

# Native Vegetation Act 2003

## Long Title

An Act relating to the sustainable management and conservation of native vegetation; to repeal the *Native Vegetation Conservation Act 1997*; and for other purposes.

## Part 1 – Preliminary

### 1 Name of Act

This Act is the *Native Vegetation Act 2003*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are:

- (a) to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State, and
- (b) to prevent broadscale clearing unless it improves or maintains environmental outcomes, and
- (c) to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation, and
- (d) to improve the condition of existing native vegetation, particularly where it has high conservation value, and
- (e) to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation, in accordance with the principles of ecologically sustainable development.

### 4 Definitions

(1) In this Act: "**authorised officer**" means a person appointed under section 34. "**broadscale clearing**" -- see section 8. "**catchment management authority**" means a catchment management authority established under the *Catchment Management Authorities Act 2003*. "**clearing**" native vegetation--see section 7. "**development consent**" means development consent under Part 4 of the EPA Act. "**Director-General**" means the Director-General of the Department of Infrastructure, Planning and Natural Resources. "**environmental planning instrument**" has the same meaning as in the EPA Act. "**EPA Act**" means the *Environmental Planning and Assessment Act 1979*. "**exercise**" a function includes perform a duty. "**function**" includes a power, authority or duty. "**government agency**" means any public or local authority, and includes:

- (a) a government department, State owned corporation and council of a local government area, and
- (b) the head of a government agency.

"**groundcover**" means any type of herbaceous vegetation. "**landholder**" means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land. "**native vegetation**" --see section 6. "**property vegetation plan**" means a property vegetation plan that has been approved under Part 4. "**protected regrowth**" --see section 10. "**regrowth**" --see section 9. "**remnant native vegetation**" --see section 9. "**routine agricultural management activities**"--see section 11. "**wetland**" includes any shallow body of water (such as a marsh, billabong, swamp or sedgeland) that is:

- (a) inundated cyclically, intermittently or permanently with water, and
- (b) vegetated with wetland plant communities.

(2) Notes in the text of this Act do not form part of this Act.

### 5 Land excluded from operation of Act

(1) This Act does not apply to the following land:

- (a) the land described or referred to in Part 1 of Schedule 1 (National park estate and other conservation areas),
- (b) the land described or referred to in Part 2 of Schedule 1 (State forestry land),
- (c) the land described or referred to in Part 3 of Schedule 1 (Urban areas).

(2) The regulations may amend Schedule 1.

(3) A regulation amending Schedule 1 to extend the area of land described or referred to in that Schedule is not to be made unless the Minister certifies to the Governor that adequate provision has been made in

environmental planning instruments or other statutory instruments applying to that additional area for the conservation and management of native vegetation.

If land is excluded from the operation of this Act, the land will continue to be subject to any local environmental plan that applies to the land.

## Part 2 – Key concepts

### 6 Meaning of native vegetation

(1) For the purposes of this Act, "**native vegetation**" means any of the following types of indigenous vegetation:

- (a) trees (including any sapling or shrub, or any scrub),
- (b) understorey plants,
- (c) groundcover (being any type of herbaceous vegetation),
- (d) plants occurring in a wetland.

(2) Vegetation is "**indigenous**" if it is of a species of vegetation, or if it comprises species of vegetation, that existed in the State before European settlement.

(3) For the purposes of this Act, "**native vegetation**" does not include any mangroves, seagrasses or any other type of marine vegetation to which section 205 of the *Fisheries Management Act 1994* applies.

### 7 Meaning of clearing native vegetation

For the purposes of this Act, "**clearing**" native vegetation means any one or more of the following:

- (a) cutting down, felling, thinning, logging or removing native vegetation,
- (b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.

See Division 3 of Part 3 for the exclusion of routine agricultural management and other farming activities from constituting the clearing of native vegetation if the landholder can establish that any clearing was carried out for the purpose of those activities.

### 8 Meaning of broadscale clearing

For the purposes of this Act, "**broadscale clearing**" of native vegetation means the clearing of any remnant native vegetation or protected regrowth.

See sections 14 (3) and 29 and the provisions of sections 18-25.

### 9 Meanings of remnant native vegetation and regrowth

(1) For the purposes of this Act, "**remnant native vegetation**" means any native vegetation other than regrowth.

