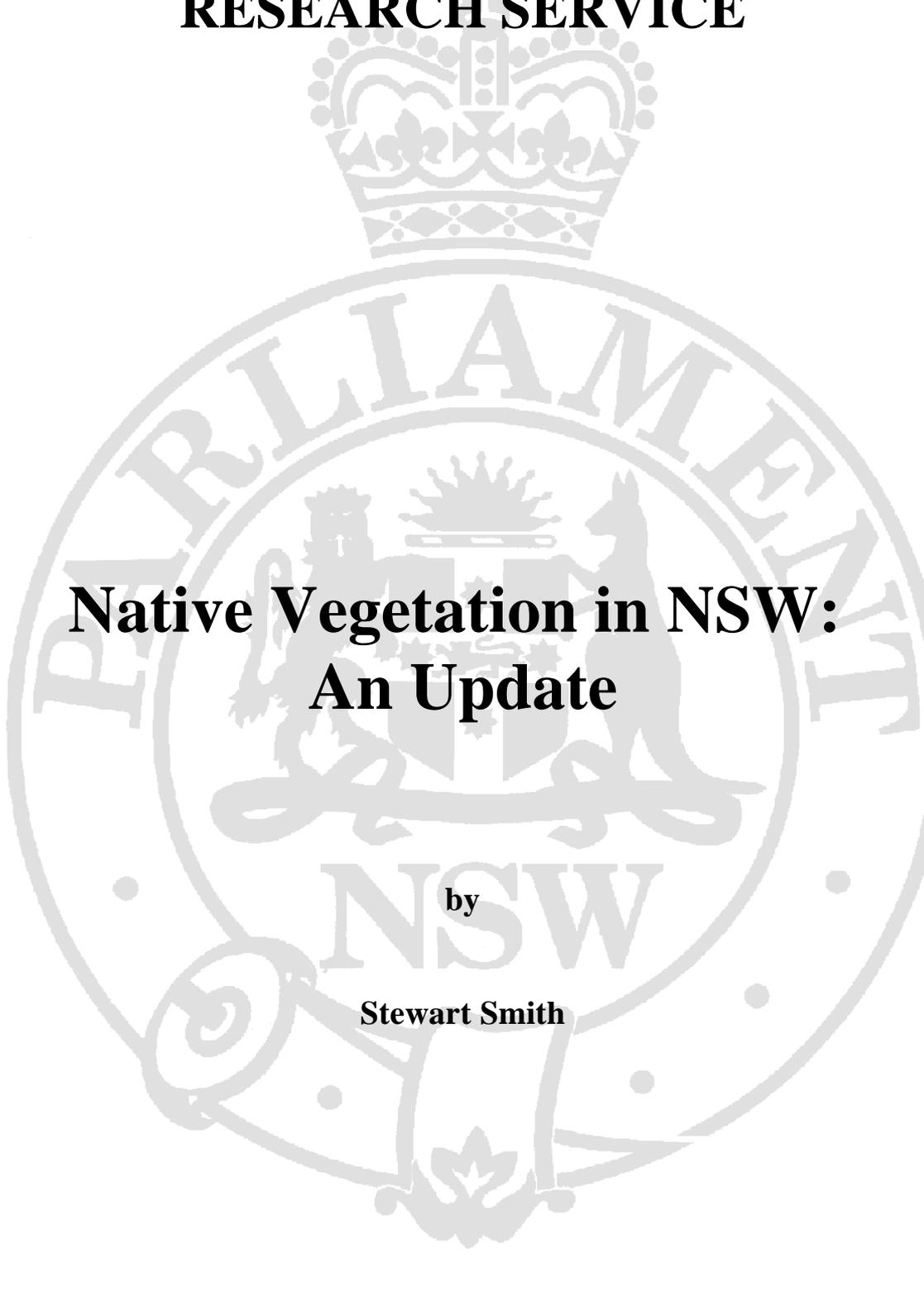


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**Native Vegetation in NSW:
An Update**

by

Stewart Smith

Briefing Paper No 6/99

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by

Stewart Smith

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EXECUTIVE SUMMARY

This Paper is an update of the 1995 Briefing Paper No 28, *Native Vegetation Protection in NSW*. In New South Wales, two-thirds of the State, or 52 million ha, was covered by forest or woodland prior to settlement. Now only 21 million ha remain. It is significant to note that, nationwide, in the last 50 years as much land has been cleared as in the 150 years before 1945. Across Australia, in 1990 an estimated 500,000 ha of native vegetation (including regrowth) was cleared for agriculture. This equates to over one million rugby football fields, or over two rugby fields being cleared every minute (page 1).

