

SENATE FINANCE AND PUBLIC ADMINISTRATION COMMITTEE INQUIRY

Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures

Introduction

The forests, woodlands, grasslands and other vegetated landscapes of NSW are important for a healthy environment and society. Clearing of native vegetation is one of the greatest threats to biodiversity in NSW. Over 60% of native vegetation in NSW has been cleared, thinned or significantly disturbed since 1788. Effective retention and management of native vegetation is also critical in the control of erosion, land degradation, water quality and impact of salinity on agricultural urban and aquatic environments. Retention of existing native vegetation is the most cost effective way to protect these critical environmental assets.

In 2003, the NSW Government introduced landmark legislation – the *Native Vegetation Act 2003* (NV Act), as the primary vehicle for protecting and improving the condition of native vegetation. The legislation also fulfilled obligations the NSW government has with the Commonwealth to reduce the rate of land clearing in Australia.

A Brief History

The current regulatory framework for native vegetation has evolved from over a century of legislation:

- 1901: Western Lands Act
- 1938: Soil Conservation Act
- 1979: Environmental Planning and Assessment Act
- 1995: State Environmental Planning Policy No. 46
- 1998: Native Vegetation Conservation Act
- 2003: Native Vegetation Act
- 2005: Native Vegetation Regulation
- 2007: Private Native Forestry Regulation

Native Vegetation Reforms – Wentworth and Sinclair Reports 2003

In late 2002, the then Premier Carr asked the Wentworth Group of Concerned Scientists to provide advice on regulating land clearing in NSW. The Wentworth group provided the government with its report in early 2003 which was accepted as the basis for major native vegetation reforms.

The NSW Government established the Native Vegetation Reform Implementation Group, chaired by the Rt Hon Ian Sinclair AC, to recommend actions to implement the native vegetation reforms. The group included representatives from farmer and environmental groups. In October 2003, the group provided its report (Sinclair Report) containing over 45 recommendations.

In December 2003, based on the Sinclair report, the Government passed the *Native Vegetation Act 2003* as part of the suite of natural resource management reforms. These reforms were developed through extensive stakeholder consultation with representatives from NSW Farmers' Association and environment groups over a 2 year period. Over 100 field trials of the methodology that supports the NV Act were undertaken and significant improvements were made prior to the commencement of the Act.

The NV Act started operation with the Regulation on 1 December 2005. It repealed the *Native Vegetation Conservation Act 1997*. Other legislation that formed part of the package included the *Catchment Management Authorities Act 2003* and the *Natural Resources Commission Act 2003*.

Reforms delivered by the NV Act and Regulations

The NV Act and Regulations delivered significant reforms to native vegetation management in NSW. The key reforms delivered include:

- an end to broadscale clearing unless approved actions improve or maintain environmental outcomes
- voluntary property vegetation plans (PVPs) agreements; between landholders and Catchment Management Authorities (CMAs) that allow the landholder to negotiate appropriate management actions that can offset the negative impacts of proposed clearing
- greater autonomy for farmers to manage vegetation through clearly identified regrowth dates and routine agricultural management practices
- a streamlined system for the management of invasive native scrub
- flexibility and incentives for farmers to manage native vegetation sustainably
- reduction in red tape by simplifying native vegetation and threatened species controls into one approval, called the property vegetation plan (PVP)
- clearing approval for 15 years providing certainty against any future changes to planning instruments and that existing land uses can continue
- standardised, consistent and validated methodology to assess clearing proposals.

Objectives of the NV Act

Section 3, NV Act outlines the objectives of the Act:

- a) to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State, and
- b) to prevent broadscale clearing unless it improves or maintains environmental outcomes, and
- c) to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity or the prevention of salinity or land degradation, and
- d) to improve the condition of existing native vegetation, particularly where it has high conservation value, and
- e) to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation,

in accordance with the principles of ecologically sustainable development.

