



New South Wales

Local Land Services Amendment Act 2016 No 64

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New South Wales

Local Land Services Amendment Act 2016 No 64

Act No 64, 2016

An Act to repeal the *Native Vegetation Act 2003*; and to amend the *Local Land Services Act 2013* in relation to native vegetation land management in rural areas. [Assented to 23 November 2016]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Land Services Amendment Act 2016*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Repeal of Native Vegetation Act 2003 No 103 and regulation

The *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2013* are repealed.

Schedule 1 Amendment of Local Land Services Act 2013 No 51

[1] Section 3 Objects of Act

Omit section 3 (e). Insert instead:

- (e) to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development (described in section 6 (2) of the *Protection of the Environment Administration Act 1991*),

[2] Section 14 Functions generally

Insert after section 14 (1) (d):

- (d1) to exercise functions conferred on it by Part 5A and Schedule 5A,

[3] Part 5A

Insert after Part 5:

Part 5A Land management (native vegetation)

Division 1 Preliminary

60A Rural areas of State to which Part applies

This Part applies to any area of the State, other than the following:

- (a) urban areas of the State to which *State Environmental Planning Policy (Urban Vegetation) 2017* applies,
- (b) national park estate and other conservation areas, namely:
 - (i) a wilderness area declared under the *Wilderness Act 1987*, or
 - (ii) land reserved under the *National Parks and Wildlife Act 1974* or acquired by the Minister administering that Act under Part 11 of that Act, or
 - (iii) land dedicated or set apart as a flora reserve under the *Forestry Act 2012* (or any Act repealed by that Act), or
 - (iv) land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies, or
 - (v) a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*, or
 - (vi) an area declared to be critical habitat under Division 3 of Part 7A of the *Fisheries Management Act 1994*, or
 - (vii) a declared World Heritage property within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or
 - (viii) land dedicated or reserved under the *Crown Lands Act 1989* for similar public purposes for which land is reserved, declared or listed under the other Acts referred to in this paragraph, or
 - (ix) land to which an interim protection order under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016* applies, or
 - (x) Lord Howe Island,

- (c) State forestry land, namely:
 - (i) land that is a State forest or timber reserve under the *Forestry Act 2012*, or
 - (ii) land acquired under Division 4 of Part 3 of the *Forestry Act 2012* for the purposes of a State forest (not being any such land acquired for the purposes of a timber plantation).

The regulations may amend this section for the purposes of adding or removing areas of the State to which this Part applies (or of revising references to areas of the State).

60B Meaning of “native vegetation”

- (1) For the purposes of this Part, **native vegetation** means any of the following types of plants native to New South Wales:
 - (a) trees (including any sapling or shrub or any scrub),
 - (b) understorey plants,
 - (c) groundcover (being any type of herbaceous vegetation),
 - (d) plants occurring in a wetland.
- (2) A plant is native to New South Wales if it was established in New South Wales before European settlement. The regulations may authorise conclusive presumptions to be made of the species of plants native to New South Wales by adopting any relevant classification in an official database of plants that is publicly accessible.
- (3) For the purposes of this Part, native vegetation extends to a plant that is dead or that is not native to New South Wales if:
 - (a) the plant is situated on land that is shown on the native vegetation regulatory map as category 2-vulnerable regulated land, and
 - (b) it would be native vegetation for the purposes of this Part if it were native to New South Wales.
- (4) For the purposes of this Part, native vegetation does not extend to marine vegetation (being mangroves, seagrasses or any other species of plant that at any time in its life cycle must inhabit water other than fresh water). A declaration under section 14.7 of the *Biodiversity Conservation Act 2016* that specified vegetation is or is not marine vegetation also has effect for the purposes of this Part.

60C Meaning of “clearing” native vegetation

For the purposes of this Part, **clearing** native vegetation means any one or more of the following:

- (a) cutting down, felling, uprooting, thinning or otherwise removing native vegetation,
- (b) killing, destroying, poisoning, ringbarking or burning native vegetation.

60D Other definitions

In this Part:

category 1-exempt land means areas of the State to which this Part applies designated as category 1-exempt land on the native vegetation regulatory map.

category 2-regulated land means areas of the State to which this Part applies designated as category 2-regulated land on the native vegetation regulatory map (including category 2-vulnerable regulated land that is so designated).

Environment Agency Head means the Chief Executive of the Office of Environment and Heritage.

land management (native vegetation) code means a land management (native vegetation) code made under Division 5 and in force.

