

# Native Vegetation Conservation Act 1997

As at 1 July 2004

## Note:

The Act is to be repealed on the commencement of sec 52 of the *Native Vegetation Act 2003 No 103*.

## Reprint history:

Reprint No 1 5 February 2002

## Long Title

An Act relating to the conservation and sustainable management of native vegetation and the clearing of land; to amend the *Soil Conservation Act 1938* and certain other Acts; to repeal *State Environmental Planning Policy No 46--Protection and Management of Native Vegetation*; and for related purposes.

## Part 1 - Preliminary

### 1 Name of Act

This Act is the *Native Vegetation Conservation Act 1997*.

### 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 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.

### 4 Definitions and notes

(1) In this Act:

**Advisory Council** means the Native Vegetation Advisory Council established under this Act.

**authorised officer** means a person appointed under section 59.

**clearing** is defined in section 5.

**critical habitat** means:

- (a) habitat declared under Part 3 of the *Threatened Species Conservation Act 1995*, or
- (b) habitat declared under Division 3 of Part 7A of the *Fisheries Management Act 1994*.

**development consent** means development consent under Part 4 of the EPA Act.

**Director-General** means the Director-General of the Department of Land and Water Conservation.

**environmental planning instrument** has the same meaning as in the EPA Act.

**EPA Act** means the *Environmental Planning and Assessment Act 1979*.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**Fund** means the Native Vegetation Management Fund established under this Act.

**lake** includes a lagoon, wetland, or other body of still water, whether permanent or temporary.

**landholder** means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

**native vegetation** is defined in section 6.

**native vegetation code of practice (or code)** means a native vegetation code of practice in force under Part 4.

**principles of ecologically sustainable development** means the principles described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

**Note:** Section 6 (2) of the *Protection of the Environment Administration Act 1991* is as follows:

(2) "ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

- (a) The precautionary principle--namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (b) Inter-generational equity--namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- (c) Conservation of biological diversity and ecological integrity.
- (d) Improved valuation and pricing of environmental resources.

**property agreement** means an agreement entered into under Part 5.

**protected land** means regional protected land or State protected land.

**region** means a part of the State designated as a region by the Minister under section 8.

**regional protected land** means land that is identified in a regional vegetation management plan as regional protected land.

**Regional Vegetation Committee** (or **Committee** ) means a Regional Vegetation Committee established under this Act.

**regional vegetation management plan** (or **plan** ) means a regional vegetation management plan in force under Part 3.

**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.

**State protected land** means:

- (a) land that is identified in an order under section 7 as State protected land, and
- (b) any land defined as protected land under section 21AB of the *Soil Conservation Act 1938* (as in force immediately before the repeal of that section by this Act).

**threatened species** means:

- (a) those species, populations and ecological communities that are specified in Schedules 1 and 2 to the *Threatened Species Conservation Act 1995* , or
- (b) those species, populations and ecological communities that are specified in Schedules 4 and 5 to the *Fisheries Management Act 1994* .

**tree** includes a sapling or a shrub, or scrub.

**wetland** includes any shallow body of water (such as a marsh, billabong, swamp or sedgeland) that is:

- (a) inundated cyclically, intermittently or permanently with water, and
  - (b) vegetated with wetland plant communities.
- (2) For the purposes of this Act, vegetation is **indigenous** if it is of a species of vegetation, or if it comprises species of vegetation, that existed in the State before European settlement.
- (3) Notes in the text of this Act (including introductory notes to Parts) do not form part of this Act.

## **5 Definition of "clearing"**

- (1) In this Act, **clearing** native vegetation means any one or more of the following:
- (a) cutting down, felling, thinning, logging or removing native vegetation,
  - (b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation,
  - (c) severing, topping or lopping branches, limbs, stems or trunks of native vegetation,
  - (d) substantially damaging or injuring native vegetation in any other way.
- (2) In this Act, **clearing** protected land means any one or more of the following:
- (a) cutting down, felling, thinning, logging or removing any vegetation on protected land,
  - (b) killing, destroying, poisoning, ringbarking, uprooting or burning any vegetation on protected land,
  - (c) severing, topping or lopping branches, limbs, stems or trunks of any

vegetation on protected land,

(d) substantially damaging or injuring any vegetation on protected land in any other way.

(3) For the purposes of subsection (2), **vegetation on protected land** means:

(a) any native vegetation on the protected land, and

(b) any tree on the protected land (regardless of whether it is dead or alive, standing or fallen, or whether it is indigenous),

but does not include any type of non-indigenous vegetative groundcover.

(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.

(5) For the purposes of this Act, the clearing of land by burning during a bush fire within the meaning of the *Rural Fires Act 1997* does not affect any requirement of this Act with respect to any subsequent clearing of the land (whether by burning or otherwise).

## **6 Definition of "native vegetation"**

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

(a) trees,

(b) understorey plants,

(c) groundcover,

(d) plants occurring in a wetland.

(2) For the purposes of this definition, **groundcover** means any type of herbaceous vegetation, but it is only to be regarded as native vegetation for the purposes of this Act if it occurs in an area where not less than 50% of the herbaceous vegetation covering the area comprises indigenous species. In determining that percentage, not less than 10% of the area concerned must be covered with herbaceous vegetation (whether dead or alive).

**Note:** Subsection (2) takes into account seasonal impacts (such as drought) in determining the amount and type of groundcover occurring in an area.

(3) For the purposes of this Act, **native vegetation** does not include any mangroves, seagrasses or any other type of marine vegetation within the meaning of the *Fisheries Management Act 1994*.

## **7 State protected land**

(1) The Minister may, by order published in the Gazette, identify:

(a) any land the surface of which generally has a slope greater than 18 degrees from the horizontal, or

(b) any land that is situated within, or within 20 metres of, the bed or bank of any part of a river or lake specified in the order, or

(c) any land that is, in the opinion of the Minister, environmentally sensitive or affected or liable to be affected by soil erosion, siltation or land degradation,

as State protected land for the purposes of this Act.

(2) Any such order must identify the land concerned in such manner as the Minister thinks appropriate (whether by the use of a map, land description, or otherwise).

(3) The Minister may, by order published in the Gazette, do any of the following things in relation to State protected land:

(a) revoke the status of the land as State protected land,

(b) alter the identification of the State protected land.

**Note:**

**State protected land** is defined in this Act to include any land previously defined as **protected land** under the *Soil Conservation Act 1938*. An order under subsection (3) therefore will be able to deal with any type of State protected land even though it has not been identified by an order

under subsection (1).

- (4) Any land that is State protected land ceases to be State protected land if:
- (a) the land is identified as regional protected land in accordance with a regional vegetation management plan, or
  - (b) the land otherwise becomes land to which a regional vegetation management plan applies.

### **8 Designation of regions**

(1) The Minister may, by order published in the Gazette, designate any part of the State as a region for the purposes of this Act.

(2) Without limiting subsection (1), a region may comprise any one or more local government areas (or parts of local government areas) to generally reflect biogeographic boundaries. However, a region cannot comprise less than the whole of at least one local government area.

