An application for development consent for development involving broadscale clearing, or for approval of a PVP that proposes broadscale clearing, is not to be granted unless:

(a) there has been an assessment and determination in accordance with the Assessment Methodology of whether the proposed clearing will improve or maintain environmental outcomes and the determination resulting from that assessment is that the proposed clearing will improve or maintain environmental outcomes, or

(b) an accredited expert has assessed and certified in accordance with clause 27 that in the accredited expert's opinion the proposed clearing will improve or maintain environmental outcomes, or

(c) the proposed clearing is exempt under clause 28 from the requirement for assessment in accordance with the Assessment Methodology.

(2) Proposed broadscale clearing is to be regarded for the purposes of the Act as clearing that will improve or maintain environmental outcomes if the determination resulting from an assessment of the proposed clearing in accordance with the Assessment Methodology is that the proposed clearing will improve or maintain environmental outcomes.

## **27 Special provisions for minor variation**

(1) An accredited expert may make an assessment that proposed clearing will improve or maintain environmental outcomes only if there has been an assessment in accordance with the Assessment Methodology of whether the proposed clearing will improve or maintain environmental outcomes (not resulting in a determination that the proposed clearing will improve or maintain environmental outcomes) and the accredited expert is of the opinion that:

(a) a minor variation to the Assessment Methodology would result in a determination that the proposed clearing will improve or maintain environmental outcomes (other than a variation that is not allowable under this clause), and

(b) strict adherence to the Assessment Methodology is in the particular case unreasonable and unnecessary.

(2) A variation to the Assessment Methodology is not allowable under this clause if it is a variation of any of the following aspects of the Assessment Methodology:

(a) riparian buffer distances or associated offset requirements,

(b) classification of vegetation as likely habitat for threatened species,

(c) classification of a plant species as a threatened species or a component of an endangered ecological community,

(d) classification of the condition of vegetation,

(e) classification of the vegetation type or landscape type as overcleared,

(f) the assessment of the regional value of vegetation.

(2A) However, a variation to the Assessment Methodology in relation to the following aspects of the Assessment Methodology is allowable if an accredited expert is also of the opinion that the proposed clearing will have additional conservation benefits on a landscape scale:

(a) classification of the condition of vegetation,

(b) classification of the vegetation type or landscape type as overcleared,

(c) the assessment of the regional value of vegetation.

(3) In certifying that proposed clearing will improve or maintain environmental

outcomes, an accredited expert must:

- (a) provide reasons for the opinions of the accredited expert, and
- (b) comply with any assessment protocols approved by the Minister for Natural Resources (in relation to aspects of assessment concerned with salinity, soil and water quality), the Minister for the Environment (in relation to aspects of assessment concerned with threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with threatened fish and marine vegetation and aquatic biodiversity).

(3A) In determining that the proposed clearing will have additional conservation benefits on a landscape scale, an accredited expert must:

- (a) provide reasons for the opinions of the accredited expert, and
- (b) comply with any assessment protocols approved by the Minister for Climate Change, Environment and Water.

(3B) Any assessment protocol approved for the purposes of subclause (3) (b) or (3A) is to be published on the website of the Department of Environment and Climate Change.

(4) In this clause: "**accredited expert**" means a person accredited by the Minister as an expert for the purposes of this clause, being accreditation on the basis of criteria approved by the Minister for Natural Resources (in relation to aspects of assessment concerned with salinity, soil and water quality), the Minister for the Environment (in relation to aspects of assessment concerned with threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with threatened fish and marine vegetation and aquatic biodiversity). "**minor variation**", in relation to the Assessment Methodology, includes, but is not limited to, a variation that involves or results in the reclassification of vegetation from "not of low condition" to "low condition" (as referred to in the Assessment Methodology).

## **28 Special provisions for long term environmental benefits**

(1) Proposed broadscale clearing is exempt from the requirement for assessment in accordance with the Assessment Methodology if the Minister is satisfied that:

- (a) the clearing is minor clearing, and
- (b) on the basis of a policy adopted under this clause, the clearing is likely to improve the condition of native vegetation on the land or prevent the long term degradation of native vegetation on the land, and
- (c) the long term environmental benefits resulting from the improved condition of native vegetation on the land or the prevention of long term degradation of native vegetation on the land outweigh the short term environmental impacts of the clearing, and
- (d) native vegetation will be restored and maintained on the land.