Elements of the Act

The NV Act ends broadscale clearing in NSW, unless it is part of a package of measures where overall maintenance or improvement of environmental outcomes is achieved. The legislation includes a range of exemptions and exclusions to allow farmers to clear native vegetation without approval for the day-to-day management of their farms. The NV Act does not apply to urban areas where land use planning legislation applies instead. A number of information sheets are available that provide information on native vegetation management as described in the NV Act (<http://www.environment.nsw.gov.au/vegetation/infosheets.htm>).

The NV Act defines native vegetation as remnant vegetation, protected regrowth or non protected regrowth. The requirements for clearing of native vegetation depends on the category of native vegetation:

1. **Remnant vegetation:** any native vegetation that is not regrowth.

2. **Regrowth:** all native vegetation that has regrown since 1 January, 1990 (or 1 January 1983 in the Western Division). Regrowth does not include native vegetation that has regrown after:
- unlawful clearing of native vegetation, or
 - bushfires, floods, droughts or other natural disasters that cause the clearing of native vegetation.

Approval is **not** required to clear any non-protected regrowth when it has:

- been legally cleared, and
- regrown after the regrowth date.

3. **Protected regrowth** is native vegetation that is regrowth and is defined as protected regrowth in a property vegetation plan, an environmental planning instrument, a natural resources management plan or an interim protection order under the NV Act. It also includes native vegetation that is regrowth which has been grown or preserved with the assistance of public funds granted for biodiversity conservation purposes.

Clearing of protected regrowth does not require approval where the clearing occurs under routine agricultural management activities (outlined below under permitted clearing), the continuation of existing farming activities or sustainable grazing.

Permitted clearing

Permitted clearing requires no approval under the NV Act or (except for certain groundcovers) under the *Threatened Species Conservation Act 1995* (TSC Act). There are six types of permitted clearing:

1. **Construction of a single dwelling.** Clearing is permitted of the minimum amount of native vegetation needed to comply with a development consent for a single dwelling.
2. **Routine agricultural management activities (RAMAs).** RAMAs cover a wide range of day to day farming activities. These are designed to allow for practical day-to-day management of farms while still protecting native vegetation values. Approval is not required where it is undertaken to the minimum extent possible and within specified limits and in association with other approvals, such as building approvals, if required. Examples include clearing for fencelines, yards and sheds, clearing for safety purposes or emergency purposes, noxious weed removal and non-commercial firewood collection.

The NV Regulation also allows landholders to obtain construction timber for the construction or maintenance of rural infrastructure provided:

- The clearing will not cause land degradation
- The same or a similar species are restored over the area from where the construction timber was cut
- The timber to be cut is not a threatened species of part of a threatened population or threatened ecological community, or their habitat.

3. **Clearing of non protected regrowth.** Vegetation that has regrown since 1 January 1990 (or 1 January 1983 in the Western Division) is classified as regrowth and can be cleared without approval.
4. **Sustainable grazing.** A landholder can carry out sustainable grazing without approval. Sustainable grazing is grazing that is not likely to result in the substantial long term decline in the structure and composition of native vegetation.
5. **Clearing of certain groundcover.** Clearing of certain groundcover is permitted where:
 - Less than 50% of the groundcover contains live indigenous species, and
 - 10% or more of the area has some form of vegetative cover whether live or dead.

However, the clearing of such vegetation is subject to the provisions of the TSC Act.

6. **To continue existing farming activities.** A landholder can clear any regrowth, without approval, to continue existing cultivation, grazing or rotational farming, except in the Western Division, where River Red Gum, Belah and White Cypress Pine species are considered protected regrowth but only when they are over 3 metres tall.

Additional exemptions allow local councils to clear for essential infrastructure and eliminate 'dual consent' for seniors housing proposals.