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

landholding includes several parcels of land (whether held under the same title, different titles or different kinds of titles) that constitute or are worked as a single property and that:

- (a) are contiguous with one another or are separated from one another only by a road, river, creek or other watercourse, or
- (b) are certified in writing by Local Land Services to be in the same sub-bioregion and within sufficient proximity to one another so as to constitute a single landholding for the purposes of this Part.

native vegetation regulatory map means a native vegetation regulatory map prepared and published under Division 2.

plant means any plant, whether vascular or non-vascular, and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation.

regulated rural area means any area of the State to which this Part applies that is category 2-regulated land.

Division 2 Native vegetation regulatory map

60E Purpose of native vegetation regulatory map

The purpose of the native vegetation regulatory map is to designate areas of the State to which this Part applies:

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

60F Transitional arrangement until preparation of maps

- (1) This section applies to an area of the State to which this Part applies during the period from the commencement of this Part until the area has been designated on a native vegetation regulatory map (the **transitional period**).
- (2) For the purposes of this Part, the area is taken, during the transitional period, to be:
 - (a) category 1-exempt land, if this Part requires the land to be designated as category 1-exempt land on the native vegetation regulatory map, or
 - (b) category 2-regulated land, if this Part requires the land to be designated as category 2-regulated land on the native vegetation regulatory map (except as provided by paragraph (c)), or
 - (c) category 2-vulnerable regulated land, if the land is designated on a transitional native vegetation regulatory map published by the

Environment Agency Head as steep or highly erodible land, as protected riparian land or as special category land.

- (3) For the purposes of this Part, an area is taken, during the transitional period, to be low conservation value grasslands if it comprises only groundcover whose clearing was permitted by section 20 of the *Native Vegetation Act 2003*, as in force immediately before the repeal of that Act.

Note. Generally that section permitted clearing if the vegetation comprised less than 50% of indigenous species of vegetation.

- (4) A provision of this Part that determines the relevant categorisation of land by reference to a reasonable belief of the Environment Agency Head about a particular matter is to be construed, for the purposes of this section, as a reference to what a reasonable person would believe about the matter.
- (5) The Environment Agency Head may, in connection with any legal proceedings against a landholder, issue a certificate that the land described in the certificate is (for the reasons set out in the certificate) category 1-exempt land or category 2-regulated land (including category 2-vulnerable regulated land). The certificate is, in those legal proceedings, prima facie evidence of the category of the land during the transitional period.
- (6) The regulations may make further provision with respect to the application of this Part during the transitional period, including:
- (a) provisions applying to the identification of low conservation value grasslands, and
 - (b) the issue of certificates by the Environment Agency Head, at the request of a landholder, as to the relevant categorisation of land, and
 - (c) the preparation and publication of draft native vegetation regulatory maps for the purposes of the publication of maps at the end of the transitional period and the application of provisions of this Part in relation to those draft maps.

60G Responsibility for preparation and publication of maps

- (1) The Environment Agency Head is responsible for preparing and publishing native vegetation regulatory maps under this Part.
- (2) Native vegetation regulatory maps are to be prepared in relation to the areas of the State to which this Part applies.
- (3) A native vegetation regulatory map may designate:
- (a) category 1-exempt land, and
 - (b) category 2-regulated land (including category 2-vulnerable regulated land), and
 - (c) any other sub-category prescribed by the regulations.
- (4) The Environment Agency Head is to publish information about the scientific method used to prepare a native vegetation regulatory map.
- (5) A native vegetation regulatory map is to be published on a government website.

60H Category 1-exempt land mapping

- (1) Land is to be designated as category 1-exempt land if the Environment Agency Head reasonably believes that:
- (a) the land was cleared of native vegetation as at 1 January 1990, or

- (b) the land was lawfully cleared of native vegetation between 1 January 1990 and the commencement of this Part.
- (2) Land is to be designated as category 1-exempt land if the Environment Agency Head reasonably believes that:
 - (a) the land contains low conservation value grasslands, or
 - (b) the land contains native vegetation that was identified as regrowth in a property vegetation plan referred to in section 9 (2) (b) of the *Native Vegetation Act 2003*, or
 - (c) the land is of a kind prescribed by the regulations as category 1-exempt land.
- (3) Land is to be designated as category 1-exempt land if the land is biodiversity certified under Part 8 of the *Biodiversity Conservation Act 2016* or under any Act repealed by that Act.
- (4) However:
 - (a) land described in subsection (1) or (2) is not to be designated as category 1-exempt land if section 60I (2) requires the land to be designated as category 2-regulated land, and
 - (b) land described in subsection (1) (a) is not to be designated as category 1-exempt land if the land was unlawfully cleared of native vegetation after 1 January 1990, and
 - (c) land described in subsection (2) (a) is not to be designated as category 1-exempt land if the land was unlawfully cleared of native vegetation after 1 January 1990.
- (5) The regulations may make provision for the purposes of determining whether grasslands are low conservation value grasslands for the purposes of this Division.