(2) For the purposes of this Act, "**regrowth**" means any native vegetation that has regrown since the earlier of the following dates:

- (a) 1 January 1983 in the case of land in the Western Division and 1 January 1990 in the case of other land,
- (b) the date specified in a property vegetation plan for the purposes of this definition (in exceptional circumstances being a date based on existing rotational farming practices).

(3) In subsection (2) (b), "**existing rotational farming practices**" means rotational farming practices:

- (a) that are reasonable and in accordance with accepted farming practice, and
- (b) that have been in place since the date specified in the plan.

(4) Regrowth does not include any native vegetation that has regrown following unlawful clearing of remnant native vegetation or following clearing of remnant native vegetation caused by bushfire, flood, drought or other natural cause.

### 10 Meaning of protected regrowth

(1) For the purposes of this Act, "**protected regrowth**" means any native vegetation that is regrowth and that is identified as protected regrowth for the purposes of this Act in:

- (a) a property vegetation plan, or
- (b) an environmental planning instrument, or
- (c) a natural resource management plan of a kind prescribed by the regulations, or
- (d) an interim protection order under this section.

(2) For the purposes of this Act, "**protected regrowth**" also includes any native vegetation that is regrowth and that has been grown or preserved (whether before or after the commencement of this Act) with the assistance of public funds granted for biodiversity conservation purposes.

(3) Before native vegetation is identified as protected regrowth in an instrument referred to in subsection (1) (a)-(c), the person or body making or approving the instrument must be satisfied that, based on available scientific evidence, the preservation of the vegetation is consistent with State-wide natural resource

management standards and targets adopted for the purposes of the *Catchment Management Authorities Act 2003*.

(4) Before native vegetation is identified as protected regrowth in a property vegetation plan, the Minister is to have regard to the social and economic implications of the preservation of the vegetation.

(5) The Minister may make and publish an interim protection order for the purpose of protecting regrowth from being cleared pending an assessment of whether it should be identified as protected regrowth.

(6) The regulations may make provision for or with respect to the making, duration and revocation of, and other matters relating to, interim protection orders under this section.

(7) The landholder of any land affected by an interim protection order under this section may appeal to the Land and Environment Court against the making of the order.

### **11 Meaning of routine agricultural management activities**

(1) For the purposes of this Act, "**routine agricultural management activities**" mean any of the following activities on land carried out by or on behalf of the landholder:

(a) the construction, operation and maintenance of rural infrastructure:

(i) including (subject to the regulations) dams, permanent fences, buildings, windmills, bores, air strips (in the Western Division), stockyards, and farm roads, but

(ii) not including rural infrastructure in areas zoned as rural-residential under environmental planning instruments or on small holdings (as defined in the regulations),

(b) the removal of noxious weeds under the *Noxious Weeds Act 1993*,

(c) the control of noxious animals under the *Rural Lands Protection Act 1998*,

(d) the collection of firewood (except for commercial purposes),

(e) the harvesting or other clearing of native vegetation planted for commercial purposes,

(f) the lopping of native vegetation for stock fodder (including uprooting mulga in the Western Division in areas officially declared to be drought affected),

(g) traditional Aboriginal cultural activities (except commercial activities),

(h) the maintenance of public utilities (such as those associated with the transmission of electricity, the supply of water, the supply of gas and electronic communication),

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

(2) The regulations may make provision for or with respect to extending, limiting or varying the activities that are routine agricultural management activities, and subsection (1) is to be construed accordingly.

## **Part 3 – Clearing native vegetation**

### **Division 1 – Control of clearing**

#### **12 Clearing requiring approval**

(1) Native vegetation must not be cleared except in accordance with:

(a) a development consent granted in accordance with this Act, or

(b) a property vegetation plan.

(2) A person who carries out or authorises the carrying out of clearing in contravention of this section is guilty of an offence and is liable to the maximum penalty provided for under section 126 of the EPA Act for a contravention of that Act.

(3) It is a defence in any proceedings for an offence against this section if it is established that the clearing was permitted under Division 2 or 3 or was excluded from this Act by Division 4.

#### **13 Minister is consent authority for clearing**

For the purposes of the EPA Act, the Minister is the consent authority for any development application made under that Act for any clearing of native vegetation that requires development consent because of this Act.

