



New South Wales

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.



New South Wales

Native Vegetation Bill 2003

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New South Wales

Native Vegetation Bill 2003

No , 2003

A Bill for

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

The Legislature of New South Wales enacts:

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 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.

4 Definitions

- (1) In this Act:

authorised officer means a person appointed under section 30.

broadscale clearing—see section 8.

catchment management authority means a catchment management authority established under the *Catchment Management Authorities Act 2003*.

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- clearing*** native vegetation—see section 7. 1
- development consent*** means development consent under Part 4 of the EPA Act. 2
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- Director-General*** means the Director-General of the Department of Infrastructure, Planning and Natural Resources. 4
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- environmental planning instrument*** has the same meaning as in the EPA Act. 6
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- EPA Act*** means the *Environmental Planning and Assessment Act 1979*. 8
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- exercise*** a function includes perform a duty. 10
- function*** includes a power, authority or duty. 11
- government agency*** means any public or local authority, and includes: 12
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- (a) a government department, State owned corporation and council of a local government area, and 14
15
 - (b) the head of a government agency. 16
- groundcover*** means any type of herbaceous vegetation. 17
- 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. 18
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- native vegetation***—see section 6. 21
- property vegetation plan*** means a property vegetation plan that has been approved under Part 4. 22
23
- protected regrowth***—see section 10. 24
- regrowth***—see section 9. 25
- remnant native vegetation***—see section 9. 26
- routine agricultural management activities***—see section 11. 27
- wetland*** includes any shallow body of water (such as a marsh, billabong, swamp or sedgeland) that is: 28
29
- (a) inundated cyclically, intermittently or permanently with water, and 30
31
 - (b) vegetated with wetland plant communities. 32
- (2) Notes in the text of this Act do not form part of this Act. 33
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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.

Note. 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	1
6	Meaning of native vegetation	2
(1)	For the purposes of this Act, <i>native vegetation</i> means any of the following types of indigenous vegetation:	3
(a)	trees (including any sapling or shrub, or any scrub),	4
(b)	understorey plants,	5
(c)	groundcover (being any type of herbaceous vegetation),	6
(d)	plants occurring in a wetland.	7
(2)	Vegetation is <i>indigenous</i> if it is of a species of vegetation, or if it comprises species of vegetation, that existed in the State before European settlement.	8
(3)	For the purposes of this Act, <i>native vegetation</i> does not include any mangroves, seagrasses or any other type of marine vegetation to which section 205 of the <i>Fisheries Management Act 1994</i> applies.	9
7	Meaning of clearing native vegetation	10
	For the purposes of this Act, <i>clearing</i> native vegetation means any one or more of the following:	11
(a)	cutting down, felling, thinning, logging or removing native vegetation,	12
(b)	killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation,	13
(c)	any other act that is intended or reasonably likely to kill native vegetation.	14
8	Meaning of broadscale clearing	15
	For the purposes of this Act, <i>broadscale clearing</i> of native vegetation means the clearing of any remnant native vegetation or protected regrowth.	16
	Note. See sections 14 (3) and 25 and the provisions of sections 17–21.	17
9	Meanings of remnant native vegetation and regrowth	18
(1)	For the purposes of this Act, <i>remnant native vegetation</i> means any native vegetation other than regrowth.	19
(2)	For the purposes of this Act, <i>regrowth</i> means any native vegetation that has regrown since the earlier of the following dates:	20

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- (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 provided in a property vegetation plan for the
purposes of this definition (being a date based on existing
rotational farming practices).

Regrowth does not include any native vegetation that has regrown
following unlawful clearing or following clearing caused by
bushfire, flood, or 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) 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.
- (3) 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.
- (4) 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) sustainable grazing of groundcover that is not likely to result
in the substantial long-term decline in the structure and
composition of the native vegetation,
 - (b) the construction, operation and maintenance of the following
rural infrastructure:
 - (i) dams,