60I Category 2-regulated land mapping

- (1) Land is to be designated as category 2-regulated land if the Environment Agency Head reasonably believes that:
 - (a) the land was not cleared of native vegetation as at 1 January 1990, or
 - (b) the land was unlawfully cleared of native vegetation after 1 January 1990.
- (2) Land is to be designated as category 2-regulated land if the Environment Agency Head reasonably believes that:
 - (a) the land contains native vegetation that was grown or preserved with the assistance of public funds (other than funds for forestry purposes), or
 - (b) the land is eligible for designation as category 2-vulnerable regulated land, or
 - (c) the land is subject to a private land conservation agreement under the *Biodiversity Conservation Act 2016*, or
 - (d) the land is subject to be set aside under a requirement made in accordance with a land management (native vegetation) code under this Part, or
 - (e) the land contains grasslands that are not low conservation value grasslands, or
 - (f) the land is or was subject to a requirement to take remedial action to restore or protect the biodiversity values of the land under this Part or

- the *Biodiversity Conservation Act 2016* or under the *Native Vegetation Act 2003* or the *National Parks and Wildlife Act 1974*, or
- (g) the land is subject to an approved conservation measure that was the basis for other land being biodiversity certified under Part 8 of the *Biodiversity Conservation Act 2016* or under any Act repealed by that Act, or
 - (h) the land is an offset under a property vegetation plan under the *Native Vegetation Act 2003* or is a set aside under a Ministerial order under Division 3 of Part 6 of the *Native Vegetation Regulation 2013*, or
 - (i) the land is in the coastal wetlands and littoral rainforests area of the coastal zone referred to in the *Coastal Management Act 2016*, or
 - (j) the land is identified as koala habitat (of a kind prescribed by the regulations) in a plan of management made under *State Environmental Planning Policy No 44—Koala Habitat Protection*, or
 - (k) the land is a declared Ramsar wetland within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or
 - (l) the land has (subject to the regulations) been mapped by the Environment Agency Head as land containing critically endangered species of plants under the *Biodiversity Conservation Act 2016*, or
 - (m) the land has been mapped by the Environment Agency Head as land containing a critically endangered ecological community under the *Biodiversity Conservation Act 2016*, or
 - (n) the land is of a kind prescribed by the regulations as category 2-regulated land.
- (3) However, land described in subsection (1) is not to be designated as category 2-regulated land if section 60H (2) or (3) requires the land to be designated as category 1-exempt land.

60J Matters relating to determination of mapped category of land

- (1) This section makes provision relating to the mapping of land under this Division as category 1-exempt land or category 2-regulated land.
- (2) Native vegetation that comprises grasslands or other non-woody vegetation is taken to have been cleared if the native vegetation was significantly disturbed or modified. The regulations may make provision for the purposes of determining whether native vegetation has been significantly disturbed or modified for the purposes of this Division.
- (3) Determinations may be made by the Environment Agency Head that land was unlawfully cleared of native vegetation only if compliance or enforcement action of a kind prescribed by regulations was taken in relation to the clearing.
- (4) Determinations may be made by the Environment Agency Head that land was cleared of native vegetation as at 1 January 1990 or between that date and the commencement of this Part only on the basis of the best available aerial photographs or satellite imagery before and after the relevant date, and any evidence provided by the landholder under section 60K (8).
- (5) Determinations made (or taken on appeal to have been made) by the Environment Agency Head as to whether land was or was not unlawfully cleared of native vegetation does not affect any decision made with respect to compliance or enforcement action taken under this or any other Act in relation to the clearing.

60K Re-categorisation of mapped land

- (1) Re-categorisation of land is the preparation and publication of a native vegetation regulatory map in accordance with this Part for any of the following purposes:
 - (a) the designation of land that is designated on a published map as one category to another category,
 - (b) the designation of land that is not designated as any category on a published map as land of a particular category,
 - (c) the removal of the designation of land on a published map.
- (2) The Environment Agency Head is to keep the categorisation of land under review and undertake an annual review of published maps.
- (3) The Environment Agency Head may re-categorise land if:
 - (a) there is an error in a published map, or
 - (b) the Environment Agency Head obtains new or improved information about historical vegetation cover or land use for a particular landholding, or
 - (c) in the case of category 2-regulated land that the landholder applies to be re-categorised as category 1-exempt land—the Environment Agency Head reasonably believes that the land has been lawfully cleared after the commencement of this Part in accordance with a property vegetation plan under the *Native Vegetation Act 2003* that remains in force, with an approval under Division 6 or with a development consent under the *Environmental Planning and Assessment Act 1979* or an approval under Part 5.1 of that Act (unless the land concerned is required to be re-vegetated under the conditions of any such approval or consent), or
 - (d) the land is subject to a successful review or appeal of an existing categorisation or of a re-categorisation (and the re-categorisation gives effect to the decision on the review or appeal), or
 - (e) the land is authorised to be re-categorised by a land management (native vegetation) code, or
 - (f) the land is authorised to be re-categorised by the regulations.
- (4) The Environment Agency Head is required to re-categorise land if the status of the land changes so that:
 - (a) the land becomes (or ceases to be) an area that is excluded from the operation of this Part, or
 - (b) the land is required to be designated as land of a different category.

