

Native Vegetation Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Natural Resources Commission Bill 2003*.

Overview of Bill

The objects of this Bill 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 the clearing of remnant native vegetation and protected regrowth unless it leads to better 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.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 states the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 provides that the proposed Act does not apply certain land as described in Schedule 1, being national park estate and other conservation areas, State forestry land and urban areas.

Part 2 Key concepts

Clause 6 defines the meaning of **native vegetation**, being indigenous trees, understorey plants, groundcover and plants occurring in a wetland.

Clause 7 defines the meaning of **clearing** native vegetation, which includes any act that is intended or reasonably likely to kill native vegetation.

Clause 8 defines the meaning of **broadscale clearing** of native vegetation, being the clearing of any remnant native vegetation or protected regrowth.

Clause 9 defines the meaning of **remnant native vegetation**, being any native vegetation other than regrowth, and **regrowth**, being native vegetation that has regrown since a certain date (other than any native vegetation that has regrown following unlawful clearing or following clearing caused by bushfire, flood, or drought or other natural cause).

Clause 10 defines the meaning of **protected regrowth**, being any native vegetation that is regrowth and that is identified as protected regrowth for the purposes of the proposed Act in certain instruments, including a property vegetation plan, an environmental planning instrument, a prescribed natural resource management plan or an interim protection order made by the Minister under the proposed section.

Clause 11 defines the meaning of **routine agricultural management activities**, which include sustainable grazing of groundcover, the construction, operation and maintenance of certain rural infrastructure, the collection of firewood (except for commercial purposes), the harvesting of native vegetation planted for commercial purposes, the lopping of native vegetation for stock fodder

during drought, traditional Aboriginal cultural activities (except commercial activities), the maintenance of public utilities and any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property. The clause permits regulations to extend, limit or vary the activities referred to in the clause.

Part 3 Clearing native vegetation

Division 1 Control of clearing

Clause 12 provides that native vegetation to which the proposed Act applies must not be cleared except in accordance with a development consent granted by the Minister in accordance with the proposed Act or a property vegetation plan. The clause does not apply to permitted or excluded clearing under Division 2 or 3.

Clause 13 provides that the Minister is to be the consent authority for any development application made under the *Environmental Planning and Assessment Act 1979 (EPA Act)* for any clearing of native vegetation that requires development consent because of the proposed Act.

Clause 14 provides for the granting of development consent under Part 4 of the EPA Act for the clearing of native vegetation. Development consent for broadscale clearing is not to be granted unless the Minister is satisfied that the clearing concerned will improve or maintain environmental outcomes.

Clause 15 permits regulations to be made to prescribe the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes, the matters required to be considered under Part 4 of the EPA Act and the keeping of a public register by the Director-General relating to development consents.

Clause 16 provides that Part 5 of the EPA Act does not apply to any clearing carried out in accordance with the proposed Part.

Division 2 Permitted clearing

Clause 17 describes the application of the proposed Division which is to set out the types of clearing of native vegetation that are permitted without a development consent or property vegetation plan.

Clause 18 permits the clearing of native vegetation that is only regrowth, but not protected regrowth.

Clause 19 permits clearing for routine agricultural management activities.

Clause 20 permits the clearing of groundcover that contains less than 50% of indigenous species of vegetation.

Division 3 Excluded clearing

Clause 21 provides that the proposed Act does not apply to certain types of clearing of native vegetation authorised or carried out under certain other Acts.

Part 4 Property vegetation plans

Clause 22 allows landholders to submit a draft property vegetation plan to the Director-General for approval by the Minister under the proposed Part.

Clause 23 provides that a property vegetation plan has effect only if it is approved by the Minister.

Clause 24 permits a property vegetation plan to make provision for native vegetation management on the land to which it applies, including clearing native vegetation and the identification of regrowth.

Clause 25 provides that the Minister is not to approve a property vegetation plan that proposes broadscale clearing of native vegetation unless the clearing concerned will improve or maintain environmental outcomes.

Clause 26 provides for the duration of a property vegetation plan and allows such a plan to be varied with the approval of the Minister and to be terminated by the Minister by notice to the landholder.

Clause 27 permits a landholder and other persons who have a prescribed interest

in land to which a property vegetation plan applies to register the plan in the General Register of Deeds. A registered plan is binding on the successors in title to the landholder and those persons with a prescribed interest.

Clause 28 enables regulations to be made with respect to property vegetation plans.

Part 5 Enforcement

Division 1 Preliminary

Clause 29 applies the proposed Part to contraventions of the Act, the former Act, the regulations, property vegetation plans, development consents and other orders and directions.

Clause 30 provides for the appointment of authorised officers to exercise certain functions under the proposed Act.

Division 2 Investigation

Clause 31 permits an authorised officer (with the permission of the landholder or the Director-General) to enter land for the purpose of determining whether a person is contravening or has contravened the proposed Act and enables the authorised officer to exercise certain investigatory powers.

Division 3 Director-General's powers

Clause 32 provides a power for the Director-General to require a person to give information or produce a document.

Clause 33 permits the Director-General to order a person not to carry out a certain activity if the Director-General is of the opinion that the person is contravening, or is about to contravene, the proposed Act.

Clause 34 permits the Director-General to give directions for remedial work to be carried out by certain persons if the Director-General is satisfied that any native vegetation has been cleared in contravention of the proposed Act or that the clearing of native vegetation is likely to have any adverse effect on the environment.

Clause 35 provides for appeals to the Land and Environment Court in relation to a decision of the Director-General to make an order, or to give a direction, under the proposed Division.

Clause 36 provides that the Director-General is not required, before making an order or giving a direction, to notify any person who may be affected by the order or direction.

Division 4 Civil and criminal proceedings

Clause 37 provides that any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of the proposed Act.

Clause 38 provides that proceedings for an offence against the proposed Act or the regulations are to be dealt with summarily before a Local Court or the Land and Environment Court within 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer.

Clause 39 provides that an authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under the proposed Act or the regulations, being an offence prescribed by the regulations.

Clause 40 provides that in any criminal or civil proceedings under the proposed Act relating to the clearing of native vegetation on any land, the onus of proof that the clearing is excluded from or permitted by the proposed Act lies on the person who seeks to rely on the exclusion or permission. The clause also deems the landholder to be responsible for any clearing of native vegetation unless it is established that it was cleared by another person and the landholder did not cause or permit the person to do so.

Clause 41 provides that if a corporation contravenes a provision of the proposed

Act, each director or other person who is concerned in the management of the corporation is taken to have contravened the same provision.

Part 6 Miscellaneous provisions

Clause 42 provides that the proposed Act binds the Crown.

Clause 43 provides for the delegation of functions by the Director-General and the Minister.

Clause 44 provides for the service of notices under the proposed Act.

Clause 45 permits a certificate signed by the Director-General to be admissible as evidence of certain matters in any proceedings under the proposed Act.

Clause 46 contains the general regulation-making power.

Clause 47 provides for the repeal of the *Native Vegetation Conservation Act 1997* and any regulation or regional vegetation management plan under that Act.

Clause 48 is a formal provision giving effect to the Schedule of amendments of other Acts.

Clause 49 is a formal provision giving effect to the Schedule of savings and transitional provisions.

Clause 50 provides for the standard review of the proposed Act.

Schedule 1 Land excluded from operation of Act

Schedule 1 sets out the land that is excluded from the operation of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2 contains consequential amendments to other Acts.

Schedule 3 Savings, transitional and other provisions

Schedule 3 enables savings and transitional regulations to be made consequent on the enactment of the proposed Act and contains other specific savings and transitional provisions.