The NSW Government has described its native vegetation protection policies as having four elements. The first was SEPP 46, which introduced native vegetation clearing controls. The second element was the NSW Vegetation Forum, which was charged with consulting the community and devising a long term alternative to SEPP 46. The third element was the release of a White Paper and introduction of the Native Vegetation Conservation Bill to the Parliament. The fourth element is the ongoing management of native vegetation under the *Native Vegetation Conservation Act 1997* (page 3).

The *Native Vegetation Conservation Act 1997* brought the clearing of native vegetation in NSW under the one regime. The Act repealed clearing provisions in the: *Soil Conservation Act 1938*; *Western Lands Act 1901*; *Crown Lands (Continued Tenures) Act 1989*; and the *Forestry Act 1916* (Appendix 2). In addition, State Environmental Planning Policy No 46 - *Protection and Management of Native Vegetation* was repealed (page 4).

The core of the *Native Vegetation Conservation Act* is the regional vegetation management plan. This plan provides specifications as to what clearing is allowed in a region. Where clearing is allowed for in the plan, no development consent for that clearing will be required. Any clearing outside the specifications of the plan, or where a plan is not yet in place and the clearing is not exempted, will require assessment and development consent from the Minister for Land and Water Conservation under Part 4 of the *Environmental Planning and Assessment Act 1979*. The Act also provides for monetary incentives for landholders to help protect their native vegetation (pages 6-9).

The NSW Farmers Association has been strongly critical of the Act. Conservation groups have been more supportive. The NSW Coalition released their native vegetation policy on 28 January 1999, which stated that a Coalition Government would repeal the *Native Vegetation Conservation Act* and replace it with an expansion of the *Soil Conservation Act* (page 9).

The Commonwealth Government, through the Natural Heritage Trust National Vegetation Initiative, has also been a participant in native vegetation conservation (page 10).

1.0 Introduction

This Paper is an update of the 1995 Briefing Paper No 28, *Native Vegetation Protection in NSW*. The 1995 Briefing Paper commented on the introduction of State Environmental Planning Policy No 46, which restricted the clearing of native vegetation. Since then, new State legislation has replaced those planning controls and the Commonwealth government has also introduced new programs under the Natural Heritage Trust.

2.0 Background to the Native Vegetation Protection Debate

Over two hundred years of European settlement in Australia has resulted in widespread changes to the environment. The practice of clearing native vegetation to make way for towns and agriculture has made its mark across the nation. In New South Wales, two-thirds of the State, or 52 million ha, was covered by forest or woodland prior to settlement. Now only 21 million ha remain.¹ Up to the 1860's, the clearing of vegetation was restricted to land around settlements. With the turn of the century, the growth of agriculture and the development of broadscale crops such as wheat, together with advances in heavy machinery and herbicides led to the widespread clearing of the land. It is significant to note that, nationwide, in the last 50 years as much land has been cleared as in the 150 years before 1945.² Across Australia, in 1990 an estimated 500,000 ha of native vegetation (including regrowth) was cleared for agriculture. This equates to over one million rugby football fields, or over two rugby fields being cleared every minute.³

Native vegetation includes forests, woodlands, grasslands and shrub communities which have not been substantially altered by human activity as well as individual trees and other plants which survive as part of modified systems.⁴ The retention of native vegetation is important for many reasons. Land degradation, which costs Australia \$2.5 billion per year⁵, has as its basic cause the removal of native vegetation. Native vegetation conserves important elements of biodiversity, maintains hydrological systems and maintains soil structure. The continued productivity of the land is dependent upon the maintenance of native vegetation cover. Land degradation across the country is now so severe, and the threats to biodiversity are increasing so rapidly, that the States and Commonwealth have introduced measures to protect native vegetation cover. The protection of biodiversity on private land introduces new policy and legal issues compared to the conservation of

¹ Commonwealth of Australia, 1995, *Native Vegetation Clearance, Habitat Loss and Biodiversity Decline*. Biodiversity Series, Paper No. 6. Department of the Environment, Sport and Territories.