#### **14 Granting of development consent**

(1) If development consent is, because of this Act, required to clear native vegetation, Part 4 of the EPA Act applies to the granting of the development consent, subject to this Division.

(2) In determining an application for development consent under this Act, the Minister is to have regard to any relevant provisions of catchment action plans of catchment management authorities, and to other matters required by the regulations.

(3) Development consent for broadscale clearing is not to be granted by the Minister unless the clearing concerned will improve or maintain environmental outcomes.

(4) If the clearing of any native vegetation has the benefit of biodiversity certification under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* and also the benefit of biodiversity certification under Part 7A of the *Fisheries Management Act 1994*:

(a) an application for development consent for clearing is not required to be accompanied by a species impact statement or statements (as would otherwise be required under section 78A of the EPA Act), and

(b) the Minister is not required to consult with the Minister administering the *Threatened Species Conservation Act 1995* and the Minister administering the *Fisheries Management Act 1994* (as would otherwise be required under section 79B of the EPA Act).

## **15 Regulations**

- (1) The regulations may make provision for or with respect to the following:
- (a) clearing principles or other matters to which the Minister must or may have regard in determining an application for development consent under Part 4 of the EPA Act,
  - (b) the exclusion of matters required to be considered under Part 4 of the EPA Act,
  - (c) the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for the purposes of development consent,
  - (d) the circumstances in which development consent for clearing is not to be granted,
  - (e) the keeping of a public register by the Director-General relating to development consents granted by the Minister under this Act and applications for such consents.
- (2) The regulations may also make provision, consistent with Part 4 of the EPA Act, for or with respect to the determination of applications for development consent for development comprising:
- (a) the clearing of native vegetation, and
  - (b) any other form of development that requires development consent pursuant to an environmental planning instrument.

Any such regulation has effect despite anything in this Part.

## **16 Relationship to Part 5 of EPA Act**

Part 5 of the EPA Act does not apply to any clearing carried out in accordance with this Part, and any such clearing is not an activity for the purposes of Part 5 of the EPA Act.

## **17 Clearing not affected by subsequent environmental planning instruments**

If native vegetation is, or is about to be, cleared in accordance with:

- (a) development consent granted in accordance with this Act, or
- (b) a property vegetation plan,

that clearing cannot be prohibited, restricted or otherwise affected by a provision of any environmental planning instrument made after the consent was granted or the plan was approved (as the case requires).

## **Division 2 – Permitted clearing**

### **18 Application**

- (1) This Division sets out the clearing of native vegetation that is permitted to be carried out without the authority conferred by a development consent or property vegetation plan.
- (2) This Division does not permit clearing without an approval or other authority required by another Act or in contravention of another Act.

### **19 Clearing of non-protected regrowth permitted**

- (1) Clearing of native vegetation that is only regrowth, but not protected regrowth, is permitted.
- (2) This section is subject to any exclusion in a property vegetation plan.

### **20 Clearing of certain groundcover permitted**

The clearing of native vegetation that comprises only groundcover is permitted if:

- (a) the vegetation comprises less than 50% of indigenous species of vegetation, and
- (b) not less than 10% of the area is covered with vegetation (whether dead or alive), and
- (c) those percentages are calculated in accordance with the regulations.

## **Division 3 – Permitted activities**

### **21 Application**

- (1) This Division sets out the activities that do not constitute the clearing of native vegetation for the purposes of this Part and, accordingly, are permitted to be carried out without the authority conferred by a development consent or property vegetation plan.
- (2) This Division does not permit an activity without an approval or other authority required by another Act or in contravention of another Act.

### **22 Routine agriculture management activities**

- (1) Clearing for routine agricultural management activities is permitted.
- (2) This section does not authorise any clearing of native vegetation:
- (a) if it exceeds the minimum extent necessary for carrying out the activity, or
  - (b) if it is done for a work, building or structure before the grant of any statutory approval or other authority required for the work, building or structure.

### **23 Continuation of existing farming activities**

- (1) The continuation of existing cultivation, grazing or rotational farming practices is permitted if it does not involve the clearing of:

- (a) remnant native vegetation, and
  - (b) in the case of the Western Division--native vegetation comprising trees not less than 3 metres high of any of the following species: *Eucalyptus camaldulensis* (river red gum), *Casuarina cristata* (belah), *Casuarina pauper* (belah) or *Callitris glaucophylla* (white cypress pine).
- (2) In this section, "existing" means existing at the commencement of this Act.