**Note:** For orders pursuant to this section, see the Historical notes at the end of this Act.

### **9 Land excluded from operation of Act**

This Act does not apply to the following land:

- (a) land that is within a zone designated "residential" (but not "rural-residential"), "village", "township", "industrial" or "business" under an environmental planning instrument,
- (b) land to which *State Environmental Planning Policy No 14--Coastal Wetlands* applies,
- (c) land to which *State Environmental Planning Policy No 26--Littoral Rainforests* applies,
- (d) land that is a State forest, national forest, flora reserve or timber reserve under the *Forestry Act 1916* ,
- (e) land that is acquired under section 15 of the *Forestry Act 1916* for the purposes of a State forest (not being any such land that is acquired for the purpose of a timber plantation within the meaning of the *Timber Plantations (Harvest Guarantee) Act 1995* ),
- (f) land that is dedicated or reserved under the *National Parks and Wildlife Act 1974* ,
- (g) land that is acquired under section 145 of the *National Parks and Wildlife Act 1974* for the purpose of obtaining land for dedication or reservation under that Act or for the purpose of preserving, protecting and preventing damage to relics or Aboriginal places,
- (h) land that is subject to a conservation agreement entered into under Division 7 of Part 4 of the *National Parks and Wildlife Act 1974* ,
- (i) land that is subject to an interim protection order made under Part 6A of the *National Parks and Wildlife Act 1974* ,
- (j) land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies,
- (k) land that is critical habitat,
- (l) Lord Howe Island.

### **10 Certain other land excluded from operation of Act: Schedules 1 and 2**

(1) This Act does not apply to any land within a local government area specified in Schedule 1. However, this Act does apply to land within any such local government area to the extent to which the land comprises State protected land.

(2) This Act does not apply to any land within a local government area specified in Schedule 2.

**Note:** Subsection (1) provides a partial exclusion from the operation of this Act (eg any requirement under Part 2 for development consent will not apply to land within a local government area specified in Schedule 1 but will apply to clearing State protected land within such a local government area). Subsection (2) provides a total exclusion from the operation of this Act. 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.

### **11 Amendment of Schedules 1 and 2**

(1) The Governor may, by order published in the Gazette:

- (a) amend Schedule 1 by:
  - (i) inserting the name of a local government area, or
  - (ii) omitting the name of a local government area, and
- (b) amend Schedule 2 by:
  - (i) inserting the name of a local government area, or
  - (ii) omitting the name of a local government area.

(2) An order under this section may only be made on the recommendation of the Minister.

(3) The Minister may recommend an order inserting the name of a local government area only if the Minister is of the opinion that adequate provision, consistent with the objects of this Act, has been made with respect to the conservation and management of native vegetation in that area through the operation of a local environmental plan applying to that area.

(4) The Minister may recommend an order omitting the name of a local government area only if the Minister is of the opinion that adequate provision, consistent with the objects of this Act, has not been made with respect to the conservation and management of native vegetation in that area through the operation of a local environmental plan applying to that area.

(5) The Minister must, before recommending an order to amend Schedule 1 or 2, consult with the Advisory Council and take into account any recommendations made by the Advisory Council.

(6) The Minister must make publicly available the Minister's reasons for recommending an order under this section.

## **12 Clearing excluded from operation of Act**

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

- (a) any clearing authorised under the *State Emergency and Rescue Management Act 1989* in relation to an emergency within the meaning of that Act,
- (a1) any clearing authorised under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act,
- (b) any clearing carried out in accordance with a bush fire management plan under the *Rural Fires Act 1997* ,
- (c) any clearing authorised under the *Noxious Weeds Act 1993* ,
- (d) any clearing carried out in accordance with a property management plan approved by the Director-General of National Parks and Wildlife for the purposes of the *Threatened Species Conservation Act 1995* ,
- (e) any clearing authorised under a licence issued under Division 1 of Part 6 of the *Threatened Species Conservation Act 1995* ,
- (f) any clearing that is, or that is part of, designated development within the meaning of the EPA Act,
- (g) any clearing authorised to be carried out under Division 3 or 4 of Part 7 of the *Fisheries Management Act 1994* ,
- (h) any clearing authorised under a licence issued under Division 6 of Part 7A of the *Fisheries Management Act 1994* ,
- (i) any clearing carried out in accordance with a licence issued under section 131 of the *National Parks and Wildlife Act 1974* ,
- (j) any clearing authorised under the *Mining Act 1992* ,
- (k) any clearing authorised under the *Petroleum (Onshore) Act 1991* ,
- (l) any clearing that consists of plantation operations within the meaning of the *Plantations and Reafforestation Act 1999* on an authorised plantation in accordance with any conditions of the authorisation and with the Plantations and Reafforestation Code under that Act,
- (m) any clearing that involves the removal or lopping of any tree or other vegetation in

- accordance with section 88 of the *Roads Act 1993* ,
- (n) any clearing carried out in accordance with a consent under Division 3 of Part 9 of the *Roads Act 1993* ,
- (o) any clearing carried out in accordance with an approval under the *Water Management Act 2000* .
- (p) (Repealed)

## **Part 2 - Clearing native vegetation and clearing protected land**

**Note:** The object of this Part is to apply the development consent process under Part 4 of the EPA Act in relation to clearing native vegetation and clearing protected land. Division 1 contains general provisions dealing with the two development consent scenarios described below in this note. The Minister for Land and Water Conservation will be the consent authority in relation to development applications to clear native vegetation or to clear protected land. Division 2 deals with the requirement for development consent:

- for clearing native vegetation on land that is subject to a regional vegetation management plan, and

- for clearing regional protected land (ie protected land identified in a plan).

For example, if a plan applies to the land on which native vegetation is proposed to be cleared, the plan will specify whether or not development consent is required for the clearing. Division 3 generally requires development consent:

- for clearing native vegetation on land that is not subject to a regional vegetation management plan, and

- for clearing State protected land.

### **Division 1 - General provisions**

#### **13 Definition**

In this Division:

**this Part** includes the provisions of a regional vegetation management plan.

#### **14 Consent authority for clearing**

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

**Note:** Section 15 of the *Interpretation Act 1987* provides that a reference in any Act to "the Minister" is a reference to the Minister administering the Act.

#### **15 Granting of development consent**

(1) If development consent is, because of this Part, required to clear native vegetation or any protected land, that development consent may be obtained by the Minister making a determination, in accordance with Part 4 of the EPA Act, to grant development consent.

(2) For the avoidance of doubt, Part 4 of the EPA Act applies to and in respect of that development consent in the same way as it applies to and in respect of development consent that may be required by an environmental planning instrument.

(3) The Director-General must keep a register, in the form approved by the Minister, of the following:

- (a) development consents granted by the Minister under Part 4 of the EPA Act for any clearing that requires development consent because of this Part,

- (b) decisions on appeal pursuant to Part 4 of the EPA Act from any determination made by the Minister under that Part in relation to any such clearing.

(4) The register is to be available for public inspection, without charge and during ordinary business hours, at the head office of the Department of Land and Water Conservation and at the relevant regional office of that Department. Any person is entitled to make copies of any entry in the register.

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

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

## **17 Offence of contravening this Part**

- (1) A person who contravenes this Part is guilty of an offence under this Act.
- (2) Section 126 (1) of the EPA Act (Penalties) applies to any such offence in the same way as it applies to an offence against that Act.

## **Division 2 - Land subject to regional vegetation management plan**

### **18 Clearing native vegetation on land subject to plan**

- (1) If a regional vegetation management plan provides that native vegetation on any specified land to which the plan applies may not be cleared without development consent, a person must not carry out that clearing unless:
  - (a) development consent has been obtained for the clearing and is in force, and
  - (b) the clearing is carried out in accordance with the development consent and the regional vegetation management plan.
- (2) If a regional vegetation management plan provides that native vegetation on any specified land to which the plan applies may be cleared without the need for development consent, a person may carry out that clearing without development consent but only if the clearing is carried out in accordance with the regional vegetation management plan.