² *Ibid* p 6

³ *Ibid* p 17

⁴ Cameron, J & Elix, J *et al*, 1991, *Recovering Ground. A case study approach to ecologically sustainable rural land management*. Australian Conservation Foundation

⁵ Beale, B & Fray, P, 1990, *The Vanishing Continent. Australia's degraded environment*. Hodder and Stoughton.

biodiversity on public land.

To halt dryland salinity in the 600mm to 800mm rainfall zone in NSW, at least 30% of the zone needs to be replanted with trees. To reverse the current situation, 50% of the zone needs to be replanted.⁶ Equally challenging scenarios exist for the large areas affected by irrigation salinity, soil acidity, soil erosion and other land degradation problems.

The conclusion of the 1995 Briefing Paper was that SEPP 46 relied purely on a regulatory approach to restrict inappropriate vegetation clearance, and that positive incentives were also required. Young of the CSIRO notes that the optimal policy package contains some regulation and include motivational and information programs. A mix of instruments is necessary to achieve a suite of outcomes in a cost effective manner. He proposes the following criteria to evaluate the optimal mix of instruments:⁷

- 1) Dependability or certainty - the instrument will deliver the desired biodiversity target, even when knowledge about the likely responses is uncertain.
- 2) Precaution - the instrument avoids the chance of serious or irreversible consequences, especially when there is scientific uncertainty about outcome.
- 3) Equity - no group of people, including future generations, is unfairly disadvantaged or favoured by the instrument's operation.
- 4) Economic efficiency - the chosen trade-off between production and conservation is achieved at least cost.
- 5) Dynamic and continuing incentive - the mechanisms used: continue to encourage technical innovation and improvement of biodiversity beyond the official policy target; automatically adapt to changing knowledge, technology, prices and climatic conditions.
- 6) Administrative feasibility and cost: monitoring and information costs are minimal; government enforcement is cost effective and can be financed from available revenue; self enforcement is encouraged; the instrument's requirements are easily explained; and the decision making process is transparent.
- 7) Community and political acceptability - the community is motivated to ensure that biodiversity objectives: are achieved; are perceived as being legitimately formulated and delivered; add to social harmony; are consistent with government commitments; and attract bipartisan support.

The above list may be a suitable vehicle to use to evaluate current native vegetation protection legislation in NSW.

⁶ Young, M. "Mining or Minding: Opportunities for Australia to Improve Conservation of Remnant Vegetation and to Alleviate Land Degradation." in Environmental Economics Round Table Proceedings, Canberra 10 July 1997. *Environmental Economics Research Paper No 6*, Environment Australia.

⁷ Young, M. "Mining or Minding: Opportunities for Australia to Improve Conservation of Remnant Vegetation and to Alleviate Land Degradation." in Environmental Economics Round Table Proceedings, Canberra 10 July 1997. *Environmental Economics Research Paper No 6*, Environment Australia, at 138.

In any program to protect native vegetation, there are inevitably costs involved both to individuals and the community. In regards to individuals, Young draws the distinction between: a ‘duty of care’ for sustainable land management faced by a landholder; and the provision of non-marketable ‘public conservation service’ by landholders managing vegetation to meet conservation objectives. However, determining where ‘duty of care’ stops and ‘public conservation service’ begins is a difficult issue. The definition is complicated by the fact that sustainable land management is not a static concept as knowledge and community perceptions change over time. Young argues that if sustainable land management is the ultimate objective, then each landholder has a duty of care to constrain practice so that it does not threaten or compromise species viability, ecosystem function and landscape processes. A public conservation service would then be defined as an action that provides non-marketable benefits of special or unique value at a level of intensity not expected of landholders in the region.⁸ Current legislation provides a mechanism to effectively codify where ‘duty of care’ and ‘public conservation service’ begin, and this is explained in section 4.0.