#### **24 Sustainable grazing**

Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation is permitted.

#### **Division 4 – Excluded clearing**

#### **25 Legislative exclusions**

This Act does not apply to the following types of clearing of native vegetation:

- (a) any clearing authorised under the *State Emergency and Rescue Management Act 1989* in relation to an emergency within the meaning of that Act,
- (b) any clearing authorised under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act,
- (c) any clearing carried out in accordance with a bush fire management plan under the *Rural Fires Act 1997*,
- (d) any clearing carried out in accordance with a property management plan approved by the Director-General of the Department of Environment and Conservation for the purposes of the *Threatened Species Conservation Act 1995*,
- (e) any clearing authorised under a licence issued under Division 1 of Part 6 of the *Threatened Species Conservation Act 1995*,
- (f) any clearing that is, or that is part of, designated development within the meaning of the EPA Act and for which development consent has been granted under that Act,
- (g) any clearing that is, or is part of, an activity carried out by a determining authority within the meaning of Part 5 of the EPA Act if the determining authority has complied with that Part,
- (h) any clearing that is, or is part of, an activity carried out in accordance with an approval of a determining authority within the meaning of Part 5 of the EPA Act if the determining authority has complied with that Part,
- (i) any clearing authorised to be carried out under Division 3 or 4 of Part 7 of the *Fisheries Management Act 1994*,
- (j) any clearing authorised under a licence issued under Division 6 of Part 7A of the *Fisheries Management Act 1994*,
- (k) any clearing carried out in accordance with a licence issued under section 131 of the *National Parks and Wildlife Act 1974*,
- (l) any clearing authorised under the *Mining Act 1992*,
- (m) any clearing authorised under the *Petroleum (Onshore) Act 1991*,
- (n) any clearing that consists of plantation operations within the meaning of the *Plantations and Reafforestation Act 1999* on an authorised plantation in accordance with any conditions of the authorisation and with the Plantations and Reafforestation Code under that Act,
- (o) any clearing that involves the removal or lopping of any tree or other vegetation in accordance with section 88 of the *Roads Act 1993*,
- (p) any clearing carried out in accordance with a consent under Division 3 of Part 9 of the *Roads Act 1993*,
- (q) any clearing carried out in accordance with a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*,
- (r) any clearing for the purpose of a survey under the *Surveying Act 2002* that is undertaken by or under the direction of a surveyor,
- (s) any clearing carried out in accordance with a licence, permit, authority or approval under the *Water Act 1912* or the *Water Management Act 2000*.

### **Part 4 – Property vegetation plans**

#### **26 Landholders may submit plans**

- (1) A landholder or group of landholders may submit a draft property vegetation plan to the Director-General for approval by the Minister under this Part.
- (2) A draft plan cannot be submitted for approval without the consent in writing of:
  - (a) all landholders of land to which the plan applies, and
  - (b) any person who has an interest in the land prescribed by the regulations.
- (3) A draft plan is to comply with any other requirements as to the form and content of the plan that are prescribed by the regulations.

### **27 Plans require Ministerial approval**

- (1) A property vegetation plan has effect only if it is approved by the Minister. Section 48 permits the Minister to delegate this function to a catchment management authority or other government agency.
- (2) In determining whether to approve a draft plan, the Minister is to have regard to any relevant provisions of catchment action plans of catchment management authorities, and to the matters required by the regulations.

### **28 Content of plans**

A property vegetation plan submitted by a landholder may make provision for native vegetation management on the land to which it applies, including the following:

- (a) proposals for clearing native vegetation on the land,
- (b) the identification of native vegetation on the land as regrowth, as referred to in section 9 (2),
- (c) proposals relating to the thinning of native vegetation in the central area of the State that has regrown between 1 January 1983 and 1 January 1990,
- (d) proposals to enable landholders to obtain financial incentives for the management of natural resources, being proposals relating to the carrying out or funding of native vegetation management activities by catchment management authorities or other bodies,
- (e) proposals relating to the continuation of existing farming or other rural practices,
- (f) provisions excluding clearing for routine agricultural management or other activities from being permitted clearing,
- (g) such other provisions as are prescribed by the regulations.