### **19 Clearing regional protected land**

- (1) If a regional vegetation management plan provides that any regional protected land may not be cleared without development consent, a person must not carry out that clearing unless:
  - (a) development consent has been obtained for the clearing and is in force, and
  - (b) the clearing is carried out in accordance with the development consent and the regional vegetation management plan.
- (2) If a regional vegetation management plan provides that any regional protected land may be cleared without the need for development consent, a person may carry out that clearing without development consent but only if it is carried out in accordance with the regional vegetation management plan.

### **20 Clearing not affected by other instruments or Acts**

- (1) If native vegetation or regional protected land is, or is about to be, cleared in accordance with:
  - (a) development consent as required by a regional vegetation management plan, or
  - (b) a regional vegetation management plan,that clearing cannot be prohibited, restricted or otherwise affected by any other environmental planning instrument or by the provisions of any Act (other than this Act, the *Plantations and Reafforestation Act 1999* or the EPA Act) to the extent to which that instrument, or those provisions, prohibit, restrict or otherwise affect that clearing.
- (2) However, subsection (1) does not operate to exclude any requirement for:
  - (a) consent under section 90 of the *National Parks and Wildlife Act 1974* , or
  - (b) a licence under the *Protection of the Environment Operations Act 1997* ,that might arise in relation to any such clearing.

**Note:** Section 90 of the *National Parks and Wildlife Act 1974* prohibits the destruction etc of relics or Aboriginal places without the consent of the Director-General of National Parks and Wildlife.

## **Division 3 - Land not subject to regional vegetation management plan**

### **21 Clearing native vegetation on land not subject to plan**

- (1) This section does not apply to:

- (a) any land to which a regional vegetation management plan applies, or
  - (b) State protected land.
- (2) A person must not clear native vegetation on any land except in accordance with:
- (a) a development consent that is in force, or
  - (b) a native vegetation code of practice.

**Note:** See also clauses 3 and 5 of Schedule 4 which provide that certain exemptions under SEPP 46 and the *Western Lands Act 1901* that existed before the commencement of this Act will be continued on a transitional basis.

## **22 Clearing State protected land**

A person must not clear State protected land except in accordance with a development consent that is in force.

**Note:** See also clause 4 of Schedule 4 which provides that certain exemptions under the *Soil Conservation Act 1938* that existed before the commencement of this Act will be continued on a transitional basis.

## **23 Clearing not affected by other instruments or Acts**

(1) If native vegetation or State protected land is, or is about to be, cleared in accordance with development consent as required by this Division, that clearing cannot be prohibited, restricted or otherwise affected by an environmental planning instrument or by the provisions of any Act (other than this Act or the EPA Act) to the extent to which that instrument, or those provisions, prohibit, restrict or otherwise affect that clearing.

(2) However, subsection (1) does not operate to exclude any requirement for:

- (a) consent under section 90 of the *National Parks and Wildlife Act 1974* , or
  - (b) a licence under the *Protection of the Environment Operations Act 1997* ,
- that might arise in relation to any such clearing.

(3) Subsection (1) does not apply to any clearing that is lawfully carried out under this Act otherwise than in accordance with development consent as required by this Division.

**Note:** For example, in any case where clearing is carried out in accordance with a native vegetation code of practice, the clearing may still require development consent because of an environmental planning instrument.

# **Part 3 - Regional vegetation management plans**

**Note:** The object of this Part is to provide a framework, through the implementation of regional vegetation management plans, for the conservation and management of native vegetation at a regional level.

## **24 Preparation of plan**

(1) The Minister may, if the Minister is of the opinion that native vegetation conservation and management is a matter of significance for a region, decide that a draft regional vegetation management plan is to be prepared for the region.

(2) The Minister may cause the draft regional vegetation management plan to be prepared by the Regional Vegetation Committee for the region to which the draft plan is intended to apply. Alternatively, the Minister may direct the Director-General to prepare the draft plan.

(3) Whoever prepares the draft regional vegetation management plan is referred to in this Part as the **initiator** .

## **25 Contents of plan**

(1) A regional vegetation management plan must identify the land to which it applies.

(2) A regional vegetation management plan may:

- (a) contain provisions specifying whether or not development consent is required to clear native vegetation or regional protected land, and
- (b) contain provisions relating to the manner in which native vegetation or regional protected land may be cleared without development consent, and
- (c) adopt or incorporate the provisions of a native vegetation code of practice as part of the plan, and
- (d) identify certain land to which the plan applies as regional protected land, and
- (e) include strategies that are designed to achieve the objects of this Act, and

- (f) include such other matters as may be authorised by the regulations.
- (3) Without limiting subsection (2), a regional vegetation management plan may include provisions identifying different forms of clearing native vegetation and regional protected land in accordance with any classification scheme for development assessment under Part 4 of the EPA Act. The provisions of a regional vegetation management plan are to be consistent with any such scheme to the maximum extent possible.

**Note:** Under the EPA Act, for example, an environmental planning instrument may provide that certain development is "exempt development".

- (4) Despite subsection (3), a regional vegetation management plan cannot include provisions relating to complying development within the meaning of the EPA Act.
- (5) A regional vegetation management plan can only identify land as regional protected land if:
- (a) the surface of the land generally has a slope greater than 18 degrees from the horizontal, or
  - (b) the land is situated within, or within 20 metres of, the bed or bank of any part of a river or lake specified in the plan, or
  - (c) the land is, in the opinion of the initiator, environmentally sensitive or affected or liable to be affected by soil erosion, siltation or land degradation.
- (6) The land identified as regional protected land by a regional vegetation management plan may include any land that was previously State protected land.

## **26 Consultation with Director-General of National Parks and Wildlife**

- (1) The initiator must consult with the Director-General of National Parks and Wildlife before preparing the draft regional vegetation management plan. The consultation is to involve matters relating to critical habitat and threatened species and their habitats.
- (2) For the purpose of the consultation, the initiator must provide the following information to the Director-General of National Parks and Wildlife:
- (a) the reasons for deciding to prepare the draft plan,
  - (b) the proposed aims and objectives of the draft plan,
  - (c) a description of the land comprising the region to which the draft plan is intended to apply,
  - (d) the types of matters to be dealt with in the draft plan.
- (3) For the purposes of the consultation, the initiator may provide any other information that, in the initiator's opinion, would assist in understanding the draft regional vegetation management plan.
- (4) The Director-General of National Parks and Wildlife may make comments to the initiator on the preparation of the draft regional vegetation management plan within 40 days after receiving the information required to be provided under subsection (2). If any such comments are provided, those comments are also to be provided to the Director-General of the Department of Land and Water Conservation.

## **27 Matters to be dealt with in plan**

- (1) In preparing a draft regional vegetation management plan, the following matters must be taken into consideration with respect to the region to which the draft plan is intended to apply:
- (a) matters relating to the conservation of native vegetation and native species (particularly threatened species) and their habitats,
  - (b) matters relating to the conservation of soil and water resources, and of archaeologically, geologically or anthropologically sensitive or significant areas of land, as they relate to native vegetation management,
  - (c) matters relating to the social and economic aspects of land uses as they relate to native vegetation management,
  - (d) any instrument made under an Act (including any environmental planning instrument and any catchment management strategy prepared in accordance with

the *Catchment Management Act 1989* ) that applies to the region or part of the region and makes provision with respect to native vegetation,

(e) any other aspect considered necessary or desirable by the Minister.