3.0 A Time-line of Reform

Since the election of 1995, the Government has described native vegetation reform as a four phase program. These phases are as follows:

Phase One: Introduction of SEPP 46, on 10 August 1995, to prevent inappropriate vegetation clearance. SEPP 46 was amended twice. The first amendment: removed the requirement for the concurrence of the National Parks and Wildlife Service before development consent for clearing native vegetation would be granted; required the Department of Land and Water Conservation, when determining an application to clear, to consider the likely social and economic consequences of granting or refusing the consent and to balance these interests with environmental factors; and exempted the clearing of native grasslands where a plan of management was in force. The second amendment replaced definitions of terms used in the SEPP and made provisions for interim regional vegetation management plans to be prepared by regional vegetation committees.

Phase Two: NSW Vegetation Forum (comprising representatives of key stakeholder groups) undertook consultation with stakeholders and the general community regarding appropriate long-term options to replace SEPP 46. More than 160 meetings were held across the State and 246 submissions received. The Forum concluded that the main achievement of SEPP 46 was a strong increase in awareness of the need for some form of native vegetation management and protection in the community. However, many submissions to the Forum considered SEPP 46 to be uncoordinated and disparate in its

⁸ Young, M. “Mining or Minding: Opportunities for Australia to Improve Conservation of Remnant Vegetation and to Alleviate Land Degradation.” in *Environmental Economics Round Table Proceedings*, Canberra 10 July 1997. *Environmental Economics Research Paper No 6*, Environment Australia, at 144.

approach to native vegetation management and protection.⁹

On the basis of this consultation, the NSW Vegetation Forum recommended:¹⁰

- The goal of native vegetation management should be to increase and improve vegetation cover by preventing inappropriate clearance, establishing new areas of vegetation and educating the community in the conservation and management of native vegetation.
- A tiered approach be adopted with State guidelines, regional management plans, local agreements and a permit system.
- A self regulated (ie, clearing in a manner consistent with relevant approved plans of management) approach with approved regional guidelines and management plans and Statewide 'safety nets' was the preferred option. Either a new Native Vegetation Management Act should be developed or a new Native Vegetation/Soil Conservation Act developed.
- Legislation should provide for the following: a NSW Vegetation Council; regional management plans; acknowledge the need for landholder/community participation; stewardship incentives; ongoing research and monitoring; and education services.

Phase Three: Government considered the report of the Vegetation Forum and options and alternatives. The preferred long-term management regime was announced on 18 March 1997, with these proposals released for public discussion in a White Paper "A proposed model for native vegetation conservation in NSW" on 23 July, 1997. A Native Vegetation Conservation Bill was introduced by the Minister for Land and Water Conservation Hon Kim Yeadon MP on 19 November 1997.

Phase Four: Ongoing sustainable management of native vegetation through the *Native Vegetation Conservation Act 1997*. The Act came into force on 1 January 1998.

4.0 The Native Vegetation Conservation Act 1997.

The *Native Vegetation Conservation Act 1997* brought the clearing of native vegetation in NSW under the one regime. The Act repealed clearing provisions in the: *Soil Conservation Act 1938*; *Western Lands Act 1901*; *Crown Lands (Continued Tenures) Act 1989*; and the *Forestry Act 1916* (Appendix 2). In addition, State Environmental Planning Policy No 46 -

⁹ NSW Vegetation Forum, *Report on Native Vegetation Management in NSW*. August 1996 at 22.

¹⁰ NSW Vegetation Forum, *Report on Native Vegetation Management in NSW*. August 1996 at 9.

Protection and Management of Native Vegetation was repealed.