A change in the status of land that results in the land being excluded from the operation of this Part has effect when the status of the land changes, whether or not the land has been re-categorised by the Environment Agency Head.
- (5) The Secretary of the Department of Planning and Environment is to notify the Environment Agency Head and the Secretary of the Department (within the meaning of this Act) of any proposed environmental planning instrument that is likely to result in land becoming (or ceasing to be) an area that is excluded from the operation of this Part or that is likely to result in a re-categorisation of a kind prescribed by the regulations.
- (6) Land that is category 2-regulated land cannot be re-categorised as category 1-exempt land because of:
 - (a) any clearing activity authorised under this Part, or

- (b) any authorised clearing activity referred to in section 60O (Clearing authorised under other legislation),
unless the re-categorisation is authorised by this Part, a land management (native vegetation) code or the regulations.
- (7) The Environment Agency Head is required to consult the landholders concerned before land is re-categorised and to give the landholders at least 30 days to make submissions to the Environment Agency Head about proposed re-categorisations, unless the re-categorisation has been requested by the landholder or relates to the exclusion of land from (or inclusion of land into) the operation of this Part. The regulations may make provision for consultation by individual notification to all or specified landholders of any land or by a public consultation process.
- (8) The Environment Agency Head, when making a determination that grasslands or other non-woody vegetation was significantly disturbed or modified on 1 January 1990 or between that date and the commencement of this Part for the purposes of a re-categorisation of the land, is to take into account any evidence provided by the landholder.
- (9) If the Environment Agency Head notifies the landholder of category 1-exempt land of a proposed re-categorisation of the land to category 2-regulated land, the land is taken to be category 2-regulated land until whichever of the following first occurs:
- (a) the Environment Agency Head notifies the landholder that the land is not to be re-categorised or the land is recategorised,
- (b) the period prescribed by the regulations for the purposes of this subsection expires.
- The Environment Agency Head is required to advise the landholder of the effect of this subsection when notifying the landholder of the proposed re-categorisation.
- (10) If a person commits an offence against section 60N in relation to land to which subsection (9) applies, the maximum penalty for the offence is (despite that section) a Tier 3 monetary penalty (within the meaning of the *Biodiversity Conservation Act 2016*).
- (11) The regulations may make further provision for or with respect to authorising or preventing the clearing of native vegetation during the process of the consideration of a re-categorisation of land or pending the publication of new maps to give effect to a re-categorisation decision.

60L Review of categorisation decisions

- (1) The relevant landholder may request the Environment Agency Head to review a decision relating to the categorisation or re-categorisation of land on a native vegetation regulatory map.
- (2) The grounds on which a request for a review may be made are the same grounds on which the Environment Agency Head may re-categorise the land.
- (3) The grounds on which a request for a review may be made extend to a categorisation based on whether or not clearing was lawful, unless the categorisation was based on a determination of the matter made by a court.
- (4) The Environment Agency Head is to determine a request for a review, and for that purpose may arrange for an official who was not responsible for the original decision to conduct the review.

- (5) The regulations may make provision for or with respect to reviews, including the following:
- (a) the form of requests for a review,
 - (b) the information to be provided in connection with a request for a review,
 - (c) the extension of any request relating to a part of the landholding concerned to other parts of the landholding,
 - (d) the fee payable for dealing with a request for a review,
 - (e) notification of and consultation with affected persons or bodies.

60M Appeal against categorisation or re-categorisation decisions

- (1) The relevant landholder may appeal to the Land and Environment Court against a decision relating to the categorisation or re-categorisation of land on a native vegetation regulatory map.
- (2) An appeal cannot be made against any such decision unless:
- (a) it is a decision made after a review under section 60L, or
 - (b) a request has been made for a review of the decision under section 60L but the review has not been determined within the period prescribed by the regulations.
- (3) An appeal is to be made within the time prescribed by the regulations.
- (4) The lodging of an appeal does not, except to the extent the Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.