(2) If, in preparing a draft regional vegetation management plan, any part of the land to which the plan is intended to apply is core koala habitat within the meaning of *State Environmental Planning Policy No 44--Koala Habitat Protection* , the plan must make provision, consistent with any guidelines under that Policy, for appropriate protection and management with respect to that habitat.

(3) If any part of the land to which a draft regional vegetation management plan is intended to apply is subject to:

(a) an environmental planning instrument that makes provision for the conservation of native vegetation, or

(b) a recovery plan under the *Threatened Species Conservation Act 1995* , the regional vegetation management plan must make provision, consistent with the objects of this Act, for at least the same level of protection and conservation in relation to native vegetation to that provided by the instrument or recovery plan.

## **28 Notification and consultation**

(1) In preparing a draft regional vegetation management plan, the following information must be notified to each person or body referred to in subsection (2):

(a) the reasons for deciding to prepare the draft plan,

(b) the general aims and objectives of the draft plan,

(c) a description of the land comprising the region to which the draft plan is intended to apply,

(d) such other matters as the initiator thinks fit.

(2) The persons and bodies to be notified are as follows:

(a) each council whose area, or a part of whose area, is within, or partly within, the region to which the draft regional vegetation management plan is intended to apply,

(b) the Local Government Liaison Committee,

(c) each Catchment Management Committee, and each Catchment Management Trust, established under the *Catchment Management Act 1989* whose area of operations, or a part of whose area of operations, is within, or partly within, the region to which the draft plan is intended to apply,

(d) the Native Vegetation Advisory Council,

(e) such other public authorities, government agencies, persons or bodies as may be determined by the initiator.

(3) A person to whom information is notified under this section may provide comments to the initiator on the draft regional vegetation management plan within 28 days (or such longer period as may be determined by the initiator) after the information is notified. If any such comments are received by the initiator, those comments are also to be provided to the Director-General.

## **29 Public exhibition of draft plan**

(1) After a draft regional vegetation management plan has been prepared, the initiator may submit the draft plan to the Director-General. If the Director-General is of the opinion that the draft plan is inconsistent with the objects of this Act, the Director-General is to refer the draft plan back to the initiator for further consideration.

(2) Once the Director-General is satisfied that the draft regional vegetation management plan is suitable for public exhibition, the Director-General must:

(a) give public notice, in a form and manner determined by the Director-General after consultation with the initiator (but which must include advertising in a metropolitan daily newspaper and in a regional newspaper circulating in the area to which the draft plan is intended to apply), of the places at which, the dates on

which, and the times during which, the draft plan may be inspected by the public, and

(b) publicly exhibit the draft plan at the places, on the dates and during the times set out in the notice, and

(c) publicly exhibit such other matters as the Director-General considers appropriate or necessary to better enable the draft plan and its implications to be understood, and

(d) specify in the notice the period during which submissions may be made to the Director-General in accordance with section 30.

(3) The exhibited draft plan must be accompanied by such information as the Director-General considers to be adequate for the purposes of providing an explanation of the background to the provisions of the draft plan.

(4) A draft regional vegetation management plan must be publicly exhibited for a period of not less than 40 days.

### **30 Submissions**

(1) Any person may, during the period referred to in section 29 (2) (d), make submissions in writing to the Director-General with respect to the draft regional vegetation management plan publicly exhibited in accordance with that section.

(2) The Director-General must:

(a) send a copy of each written submission to the initiator, and

(b) allow the initiator such time as is considered to be reasonable by the Director-General:

(i) to consider the submissions, and

(ii) to make such recommendations to the Director-General as the initiator thinks fit (including any recommendations to change the draft plan).

### **31 Submission of draft plan and report to Minister**

(1) The Director-General must, after complying with section 30 (2), submit the draft regional vegetation management plan to the Minister.

(2) The draft plan must be accompanied by a report by the Director-General.

(3) The report must include:

(a) any comments received by the Director-General in accordance with sections 26 (4) and 28 (3), and

(b) any submissions made with respect to the draft plan under section 30 (1), and

(c) any recommendations made by the initiator under section 30 (2) (b) (ii).

(4) In submitting the draft plan, the Director-General may, after consultation with the initiator, exclude certain provisions of the draft plan or exclude from the application of the draft plan part of the region to which the draft plan applied (in this section referred to as the **deferred matter**) which, in the opinion of the Director-General, require or requires further consideration but which should not prejudice the consideration of the draft plan as submitted.

(5) The Director-General may, after consultation with the initiator, subsequently take action under this section in respect of the deferred matter, without having to publicly re-exhibit the deferred matter, as if it were a draft regional vegetation management plan.

### **32 Consultation with Minister for the Environment and Advisory Council**

(1) The Minister must, before making a regional vegetation management plan, consult with the Minister for the Environment and take into account any recommendations made by that Minister.

(2) The Minister for the Environment may make recommendations in respect of the whole plan, but should have particular regard to any comments provided by the Director-General of National Parks and Wildlife under section 26 (4) and to any provisions of the plan relating to the protection and management of koala habitat as referred to in section 27 (2).

(3) If the Minister decides not to follow any one or more of the recommendations made by the Minister for the Environment, the Minister must include the reasons for that decision in a report accompanying the regional vegetation management plan when it is made in accordance with section 33.

(4) The Minister must, before making a regional vegetation management plan, consult with the Advisory Council and take into account any recommendations made by the Advisory Council.

### **33 Making of plan**

(1) After the submission by the Director-General of the draft regional vegetation management plan, and after taking into consideration the Director-General's report under section 31 and consulting with the Minister for the Environment in accordance with section 32, the Minister may:

(a) make a regional vegetation management plan:

(i) in accordance with the draft plan submitted to the Minister, or

(ii) in accordance with the draft plan as submitted, but with such alterations as the Minister thinks fit, or

(b) cause the draft plan to be re-exhibited (with such alterations as the Minister thinks fit) and re-submitted in accordance with this Part, or

(c) decide not to proceed with the draft regional vegetation management plan.

(2) The Minister must, if the Minister decides to make a regional vegetation management plan, or cause the draft plan to be re-exhibited, with such alterations as the Minister thinks fit, consult with the initiator, the Director-General and the Minister for the Environment before making any such alterations.

(3) The validity of a regional vegetation management plan cannot be questioned in any legal proceedings except those that are commenced in the Land and Environment Court by any person within 3 months of the date of its publication in the Gazette.

### **34 Commencement and duration of plan**

(1) A regional vegetation management plan:

(a) must be published in the Gazette, and

(b) takes effect on and from the date of publication or a later date specified in the plan.

(2) A regional vegetation management plan, unless sooner repealed, ceases to be in force 10 years after the day on which it takes effect. However, the Minister may, by order published in the Gazette before the end of the 10-year period, extend the period by which a plan remains in force by a further period not exceeding 6 months.

### **35 Amendment and repeal of plan**

(1) A regional vegetation management plan may be amended by a subsequent regional vegetation management plan made in accordance with this Part.

(2) The Minister may, by order published in the Gazette, repeal a regional vegetation management plan. The repeal takes effect on the date of publication or a later date specified in the order.