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| <ul style="list-style-type: none"> (ii) permanent fences with a cleared buffer on both sides of up to 20 metres in the Western Division and 10 metres in other areas, (iii) buildings with a cleared curtilage of up to 2 hectares, (iv) air strips in the Western Division with cleared buffers required to meet aviation industry requirements, (v) windmills or bores with cleared buffers of not more than 3 metres, (vi) stockyards with cleared buffers of not more than 3 metres, (vii) farm roads with a width (including buffers) of not more than 5 metres, (c) the collection of firewood (except for commercial purposes), (d) the harvesting or other clearing of native vegetation planted for commercial purposes, (e) the lopping of native vegetation for stock fodder (including uprooting mulga in the Western Division) in areas officially declared to be drought affected, (f) traditional Aboriginal cultural activities (except commercial activities), (g) 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), (h) any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property. <p>(2) The regulations may extend, limit or vary the activities that are routine agricultural management activities, and subsection (1) is to be construed accordingly.</p> | 1
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Part 3	Clearing native vegetation	1
Division 1	Control of clearing	2
12	Clearing requiring approval	3
(1)	Native vegetation must not be cleared except in accordance with:	4
(a)	a development consent granted in accordance with this Act, or	5
(b)	a property vegetation plan.	6
(2)	This section is subject to Divisions 2 and 3.	7
(3)	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.	8 9 10 11
	Note. Clearing that is subject to this Part includes (subject to permitted or excluded clearing) clearing of invasive scrub for existing land use, clearing to intensify or change land use, clearing for commercial firewood, clearing to maintain long term rotational regimes and clearing of remnant native vegetation. Sections 14 (3) and 25 (2) apply to any such broadscale clearing.	12 13 14 15 16
13	Minister is consent authority for clearing	17
	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.	18 19 20 21
14	Granting of development consent	22
(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.	23 24 25
(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.	26 27 28 29
(3)	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.	30 31 32

15 Regulations

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.

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.

Division 2 Permitted clearing

17 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.

18 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.

19	Clearing for routine agricultural management activities permitted	1
(1)	Clearing of native vegetation only for the purposes of, and to the minimum extent necessary for, routine agricultural management activities is permitted.	2 3 4
(2)	Any such clearing for a work, building or structure is not permitted before the grant of any statutory approval or other authority required for the work, building or structure.	5 6 7
(3)	This section is subject to any exclusion in a property vegetation plan.	8 9
20	Clearing of certain groundcover permitted	10
	The clearing of native vegetation that comprises only groundcover is permitted if:	11 12
(a)	the vegetation comprises less than 50% of indigenous species of vegetation, and	13 14
(b)	that percentage is calculated in accordance with the regulations.	15 16
Division 3	Excluded clearing	17
21	Legislative exclusions	18
	This Act does not apply to the following types of clearing of native vegetation:	19 20
(a)	any clearing authorised under the <i>State Emergency and Rescue Management Act 1989</i> in relation to an emergency within the meaning of that Act,	21 22 23
(b)	any clearing authorised under the <i>Rural Fires Act 1997</i> in relation to any emergency fire fighting act within the meaning of that Act,	24 25 26
(c)	any clearing carried out in accordance with a bush fire management plan under the <i>Rural Fires Act 1997</i> ,	27 28
(d)	any clearing authorised under the <i>Noxious Weeds Act 1993</i> ,	29
(e)	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 <i>Threatened Species Conservation Act 1995</i> ,	30 31 32 33
(f)	any clearing authorised under a licence issued under Division 1 of Part 6 of the <i>Threatened Species Conservation Act 1995</i> ,	34 35

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| (g) | 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, | 1
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| (h) | 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, | 4
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| (i) | 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, | 7
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| (j) | any clearing authorised to be carried out under Division 3 or 4 of Part 7 of the <i>Fisheries Management Act 1994</i> , | 11
12 |
| (k) | any clearing authorised under a licence issued under Division 6 of Part 7A of the <i>Fisheries Management Act 1994</i> , | 13
14 |
| (l) | any clearing carried out in accordance with a licence issued under section 131 of the <i>National Parks and Wildlife Act 1974</i> , | 15
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| (m) | any clearing authorised under the <i>Mining Act 1992</i> , | 18 |
| (n) | any clearing authorised under the <i>Petroleum (Onshore) Act 1991</i> , | 19
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| (o) | any clearing that consists of plantation operations within the meaning of the <i>Plantations and Reafforestation Act 1999</i> on an authorised plantation in accordance with any conditions of the authorisation and with the Plantations and Reafforestation Code under that Act, | 21
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| (p) | any clearing that involves the removal or lopping of any tree or other vegetation in accordance with section 88 of the <i>Roads Act 1993</i> , | 26
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| (q) | any clearing carried out in accordance with a consent under Division 3 of Part 9 of the <i>Roads Act 1993</i> , | 29
30 |
| (r) | any clearing carried out in accordance with a permit under Part 3A of the <i>Rivers and Foreshores Improvement Act 1948</i> , | 31
32 |
| (s) | any clearing associated with the control of burrowing or den-making animals that is authorised under the <i>Rural Lands Protection Act 1998</i> , | 33
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| (t) | any clearing for the purpose of a survey under the <i>Surveying Act 2002</i> that is undertaken by or under the direction of a surveyor, | 36
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Clause 21 Native Vegetation Bill 2003

Part 3 Clearing native vegetation

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- (u) any clearing carried out in accordance with a licence, permit,
 authority or approval under the *Water Act 1912* or the *Water*
 Management Act 2000.