### **29 Plans proposing broadscale clearing**

- (1) This section applies to a property vegetation plan that proposes broadscale clearing of native vegetation.
- (2) The Minister is not to approve such a plan unless the clearing concerned will improve or maintain environmental outcomes.

### **30 Duration of plans**

- (1) A property vegetation plan has effect for such period as is specified in the plan, subject to a maximum period of 15 years in the case of provisions of the plan for the clearing of native vegetation.
- (2) A property vegetation plan:
  - (a) may be varied by the landholder with the approval of the Minister, and
  - (b) may be terminated in accordance with the regulations by the Minister, by notice to the landholder of the land to which it applies, for the reasons stated in the notice (being reasons relating to a contravention by the landholder of the plan).
- (3) The regulations may make provision for reviews of property vegetation plans after 10 years.
- (4) A property vegetation plan continues to have effect despite any change in the landholders of the land concerned.

### **31 Registered plan to run with land**

- (1) The landholders and other persons having a prescribed interest in land to which a property vegetation plan applies (the "**parties to the plan**") may consent to the registration of the plan in accordance with this section.
- (2) On being notified by the Director-General that a property vegetation plan has been approved by the Minister and the parties to the plan have consented to the registration of the plan, the Registrar-General is required:
  - (a) to register the plan in the General Register of Deeds, and
  - (b) if appropriate, make an entry:
    - (i) in the Register kept under the *Real Property Act 1900*, or
    - (ii) in any official record relating to Crown land,which relates to the land to which the plan applies.
- (3) A plan that has been registered by the Registrar-General in accordance with this section is binding on, and is enforceable by and against, the successors in title to the parties to the plan. Those successors in title are taken to have notice of the plan.
- (4) A property vegetation plan relating to land under the *Real Property Act 1900* about which an entry is made in a folio is an interest recorded in the folio for the purposes of section 42 of that Act.
- (5) A reference in this section to a property vegetation plan includes a reference to any part of the plan or to any variation or termination of the plan.
- (6) In this section: "**successors in title**" includes a mortgagee, chargee, covenant chargee or other person, in possession of land to which a property vegetation plan applies pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before the registration of the plan.

### **32 Regulations**

The regulations may make provision for or with respect to property vegetation plans, including the following:

- (a) clearing principles or other matters to which the Minister must or may have regard in determining whether to approve such a plan,
- (b) the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for the purposes of any such plan,
- (c) the circumstances in which any such plan is not to be approved,
- (d) the form and content of any such plans, including the evidence required to accompany a plan which identifies vegetation as regrowth,
- (e) the keeping of a public register by the Director-General relating to any such plans approved by the Minister under this Act that authorise the clearing of native vegetation or provide financial incentives, and applications for such approvals.

## **Part 5 – Enforcement**

### **Division 1 – Preliminary**

#### **33 Application of Part**

- (1) For the purposes of this Part, a reference to a contravention of this Act is a reference to a contravention of the following:
- (a) this Act or the regulations,
  - (b) a property vegetation plan,
  - (c) the conditions of a development consent granted in accordance with this Act,
  - (d) an order or direction of the Director-General under this Part.
- (2) In this section, "**this Act**" includes the *Native Vegetation Conservation Act 1997*.

#### **34 Appointment of authorised officers**

- (1) The Minister may appoint any member of staff of a government agency as an authorised officer for the purposes of this Act.
- (2) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (3) An authorised officer cannot exercise the functions of an authorised officer under this Act unless the officer is in possession of an identification card issued on behalf of the Minister.
- (4) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person who is subject to the exercise of the function, produce the officer's identification card to the person.