Division 3 Regulation of clearing of native vegetation in regulated rural areas

60N Unauthorised clearing of native vegetation in regulated rural areas—offence

- (1) A person who clears native vegetation in a regulated rural area is guilty of an offence unless the person establishes any of the following defences:
- (a) that the clearing is for an allowable activity authorised under Division 4 and Schedule 5A,
 - (b) that the clearing is authorised by a land management (native vegetation) code under Division 5,
 - (c) that the clearing is authorised by an approval of the Panel under Division 6,
 - (d) that the clearing is authorised under section 60O (Clearing authorised under other legislation etc).

Maximum penalty:

- (a) for an offence that was committed intentionally and that caused or was likely to cause significant harm to the environment:
 - (i) in the case of a corporation—\$5 million, or
 - (ii) in the case of an individual—\$1 million, or
- (b) for any other offence:
 - (i) in the case of a corporation—\$2 million, or
 - (ii) in the case of an individual—\$500,000.

- (2) The higher maximum penalty under this section does not apply unless:
- (a) the prosecution establishes (to the criminal standard of proof) that the offence was committed intentionally and caused or was likely to cause significant harm to the environment, and
 - (b) the court attendance notice or application commencing the proceedings alleged that those factors applied to the commission of the offence.

If any such allegation in the notice or application is not established by the prosecution, the lower maximum penalty under this section applies (whether or not the notice or application is amended).

- (3) For the purposes of this section, clearing of native vegetation is not authorised as referred to in subsection (1) unless the conditions to which the authorisation is subject (including any conditions of a land management (native vegetation) code relating to the clearing or any certificate or approval issued or granted for the clearing) are complied with. This subsection extends to conditions that impose obligations on the person who clears the native vegetation that are required to be complied with before or after the clearing is carried out.
- (4) This section does not operate to preclude the commission of an offence under the *Environmental Planning and Assessment Act 1979* or the *Biodiversity Conservation Act 2016* in relation to the clearing of native vegetation.

600 Clearing authorised under other legislation

For the purposes of this Part, the clearing of native vegetation in a regulated rural area is authorised under other legislation in any of the following cases:

(a) **Planning approval**

The clearing was authorised by:

- (i) a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or
- (ii) a State significant infrastructure approval under Part 5.1 of that Act, or
- (iii) a transitional Part 3A project approval under Schedule 6A to that Act.

Note. A planning approval may authorise clearing as part of or ancillary to the carrying out of other development, but except in limited cases does not authorise only clearing of native vegetation—see section 60P.

(b) **Other planning authorisation**

The clearing was:

- (i) a part of or ancillary to the carrying out of exempt development within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (ii) an activity carried out by a determining authority within the meaning of Part 5 of that Act after compliance with that Part, or
- (iii) authorised by an approval of a determining authority within the meaning of Part 5 of that Act granted after compliance with that Part.

(c) **Biodiversity conservation authorisation**

The clearing was authorised by a biodiversity conservation licence under the *Biodiversity Conservation Act 2016* or was authorised by a regulation made under section 2.9 of that Act (including under a code of practice made or adopted by any such regulation).

(d) **Rural fires authorisation**

The clearing was:

- (i) an emergency fire fighting act or emergency bush fire hazard reduction work within the meaning of the *Rural Fires Act 1997*, or
- (ii) bush fire hazard reduction work to which section 100C (4) of the *Rural Fires Act 1997* applies or vegetation clearing work under section 100R of that Act.

(e) **Electricity network operator bush fire risk mitigation direction**

The clearing was required to be carried out to give effect to a direction of a network operator under Division 2A of Part 5 of the *Electricity Supply Act 1995*.

(f) **State emergency authorisation**

The clearing was authorised by or under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property.

(g) **Biosecurity authorisation**

The clearing was an authorised action for the purposes of section 386 of the *Biosecurity Act 2015*.

(h) **Plantation operations authorisation**

The clearing was the carrying out of a plantation operation on an authorised plantation in accordance with the *Plantations and Reafforestation Act 1999*, the conditions of the authorisation and the provisions of the Plantations and Reafforestation Code applying to the plantation.

(i) **Forestry operations authorisation**

The clearing was:

- (i) the carrying out of a forestry operation in a State forest or other Crown-timber land to which an integrated forestry operations approval under Part 5B of the *Forestry Act 2012* applies, being a forestry operation that is carried out in accordance with the approval, or
- (ii) the carrying out of a forestry operation authorised by Part 5C (Private native forestry) of the *Forestry Act 2012*.

(j) **Water management authorisation**

The clearing was authorised by a licence, permit, approval or other authority under the *Water Management Act 2000*.