The core of the *Native Vegetation Conservation Act* is the regional vegetation management plan. This plan provides specifications as to what clearing is allowed in a region. Where clearing is allowed for in the plan, no development consent for that clearing will be required. Any clearing outside the specifications of the plan, or where a plan is not yet in place and the clearing is not exempted, will require assessment and development consent from the Minister for Land and Water Conservation under Part 4 of the *Environmental Planning and Assessment Act 1979*. A detailed overview of the Act is provided below.

The objects of the *Native Vegetation Conservation Act* are:

- (a) to provide for the conservation and management of native vegetation on a regional basis, and
- (b) to encourage and promote native vegetation management in the social, economic and environmental interests of the State, and
- (c) to protect native vegetation of high conservation value, and
- (d) to improve the condition of existing native vegetation, and
- (e) to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation, and
- (f) to prevent the inappropriate clearing of vegetation, and
- (g) to promote the significance of native vegetation, in accordance with the principles of ecologically sustainable development.

The Act defines the clearing of native vegetation as any one or more of the following: cutting down, felling, thinning, logging or removing native vegetation; killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation; severing, topping or lopping branches, limbs, stems or trunks of native vegetation; substantially damaging or injuring native vegetation in any other way. On land that is declared as protected land, the above definition of clearing also applies to non-native trees and to standing dead or fallen trees.

The term ‘protected land’ is taken from the *Soil Conservation Act 1938*. The *Soil Conservation Act* was originally designed to conserve soil resources and prevent erosion of the land. Over time amendments strengthened provisions to retain native vegetation, although these are now found in the *Native Vegetation Conservation Act*. The definition of protected land in the new Act is the same as the old *Soil Conservation Act* and is defined as:

- any land within 20 metres of the bed or bank of any prescribed river or lake
- steep land with a slope greater than 18 degrees
- land that is environmentally sensitive or affected or liable to be affected by soil erosion, siltation or land degradation

State protected land in this Act is taken to also include any protected land under the Soil Conservation Act. The Act makes a distinction between regional protected land and State protected land. State protected land ceases to be so if the land is identified as regional

protected land in a regional vegetation management plan, or is otherwise subject to a regional vegetation management plan (section 7(4)).

For the purposes of this Act, clearing native vegetation, or clearing protected land, does not include sustainable grazing. Sustainable grazing is the level of grazing that, in the opinion of the Director-General, the vegetation concerned is capable of supporting without resulting in a substantial long-term modification of the structure and composition of the vegetation.

The Act excludes clearing if it has been authorised under 16 other pieces of legislation. For example, clearing authorised under the *Rural Fires Act* as part of a bushfire management plan is not covered by the *Native Vegetation Conservation Act*.

Section 51 of the Act established Regional Vegetation Committees, which are comprised of 15 persons representative of a wide cross section of stakeholders. A Regional Vegetation Committee has the following functions: preparing, with the approval of the Minister, a draft regional vegetation management plan for the region in which it operates; and monitoring and reviewing the regional vegetation management plan after it is made.

As noted, the centrepiece of the legislation is regional vegetation management plans, and the detail of these plans is found in Part 3 of the Act. These plans may contain the following: contain provisions specifying whether or not development consent is required to clear native vegetation or regional protected land; contain provisions relating to the manner in which native vegetation or regional protected land may be cleared without development consent; adopt or incorporate the provisions of a native vegetation code of practice as part of the plan; identify certain land to which the plan applies as regional protected land; and include strategies that are designed to achieve the objects of this Act.

Once a draft vegetation management plan has been developed it must be approved by the Minister before public release for comments. Upon approving the final plan, the Minister must consult with the Minister for the Environment and seek comments and recommendations. While the Minister for the Environment has no formal consent approval authority, in making the final plan the Minister must give reasons why any recommendations from the Minister for the Environment were ignored. A regional vegetation management plan stays in effect for ten years. On the 4 September 1998 the Minister for Land and Water Conservation Hon Richard Amery MP launched the State's first draft native vegetation plan, for the Mid Lachlan region.¹¹