(2) The Minister may approve a policy that sets out the circumstances in which minor clearing of native vegetation on land is likely to improve the condition of native vegetation on the land or prevent the long term degradation of native vegetation on the land.

(3) Before adopting a policy for the purposes of this clause, the Minister is to:

- (a) consult with the Minister for the Environment on the draft policy, and
- (b) place the draft policy on public exhibition for a reasonable period and give notice of the public exhibition of the draft policy, and invite public submissions on it, by notice in a newspaper circulating generally in the area of operations of the catchment management authority in which land covered by the draft policy is situated, and
- (c) consider any public submissions made during the period allowed for the making of public submissions.

(4) A policy adopted for the purposes of this clause is to be made publicly available.

## **29 Special requirements when PVP approved on the basis of varied data or expert**

## **assessment**

If a PVP that proposes broadscale clearing of native vegetation is approved by the Minister on the basis of the use of data for the purposes of the Assessment Methodology that has been varied in accordance with the Assessment Methodology or on the basis that an accredited expert has, in accordance with clause 27, assessed and certified that in the accredited expert's opinion the proposed clearing will improve or maintain environmental outcomes, the Minister must:

- (a) publish within 10 business days after the decision the Minister's reasons for the decision to approve the PVP, and
- (b) make publicly available the reports of any expert assessment of the clearing proposal or data relevant to the proposal, and
- (c) make a record of any variations made to the data used for the purposes of the Assessment Methodology together with a record of the results of the initial assessment and the assessment using the varied data, and
- (d) retain the records made under paragraph (c) for the duration of the PVP.

## **Part 5A – Clearing under PVP for purposes of private native forestry**

### **29A PNF code of practice**

In this Part:

**"PNF code of practice"** means the document called *Private Native Forestry Code of Practice* that makes provision for the clearing of native vegetation for the purposes of private native forestry, being the document:

- (a) approved by the Minister, and
- (b) as in force and as published in the Gazette on 8 February 2008.

### **29B Clearing under PVP in accordance with PNF code of practice**

- (1) Broadscale clearing for the purposes of private native forestry is, for the purposes of the Act, taken to be clearing that will improve or maintain environmental outcomes if it is carried out in accordance with the PNF code of practice.
- (2) An application for approval of a private native forestry PVP that proposes broadscale clearing is not to be granted by the Minister unless the PVP:
  - (a) adopts the PNF code of practice, and
  - (b) provides for the clearing to be carried out in accordance with the PNF code of practice.
- (3) This clause is subject to any variation approved by the Minister under clause 29C.
- (4) This clause does not apply in relation to the clearing of native vegetation with development consent.

### **29C Special provisions for minor variation**

- (1) This clause only applies in relation to a private native forestry PVP that has been approved by the Minister if more than 10% of the area to which the PVP applies (excluding any critical environmental area) consists of areas that are restricted areas.
- (2) The Minister may approve of a variation of the PNF code of practice in its application to a private native forestry PVP if an accredited expert certifies that:
  - (a) the variation is minor, and
  - (b) the variation does not apply to a critical environmental area, and
    - (b1) the variation does not apply to an endangered ecological community or vulnerable ecological community within the meaning of the *Threatened Species Conservation Act 1995*, and
    - (b2) the variation does not apply to canopy openings (as determined in accordance with the PNF code of practice), and
  - (c) any clearing carried out in accordance with the proposed variation will