Clearing that requires approval

Clearing remnant native vegetation or protected regrowth requires approval under the NV Act unless the clearing is a permitted activity. Under the NV Act, the Minister has delegated the approval of clearing to the local Catchment Management Authority (CMA), except for Private Native Forestry, where the Department of Environment, Climate Change and Water (DECCW) is the delegated authority. CMAs can only approve clearing of remnant vegetation or protected regrowth when the clearing will improve or maintain environmental outcomes. The *Native Vegetation Regulation 2006* sets out an Environmental Outcomes Assessment Methodology which is applied using a decision support tool known as the PVP Developer to assess the application to clear.

'Improve or maintain' means that for clearing to be approved it cannot result in reduced environmental outcomes. The impact of clearing is measured against four environmental values: water quality, soils, salinity and biodiversity (including threatened species).

PVPs are negotiated agreements between a landholder and a CMA and are prepared for free. Clearing proposals that form part of a PVP can incorporate offsets to meet the 'improve or maintain' environmental outcomes test required by the NV Act. Clearing approvals can last up to 15 years although offsets may be needed for a longer period. A PVP can also define and confirm regrowth or continuing uses as well as areas subject to long-term rotations that may qualify for a change to the regrowth date.

Offsets

Offsets are positive management actions to help meet the 'improve or maintain' test. They are actions that landholder agrees to in order to balance any negative impacts of clearing and are usually required to be maintained in perpetuity. Examples of offsets include agreeing not to clear native vegetation regrowth, reducing stocking rates from areas of remnant vegetation, planting and re-seeding or improving habitat by weed control.

Incentive programs

All CMAs have developed on farm incentive programs that relate to native vegetation. Native vegetation incentive programs include:

- Revegetation and rehabilitation of land with native vegetation, such as managing stock to allow natural regeneration, large scale planting of trees, planting understorey species, rebuilding riparian vegetation
- Conservation and management of existing native vegetation, such as weed and feral animal control, protection from pesticides and fertilisers, control of grazing and fire
- Rewarding farmers for good land management, such as retaining standing and fallen dead trees, retaining a proportion of mature vegetation on their properties for conservation purposes.

Native vegetation incentive programs are delivered by the CMAs based on a Catchment Action Plan and investment strategy that identifies the natural resource priorities for their catchment. The CMAs use the PVP Developer to evaluate proposed activities against the benefits they will have on water quality, soils, salinity and biodiversity.

Invasive Native Scrub

Under the NV Act, clearing of invasive native scrub (INS) requires approval if it meets the definition of remnant vegetation. INS comprises:

- A plant species that invades vegetation communities where it has not been known to occur previously OR a species that regenerates densely following natural or artificial disturbance *and*
- The invasion and/or dense regeneration of the species results in change of structure and/or composition of the vegetation community, *and*
- The species is within its natural geographic range or distribution.

INS can cause environmental and production problems. However, INS species are native to NSW and provide habitat for some native plants and animals, and connections for the movement of wildlife across the landscape. The NSW Government is responsible for balancing the need to maintain production with protection of the environment.

There are over 40 native plant species listed as INS in NSW and different species are listed for different areas. Species can be added to or removed from the list at the request of the CMA and following review of supporting scientific evidence.

CMAs assess the clearing of INS using the PVP Developer. A special assessment process has been specifically designed for clearing to manage INS called the INS Tool. This was developed by the INS Working Group which included representatives from CMAs, agencies and independent scientists in consultation with farmers and conservation interests as well as the general public. A review of the INS Tool was completed in 2006 and proposed changes. The Natural Resources Commission independently reviewed the proposed changes and made recommendations to the NSW Government on the changes. The NSW Government accepted the recommendations and they have been incorporated into the INS tool.

The INS Tool sets out the treatments that allow landholders to clear INS to restore open woodlands and native grasslands. Offsets are not required when using the INS Tool.

After assessing a clearing proposal using the INS Tool, a PVP is prepared by the landholder with the CMA. Landholders can treat up to 80% of the extent of INS on the property. In order to maintain a mosaic of habitats, the INS Tool requires that at least 20% of the INS extent on a property remain untreated, preferably in patches and clumps across the property.

