



New South Wales

Local Land Services Amendment Bill 2016

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Biodiversity Conservation Bill 2016*.

Overview of Bill

The object of this Bill is to repeal the *Native Vegetation Act 2003* and to amend the *Local Land Services Act 2013* to deal with native vegetation land management in rural areas.

This Bill, together with the cognate *Biodiversity Conservation Bill 2016*, is proposed to be enacted in response to the Final Report of the Independent Biodiversity Legislation Review Panel provided to the Minister for the Environment on 18 December 2014. Public consultation drafts were released on 3 May 2016 with a range of explanatory and other related material that can be accessed at www.landmanagement.nsw.gov.au. This Bill and the cognate Bill have been revised following consideration of submissions made in response to the consultation drafts.

Outline of provisions

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 repeals the *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2013*.

Schedule 1 Amendment of Local Land Services Act 2013 No 51

Schedule 1 [1] amends the object of the Act of ensuring the proper management of natural resources in the social, economic and environmental interests of the State so as to refer specifically to acting consistently with the principles of ecologically sustainable development.

Schedule 1 [2] confers on Local Land Services the new functions with respect to native vegetation land management in rural areas conferred by proposed Part 5A and Schedule 5A.

Schedule 1 [3] inserts proposed Part 5A into the Act, which deals with native vegetation land management in rural areas.

Proposed Division 1 contains preliminary provisions. The proposed Part applies to areas of the State other than urban areas (where proposed *State Environmental Planning Policy (Urban Vegetation) 2017* will deal with the protection of trees and other vegetation) and other than the national park estate, certain other conservation areas and State forestry land. The proposed Division defines words and expressions used in the proposed Part. **Native vegetation** is broadly defined to mean any tree, understorey plant, groundcover or wetland plant (other than marine vegetation) native to New South Wales—the definition extends to certain dead or non-native plants that are situated on land designated as category 2-vulnerable regulated land. A **regulated rural area** is defined as any part of the State to which the proposed Part applies that is designated as category 2-regulated land (including category 2-vulnerable regulated land). The **Environment Agency Head** is defined as the Chief Executive of the Office of Environment and Heritage.

Proposed Division 2 provides for the designation and categorisation of areas of the State for the purposes of the proposed Part. A **native vegetation regulatory map** prepared and published by the Environment Agency Head is to designate the areas of the State:

- (a) where the clearing of native vegetation is not regulated under the proposed Part (**category 1-exempt land**), and
- (b) where the clearing of native vegetation is regulated under the proposed Part (**category 2-regulated land**), and
- (c) where the clearing of native vegetation is regulated under the proposed Part but is subject to additional restrictions because of its vulnerability (**category 2-vulnerable regulated land**).

The proposed Division sets out the criteria for each category of designation. During a transitional period before the relevant native vegetation regulatory maps are prepared and published, the proposed Part will operate on the basis of the appropriate categories determined by reference to the criteria on which the maps are to be prepared. The proposed Division also provides for the determinations that may be made by the Environment Agency Head for the purposes of the mapping of land under the proposed Division and provides for the re-categorisation of mapped land and reviews of and judicial appeals against categorisation and re-categorisation decisions.

Proposed Division 3 deals with the regulation of the clearing of native vegetation in regulated rural areas. **Proposed section 60N** makes it an offence for a person to clear native vegetation in a regulated rural area unless the person establishes:

- (a) that the clearing is for an allowable activity authorised under proposed Schedule 5A, or
- (b) that the clearing is authorised by a land management (native vegetation) code under proposed Division 5, or
- (c) that the clearing is authorised by an approval of the Native Vegetation Panel under proposed Division 6, or
- (d) that the clearing is authorised under other legislation as set out in **proposed section 60O**.

Proposed section 60P provides that local environmental plans under the *Environmental Planning and Assessment Act 1979* (other than mandatory provisions of the standard instrument under that

Act) may not require development consent only for the clearing of native vegetation in an area of the State to which the proposed Part applies.

Proposed Division 4 provides that proposed Schedule 5A sets out the clearing of native vegetation in regulated rural areas for allowable activities that is authorised without any approval or other authority under the proposed Part. The proposed Division enables regulations to amend proposed Schedule 5A. The proposed Division makes clear that it does not authorise clearing or other activities without obtaining any authority required by or under, or in contravention of, other Acts.

Proposed Division 5 contains provisions with respect to the clearing of native vegetation authorised under land management (native vegetation) codes. **Proposed section 60S** provides that clearing in a regulated rural area is authorised without any approval or other authority under the proposed Part if it is clearing carried out by or on behalf of the landholder in accordance with a land management (native vegetation) code. **Proposed sections 60T–60W** make provision relating to the preparation, making, amendment and repeal of codes by the Minister administering the Act with the concurrence of the Minister administering the proposed *Biodiversity Conservation Act 2016* (including public consultation on proposed codes). **Proposed section 60X** requires a landholder to give notice to Local Land Services of any clearing that is authorised by a code (unless the landholder is exempt by the code from giving the notice). **Proposed sections 60Y–60ZB** deal with the issue by Local Land Services of certificates relating to code compliance (including voluntary or mandatory certificates confirming that clearing may be lawfully carried out and certificates authorising minor variations of a code). **Proposed section 60ZC** contains provisions relating to vegetation set aside areas required under certain codes when clearing is carried out in reliance on the code. Existing and future landholders will have obligations to maintain the set aside areas once established and registered on a public register kept by Local Land Services.