- improve or maintain environmental outcomes, and  
(d) strict adherence to the PNF code of practice is in the particular case unreasonable and unnecessary.
- (3) In certifying for the purposes of this clause that clearing will improve or maintain environmental outcomes, an accredited expert must:
- (a) provide reasons for the opinions of the accredited expert, and
  - (b) comply with any assessment protocols approved by the Minister and the Minister for Primary Industries.
- (4) If the Minister approves of a variation of the PNF code of practice in its application to a private native forestry PVP, the Minister must:
- (a) approve of the PVP being modified in accordance with the variation, and
  - (b) make publicly available the reports of the accredited expert in relation to the variation.
- (5) In this clause: "**accredited expert**" means a person accredited by the Minister as an expert for the purposes of this clause, being accreditation on the basis of criteria approved by the Minister and the Minister for Primary Industries. "**critical environmental area**", in relation to a private native forestry PVP, means any of the following areas to which the PVP applies:
- (a) riparian exclusion zones,
  - (b) old growth forest,
  - (c) rainforest,
  - (d) steep land (that is, land with a slope greater than 30 degrees).
- "**restricted area**", in relation to a private native forestry PVP, means that part of any of the following types of areas to which the PVP applies (other than any critical environmental area) that is not permitted to be cleared, or in which clearing is restricted, under the PNF code of practice:
- (a) rocky outcrops and cliffs (as defined in the PNF code of practice),
  - (b) areas of existing mass movement (as defined in the PNF code of practice),
  - (c) exclusion zones (as set out in the listed ecological prescriptions in the appendix to each Part of the PNF code of practice),
  - (d) riparian buffer zones (as set out in the relevant tables in the PNF code of practice),
  - (e) caves, tunnels and disused mineshafts (excluding open pits less than 3 metres deep),
  - (f) endangered ecological communities (as set out in Part 3 of Schedule 1 to the *Threatened Species Conservation Act 1995*),
  - (g) vulnerable ecological communities (as set out in Part 2 of Schedule 2 to the *Threatened Species Conservation Act 1995*),
  - (h) areas containing Aboriginal objects or Aboriginal places (within the meaning of the *National Parks and Wildlife Act 1974*),
  - (i) areas containing items identified as heritage items in an environmental planning instrument.

## **29D Procedure for amendment of PNF code of practice**

- (1) The following applies for the purposes of any amendment of the PNF code of practice:
- (a) the Minister is not to make an amendment that relates to the protection of habitat or biodiversity without the concurrence of the Minister for Primary Industries,
  - (b) an amendment is to be published in the Gazette,
  - (c) an amendment does not take effect until the definition of "**PNF code of practice**" in clause 29A is amended to give effect to the amendment.
- (2) Subclause (1) does not apply in relation to any variation of the PNF code of practice



that is approved by the Minister under clause 29C.

## **Part 6 – Special provisions for vulnerable land**

### **30 Former Act not to apply to State protected land**

- (1) The provisions of the former Act do not have effect under clause 4 of Schedule 3 to the new Act to or in relation to State protected land except as provided by this clause and clause 40A.
- (2) The provisions of the former Act continue to have effect (despite its repeal) to and in relation to:
  - (a) exotic trees (that is, trees that are not native vegetation) on State protected land, and
  - (b) dead trees on State protected land, and
  - (c) native vegetation on State protected land in a local government area (other than Wollongong) specified in Schedule 1 to the former Act immediately before its repeal.
- (3) The provisions of the former Act do not have effect under subclause (2) in respect of clearing of exotic trees or dead trees in circumstances set out in guidelines approved and published by the Minister to enable clearing where no more than minimal environmental harm is likely.

### **31 Identification of protected regrowth on steep or highly erodible land or protected riparian land**

- (1) The Minister may prepare a natural resource management plan for the purposes of:
  - (a) identifying land as **"steep or highly erodible land"**, **"protected riparian land"** or **"special category land"** for the purposes of this Part, and
  - (b) identifying as protected regrowth for the purposes of section 10 of the Act all native vegetation on land identified by the plan as steep or highly erodible land or protected riparian land.
- (2) A natural resource management plan prepared by the Minister under this clause is prescribed for the purposes of section 10 (1) (c) of the Act. Section 10 (1) (c) provides for the identification of protected vegetation by a natural resource management plan prescribed by the regulations.
- (3) All regrowth on State protected land (other than State protected land that is identified as "Category C" protected land on any map held by the Director-General) is identified as protected regrowth for the purposes of section 10 of the Act until:
  - (a) the Minister prepares a natural resource management plan under subclause (1), or
  - (b) the end of the period of 6 months after the commencement of this Regulation, whichever happens first.