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Part 4	Property vegetation plans	1
22	Landholders may submit plans	2
(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.	3 4 5
(2)	A draft plan cannot be submitted for approval without the consent in writing of:	6 7
(a)	all landholders of land to which the plan applies, and	8
(b)	any person who has an interest in the land prescribed by the regulations.	9 10
(3)	A draft plan is to comply with any other requirements prescribed by the regulations.	11 12
23	Plans require Ministerial approval	13
	A property vegetation plan has effect only if it is approved by the Minister.	14 15
	Note. Section 43 permits the Minister to delegate this function to a catchment management authority or other government agency.	16 17
24	Content of plans	18
	A property vegetation plan may make provision for native vegetation management on the land to which it applies, including the following:	19 20 21
(a)	proposals for clearing native vegetation on the land (called a “development PVP”),	22 23
(b)	the identification of native vegetation on the land as regrowth (called a “continuing use PVP”),	24 25
(c)	proposals relating to the carrying out or funding of native vegetation management activities by catchment management authorities or other bodies (called an “incentive PVP”),	26 27 28
(d)	provisions excluding clearing for routine agricultural management activities from being permitted clearing,	29 30
(e)	such other provisions as are prescribed by the regulations.	31
25	Plans proposing broadscale clearing	32
(1)	This section applies to a property vegetation plan that proposes broadscale clearing of native vegetation.	33 34

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- (2) The Minister is not to approve such a plan unless the clearing concerned will improve or maintain environmental outcomes.

26 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.
- (3) The regulations may make provision for reviews of property vegetation plans after 10 years or another specified period.
- (4) A property vegetation plan continues to have effect despite any change in the landholders of the land concerned.

27 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.

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- (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. 1
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- (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. 4
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- (6) In this section: 7
- 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. 8
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28 Regulations 12

The regulations may make provision for or with respect to property vegetation plans, including the following: 13
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- (a) matters to which the Minister must or may have regard in determining whether to approve such a plan, 15
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- (b) the circumstances in which clearing is to be regarded as improving or maintaining environmental outcomes for the purposes of any such plan, 17
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- (c) the circumstances in which any such plan is not to be approved, 20
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- (d) the form and content of any such plans, including the evidence required to accompany a plan which identifies vegetation as regrowth. 22
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Part 5 Enforcement

Division 1 Preliminary

29 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*.

30 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

31 Powers of entry and inspection

- (1) An authorised officer may enter land for the purpose of:
 - (a) determining whether a person is contravening or has contravened this Act, or

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| <p>(b) exercising any function conferred by this section,</p> <p>but only with the consent of the landholder or the specific authority of the Director-General.</p> <p>(2) An authorised officer may, for the purposes of determining whether a person is contravening or has contravened this Act:</p> <p style="padding-left: 20px;">(a) conduct such investigations, make such inquiries, examinations and inspections, and take such samples and recordings (including photographs), as the officer considers necessary, and</p> <p style="padding-left: 20px;">(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</p> <p style="padding-left: 20px;">(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.</p> <p>(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.</p> <p>(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.</p> <p>(5) A person who, without reasonable excuse:</p> <p style="padding-left: 20px;">(a) obstructs an authorised officer in the exercise of the officer's functions under this section, or</p> <p style="padding-left: 20px;">(b) fails or refuses to comply with a requirement made by an authorised officer under this section,</p> <p>is guilty of an offence.</p> <p>Maximum penalty: 100 penalty units.</p> <p>(6) In this section, obstruct includes delay, threaten or hinder.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> |
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Division 3 Director-General's powers

32 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.

33 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—1,000 penalty units and 100 penalty units for each day the offence continues, or
 - (b) in any other case—500 penalty units and 50 penalty units for each day the offence continues.

34 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

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- (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—1,000 penalty units and 100 penalty units for each day the offence continues, or
 - (b) in any other case—500 penalty units and 50 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.

35 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.

36 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

37 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.

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- (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.