(k) **Mining/petroleum authorisation**

The clearing was authorised by a lease, licence or other authority under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

(l) **Fisheries management authorisation**

The clearing was authorised by a licence under Division 6 of Part 7A of the *Fisheries Management Act 1994* or was authorised under Division 3 or 4 of Part 7 of that Act.

(m) **Survey work**

The clearing was required to be carried out for the purposes of a survey under the *Surveying and Spatial Information Act 2002* and was carried out by or under the direction of a surveyor.

(n) **Roads authorisation**

The clearing was authorised by a consent under Division 3 of Part 9 of the *Roads Act 1993*.

(o) **Private land conservation agreement**

The clearing was authorised by a private land conservation agreement under the *Biodiversity Conservation Act 2016*.

(p) **Other legislative authorisation**

The clearing was authorised by or under any other Act that has effect despite this Part.

60P Limitation on planning instruments requiring consent for clearing only

- (1) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* (other than a State environmental planning policy or so much of a local environmental plan that adopts a mandatory provision of a standard instrument under that Act) may not be made to require development consent or other authorisation only for the clearing of native vegetation in an area of the State to which this Part applies. Any such requirement in an environmental planning instrument has no effect.
- (2) This section does not affect the imposition of conditions relating to the clearing of native vegetation on a development consent of any other kind.

Division 4 Allowable activities clearing of native vegetation

60Q Allowable activities clearing—Schedule 5A

- (1) Schedule 5A sets out the clearing of native vegetation in regulated rural areas for allowable activities that is authorised without any approval or other authority under this Part for the clearing.
- (2) Schedule 5A does not permit clearing or any other activity:
 - (a) without an approval or other authority required by or under another Act or another Part of this Act (or in anticipation of the grant of any such approval or other authority), or
 - (b) in contravention of any provision of or made under (or in contravention of any agreement made under) another Act or another Part of this Act.

60R Amendment of Schedule 5A

The regulations may amend Schedule 5A.

Division 5 Clearing native vegetation under land management (native vegetation) code

60S Authorised clearing by landholders under codes

- (1) The clearing of native vegetation in a regulated rural area is authorised without any approval or other authority under this Part if it is clearing carried out by or on behalf of the landholder in accordance with a land management (native vegetation) code under this Division.

- (2) The clearing of native vegetation is not authorised by a land management (native vegetation) code in any part of a regulated rural area that is excluded by the regulations or that is excluded by the code concerned.
- (3) Clearing of native vegetation authorised by Division 4 and Schedule 5A is not subject to a land management (native vegetation) code despite anything to the contrary in the code.
- (4) A land management (native vegetation) code does not permit clearing or any other activity:
 - (a) without an approval or other authority required by or under another Act or another Part of this Act, or
 - (b) in contravention of any provision of or made under another Act or another Part of this Act, or
 - (c) if the regulations so provide, without the consent of all landholders or other persons with a specified interest in the land.

60T Responsibility for preparation and making of codes

- (1) The Minister is responsible for preparing and making land management (native vegetation) codes under this Division.
- (2) The Minister may make a land management (native vegetation) code only with the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*.
- (3) When preparing or giving concurrence to a land management (native vegetation) code, the Minister or the Minister administering that Act (as the case requires) is to have regard to the principles of ecologically sustainable development (described in section 6 (2) of the *Protection of the Environment Administration Act 1991*).

Note. Those principles require economic, social and environmental considerations to be effectively integrated in decision-making processes.
- (4) A land management (native vegetation) code is to be published on the NSW legislation website.

60U Public consultation on proposed codes

- (1) Before a land management (native vegetation) code is made, the proposed code is to be made publicly available for a period of at least 4 weeks.
- (2) During the period of public consultation, any person may make a written submission to the Minister on the proposed code. The Minister may (but need not) make publicly available the submissions made on the proposed code (or a summary of or report on any such submissions).
- (3) The Minister is, before making a land management (native vegetation) code, to consider any submissions duly made on the proposed code.
- (4) If substantial changes are proposed to be made to a proposed code following public consultation, the Minister may undertake further public consultation on the revised proposed code.
- (5) A failure to comply with a requirement under this section in relation to a proposed code does not prevent the code being made, or invalidate the code once it is made.
- (6) The regulations may make further provision for or with respect to public consultation under this section.

60V Amendment or repeal of codes

- (1) A land management (native vegetation) code may be amended or repealed in the same way as a code may be made.
- (2) Public consultation under section 60U applies to the amendment or repeal of a land management (native vegetation) code.
- (3) However, the Minister may:
 - (a) dispense with public consultation on any amendment of a code if satisfied it should be dispensed with because of the minor nature or urgency of the matter, and
 - (b) dispense with the concurrence of the Minister administering the *Biodiversity Conservation Act 2016* on any amendment of a code if satisfied it should be dispensed with because of the minor nature of the matter.