### **32 Limitation of RAMAs on protected riparian land**

The following activities are the only activities that comprise a routine agricultural management activity for the purposes of section 11 of the Act on land identified as protected riparian land by a natural resource management plan under clause 31:

- (a) the maintenance of safety clearances around electricity transmission lines to a distance of no more than 15 metres where any clearing is carried out by an employee of or contractor to a local government or electricity supply authority,
- (b) the removal of noxious weeds under the *Noxious Weeds Act 1993*,
- (c) the construction and maintenance of boundary fencing, with a total width of clearing for the purposes of a boundary fence not to exceed 3 metres on either side of the fence,
- (d) the construction and maintenance of fencing (other than boundary fencing) to improve management of the protected riparian land, with a total width of clearing for the purposes of a fence not to exceed 3 metres and only for fencing that is reasonably required to be constructed on protected riparian land,

(e) the construction and maintenance of farm roads, with a total width of clearing for the purposes of a farm road not to exceed 4 metres and only if:

- (i) the road is reasonably required to access sites within or on the other side of the protected riparian land, and
- (ii) the route of the road minimises the clearing that is required to be undertaken on protected riparian land,

Planning the route of a road to minimise clearing on protected riparian land may, for example, require its construction on land that has already been cleared or on land that is not protected riparian land, or for the road to take the most direct route through or across the protected riparian land.

(f) anything done pursuant to an obligation arising under an eradication order or pest control order under Part 11 of the *Rural Lands Protection Act 1998*,

(g) any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property.

### **33 Clearing of lignum on special category land**

(1) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the clearing of lignum on land identified as special category land by a natural resource management plan under clause 31 as follows, subject to the restrictions provided by subclause (2):

- (a) clearing within 50 metres of an existing shed, silo, pump house, residence or air strip,
- (b) clearing for the purpose of fence maintenance or stock management involving the clearing of not more than 30 metres either side of a fence,
- (c) clearing for the purpose of maintaining an existing flood control work or storage control bank involving the clearing of not more than 30 metres from the toe of the outside batter of the work or bank,
- (d) clearing for the purpose of maintaining an existing irrigation channel involving the clearing of not more than 30 metres from the toe of the outside batter of the channel,
- (e) clearing for the purpose of maintaining a local council road or an existing farm road or track that has been built up at least 50 centimetres above the adjacent floodplain level involving the clearing of not more than 30 metres from the toe of the outside batter of the road or track,
- (f) clearing within 50 metres of an existing ground tank or trough that is used for stock watering,
- (g) clearing for the purpose of stock management or internal paddock access involving the clearing of any number of parallel strips of lignum up to 20 metres in width.

(2) Restrictions on the clearing of lignum on special category land are as follows:

- (a) cleared strips exceeding 10 metres in width must be bounded on both sides by uncleared strips of lignum at least 1,000 metres wide,
- (b) cleared strips of lignum between 5 metres and 10 metres in width must be bounded on both sides by uncleared strips of lignum at least 500 metres wide,
- (c) cleared strips of lignum less than 5 metres in width must be bounded on both sides by uncleared strips of lignum at least 250 metres wide.

## **Part 7 – Savings and transitional provisions**

### **34 Authorised officers under former Act**

(1) A person who was an authorised officer under the former Act immediately before the repeal of that Act is taken to have been appointed on the commencement of the new Act as an authorised officer under the new Act.

(2) Any limitation on the authority of the authorised officer under the former Act also operates as a limitation on the authority of the authorised officer under the new Act and

operates as a limitation imposed by the relevant instrument of appointment.

(3) This clause does not remove the need for an authorised officer to be in possession of an identification card issued on behalf of the Minister.

### **35 Pending applications for development consent**

A development application made under the EPA Act before the repeal of the former Act for any clearing that requires development consent under the new Act and that is pending on the commencement of the new Act is to be dealt with as follows:

- (a) if the application was made before 9 November 2004, the application is to continue to be dealt with and finalised under the former Act as if the former Act had not been repealed,
- (b) if the application was made on or after that date, the application is to be dealt with and finalised under the new Act as if it had first been made after the commencement of the new Act.

### **36 Native Vegetation Management Fund**

Any money in the Native Vegetation Management Fund under the former Act immediately before its repeal is to be allocated and spent in such manner as the Minister may authorise in connection with the objects of the new Act.

### **37 Property agreements under former Act**

- (1) Part 5 (Property agreements) of the former Act continues to apply, as if it had not been repealed, to and in respect of a property agreement in force under the former Act immediately before its repeal.
- (2) Despite subclause (1), a property agreement in force under the former Act immediately before its repeal cannot be registered as provided by section 44 of the former Act more than 15 months after that repeal.
- (3) Part 5 (Enforcement) of the new Act extends to a breach of a property agreement in force under the former Act immediately before the repeal of the former Act as if a reference in Part 5 of the new Act to a contravention of the former Act included a reference to a breach of a property agreement in force under the former Act.