Financial Investment

Natural resource investment funding incorporates a suite of programs and objectives, a number of which include native vegetation management components. These include:

- National Action Plan for Salinity and Water Quality (NAP) – total funding \$396 million over 7 years from the Commonwealth and NSW governments (2002 – 2009)
- Natural Heritage Trust 2 (NHT2) – total funding \$183 million over 7 years from the Commonwealth (2002 – 2009)
- Caring for our Country (CfoC) - \$186 million over 5 years (2008 – 2013) from the Commonwealth – guaranteed CMA base-level only
- Catchment Action NSW - \$167 million over 5 years from the NSW government (2008 – 2013).

In NSW, over \$120 million has been specifically directed to improve the management of native vegetation. This includes \$90m from NAP (\$45 million from NSW and \$45 million from the Commonwealth) and \$30 million of NSW State Sustainability Funding. This investment in vegetation and biodiversity management continues.

Financial assistance for people impacted by new legislation 2005 onwards

The Native Vegetation Assistance Package (NVAP) was established to assist landholders who are directly disadvantaged by being unable to clear native vegetation on their property. This Package delivered just short of \$1 million in Sustainable Farming Grants as well as over \$17 million in Exit Assistance.

Nine sustainable farming grants have been delivered to farmers totalling \$947,000 (four Agriculture \$440,000, five PNF \$506,577). All applicants for grants were successful in receiving funding. A further \$400,000 in sustainable farming grants remains available for PNF operators until 30 June 2011.

The Farmer Exit Assistance Package worth \$17.6 million is being delivered by a revolving fund administered by the Nature Conservation Trust. Four properties have been purchased. This scheme is still available for all landholders until 30 June 2012 (funds pending) (<http://www.environment.nsw.gov.au/vegetation/financialassist.htm>).

Compliance and enforcement strategy

DECCW is responsible for promoting compliance with native vegetation legislation to achieve better environmental and conservation outcomes. The *Native Vegetation Compliance and Enforcement Strategy* has been developed to assist the community in understanding the principles and approaches DECCW uses when undertaking compliance and enforcement activities under the NV Act (<http://www.environment.nsw.gov.au/resources/vegetation/09465nvcestrategy.pdf>). Effective stakeholder engagement, strategic investigations, appropriate enforcement actions and targeted compliance campaigns are all key components of DECCW's regulation of native vegetation.

DECCW takes a 'risk based approach' to compliance and enforcement by targeting compliance efforts towards problems that pose the highest environmental and compliance risks. Compliance is driven through transparent, consistent and accountable regulatory actions that target those who consciously choose not to comply with the law. When illegal clearing is identified the Department selects the most appropriate regulatory response from a range of tools, such as prosecutions, penalty notices, Stop Work Orders, Remedial Directions, warning and advisory letters.

The community, industry, landholders, contractors, interest groups, CMAs and government agencies all have an important role in delivering better outcomes for native vegetation by promoting compliance with legislation and by identifying and reporting possible environmental problems and illegal clearing.

Satellite monitoring

DECCW uses high resolution satellite imagery to monitor illegal land clearing in NSW. The satellite imagery can show the removal of a single tree (SPOT5 – 2.5m² pixels) Imagery for the entire state is purchased each year. Medium resolution imagery (LandSat – 25m²pixels) is used for woody vegetation change reporting.

Public reporting

NSW releases a public Annual Report on native vegetation. The 2008 report is attached (Attachment 1) <http://www.environment.nsw.gov.au/resources/nativeveg/09523arnv08.pdf> and the 2009 report is near to completion. Reports are produced annually and will now include information from 1988 onwards.