### **Division 2 – Investigation**

#### **35 Powers of entry and inspection**

- (1) An authorised officer may enter land for the purpose of determining whether a person is contravening or has contravened this Act, but only if:
- (a) the landholder consents, or
  - (b) the Director-General has authorised the entry onto the land concerned.
- (2) An authorised officer may, for the purposes of determining whether a person is contravening or has contravened this Act:
- (a) conduct such investigations, make such inquiries, examinations and inspections, and take such samples and recordings (including photographs), as the officer considers necessary, and
  - (b) require a landholder or other person to produce to the officer any records or documents that relate to any clearing of native vegetation on any land, and
  - (c) require a landholder or other person to provide such reasonable assistance and facilities as may be requested by the officer to exercise the officer's functions under this section.
- (3) A person may accompany an authorised officer and take all reasonable steps to assist an officer in the exercise of the officer's functions under this section if the officer is of the opinion that the person is capable of providing assistance to the officer in the exercise of those functions.
- (4) An authorised officer is not entitled to enter any part of premises used only for residential purposes except with the consent of the landholder.
- (5) A person who, without reasonable excuse:
- (a) obstructs an authorised officer in the exercise of the officer's functions under this section, or
  - (b) fails or refuses to comply with a requirement made by an authorised officer under this section,
- is guilty of an offence. Maximum penalty: 100 penalty units.
- (6) In this section, "**obstruct**" includes delay, threaten or hinder.

### **Division 3 – Director-General's powers**

#### **36 Power to obtain information**

- (1) In this section: "**relevant information**" means information about a possible contravention of this Act.
- (2) The Director-General may, by notice in writing served on a person, require the person:
- (a) to give to an authorised officer, orally or in writing signed by the person (or, if the person is a corporation, by a competent officer) and within the time and in the manner specified in the notice,

any relevant information of which the person has knowledge, or

(b) to produce to an authorised officer, in accordance with the notice, any document containing relevant information.

(3) An authorised officer may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.

(4) A person must not, without reasonable excuse:

(a) fail to comply with such a notice to the extent that the person is capable of complying with it, or

(b) in purported compliance with such a notice, give information or an answer to a question, or produce a document, knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

(5) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.

(6) Any information or document obtained from a natural person under this section is not admissible against the person in criminal proceedings other than proceedings for an offence under this section.

Section 34 (4) requires an authorised officer exercising functions under this section to produce his or her identification card if requested to do so.

### **37 Director-General may make "stop work" order**

(1) If the Director-General is of the opinion that a person is contravening, or is about to contravene, this Act, the Director-General may, by notice in writing given to the person, order the person not to carry out the activity concerned.

(2) The order:

(a) takes effect immediately (or from a later date specified in the notice), and

(b) is subject to such conditions as the Director-General may specify in the notice.

(3) The Director-General may vary or revoke the order or the conditions of the order by further notice in writing given to the person subject to the order.

(4) An order under this section remains in force until whichever of the following happens first:

(a) the order is revoked by the Director-General,

(b) the period (if any) for which the order is expressed in the notice to be in force ends,

(c) the period of 2 years from the day on which the order took effect ends.

(5) A person who does not comply with an order in force under this section is guilty of an offence.

Maximum penalty:

(a) in the case of a corporation--2,000 penalty units and 200 penalty units for each day the offence continues, or

(b) in any other case--1,000 penalty units and 100 penalty units for each day the offence continues.

### **38 Directions for remedial work**

(1) If the Director-General is satisfied:

(a) that any native vegetation has been cleared in contravention of this Act, or

(b) that the clearing of native vegetation on any land has caused, or is likely to cause, on or in the vicinity of the land, any soil erosion, land degradation or siltation of any river or lake, or any adverse effect on the environment,

the Director-General may, by notice in writing, direct the landholder, or the person having the control or management of the clearing, to carry out specified work in a specified manner and within a specified time.

(2) Any one or more of the following types of work may be directed to be carried out by a notice under this section:

(a) work to repair any damage caused by the clearing,

(b) work to rehabilitate any land affected by the clearing (including the taking of steps to allow the land to regenerate),

(c) work to ensure that specified land, or any specified river or lake, will not be damaged or detrimentally affected, or further damaged or detrimentally affected, by the clearing.

(3) A direction under this section may be varied or revoked by a further notice.

(4) A person who does not comply with a direction under this section is guilty of an offence. Maximum penalty:

(a) in the case of a corporation--2,000 penalty units and 200 penalty units for each day the offence continues, or

(b) in any other case--1,000 penalty units and 100 penalty units for each day the offence continues.

(5) If a person fails to comply with a direction under this section, the Director-General

may authorise any other person to enter the land and carry out the specified work.

(6) The Director-General may recover the cost of that work from the person given the direction in any court of competent jurisdiction as a debt due by that person to the Crown.

(7) In this section: "**lake**" includes a lagoon, wetland, or other body of still water, whether permanent or temporary. "**river**" includes any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream.