### **36 Status of regional vegetation management plan**

(1) For the purposes of Part 4 of the EPA Act, a regional vegetation management plan is taken to be an environmental planning instrument. Accordingly, a reference in Part 4 of the EPA Act to an environmental planning instrument is taken to include a reference to a regional vegetation management plan.

(2) However, subsection (1) is subject to Part 2 of this Act which provides that development consent may be required to clear native vegetation or protected land.

(3) A regional vegetation management plan prevails over any other environmental planning instrument, whether made before or after the plan, to the extent of any inconsistency.

**Note:** A regional vegetation management plan cannot prevail over SEPP Nos 14 and 26 because the land

to which those SEPPs apply is excluded from the operation of this Act (see section 9).

## Part 4 - Native vegetation codes of practice

**Note:** Native vegetation codes of practice are designed to regulate the clearing of native vegetation for specified purposes. A code is required to be adopted by regulation before it comes into force. Any such regulation will need to comply with the requirements of the *Subordinate Legislation Act 1989* (eg the proposed regulation adopting the code must be advertised, consultation must take place and a regulatory impact statement must be prepared).

### 37 Preparation of draft code

- (1) A draft native vegetation code of practice may:
  - (a) be prepared by the Director-General, and
  - (b) be approved by the Minister,in order to regulate the clearing of native vegetation for a specified purpose.
- (2) The Minister must, before approving a draft native vegetation code of practice, consult with the Advisory Council and take into account any recommendations made by the Advisory Council.

### 38 Contents of code

- (1) A native vegetation code of practice may contain provisions relating to the clearing of native vegetation on the land, and for the purpose, specified in the code.
- (2) A native vegetation code of practice cannot:
  - (a) contain provisions that are inconsistent with the objects of this Act, and
  - (b) apply to or in respect of any protected land.
- (3) A native vegetation code of practice:
  - (a) is to include the aims and objectives of the code, and
  - (b) applies only to the native vegetation, and to the land, specified in the code, and
  - (c) is to specify the extent to which the native vegetation may be cleared in accordance with the code.
- (4) The provisions of a native vegetation code of practice may be incorporated in (or be adopted by) a regional vegetation management plan, but cannot be amended by any such plan.

### 39 Adoption and amendment of code by regulation

- (1) The regulations may adopt a native vegetation code in accordance with this Part.
- (2) A native vegetation code of practice:
  - (a) does not have any effect unless it is so adopted, and
  - (b) is to be set out in the regulation that adopts it, and
  - (c) ceases to have effect if the regulation that adopts it is repealed.
- (3) A native vegetation code of practice may be amended by the regulations.

## Part 5 - Property agreements

The object of this Part is to provide:

- (a) a mechanism for landholders to adopt an integrated approach, and to develop appropriate strategies, for the management of vegetation on their land, and
- (b) incentives for landholders to enter into property agreements under this Part.

Landholders who have entered into voluntary conservation agreements under the *National Parks and Wildlife Act 1974*, or property management plans under the *Threatened Species Conservation Act 1995*, are not prevented from entering into property agreements under this Part, and are therefore not prevented from being eligible to obtain any incentives that might be available to landholders who enter into property agreements under this Part.

### 39A Definition

In this Part:

**Trust** means the Nature Conservation Trust of New South Wales constituted by the *Nature Conservation Trust Act 2001*.

#### **40 Making of property agreement**

(1) The Director-General, or both the Director-General and the Trust (but not the Trust alone), may enter into a property agreement with a landholder in relation to any land.

(1A) The Trust may negotiate the making of a property agreement, whether or not the Trust is to be a party to the agreement.

(1B) However, the Director-General may refuse to enter into a property agreement negotiated by the Trust. In that case, the negotiated property agreement does not take effect.

(2) A property agreement may relate to more than one parcel of land and more than one landholder may be a party to the agreement.

#### **41 Nature of property agreement**

(1) A property agreement may provide for the conservation and management of vegetation on the land to which the agreement relates.

(2) A property agreement has no effect unless:

(a) each landholder concerned has consented in writing to the agreement, and

(b) if any land to which the agreement relates is subject to a mortgage, charge or positive covenant--the mortgagee, chargee or person entitled to the benefit of the covenant has consented in writing to the agreement.

(3) A property agreement does not operate to exclude any requirement for development consent to clear native vegetation or to clear protected land.

**Note:** If a property agreement relates to land in respect of which development consent is required under Part 2 of this Act for the clearing of native vegetation, the Minister may, in accordance with Part 4 of the EPA Act, provide that the consent will operate for the duration of the property agreement.

#### **42 Contents of property agreements**

(1) A property agreement may contain terms that are binding on the parties to the agreement.

(2) A property agreement may include provisions for:

(a) the identification of any land, or of specified vegetation, that is to be set aside for conservation or rehabilitation purposes, and

(b) an outline of the methods and practices for vegetation management on any land to which the agreement relates, including (where appropriate) specific outcomes for each separate parcel of land, and

(c) the provision of financial and technical assistance to a landholder on behalf of the Director-General or the Trust, or both the Director-General and the Trust severally, with respect to vegetation management, and

(d) such other matters as the Director-General considers appropriate and which are included with the consent of the parties to the agreement.

(3) A reference in subsection (2) to the Trust applies, in relation to a particular property agreement, only if the Trust is a party to the property agreement.

#### **43 Duration and variation of property agreement**

(1) A property agreement:

(a) takes effect from a day, or on the happening of an event, specified in the agreement, and

(b) remains in force for the period specified in the agreement.

(2) A property agreement may be varied by a subsequent agreement between the parties to the agreement.

(3) Despite subsection (1) (b), a property agreement may be terminated at any time with the consent of the parties to the agreement, or in any such other manner, or in such circumstances, as may be specified in the agreement.

#### **44 Registered property agreement to run with land**

(1) The parties to a property agreement may consent to the registration of the agreement

in accordance with this section.

(2) On being notified by the Director-General that a property agreement has been entered into and the parties have consented to the registration of the agreement, the Registrar-General is required:

- (a) to register the agreement 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 agreement applies.

(3) A property agreement 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 landholder or landholders who entered into the agreement. Those successors in title are taken to have notice of the agreement.

(4) A property agreement relating to land under the *Real Property Act 1900* about which an entry is made in a folio is an interest recorded in the folio for the purposes of section 42 of that Act.

(5) A reference in this section to a property agreement includes a reference to any variation or termination of the property agreement.

(6) In this section:

**successors in title** includes a mortgagee, chargee, covenant chargee or other person, in possession of land to which a property management agreement applies pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before the registration of the property agreement.

#### **45 Enforcement of property agreement**

(1) Proceedings relating to the enforcement of property agreements are to be taken in the Land and Environment Court.

(2) Damages are not to be awarded against a landholder who is a party to a property agreement for a breach of the agreement unless the breach arose from an intentional or reckless act or omission by the landholder or by a previous landholder in respect of the land (being an act or omission of which the landholder had notice).

(3) In assessing damages for breach of a property agreement by a landholder, the Court may have regard to:

- (a) any detriment to the public interest arising from the breach, and
- (b) any financial or other benefit that the landholder sought to gain by committing the breach, and
- (c) any other matter that it considers relevant.

(4) Except as provided by subsection (2), nothing in this section limits the remedies of a party under a property agreement.