60W Content of codes

- (1) A land management (native vegetation) code may make provision for or with respect to authorising the clearing of native vegetation on category 2-regulated land.
- (2) A code may, in connection with any clearing authorised by the code:
 - (a) set out the circumstances in which a set aside area for native vegetation is required in connection with any such clearing, and
 - (b) provide for the re-vegetation, weed control and other land management actions on category 1-exempt land or other land to establish or maintain a set aside area or to protect areas that may be impacted by any such clearing, and
 - (c) authorise the re-categorisation of land in connection with any such clearing.
- (3) A code may (without limitation) make provision for or with respect to the following:
 - (a) the clearing of native vegetation in particular regions or other areas,
 - (b) the clearing of native vegetation in connection with particular activities,
 - (c) the clearing of particular kinds of native vegetation,
 - (d) when clearing of native vegetation may or may not be carried out,
 - (e) the clearing of native vegetation that may continue to be carried out for the purposes of rotational farming practices that were in place as at 1 January 1990,
 - (f) the manner in which clearing of native vegetation is to be carried out,
 - (g) the giving of notice to Local Land Services and others before or after the clearing of native vegetation is carried out,
 - (h) voluntary or mandatory certificates from Local Land Services confirming that the clearing may lawfully be carried out and certificates from Local Land Services authorising minor variations of the code (including the duration of any such certificates),
 - (i) the keeping of records relating to the clearing of native vegetation,
 - (j) the conservation of biodiversity,
 - (k) the transition to this Part of clearing and other requirements under property vegetation plans under the *Native Vegetation Act 2003*,

- (l) any other matter prescribed by the regulations.

60X Notice to Local Land Services of clearing

- (1) The landholder must give, or cause to be given, to Local Land Services notice of the clearing of native vegetation under the authority conferred by a land management (native vegetation) code unless the code exempts the landholder from giving notice of clearing of that kind.

Maximum penalty:

- (a) in the case of a corporation—\$110,000, or
(b) in the case of an individual—\$22,000.

- (2) The notice is to be given within the time (whether before or after the clearing), and in the form and manner, specified in the land management (native vegetation) code.

60Y Certification by Local Land Services prior to clearing—general

- (1) Local Land Services may, on the application of a landholder, issue the following certificates:
- (a) a certificate confirming that proposed clearing of native vegetation, by or on behalf of the landholder, of the kind set out in the certificate is compliant with the requirements of a specified land management (native vegetation) code (a *voluntary code compliant certificate*),
- (b) a certificate for the clearing of native vegetation of the kind set out in the certificate that is required under a land management (native vegetation) code before the clearing is carried out under the code (a *mandatory code compliant certificate*),
- (c) a certificate that authorises minor variations of a land management (native vegetation) code in its application to the landholding concerned of the kind set out in the certificate (an *authorised code variation certificate*).
- (2) A certificate under this section may adopt relevant terms for the certificate that are prescribed by the regulations or the land management (native vegetation) code.
- (3) An authorised code variation certificate may be combined with a voluntary code compliant certificate or a mandatory code compliant certificate.
- (4) Local Land Services may vary the terms of a certificate under this section by notice in writing to the landholder.
- (5) Local Land Services may revoke a certificate under this section by notice in writing to the landholder.
- (6) A certificate under this section remains in force for the period specified in the certificate unless sooner revoked by Local Land Services or surrendered by the landholder. The relevant land management (native vegetation) code may limit the maximum period that may be so specified in the certificate.
- (7) A certificate under this section continues to have effect in relation to any clearing of native vegetation that was carried out before the certificate expired or was revoked or surrendered.
- (8) A certificate under this section continues to have effect in relation to the completion of the clearing of native vegetation that is carried out after the certificate expires if the clearing authorised by the certificate had been substantially carried out before the expiry of the certificate.

- (9) If the relevant land management (native vegetation) code is amended or repealed after a certificate is issued under this section, the continued clearing of native vegetation in compliance with the certificate is clearing authorised by a land management (native vegetation) code.
- (10) A certificate under this section applies to the clearing of native vegetation by or on behalf of the landholder to whom it was issued and by or on behalf of any other person who becomes a landholder of the land concerned after the certificate was issued.
- (11) A landholder is not entitled to any compensation because a certificate issued under this section is revoked or its terms are varied.
- (12) The regulations may make provision for or with respect to certificates under this section, including for or with respect to the following:
 - (a) the making of applications for certificates (including information to be provided by the landholder),

Note. See section 22 with respect to fees payable in relation to the issue of certificates.
 - (b) the issue of certificates by authorised persons or bodies on behalf of Local Land Services,
 - (c) the terms and form of certificates,
 - (d) the amendment, revocation or surrender of certificates.
- (13) To avoid doubt, Local Land Services is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when issuing or varying a certificate under this section.