Continuous improvement

The NSW government has continued to review the regulatory framework since the introduction of the NV Act. For example:

- A streamlined system for the management of invasive native scrub in central and western NSW was introduced 2006
- Changes to give local councils more flexibility when constructing infrastructure were added in 2008
- Provision has been made for landscape scale rather than single property assessments in some cases, especially where farmers can work together as a group; and
- Sections of the Environmental Outcomes Assessment Methodology relating to biodiversity and threatened species are currently being reviewed to better reflect current knowledge of environmental assessment.

NV Act review

The NV Act has been formally reviewed as part of the five year statutory review requirement. The purpose of the review was to determine whether the policy objectives of the Act remain valid and whether the terms of the Act are appropriate for meeting these objectives.

The review report concluded:-

"This report identifies the depth and complexity of issues faced in the management of native vegetation in NSW. Whilst no fundamental change in the nature of the Act's framework appears to be needed, this review identifies areas for change that could enhance the current operation of the Act. The government will further consider these issues in consultation with relevant stakeholders."

A copy of the Report is enclosed for your information.

Achievements 1 December 2005 – 31 December 2009

- **Number of PVPs.** From 1 December 2005 – 31 December 2009, 1,677 PVPs have been approved of which 1,159 have involved incentives. Over 380,000 ha have been protected, conserved or improved to achieve biodiversity, land restoration, salinity and water quality outcomes.
- **Reduction in the area being approved for clearing.** Since the implementation of the NV Act in December 2005, there has been an overall reduction in the area of land approved for clearing in NSW. For example, in 1999 over 160,000 hectares of land was approved for clearing compared to less than 2,000 hectares of approved clearing in each of 2008 and 2009 under the NV Act.

From December 2005, when the NV Act came into force, to December 2009, 7,243 hectares have been approved for clearing subject to a PVP to improve or maintain the environmental outcomes. 25,623ha has been secured as offsets for clearing.

- **Invasive Native Scrub (INS).** 1,677,379 ha have been approved for INS treatment.
- **Compliance** Enforcement statistics

Native Vegetation Summary		
January 2008 - December 2009	Total 2009	Total 2008
PROSECUTIONS		
- Convictions (matter finalised)	8	4
PENALTY NOTICES - PINS		
- Number issued under s12	22	8
STOP WORK ORDERS(s37)		
- Number issued	0	2
REMEDIAL DIRECTIONS (s38)		
- Number issued	26	4
WARNING AND ADVISORY LETTERS		
- Number sent	194	103

Private Native Forestry

Private Native Forestry (PNF) is the management of native vegetation on privately owned land for the purposes of obtaining forest products on a sustainable basis. There is an estimated 8.5 million hectares of native forests on private land across NSW. PNF is critical to both the timber industry and maintaining environmental values including biodiversity, water and soil quality, carbon and preventing land degradation.

In 2007, the NSW Government introduced significant regulatory reforms for the PNF industry – the PNF Code of Practice under the *Native Vegetation Regulation 2005*. The regulatory reforms aim to encourage movement to a more sustainable industry that can maintain timber supplied into the future whilst also maintaining environmental values.

History

Until 2007, PNF had been a largely unregulated industry in NSW. Only forestry operations on State Protected Land required approval prior to the introduction of the Code (approximately 20% of all PNF activity). The harvesting of timber on private land for commercial purposes is regulated in every State and Territory with the exception of South Australia and the Australian Capital Territory.

In 1992, all State and territory governments together with the Commonwealth Government signed the National Forest Policy Statement (NFPS). The NFPS provides the national policy framework for forest management and sustainable timber production on public and private land. It seeks to achieve ecologically sustainable forest management (ESFM) and promotes the use of codes of practice to ensure a high standard of forestry operations on private land and to protect the environment.

Between 1999 and 2001, three Regional Forest Agreements (RFAs) were signed between the Commonwealth and the NSW Government consistent with this policy statement. The RFAs set the direction for future use and management of the native forests in three coastal regions for the next 20 years, reiterating the commitment to ESFM, and also the introduction of a code of practice for timber harvesting in private forests in NSW.