## **Part 6 - Other conservation and remedial measures**

#### **46 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, Part 2, the Director-General may, by notice in writing given to the person, order the person not to carry out the clearing 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 and is liable to a penalty not exceeding 1,000 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 100 penalty units for each day the offence continues.

#### **47 Directions for remedial work**

(1) If the Director-General is satisfied:

- (a) that any native vegetation, or any protected land, has been cleared in contravention of Part 2, or
- (b) that the clearing of native vegetation on any land, or the clearing of protected 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,
- (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 and is liable to a penalty not exceeding 1,000 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 100 penalty units for each day the offence continues.

(5) If a person fails to comply with a direction under this section, the Director-General may authorise any other person to enter the land and carry out the specified work.

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

(7) Until repayment, the cost is to be a charge on the land.

#### **48 Appeals under this Part**

(1) A person aggrieved by the decision of the Director-General to make an order, or to give a direction, under this Part 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.

#### **49 Prior notification not required**

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

#### **50 Power to obtain information**

(1) In this section:

**relevant information** means information about a possible offence under this Part.

(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:

(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: 10 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 person under this section is not admissible against the person in criminal proceedings other than proceedings for an offence under this section.

(7) An authorised officer exercising any power under this section must, if requested to do so, produce the authorised officer's identification card to a person served with a notice under this section.

## **Part 7 - Administrative provisions**

### **Division 1 - Regional Vegetation Committees**

#### **51 Establishment of Regional Vegetation Committee**

(1) The Minister may establish a Regional Vegetation Committee in respect of a region.

(2) The name of a Regional Vegetation Committee is to refer to the region in respect of which the Committee is established.

(3) A Regional Vegetation Committee consists of members appointed by the Minister.

(4) The members are as follows:

(a) 4 representatives of rural interests, at least 2 of whom are nominated by the NSW Farmers Association,

(b) 2 representatives of conservation interests nominated by the Nature Conservation Council of New South Wales,

(c) a person who is a non-government member of a Catchment Management Committee, or who is a trustee of a Catchment Management Trust, appointed under section 14 (2) (a) or (b) of the *Catchment Management Act 1989*, being a Catchment Management Committee or Trust whose area of operations applies to the region for which the Committee is established,

(d) a person who is a member of a LandCare Group whose area of operations applies to the region for which the Committee is established,

(e) a person who is nominated by the local government councils whose areas apply to the region for which the Committee is established,

- (f) 2 representatives of Aboriginal interests nominated by the New South Wales Aboriginal Land Council,
  - (g) a representative of the Department of Land and Water Conservation,
  - (h) a representative of the Department of Agriculture,
  - (i) a representative of the National Parks and Wildlife Service,
  - (j) a person (nominated by the Australian Ecological Society or the National Herbarium) who has recognised scientific expertise in an area relating to native vegetation conservation and management.
- (5) The members of a Committee are to elect one of their number to be the Chairperson of the Committee.
- (6) Schedule 3 has effect with respect to the members and procedure of Regional Vegetation Committees.

### **52 Functions of Regional Vegetation Committee**

- (1) A Regional Vegetation Committee has the following functions:
- (a) preparing, with the approval of the Minister, a draft regional vegetation management plan for the region in respect of which the Committee is established,
  - (b) monitoring and reviewing the regional vegetation management plan after it is made,
  - (c) such other functions as are conferred or imposed on it by or under this Act.
- (2) A Regional Vegetation Committee must, if requested to do so by the Minister, provide the Advisory Council with a report in relation to its functions.

### **53 Dissolution of Regional Vegetation Committee**

The Minister may, by an instrument in writing, dissolve a Regional Vegetation Committee:

- (a) if the Minister is satisfied that it is no longer necessary for the Committee to continue,
- or
- (b) if requested to do so by the Committee.

## **Division 2 - Native Vegetation Advisory Council**

### **54 Establishment of Advisory Council**

- (1) There is established by this Act a Native Vegetation Advisory Council.
- (2) The Advisory Council consists of:
- (a) a person appointed by the Minister to be the Chairperson of the Advisory Council, and
  - (b) such other members as may be appointed by the Minister.
- (3) The members referred to in subsection (2) (b) are as follows:
- (a) 4 representatives of rural interests, at least 2 of whom are nominated by the NSW Farmers Association,
  - (b) 2 representatives of conservation interests nominated by the Nature Conservation Council of New South Wales,
  - (c) a person who is a non-government member of the State Catchment Management Co-ordinating Committee established under the *Catchment Management Act 1989*,
  - (d) a representative of local government interests nominated by the Local Government and Shires Associations of New South Wales,
  - (e) 2 representatives of Aboriginal interests nominated by the New South Wales Aboriginal Land Council,
  - (f) a representative of the Department of Land and Water Conservation,
  - (g) a representative of the Department of Agriculture,
  - (h) a representative of the National Parks and Wildlife Service,
  - (i) a representative of the Department of Urban Affairs and Planning,
  - (j) a person (nominated by the Australian Ecological Society or the National Herbarium) who has recognised scientific expertise in an area relating to native

vegetation conservation and management.

(4) Schedule 3 has effect with respect to the members and procedure of the Advisory Council.

### **55 Functions of Advisory Council**

(1) The Advisory Council has the following functions:

- (a) to advise, monitor and report to the Minister on the status of native vegetation throughout the State,
- (b) to develop, and advise the Minister on, a native vegetation conservation strategy that is designed to assist in achieving the objects of this Act,
- (c) to advise and report to the Minister on any matter, including such matters as may be requested by the Minister from time to time,
- (d) such other functions as may be conferred or imposed on it by or under this or any other Act.

(2) The Advisory Council is required to report annually to the Minister on the matters referred to in subsection (1).

(3) The strategy referred to in subsection (1) (b) is to deal with:

- (a) strategies at both the State and national level that are relevant to native vegetation management (eg greenhouse and biodiversity strategies), and
- (b) promoting education and awareness of native vegetation conservation.

## **Division 3 - Native Vegetation Management Fund**

### **56 Establishment of Fund**

(1) There is established by this Act a Native Vegetation Management Fund into which is to be paid:

- (a) such money as may be appropriated by Parliament for payment into the Fund, and
- (b) the proceeds of the investment of money in the Fund, and
- (c) such money as may be paid into the Fund.

(2) The Director-General is responsible for the administration of the Fund.

(3) Money in the Fund may only:

- (a) be allocated with the Minister's authorisation (and on such basis as the Minister thinks appropriate), and
- (b) be spent in connection with the objects of this Act.

(4) Without limiting subsection (3), money in the Fund may be allocated for purposes connected with property agreements.

(5) The Minister is to seek the advice of the Advisory Council regarding priorities for the allocation of money from the Fund.

### **57 Investment of money in Fund**

The Minister may invest money in the Fund:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Minister to invest the money, in any other manner approved by the Treasurer.

## **Part 8 - Miscellaneous provisions**

### **58 Act binds Crown**

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

### **59 Appointment of authorised officers**

(1) The Minister may appoint any person who is a public servant employed in the

Department of Land and Water Conservation 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 by the Director-General.

(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, produce the officer's identification card to the person.

## **60 Delegation of functions**

(1) The Director-General may delegate to any public servant employed in the Department of Land and Water Conservation any of the Director-General's functions under this Act other than this power of delegation.

(2) The Minister may delegate to any public servant employed in the Department of Land and Water Conservation:

(a) any of the Minister's functions under this Act (other than this power of delegation), and

(b) any of the Minister's functions under the EPA Act as consent authority in relation to a development application for consent to clear native vegetation or to clear trees on protected land.