### **38 Stop work orders and remedial work directions under former Act**

- (1) An order in force under section 46 of the former Act immediately before its repeal is taken to have been made under section 37 of the new Act and for that purpose is to be regarded as having taken effect when it took effect under section 46 of the former Act.
- (2) A direction in force under section 47 of the former Act immediately before its repeal is taken to have been made under section 38 of the new Act and for that purpose is to be regarded as having taken effect when it took effect under section 47 of the former Act.

### **39 Exempt farm forestry under Plantations and Reafforestation Act 1999**

- (1) On and from the repeal of the former Act by the new Act, section 6 (1) (b) of the *Plantations and Reafforestation Act 1999* is to be read as if:
  - (a) a reference to clearing of native vegetation or of protected land (within the meaning of the former Act) were a reference to clearing of native vegetation within the meaning of the new Act, and
  - (b) a reference to clearing that is exempt from the requirement under Part 2 of the former Act for development consent were a reference to clearing that is exempt from the requirement under section 12 of the new Act that the clearing be in accordance with a development consent or a property vegetation plan.
- (2) Subclause (1) does not apply in respect of clearing that commenced before the repeal of the former Act. Section 6 (1) (b) of the *Plantations and Reafforestation Act 1999* continues to apply to and in respect of that clearing as if the former Act had not been repealed and any relevant regional vegetation management plan under that Act were still in force.

#### 40 (Repealed)

##### 40A Exemption of clearing authorised under existing authorities (State protected land)

(1) Any clearing of native vegetation authorised under an existing authority is taken to be clearing that is exempt from any requirement under section 12 of the new Act that the clearing be in accordance with a development consent or a PVP.

(2) If the existing authority concerned has a specified expiry date, this clause ceases to have effect in relation to the exempt clearing:

- (a) on that expiry date, or
- (b) if the existing authority otherwise ceases to be in force, or
- (c) if the land on which the clearing is authorised becomes land to which a PVP applies,

whichever first occurs.

(3) If the existing authority concerned does not have a specified expiry date, this clause ceases to have effect in relation to the exempt clearing:

- (a) if the existing authority ceases to be in force, or
- (b) if the land on which the clearing is authorised becomes land to which a PVP applies, or
- (c) on 1 October 2008,

whichever first occurs.

(4) In this clause: "**existing authority**" means an authority issued under section 21D of the *Soil Conservation Act 1938* and in force immediately before 1 January 1998.

##### 41 Existing private native forestry--clearing under SEPP 46 exemptions

(1) If the clearing of native vegetation for a purpose described in paragraph (i) of Schedule 3 to SEPP 46 was being carried out on land immediately before 1 August 2007, the clearing continues to be clearing that the new Act does not apply to, but only until:

- (a) 1 November 2007 in the case of land in northern NSW (unless it is land referred to in paragraph (c) or (d)), or
- (b) 1 December 2007 in the case of land in southern NSW (unless it is land referred to in paragraph (c) or (d)), or
- (c) 1 January 2008 in the case of land comprising a river red gum forest, or
- (d) 1 February 2008 in the case of land comprising a cypress forest or a western hardwood forest,

and only if the landholder notifies the Director-General, on or before 31 August 2007 in the manner approved by the Director-General, that the clearing is being carried out.

(2) In this clause: "**cypress forest**" means a forest dominated by white cypress pine (*Callitris glaucophylla*), being a forest in which at least 80% of the stand basal area comprises trees of that species. "**northern NSW**" means the part of the State north of the Sydney Latitude. "**river red gum forest**" means a forest dominated by *Eucalyptus camaldulensis*, being a forest that is consistent with the description of Forest Type 199 (River Red Gum) set out in the document called *State Forests of NSW Research Note 17*. "**SEPP 46**" means *State Environmental Planning Policy No 46--Protection and Management of Native Vegetation* as in force immediately before its repeal by the former Act. "**southern NSW**" means the part of the State south of the Sydney Latitude. "**Sydney Latitude**" means Latitude 33° 52' 02.71"S. "**western hardwood forest**" means a forest that is consistent with the description of any of the Forest Types 99, 103, 104, 124, 171-178, 180-185, 203-210 and 213 set out in the document called *State Forests of NSW Research Note 17*.