In regards to clearing (both native vegetation and protected land), a regional vegetation management plan provides for two scenarios. Firstly, if the plan specifies that areas may not be cleared without development consent, then a person must not carry out that clearing unless: development consent as described above has been obtained; and clearing is carried out in accordance with the development consent and the regional vegetation management plan (section 18). If a plan provides that native vegetation may be cleared without

¹¹ Media Release, "Amery Launches first draft Native Vegetation Plan." Hon Richard Amery MP, Minister for Land and Water Conservation, 4 September 1998.

development consent, a person may clear that land without consent but only if the clearing is carried out in accordance with the plan. Once clearing has gained development consent or is in accordance with a regional vegetation management plan, that clearing cannot be prohibited, restricted or otherwise affected by any other planning instrument or by the provisions of any other Act (apart from this Act and the EPA Act). However, consent under s.90 of the *National Parks and Wildlife Act 1974*, which prohibits the destruction of relics or Aboriginal places without consent of the Director-General is still required, and a licence under the *Pollution Control Act 1970* in respect of the pollution of waters may also be required.

For land not subject to a regional vegetation management plan, native vegetation must not be cleared except in accordance with a development consent or a native vegetation code of practice. State protected land may only be cleared with development consent. Native vegetation codes of practice are designed to regulate the clearing of native vegetation for specified purposes, such as clearing for the purpose of establishing a timber plantation. A native vegetation code of practice cannot apply to protected land.

Part 2 of the Act deals with the actual clearing of native vegetation and protected land. Section 15 states that if development consent is required to clear native vegetation, the landholder must apply to the Minister for Land and Water Conservation. The Minister, in making the determination, must do so in accordance with Part 4 of the *Environmental Planning and Assessment Act 1979*. If clearing is done without consent, the Act states that section 126 (1) of the EPA Act (Penalties) applies in the same way as it applies to an offence against that Act. This provides for penalties up to 1000 penalty units (\$110,000). However, intriguingly, the Act does not state that section 126 (3) of the EPA Act applies. This section states that if found guilty of an offence involving the destruction of or damage to a tree or vegetation, the Court may direct the offender to plant new trees and vegetation and maintain those trees to a mature growth, and to provide security for this obligation.

The Act also provides for stop work and remedial orders by the Director-General of the Department of Land and Water Conservation (sections 46-50). Failure to comply with an order attracts a maximum fine of 1000 penalty units. The Director-General may issue a remedial notice to repair and rehabilitate the affected land. If the person fails to comply with a remedial order, not only can they be fined as above, the Director-General may authorise another person to carry out the work and then recover the cost of that work from the person who illegally cleared. Appeals by affected persons to the Land and Environment Court are provided for.

The Act outlines powers of investigation and entry onto land by authorised officers to determine if land has been or is being cleared illegally. Proceedings commenced by the Department of Land and Water Conservation may either be brought summarily before a Local Court or the Land and Environment Court. If the former is chosen, a maximum penalty of 100 penalty units may be imposed (ie, \$1,100). In addition, the Act provides for third parties to commence action in the Land and Environment Court for an order to remedy or restrain a breach of the Act. An interesting anomaly then seems to arise. It could be argued that the Act only provides for the Director-General of the Department of Land and

Water Conservation to issue remedial notices to repair illegally cleared land. For those cases 'ignored' by the Department, and if successful action is commenced by third parties, the Land and Environment Court can only issue monetary fines and not direct that any rehabilitation be carried out.

Similar to pollution offences under the *Environmental Offences and Penalties Act 1989*, section 65 states that if a corporation contravenes the 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. As per the pollution legislation, various defences are provided for. It is noteworthy that the inclusion of these provisions in pollution legislation has greatly heightened awareness of Directors' corporate environmental responsibilities, and the same is likely in this legislation.