## **61 Powers of entry and inspection**

(1) An authorised officer may enter land for the purpose of determining whether:

(a) a person is contravening or has contravened any provision of this Act or the regulations (including any instrument made under this Act), or

(b) any native vegetation or protected land is being cleared in contravention of this Act,

and while on that land exercise the functions specified in subsection (2).

(2) The functions that may be exercised on land entered by an authorised officer are as follows:

(a) the authorised officer may conduct such investigations, make such inquiries, examinations and inspections, and take such samples and recordings (including photographs), as the officer considers necessary,

(b) the authorised officer may require the landholder to produce to the officer any records or documents that relate to any clearing activities carried on in relation to that land,

(c) the authorised officer may require the landholder to provide such reasonable assistance and facilities as may be requested by the officer.

(3) An authorised officer is not entitled to exercise the powers conferred by this section in relation to residential premises except with the consent of the landholder.

(4) A person who:

(a) obstructs an authorised officer in the exercise of the officer's functions under this section, or

(b) being the landholder, fails or refuses to comply with a requirement made by an authorised officer under this section,

is guilty of an offence.

Maximum penalty: 10 penalty units.

(5) In this section, **obstruct** includes delay, threaten or hinder.

## **62 Service of notices**

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

(a) by delivering it personally to the person to whom it is addressed, or

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

### **63 Restraint of breaches of this Act**

(1) In this section:

(a) a reference to a breach of this Act is a reference to:

- (i) a contravention of or failure to comply with this Act, or
- (ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act, and

(b) a reference to this Act includes a reference to any of the following:

- (i) a regional vegetation management plan,
- (ii) a native vegetation code of practice,
- (iii) a development consent granted under the EPA Act (being a consent that is required because of Part 2 of this Act),
- (iv) a condition subject to which such a development consent was granted,
- (v) an order or direction under Part 6.

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

(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 unincorporated (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.

### **64 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 (or became apparent to) 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 (or became apparent to) 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.

### **65 Offences by corporations**

(1) If a corporation contravenes, whether by act or omission, any provision of this Act or

the regulations, 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 actual, imputed or constructive 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.

(4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.

## **66 Evidence**

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

- (a) that any land specified in the certificate was, at a time or during a period specified in the certificate, protected land,
- (b) 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,
- (c) that a person was, at a time or during a period specified in the certificate, a landholder,
- (d) that a person was, at a time or during a period specified in the certificate, an authorised officer,
- (e) 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.

## **67 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) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to any matter relating to regional vegetation management plans and property agreements.

(3) A regulation may provide that development consent is not required:

- (a) to clear native vegetation on any land (other than land to which a regional vegetation management plan applies), or
- (b) to clear State protected land,

if the clearing specified in the regulation is carried out in accordance with the regulation. Any such regulation has effect despite anything in Part 2 of this Act.

(4) The regulations may make provision, consistent with Part 4 of the EPA Act, for or with respect to the determination of applications for development consent for development comprising:

- (a) the clearing of native vegetation, or the clearing of protected land, and
- (b) another form of development which requires development consent pursuant to a local environmental plan made under the EPA Act.

Any such regulation has effect despite anything in Part 2 of this Act.

(5) The regulations may create an offence punishable by a penalty not exceeding 20 penalty units.

### **68 Savings and transitional provisions**

Schedule 4 has effect.

### **69 (Repealed)**

### **70 Repeal of SEPP 46**

*State Environmental Planning Policy No 46--Protection and Management of Native Vegetation* is repealed.

### **71 Review of Act**

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Local government areas partially excluded from Act**

(Sections 10 (1) and 11 (1) (a))

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.

## **Schedule 2 Local government areas totally excluded from Act**

(Sections 10 (2) and 11 (1) (b))

## **Schedule 3 Members and procedure of Regional Vegetation Committees and Advisory Council**

(Sections 51 (6) and 54 (4))

## **Part 1 - Preliminary**

### **1 Definitions**

In this Schedule:

**Chairperson** means the Chairperson of a Regional Vegetation Committee or the Advisory Council.

**member** means a member of a Regional Vegetation Committee or the Advisory Council.

## **Part 2 - Provisions relating to members**

### **2 Terms of office of appointed members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **4 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person:
  - (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister has determined in respect of the member in whose place the person is acting.
- (4) This clause does not operate to confer on a deputy of a member who is the Chairperson the member's functions as Chairperson.

### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 3 consecutive meetings of the Regional Vegetation Committee concerned, or of the Advisory Council, of which reasonable notice has been given to the member personally or by post, except on leave granted by the Chairperson or unless the member is excused by the Chairperson for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may at any time remove a member from office.

### **6 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Chairperson of Advisory Council**

- (1) The Chairperson of the Advisory Council vacates office as Chairperson if the person:
  - (a) is removed from office by the Minister under this clause, or
  - (b) ceases to be a member.
- (2) The Minister may at any time remove the Chairperson of the Advisory Council from office as Chairperson.

## **8 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

# **Part 3 - Procedure**

## **9 General procedure**

The procedure for the calling of meetings of a Regional Vegetation Committee or the Advisory Council, and for the conduct of business at those meetings, is, subject to this Act and the regulations, to be as determined by the Regional Vegetation Committee and the Advisory Council.

## **10 Quorum**

The quorum for a meeting of a Regional Vegetation Committee or the Advisory Council is a majority of the members for the time being.

## **11 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, another member elected to chair the meeting by the members present) is to preside at a meeting of a Regional Vegetation Committee or the Advisory Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Consensus decision making**

- (1) Any decision at a meeting of a Regional Vegetation Committee or the Advisory Council at which a quorum is present is to be made by consensus.
- (2) If a consensus cannot be reached at the meeting, a decision supported by a majority of the votes cast at the meeting is the decision of the Committee or the Advisory Council.
- (3) Any member is entitled to make a report indicating a minority view in relation to a decision of the Committee or the Advisory Council. Such a report may be given to the Minister.

## **13 Subcommittees**

- (1) A Regional Vegetation Committee or the Advisory Council may establish subcommittees to assist the Committee or the Advisory Council in the exercise of its functions.
- (2) At least one of the members of a subcommittee must be a member of the Regional Vegetation Committee or the Advisory Council, but it does not matter if none of the other

members of a subcommittee is a member of the Committee or the Advisory Council.

(3) A member of a subcommittee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(4) The procedures for calling meetings of a subcommittee and for the conduct of those meetings are to be determined by the Regional Vegetation Committee or the Advisory Council (or, subject to any determination by the Committee or the Advisory Council) by the subcommittee.

(5) A Regional Vegetation Committee or the Advisory Council may delegate to a subcommittee any of the functions of the Committee or the Advisory Council, other than this power of delegation.

#### **14 Transaction of business outside meetings or by telephone**

(1) A Regional Vegetation Committee or the Advisory Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee or the Advisory Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee or the Advisory Council.

(2) A Regional Vegetation Committee or the Advisory Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter that is before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Regional Vegetation Committee or the Advisory Council.

(4) A resolution approved under subclause (1) is to be recorded in the minutes of the next meeting of the Regional Vegetation Committee or the Advisory Council.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **15 Minutes of meetings**

(1) A Regional Vegetation Committee and the Advisory Council must keep minutes of the proceedings of each meeting of the Committee or Advisory Council.