Proposed Division 6 deals with the approval of the clearing of native vegetation that is not otherwise authorised under the proposed Part. **Proposed section 60ZE** provides for the establishment of a specialist 3 member Native Vegetation Panel, having the function of determining applications under the proposed Division for approval to clear native vegetation for a purpose for which planning approval is not required. The Panel is generally not subject to the control or direction of the Minister. **Proposed section 60ZF** sets out the grounds for granting or refusing applications for approvals and the conditions that may be imposed on approvals. Approvals cannot be granted if the clearing is assessed as having serious and irreversible impacts on biodiversity values. **Proposed section 60ZG** requires an applicant for an approval to obtain a biodiversity development assessment report under the proposed *Biodiversity Conservation Act 2016* in respect of the proposed clearing and makes provision for the retirement of biodiversity credits to offset the residual impact of the clearing after proposed measures to avoid or minimise those impacts. **Proposed sections 60ZH–60ZK** provide for the making of regulations with respect to applications and approvals, the modification of approvals and appeals against approval decisions. **Proposed section 60ZL** enables a SEPP to apply the proposed Division to approvals for clearing in certain areas that are not regulated rural areas under the proposed Part.

Proposed Division 7 makes provision with respect to miscellaneous matters, including the enforcement of the proposed Part under the proposed *Biodiversity Conservation Act 2016*, annual reporting by Local Land Services on rates of allowable clearing, the establishment of public information registers containing information about notices, certificates, approvals and applications under the proposed Part and the making of regulations under the proposed Part.

Schedule 1 [4] makes a consequential amendment in relation to provisions of the Act relating to timber on controlled travelling stock reserves.

Schedule 1 [5] makes a consequential amendment in relation to the exclusion of protected animals and threatened species from the operation of pest control orders under the Act.

Schedule 1 [6] and [7] provide for the 5-year review of the proposed Part and Schedules in conjunction with the review of the proposed *Biodiversity Conservation Act 2016*.

Schedule 1 [8] inserts proposed Schedule 5A, which sets out the clearing of native vegetation for allowable activities that is authorised without any other approval under proposed Part 5A on category 2-regulated land. **Proposed section 60R** enables regulations made under the proposed Part to amend the proposed Schedule.

Proposed Part 1 contains preliminary provisions with respect to the application and interpretation of the proposed Schedule.

Proposed Part 2 sets out the clearing of native vegetation that is generally authorised on land in regulated rural areas. This includes clearing to remove or reduce an imminent risk of serious personal injury or damage to property, clearing to obtain timber for the construction of rural infrastructure, clearing to obtain firewood, clearing that is exempt farm forestry under the *Plantations and Reafforestation Act 1999*, clearing of planted native vegetation, clearing for a non-commercial traditional Aboriginal cultural activity, clearing for certain environmental protection works, public works, gravel pits, telecommunications infrastructure, privately owned power lines and airstrips, clearing for the maintenance of electricity transmission infrastructure, clearing during sustainable grazing and clearing for a firebreak in the Western Division of the State.

Proposed Part 3 sets out the maximum distances of clearing of native vegetation that are authorised for rural infrastructure. A building, structure or work is *rural infrastructure* if it is used for the purposes of, or in connection with, an activity that is being carried out in a regulated rural area and does not require planning approval.

Proposed Part 4 sets out the only clearing of native vegetation (and of dead and non-native vegetation) that is authorised on category 2-vulnerable regulated land. The clearing of native vegetation on land that is shown on the native vegetation regulatory map as protected riparian land is subject to proposed clause 35 (and the other Parts of the proposed Schedule authorising clearing for allowable activities do not apply to the land). Clearing on land that is shown on the native vegetation regulatory map as steep or highly erodible land, or on former State protected land under the *Native Vegetation Act 2003*, is subject to relevant limitations applying under that Act in relation to State protected land before the commencement of the proposed Act.

Schedule 1 [9] inserts proposed Schedule 5B, which provides for the membership and procedure of the Native Vegetation Panel.

Schedule 1 [10] omits redundant definitions of *fauna*, *protected fauna* and *threatened species*.

Savings and transitional provisions

Schedule 9 to the proposed *Biodiversity Conservation Act 2016* provides for savings and transitional provisions (including savings and transitional regulations) relating to the repeals and amendments made by this Bill (including the preservation of the operation of property vegetation plans under the *Native Vegetation Act 2003*).