The Department of Land and Water Conservation has issued guidelines on the level of information required to support an application to clear native vegetation under the Act. The requirements are divided into three categories based on the size of the proposed clearing - small, medium and large, with increasing levels of information required as the complexity of the proposal increases. A small application must contain the following basic information: property location details; natural features of the property; vegetation management proposal; clearing proposal justification; and information on Aboriginal and European sites or heritage areas. Supporting information that must be included are: legal status of land map; a natural features map; an aerial photo where available; and an Aboriginal sites search report from the National Parks and Wildlife Service. A large application must have all of the above plus the following: flora survey report; fauna survey report; landscape survey report; archeological survey report; economic survey report and a social survey report. These reports must be carried out by an appropriately qualified person.¹² As an example, Appendix One contains an Application for Clearing Form that landholders must complete and submit to the Department of Land and Water Conservation.

The Act also established a 16 member Advisory Council which has the following functions: to advise, monitor and report to the Minister on the status of native vegetation throughout the State; and amongst other things to develop, and advise the Minister on, a native vegetation conservation strategy that is designed to assist in achieving the objects of the Act.

Section 56 of the Act established a Native Vegetation Management Fund, which the Government has allocated \$5 million each year for three years to the fund. Grants from the Fund were accessible from 13 October 1998 and provide for two types of grants. The first involves grants up to \$10,000 which are payable to landholders wanting to carry out simple native vegetation management work such as fencing, weed control or revegetating. The second involves grants of more than \$10,000 for landholders wanting to carry out more substantial work involving the revegetation of and rehabilitation of larger areas of land. This second type of grant will require the landholder to enter into a Property Agreement with the Department of Land and Water Conservation for a specified period of time, usually between

¹² NSW Department of Land and Water Conservation, *Guidelines and Application Form for Clearing Vegetation under the Native Vegetation Conservation Act 1997*. June 1998, at 9.

five and ten years, and may be registered on the land title papers.¹³

The Act provides for Property Agreements, which are agreements between the Minister and a landholder. The Agreement may include provisions for: the identification of any land, or of specified vegetation, that is to be set aside for conservation or rehabilitation purposes; outline methods and practices for vegetation management; and provide financial and technical assistance to a landholder. Each Property Agreement can specify its duration. If agreed to by both parties, the Property Agreement may be registered with the Registrar-General. The Agreement is then binding on, and is enforceable by and against, the successors in title to the landholder or landholders who entered into the agreement (section 44). A Property Agreement may be enforced in the Land and Environment Court.

The *Native Vegetation Conservation Act 1997* therefore seems to provide a community based approach to managing native vegetation within a regulatory framework and with a positive incentive scheme.

4.1 Responses to the Native Vegetation Conservation Act 1997

The NSW Farmers Association in particular has been strongly critical of the Act. At the ‘Country Summit’ at Wagga Wagga in 1998, the President of the NSW Farmers moved motions that called on the NSW Government to replace the Act with legislation that recognises the NSW Native Vegetation Forum recommendations. Issues included: any vegetation Act not to be subservient to the EPA Act; and the problem of the lengthy period of time taken to get approval for regional vegetation plans.¹⁴ Later in 1998, NSW Farmers again called the preparation of native management plans a ‘farce’, citing problems of a lack of information and direction. A spokesman concluded: “It is getting to the stage that if we don’t get some more satisfactory outcomes this association is looking at drawing up its own plans and encouraging civil disobedience.”¹⁵

The Nature Conservation Council of NSW has been very supportive of native vegetation protection legislation. They state that now regional vegetation plans are being developed, NSW is well positioned to achieve more sustainable land use and better biodiversity conservation. However, the Council has identified two areas that could be improved. These are clear policy direction and adequate funding. It is claimed that Departmental guidelines provided to regional vegetation committees are too vague and simplistic, and that clear, consistent guidelines are required at the broad bioregional level to avoid incompatible plans. Similarly, a lack of resources and funding to gain and use basic vegetation maps is hindering the process of developing regional vegetation plans.¹⁶

¹³ Media Release “\$15 million native vegetation management fund now accessible.” Hon Richard Amery, Minister for Land and Water Conservation, 13 October 1998.

¹⁴ “Donges leads drive for vegetation law overhaul.” in *The Land*, 19 March 1998.

¹⁵ “Vegetation plans a farce” in *The Land*, 15 October 1998.