### **39 Appeals under this Division**

(1) A person aggrieved by a decision of the Director-General to make an order, or to give a direction, under this Division may appeal against the decision to the Land and Environment Court within 30 days of the service of the notice of the order or direction.

(2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the decision appealed against.

### **40 Prior notification not required**

The Director-General is not required, before making an order or giving a direction under this Division, to notify any person who may be affected by the order or direction.

## **Division 4 – Civil and criminal proceedings**

### **41 Restraint of contraventions of this Act**

(1) In this section, "**contravention**" includes threatened or apprehended contravention.

(2) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that contravention.

(3) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(4) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(5) If the Court is satisfied that a contravention has occurred, or that a contravention will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the contravention.

### **42 Proceedings for offences**

(1) Proceedings for an offence under this Act or the regulations are to be dealt with summarily before:

- (a) a Local Court, or
- (b) the Land and Environment Court.

(2) The maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations is the maximum monetary penalty provided by this Act in respect of that offence, or 100 penalty units (including any daily penalty), whichever is the lesser.

(3) Proceedings for an offence under this Act or the regulations may be commenced within, but not later than, 2 years after the date on which the offence is alleged to have been committed.

(4) However, proceedings for any such offence may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer.

(5) If subsection (4) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the information or application, unless the contrary is established.

(6) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.

### **43 Penalty notices**

(1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

- (6) The regulations may:
- (a) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (b) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

#### **44 Evidentiary provision**

In any criminal or civil proceedings, the landholder of any land on which native vegetation is cleared is taken to have carried out the clearing unless it is established that:

- (a) the clearing was carried out by another person, and
- (b) the landholder did not cause or permit the other person to carry out the clearing.

This section does not prevent proceedings being taken against the person who actually carried out the clearing.

#### **45 Offences by corporations**

(1) If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:

- (a) the corporation contravened the provision without the knowledge of the person, or
- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
- (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

## **Part 6 – Miscellaneous provisions**

#### **46 Regulation of collection of timber for commercial firewood**

- (1) In this section, "**dead wood**" means any dead tree or part of a dead tree, whether or not:
- (a) it is standing, or
  - (b) it is of an indigenous species.
- (2) The regulations may regulate or prohibit the clearing or the removal of dead wood from any land, by the landholder or any other person, if it is done for the purposes of commercial firewood collection.
- (3) This section is not limited by the objects set out in section 3.

#### **47 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

#### **48 Delegation of functions**

- (1) The Director-General may delegate to an authorised body or person any of the Director-General's functions under this Act other than this power of delegation.
- (2) The Minister may delegate to an authorised body or person:
- (a) any of the Minister's functions under this Act (other than this power of delegation), and
  - (b) any of the Minister's functions under the EPA Act as consent authority in relation to a development application for consent to clear native vegetation.
- (3) In this section, "**authorised body or person**" means:
- (a) a catchment management authority or other government agency, or
  - (b) any statutory officer or member of staff of a government agency.

#### **49 Service of notices**

Any notice under this Act or the regulations that is required to be served or given to a person may be served or given:

- (a) by delivering it personally to the person to whom it is addressed, or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there for the person with some other person, or
- (c) by posting it to the person to whom it is addressed to the person's place of residence or business last known to the person sending the notice.

#### **50 Evidence**

A certificate signed by the Director-General certifying any one or more of the following:

- (a) that a written notice, order or direction purporting to be given under this Act, and a copy of which is set out or annexed to the certificate, was given on a day specified in the certificate,
- (b) that a person was, at a time or during a period specified in the certificate, a landholder,
- (c) that a person was, at a time or during a period specified in the certificate, an authorised officer,
- (d) that any instrument made under this Act was, at a time or during a period specified in the certificate, in force,

is admissible in any proceedings under this Act and is prima facie evidence of the matters so specified.

#### **51 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create an offence punishable by a penalty not exceeding 100 penalty units.

#### **52 Repeals**

- (1) The *Native Vegetation Conservation Act 1997* and any regulation or regional vegetation management plan under that Act are repealed.
- (2) Different days may be appointed for the commencement of this section for the purposes of repealing different provisions of the Act or a regulation or plan on different days.

#### **53 (Repealed)**

#### **54 Savings, transitional and other provisions**

Schedule 3 has effect.