(3) For the purposes of the definition of "**cypress forest**" in subclause (2): "**basal area**" means the cross-sectional area of a tree measured at 1.3 metres above the ground and over bark. "**stand**" means an aggregation of trees sufficiently uniform in composition and condition within one (but not more than one) broad forest type, or defined by natural or artificial boundaries, to be regarded as a unit for silvicultural or management

purposes. "**stand basal area**" means the sum of the basal areas of all trees within a stand that have a diameter of more than 10 centimetres measured at 1.3 metres above the ground and over bark.

#### **41A Development consents and pending applications under former Act to clear State protected land for private native forestry purposes**

- (1) Any development consent for clearing State protected land for the purposes of private native forestry granted in accordance with the former Act after its repeal is taken to be a development consent granted in accordance with the new Act. Up until 1 August 2007, clearing for private native forestry purposes on State protected land was subject to the provisions of the former Act as if that Act had not been repealed on 1 December 2005.
- (2) An application for development consent under the former Act to clear State protected land for the purposes of private native forestry that was made before (but not determined by) 1 August 2007 is not to be granted.

### **Part 8 – General**

#### **42 Clearing of groundcover--calculations**

- (1) The percentages referred to in section 20 (Clearing of certain groundcover permitted) of the Act are to be calculated in accordance with the following methodology:
  - (a) the percentages are to be calculated by the landholder in a scientific and objective manner that is appropriate to the area proposed to be cleared and the species of vegetation that are present,
  - (b) the calculation can only be made at the time of year when the proportion of the amount of indigenous vegetation in the area to the amount of non-indigenous vegetation in the area is likely to be at its maximum.
- (2) The landholder must retain for at least 5 years after the clearing of native vegetation that comprises only groundcover a record of the calculation carried out for the purposes of subclause (1), consisting of:
  - (a) a map showing the area that was the subject of the calculation, and
  - (b) a record of the season in which the calculation was made, and
  - (c) a statement as to how the calculation was made, and
  - (d) photographs that clearly show the type of groundcover in the mapped area, taken at the time the calculation was made.
- (3) This clause does not apply to land that is declared by the Minister by order published in the Gazette to be land that is not subject to this clause. The Minister's order may declare land by reference to a map deposited in the office of the Minister.

#### **43 Penalty notice offences and penalties**

- (1) For the purposes of section 43 of the Act:
  - (a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and
  - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of Schedule 1 or, if the person alleged to have committed the offence is a corporation and a greater penalty is specified in Column 3 of Schedule 1, the amount specified in Column 3 of Schedule 1.
- (2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

Section 307A of the *Crimes Act 1900* makes it an offence for a person to knowingly or recklessly make a false or misleading statement in connection with a claim, request or other form of application to a public official for any benefit or any licence, permit, consent, approval, registration or other form of authority. The maximum penalty provided by the section is imprisonment for 2 years and/or a fine of 200 penalty units.

#### **44 Amendments to Schedule 1 to the Act**

Schedule 1 to the Act is amended:

- (a) by omitting items 1, 2, 3 and 6, and
- (b) by omitting "Wollongong," from item 13, and
- (c) by inserting ", not being land to which a property vegetation plan applies" after "so designated" in item 14.

## Schedule 1 Penalty notice offences

(Clause 43)

Column 1	Column 2	Column 3
Provision	Penalty (individuals)	Penalty (corporations)
	Offences under the Act	
section 12	\$3,300	\$5,500
section 35 (5)	\$1,100	
section 36 (4)	\$1,100	
section 37 (5)	\$1,650	\$3,300
section 38 (4)	\$1,650	\$3,300

### Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Native Vegetation Regulation 2005 (729)*. GG No 140 of 18.11.2005, p 9419. Date of commencement, 1.12.2005, cl 2. This Regulation has been amended by cl 40 (3) of this Regulation and as follows:

2005	(767)	<i>Native Vegetation Amendment Regulation 2005</i> . GG No 146 of 30.11.2005, p 9847. Date of commencement, 1.12.2005, cl 2.
2006	(274)	<i>Native Vegetation Amendment (Private Native Forestry) Regulation 2006</i> . GG No 74 of 2.6.2006, p 3933. Date of commencement, on gazettal.
	(423)	<i>Native Vegetation Amendment (Miscellaneous) Regulation 2006</i> . GG No 98 of 4.8.2006, p 6059. Date of commencement, on gazettal.
	(602)	<i>Native Vegetation Amendment (Private Native Forestry) Regulation (No 2) 2006</i> . GG No 120 of 29.9.2006, p 8467. Date of commencement, on gazettal.
	(675)	<i>Native Vegetation Amendment (Assessment Methodology) Regulation 2006</i> . GG No 145 of 24.11.2006, p 9909. Date of commencement, on gazettal.
	No	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2006</i> . Assented to 4.12.2006. Date

	120	of commencement of Sch 2, assent, sec 2 (2).
2007	(120)	<i>Native Vegetation Amendment Regulation 2007</i> . GG No 36 of 2.3.2007, p 1461. Date of commencement, on gazettal.
	(292)	<i>Native Vegetation Amendment (Private Native Forestry--Transitional) Regulation 2007</i> . GG No 83 of 29.6.2007, p 4075. Date of commencement, on gazettal.
	(372)	<i>Native Vegetation Amendment (Private Native Forestry) Regulation 2007</i> . GG No 97 of 1.8.2007, p 5153. Date of commencement, 1.8.2007, cl 2.
	No 82	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2007</i> . Assented to 7.12.2007. Date of commencement of Sch 2.12, assent, sec 2 (2).
2008	(26)	<i>Native Vegetation Amendment (Miscellaneous) Regulation 2008</i> . GG No 14 of 8.2.2008, p 487. Date of commencement, 8.2.2008, cl 2.
2009	No 9	<i>Western Lands Amendment Act 2009</i> . Assented to 7.4.2009. Date of commencement of Sch 3, assent, sec 2 (1).

#### Table of amendments

Cl 3	Am 2005 (767), Sch 1 [1]; 2006 (423), Sch 1 [1]; 2006 No 120, Sch 2.64; 2007 (120), Sch 1 [1]; 2007 (372), Sch 1 [1]; 2009 No 9, Sch 3.9.
Cl 6A	Ins 2007 (372), Sch 1 [2].
Cl 9	Am 2007 (120), Sch 1 [2] [3]; 2007 (372), Sch 1 [3] [4].
Cl 12	Am 2007 (372), Sch 1 [5]; 2008 (26), Sch 1 [1] [2].
Cl 12A	Ins 2007 (372), Sch 1 [6].
Cl 12B	Ins 2008 (26), Sch 1 [3].
Cl 16	Am 2006 (423), Sch 1 [2] [3].
Cl 18A	Ins 2007 (120), Sch 1 [4]. Am 2008 (26), Sch 1 [4].
Cl 20	Am 2005 (767), Sch 1 [2] [3].
Cl 21	Am 2006 (423), Sch 1 [4].
Cl 23A	Ins 2007 (372), Sch 1 [7]. Subst 2008 (26), Sch 1 [5].
Cl 23B	Ins 2008 (26), Sch 1 [5].
Cl 24A	Ins 2007 (372), Sch 1 [8].
Cl 24	Am 2006 (423), Sch 1 [5]; 2006 (675), Sch 1; 2007 (120), Sch 1 [5].
Cl 27	Am 2008 (26), Sch 1 [6]-[8].
Part 5A	Ins 2007 (372), Sch 1 [9].
Cl 29A	Ins 2007 (372), Sch 1 [9]. Am 2008 (26), Sch 1 [9].
Cl 29B	Ins 2007 (372), Sch 1 [9].
Cl 29C	Ins 2007 (372), Sch 1 [9]. Am 2008 (26), Sch 1 [10]-[12].
Cl 29D	Ins 2007 (372), Sch 1 [9].
Cl 30	Am 2007 (372), Sch 1 [10].
Cl 37	Am 2006 (423), Sch 1 [6].

Cl 40	Rep 2005 (729), cl 40 (3).
Cl 40A	Ins 2007 (372), Sch 1 [11].
Cl 41	Am 2006 (274), cl 2; 2006 (602), cl 2; 2007 (292), cl 2. Subst 2007 (372), Sch 1 [12]. Am 2007 No 82, Sch 2.12
Cl 41A	Ins 2007 (372), Sch 1 [12].