¹⁶ “Better bush beefs up the bank balance” in *Environment NSW*, Vol 5 No 1 Summer 1999.

On 28 January 1999 the NSW Coalition announced its native vegetation policy. The Shadow Minister for Land and Water Conservation Mr Don Page MP announced that a Coalition government would repeal the *Native Vegetation Conservation Act* and deal with native vegetation through an expansion of the *Soil Conservation Act*. Mr Page also stated that it was inappropriate to treat native vegetation management under the *Environmental Planning and Assessment Act 1979*. Spending on native vegetation would be increased to \$30 million over three years, and regional vegetation management plans would continue to be an important focus of the new legislation. Vegetation committees would be retained but their composition reviewed. The Coalition stated that a Conservation Commissioner would be established who will have overall responsibility for both native vegetation conservation and soil conservation. Mr Page also said that whilst a Coalition government wanted a co-operative approach to native vegetation management, sanctions would exist for landholders who chose to operate outside specified Codes of Practice or regional vegetation plans.¹⁷

5.0 Commonwealth Initiatives

As part of the Federal Government's Natural Heritage Trust, a National Vegetation Initiative has been established. The Initiative provides \$318 million over five years to fund two key areas of activity. These are:

- \$64 million for the protection of remnant native vegetation at risk from clearing, in cooperation with the States, landholders and land managers.
- \$254 million to greatly expand revegetation activities, with the goal of building up to an additional 250 000 hectares per year by the year 2001.

The aim of the Vegetation Initiative is to ensure that the rate of revegetation in Australia exceeds the rate of clearance.¹⁸ However, this will be immensely difficult to achieve as there are currently no clearing controls on freehold land in Queensland or Tasmania and only limited control on clearing of leasehold land in the Northern Territory. In Queensland alone the current rate of clearing leasehold land is around 190,000 hectares per annum.

One of the issues facing the efficient implementation of the Initiative is the inconsistent definition of 'duty of care' among the States. Across Australia, there are significant differences between the States in relation to the regulation of vegetation clearance, the objectives and structure of vegetation programs and the size of financial incentives available for vegetation conservation. These differences act a significant barrier to the efficient

¹⁷ "Coalition announces native vegetation policy" News Release Mr Don Page MP, Shadow Minister for Land and Water Conservation. 28 January 1999.

¹⁸ "Investing in Natural Capital." An Address to the National Farmers Federation by Senator Hill, Minister for the Environment, 14 August 1996. See Internet site: <http://www.environment.gov.au/portfolio/minister/env/96>

implementation of the Vegetation Initiative.¹⁹ Young considers it to be inefficient and ineffective to provide financial assistance to States that have not yet introduced clearing controls, and concludes that the efficient delivery of the Initiatives targets is virtually impossible.

On 31 July 1998 the NSW Minister for Land and Water Conservation received a \$258,000 cheque from the Natural Heritage Trust to be spent on improved mapping techniques and compiling data relating to native vegetation across the State.

6.0 Conclusion

The clearing of native vegetation has been identified as one of the biggest threats to the biodiversity of Australian flora and fauna. Native vegetation in rural areas is found on more than just private farm land. Vegetation along roadways, easements, railway lines and so forth are also often important sites, therefore any native vegetation protection policies and legislation needs to be able to cater for these differences in land tenure.

According to the Government, the *Native Vegetation Conservation Act 1997* provides the legislative means to protect native vegetation on freehold land in the rural areas of the State. This Act has been, however, the subject of protest from members of the farming community, some of whom fundamentally disagree with the State having a right of regulation of the use of their land. Others in the community, notably the conservation groups, have been widely supportive of the legislation.

¹⁹ Young, M. "Mining or Minding: Opportunities for Australia to Improve Conservation of Remnant Vegetation and to Alleviate Land Degradation." in Environmental Economics Round Table Proceedings, Canberra 10 July 1997. *Environmental Economics Research Paper No 6*, Environment Australia, at 148.

Appendix One

Application Form for Clearing Vegetation under the
Native Vegetation Conservation Act 1997