The introduction of the PNF Code in 2007 represented a significant milestone for the sustainable management of forests on private land in NSW by establishing sustainable forest management practices into the NV Act for all PNF activity in NSW. The PNF Code of Practice is the result of extensive consultation with stakeholders, including industry, forest growers and conservation groups.

Elements of the Code

Under the NV Act, all forestry activities on private land now require a PNF PVP.

PNF PVPs require a landholder to undertake their operations in accordance with the Code. There are four regionally specific Codes: northern NSW, Southern NSW, River Red Gum, and Cypress Western Hardwood.

Harvesting native vegetation under a PNF PVP is deemed to improve or maintain environmental outcomes if it complies with the requirements of the Code. A PNF PVP is a legally binding agreement between a landholder and the Minister for Climate Change and the Environment and has a minimum term of 15 years.

The code requires that private forestry operations improve or maintain environmental outcomes by protecting landscape features such as old growth forests, rainforests, steep lands and drainage features. Site specific biodiversity and habitat features are also protected through compulsory retention of hollow bearing feed trees and limiting harvesting techniques.

The Minister for Climate Change and the Environment has granted the Code Biodiversity Certification. This means the landscape, biodiversity and habitat protection features of the Code meet the objectives of the *Threatened Species Conservation Act 1995* (TSC Act). Biodiversity Certification means that landholders are not required to obtain licences and permits under the TSC Act to undertake native timber harvesting operations. This streamlines the approval process significantly for PNF landholders.

Industry Assistance Program

The PNF Code was introduced as part of a broader \$37 million reform package funded by the NSW Government, through the Environmental Trust, in recognition of the industry-wide change implications of regulating most private native forestry for the first time. The funding package was reduced to \$10.1 million in 2009 as the impacts of the Code on the industry and the demand for assistance was not as significant as expected.

The program incorporated:

- Business exit and worker assistance - \$2.4 million (based on demand) to assist the PNF businesses made unviable and workers made redundant as a result of the PNF Code;
- Industry Training - \$4 million to provide training to help industry participants understand the Code. The training was designed with industry partners and is delivered by the NSW Department of Industry and Investment and the Technical and Further Education (TAFE);
- Agency Implementation - \$3.7 million to ensure forestry operators and landholders are aware of the new regulatory arrangements for PNF and to work with landholders to prepare PNF PVPs.

PNF Achievements 1 August 2007 – 31 December 2009

- *Approvals.* 1,073 PNF PVS have been approved that allow landholders to undertake private native forestry operations across 265,329 hectares. The majority of PNF PVPs are located on the North Coast of NSW (around 85%).

- *PNF training.* Thirty three accredited PNF training courses have been delivered to 235 participants in Forest Soil and Water Protection, Biodiversity and Silviculture Principles, Occupational Health and Safety and PNF Planning. A further 34 courses are planned to be delivered by June 2010.

The NSW Department of Industry and Investment has delivered 12 Awareness Field Days with over 150 participants. A further 20 field days will be delivered by September 2010.

- *Industry Assistance Program.* The NSW Department of Industry and Investment is administering the program. Applications closed on 15 May 2009. Ten applications were received from businesses and 5 from workers. Applicants will be advised by the end of March 2010. Three businesses were assessed as being immediately and significantly impacted by the Code and were provided with early exit assistance totalling \$530,000.

Sustainable Farming Grants, as part of the Native Vegetation Assistance Package, have been made available to landholders impacted by the PNF and has been extended to 2011. Six Sustainable Farming Grants totalling over \$506,000 were made to landholders impacted by the PNF Code in 2008/2009. Further funding is available for PNF landholders until 30 June 2011.

- *Auditing and compliance.* A total of 76 audits and 68 operational inspections have been undertaken. Nine audits have required compliance actions and 4 penalty infringement notices have been issued.