38 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.

39 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.

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| (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. | 1
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| (3) | A penalty notice may be served personally or by post. | 6 |
| (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. | 7
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| (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. | 10
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| (6) | The regulations may: | 14 |
| | (a) prescribe the amount of penalty payable for the offence if dealt with under this section, and | 15
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| | (b) prescribe different amounts of penalties for different offences or classes of offences. | 17
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| (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. | 19
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| (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. | 22
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| 40 | Onus of proof | 25 |
| (1) | In any criminal or civil proceedings in relation to a contravention of this Act, if it is established that native vegetation has been cleared, the onus of proof that the clearing is excluded from or permitted by this Act lies on the person who seeks to rely on the exclusion or permission. | 26
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| (2) | In any criminal proceedings in relation to a contravention of this Act, the onus of proof that the person had a reasonable excuse (as referred to in the relevant provision) lies on the person charged with the offence. | 31
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| (3) | 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: | 35
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- (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 subsection does not prevent proceedings being taken against the person who actually carried out the clearing.

41 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	1
42	Act binds Crown	2
	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.	3 4 5
43	Delegation of functions	6
(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.	7 8 9
(2)	The Minister may delegate to an authorised body or person:	10
(a)	any of the Minister's functions under this Act (other than this power of delegation), and	11 12
(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.	13 14 15
(3)	In this section, <i>authorised body or person</i> means:	16
(a)	a catchment management authority or other government agency, or	17 18
(b)	any statutory officer or member of staff of a government agency.	19 20
44	Service of notices	21
	Any notice under this Act or the regulations that is required to be served or given to a person may be served or given:	22 23
(a)	by delivering it personally to the person to whom it is addressed, or	24 25
(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	26 27 28
(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.	29 30 31

45 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.

46 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.

47 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.

48 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

49 Savings, transitional and other provisions

Schedule 3 has effect.

50 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.

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Schedule 1 Land excluded from operation of Act 1
(Section 5) 2

Part 1 National park estate and other conservation areas 3
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| 1 | Land to which <i>State Environmental Planning Policy No 14—Coastal Wetlands</i> applies. | 5
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| 2 | Land to which <i>State Environmental Planning Policy No 26—Littoral Rainforests</i> applies. | 7
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| 3 | Land that is reserved under the <i>National Parks and Wildlife Act 1974</i> . | 9
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| 4 | Land that is acquired under section 145 of the <i>National Parks and Wildlife Act 1974</i> 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. | 11
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| 5 | Land that is subject to a conservation agreement entered into under Division 12 of Part 4 of the <i>National Parks and Wildlife Act 1974</i> . | 15
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| 6 | Land that is subject to an interim protection order made under Part 6A of the <i>National Parks and Wildlife Act 1974</i> . | 17
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| 7 | Land to which an interim heritage order or listing on the State Heritage Register under the <i>Heritage Act 1977</i> applies. | 19
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| 8 | Land that is critical habitat, being habitat declared under Part 3 of the <i>Threatened Species Conservation Act 1995</i> or under Division 3 of Part 7A of the <i>Fisheries Management Act 1994</i> . | 21
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| 9 | Lord Howe Island. | 24 |

Part 2 State forestry land 25

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| 10 | Land that is a State forest, flora reserve or timber reserve under the <i>Forestry Act 1916</i> . | 26
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11	Land that is acquired under section 15 of the <i>Forestry Act 1916</i> for the purposes of a State forest (not being any such land that is acquired for the purpose of a timber plantation).	1 2 3
Part 3	Urban areas	4
12	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, Wollongong, Woollahra.	5 6 7 8 9 10 11 12 13
13	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.	14 15 16 17 18

Schedule 2 Amendment of other Acts

(Section 48)

2.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Native Vegetation Act 2003, section 39

2.2 Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals

Omit section 17 (g). Insert instead:

(g) appeals under section 10 (4) or 35 of the *Native Vegetation Act 2003*, and

[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Omit section 20 (1) (de). Insert instead:

(de) proceedings under section 37 of the *Native Vegetation Act 2003*,

[3] Section 20 (3) (a)

Omit “*Native Vegetation Conservation Act 1997*”.

Insert instead “*Native Vegetation Act 2003*”.

Schedule 3 Savings, transitional and other provisions

(Section 49)

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) a State environmental planning policy under the EPA Act otherwise provides, or

(b) the first anniversary of the repeal of the former Act, whichever first occurs.

(3) This clause is subject to any regulation made under clause 1.