#### **55 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Land excluded from operation of Act**

(Section 5)

### **Part 1 – National park estate and other conservation areas**

#### **1-3 (Repealed)**

#### **4**

Land that is reserved under the *National Parks and Wildlife Act 1974*.

#### **5**

Land that is acquired under section 145 of the *National Parks and Wildlife Act 1974* for the purpose of obtaining land for reservation under that Act or for the purpose of preserving, protecting and preventing damage to Aboriginal objects or Aboriginal places.

#### **6 (Repealed)**

#### **7**

Land that is subject to an interim protection order made under Part 6A of the *National Parks and Wildlife Act 1974*.

#### **8**

Land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies.

#### **9**

Land that is critical habitat, being habitat declared under Part 3 of the *Threatened Species Conservation Act 1995* or under Division 3 of Part 7A of the *Fisheries Management Act 1994*.

#### **10**

Lord Howe Island.

## **Part 2 – State forestry land**

### **11**

Land that is a State forest, flora reserve or timber reserve under the *Forestry Act 1916*.

### **12**

Land that is acquired under section 15 of the *Forestry Act 1916* for the purposes of a State forest (not being any such land that is acquired for the purpose of a timber plantation).

## **Part 3 – Urban areas**

### **13**

The following local government areas:

Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canterbury, Concord, Drummoyne, Fairfield, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, South Sydney, Strathfield, Sutherland Shire, Sydney City, Warringah, Waverley, Willoughby, Woollahra.

### **14**

Land within a zone designated "residential" (but not "rural-residential"), "village", "township", "industrial" or "business" under an environmental planning instrument or, having regard to the purpose of the zone, having the substantial character of a zone so designated, not being land to which a property vegetation plan applies.

### **15**

The Director-General may, for the purposes of resolving any dispute, determine whether a zone not referred to in clause 14 has the substantial character of such a zone.

## **Schedule 2 (Repealed)**

## **Schedule 3 Savings, transitional and other provisions**

(Section 54)

### **Part 1 – Preliminary**

#### **1 Savings and transitional regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:

    (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

    (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 – Provisions consequent on the enactment of this Act**

#### **2 Definition**

In this Part:

"the former Act" means the *Native Vegetation Conservation Act 1997*.

#### **3 Development consents under former Act**

A development consent for clearing granted in accordance with the former Act (before its repeal) by the Minister administering that Act is taken to be a development consent granted in accordance with this Act.

#### 4 State protected land--transitional arrangements

- (1) In this clause: "**State protected land**" means State protected land within the meaning of the former Act, immediately before its repeal.
- (2) The provisions of the former Act continue to have effect (despite its repeal) to and in relation to State protected land until a State environmental planning policy under the EPA Act otherwise provides.
- (3) This clause is subject to any regulation made under clause 1.

#### Historical notes

The following abbreviations are used in the Historical notes:

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

Table of amending instruments *Native Vegetation Act 2003 No 103*. Second reading speech made: Legislative Assembly, 12.11.2003; Legislative Council, 4.12.2003. Assented to 11.12.2003. Date of commencement, 1.12.2005, sec 2 and GG No 140 of 18.11.2005, p 9404. This Act has been amended as follows:

2004	No 88	<i>Threatened Species Legislation Amendment Act 2004</i> . Assented to 30.11.2004. Date of commencement of Sch 3.3, 1.12.2005, sec 2 (1) and GG No 142 of 25.11.2005, p 9657.
	No 91	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2004</i> . Assented to 10.12.2004. Date of commencement of Sch 2.55, assent, sec 2 (2).
	(729)	<i>Native Vegetation Regulation 2005</i> . GG No 140 of 18.11.2005, p 9419. Date of commencement, 1.12.2005, cl 2.
2006	No 58	<i>Statute Law (Miscellaneous Provisions) Act 2006</i> . Assented to 20.6.2006. Date of commencement of Sch 4, assent, sec 2 (1).

#### Table of amendments

Sec 14	Am 2004 No 88, Sch 3.3.
Sec 23	Am 2004 No 91, Sch 2.55.
Sec 53	Rep 2006 No 58, Sch 4.
Sch 1	Am 2005 (729), cl 44.
Sch 2	Rep 2006 No 58, Sch 4.