(2) The Advisory Council must provide the Minister with a copy of the minutes of each of its meetings as soon as practicable after the meeting is held.

#### **16 First meeting**

The Minister may call the first meeting of a Regional Vegetation Committee or the Advisory Council in such manner as the Minister thinks fit.

## **Schedule 4 Savings and transitional provisions**

(Section 68)

### **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 this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act 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:

**SEPP 46** means *State Environmental Planning Policy No 46--Protection and Management of Native Vegetation* as in force immediately before its repeal by this Act.

### **3 Existing development consents and exemptions under SEPP 46**

- (1) The repeal of SEPP 46 by this Act does not affect any development consent for clearing native vegetation as required by SEPP 46 and in force immediately before that repeal, except to the extent that:
  - (a) the development consent is taken to be development consent as required by Part 2 of this Act, and
  - (b) the clearing is to be subject to this Act.
- (2) Subject to the regulations, the clearing of native vegetation for a purpose or extent described in Schedule 3 to SEPP 46 continues, after the repeal of SEPP 46 by this Act, to be clearing that is exempt from any requirement under Part 2 of this Act for development consent.
- (3) Subclause (2), and any regulation made for the purposes of that subclause, ceases to have effect in relation to the clearing concerned if the land to which the clearing relates becomes land to which a regional vegetation management plan applies.

### **4 Existing authorities and exemptions under Soil Conservation Act 1938 (State protected land)**

- (1) The clearing of protected land as authorised by an authority issued under section 21D of the *Soil Conservation Act 1938* and in force immediately before the commencement of Schedule 5.3 to this Act is, after that commencement, taken to be clearing that:
  - (a) is authorised by a development consent required by Part 2 of this Act, and in force under Part 4 of the EPA Act, and
  - (b) is to be subject to this Act.
- (2) Subject to the regulations, the clearing of protected land in accordance with an exemption order under section 21C (2) of the *Soil Conservation Act 1938*, and in force immediately before the commencement of Schedule 5.3 to this Act, is, after that commencement, to be clearing that is exempt from any requirement under Part 2 of this Act for development consent.
- (3) Subclause (2), and any regulation made for the purposes of that subclause, ceases to have effect in relation to the exempt clearing if the land on which the clearing relates becomes land to which a regional vegetation management plan applies.

### **5 Existing clearing licences and exemptions under Western Lands Act 1901**

- (1) The clearing of native vegetation in the Western Division as authorised by a clearing licence issued under section 18DB of the *Western Lands Act 1901* and in force immediately before the commencement of Schedule 5.4 to this Act is, after that commencement, taken to be clearing that:
  - (a) is authorised by a development consent required by Part 2 of this Act, and in

force under Part 4 of the EPA Act, and

(b) is to be subject to this Act.

(2) Subject to the regulations, the clearing of native vegetation in the Western Division for a purpose described in Schedule 4 to the *Western Lands Regulation 1997* is, after the commencement of Schedule 5.4 to this Act, taken to be clearing that is exempt from any requirement under Part 2 of this Act for development consent.

(3) Subclause (2) ceases to have effect in relation to the exempt clearing if the land on which the clearing is carried out becomes land to which a regional vegetation management plan applies.

#### **6 Interim management plans and Regional Vegetation Committees under SEPP 46**

(1) An interim regional vegetation management plan made under SEPP 46 and in force immediately before the commencement of this clause:

(a) continues to apply, after that commencement, to the area of land to which the interim plan applied, and

(b) is taken to be a regional vegetation management plan in force under this Act in respect of a region determined by the Minister, and

(c) may be amended or repealed under Part 3 of this Act.

(2) If the process of making an interim regional vegetation plan under SEPP 46 started before the commencement of this clause but the plan was not made before that commencement, the process of making the draft plan may be completed in accordance with this Act.

(3) A Regional Vegetation Committee established under SEPP 46 is taken to be a Regional Vegetation Committee established under this Act.

#### **7 Native grasslands plans of management under SEPP 46**

A plan of management in force under clause 12 of SEPP 46 immediately before the repeal of SEPP 46 by this Act continues to authorise the clearing of native vegetation without development consent in accordance with the plan after that repeal, but only until such time as:

(a) a regional vegetation management plan is made in relation to the land to which the plan of management under clause 12 of SEPP 46 applied, or

(b) the second anniversary of the commencement of this clause occurs,

whichever happens first.

#### **8 Pending development applications relating to clearing**

This Act extends to any application:

(a) for development consent (as required by an environmental planning instrument) to clear native vegetation, or

(b) for any approval or authorisation under any other Act to clear native vegetation or protected land,

that was made but not determined before the commencement of this clause. Accordingly, any such pending application is to be dealt with as if this Act was in force when the application was made.

## **Schedule 5 (Repealed)**

### **Historical notes**

Table of Acts *Native Vegetation Conservation Act 1997 No 133* . Assented to 16.12.1997. Date of commencement, 1.1.1998, sec 2 and GG No 149 of 19.12.1997, p 10095. This Act has been amended as follows:

*the Amendment Act 1998* . Assented to 8.12.1998. Date of commencement, 2.4.1999, sec 2 and GG No 27 of 5.3.1999, p 1546.

*Law (Miscellaneous Provisions) Act (No 2) 1999* . Assented to 3.12.1999. Date of commencement of Sch 2.43, assent, sec 2 (2); date of commencement of Sch 4, assent, sec 2

*Legislation Amendment (Sentencing) Act 1999* . Assented to 8.12.1999. Date of commencement of sec 7 and Sch 5, 1.1.2000, sec 2 (1) and GG No 144 of 24.12.1999, p

*ions and Reafforestation Act 1999* . Assented to 8.12.1999. Date of commencement, 001, sec 2 and GG No 190 of 14.12.2001, p 9834.

*Management Act 2000* . Assented to 8.12.2000. Date of commencement of Sch 8.19, 4, sec 2 (1) and GG No 110 of 1.7.2004, p 5002.

*Law (Miscellaneous Provisions) Act (No 2) 2000* . Assented to 8.12.2000. Date of commencement of Sch 2.33, assent, sec 2 (2).

*Conservation Trust Act 2001* . Assented to 18.4.2001. Date of commencement of Sch 2003, sec 2 and GG No 54 of 28.2.2003, p 3507.

*Legislation Repeal and Amendment Act 2001* . Assented to 19.12.2001. Date of commencement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.

*ires and Environmental Assessment Legislation Amendment Act 2002* . Assented to 02. Date of commencement, 1.8.2002, sec 2 and GG No 122 of 26.7.2002, p 5545.

#### Table of amendments

	02 No 67, Sch 5.5 [1].
	08 No 138, Sch 2.7.
	09 No 97, Sch 2.7 [1]; 2002 No 67, Sch 5.5 [2]-[4]; 2000 No 92, Sch 8.19.
	09 No 97, Sch 2.7 [2]; 2000 No 93, Sch 2.33 [1].
	00 No 93, Sch 2.33 [2].
note	09 No 97, Sch 2.7 [3].
A	01 No 10, Sch 4 [1].
	01 No 10, Sch 4 [2].
	01 No 10, Sch 4 [3] [4].
	09 No 85, Sch 2.43; 2001 No 121, Sch 2.156 [1] [2].
	09 No 85, Sch 4.
	09 No 94, sec 7 (2) and Sch 5, Part 2.

99 No 85, Sch 4.