60Z Voluntary and mandatory code compliant certificates

- (1) Local Land Services is to issue a voluntary code compliant certificate or a mandatory code compliant certificate for which a landholder has applied if satisfied that the proposed clearing will be clearing carried out in accordance with the relevant land management (native vegetation) code, and is to refuse to issue that certificate if not so satisfied.
- (2) The clearing of native vegetation by or on behalf of a landholder in accordance with a voluntary code compliant certificate or a mandatory code compliant certificate is conclusively presumed to be clearing carried out in accordance with the relevant land management (native vegetation) code.
- (3) However, any such certificate may restrict the application of the certificate to specified aspects of the clearing of native vegetation. Any other aspect of the clearing is not conclusively presumed to be clearing carried out in accordance with the relevant land management (native vegetation) code.
- (4) For the purposes of this section, any clearing is not conclusively presumed to be clearing carried out in accordance with the relevant land management (native vegetation) code if the information provided in the application for the certificate (or pursuant to a request by Local Land Services to determine the application) was false or misleading in a material particular.
- (5) This section does not apply to any contravention of section 60ZC (Provisions relating to set aside areas).

60ZA Limitation on issue of mandatory code compliant certificates

- (1) The Minister administering this Division and the Minister administering the *Biodiversity Conservation Act 2016* may, by order published jointly in the Gazette, restrict the issue of mandatory code compliant certificates.

- (2) Any such restriction may, without limitation, exclude the issue of those certificates in particular areas or all areas and for particular periods or indefinitely.
- (3) Local Land Services is to exercise its functions under this Division subject to any such restriction.
- (4) An order may be made under this section without prior notice to affected landholders and affected landholders are not entitled to any compensation because of the operation of the order.

60ZB Authorised code variation certificates

- (1) Local Land Services is to issue an authorised code variation certificate for which a landholder has applied if satisfied that:
 - (a) the proposed variation is for a legitimate purpose associated with the management of the land concerned, and
 - (b) the variation is reasonable in the circumstances, and
 - (c) the environmental impact of the variation would only be minor, and is to refuse to issue that certificate if not so satisfied.
- (2) The clearing of native vegetation by or on behalf of a landholder in accordance with a land management (native vegetation) code, as varied by an authorised code variation certificate, is clearing carried out in accordance with that code.
- (3) However, any such clearing is not clearing carried out in accordance with that code to the extent it relies on a variation authorised by the certificate if the information provided in the application for the certificate (or pursuant to a request by Local Land Services to determine the application) was false or misleading in a material particular.

60ZC Provisions relating to set aside areas

- (1) This section applies where a land management (native vegetation) code requires a set aside area for native vegetation on part of a landholding and clearing of native vegetation on any other part of the landholding is carried out in reliance on the authority conferred by the code. This section does not apply if the clearing of the native vegetation on a set aside area is carried out in accordance with an approval under Division 6. This section applies despite any authorisation to clear native vegetation for an allowable activity under Division 4 and Schedule 5A.
- (2) The land management (native vegetation) code is to contain the requirements for set aside areas under the terms of a mandatory code compliant certificate, including the characteristics of areas suitable to be set aside, the size of the area to be set aside, any re-vegetation or other management actions required or prohibited in the set aside area, when the area is to be set aside and the consent to the set aside of landholders or other persons with a specified interest in the area.
- (3) Clearing under the land management (native vegetation) code may not be carried out until the set aside area is registered on a public register of set aside areas maintained by Local Land Services in accordance with the regulations.
- (4) A set aside area cannot be an area:
 - (a) that is covered by a private land conservation agreement under the *Biodiversity Conservation Act 2016*, or
 - (b) that is set aside from clearing for biodiversity purposes because of any other agreement or any statutory or other legal obligation (other than

- under a law of the Commonwealth that relates to the same impacts arising from the same activity), or
- (c) that is of a kind that the regulations exclude from being a set aside area.
- (5) The landholder of any land containing a set aside area (including any future landholder of the area) has the following obligations:
- (a) the landholder is required to comply with the obligations of the relevant land management (native vegetation) code (and the necessary mandatory code compliant certificate) with respect to establishing the set aside area,
- (b) the landholder must not clear native vegetation on the set aside area, other than:
- (i) in the course of land management activities authorised or required by that code or certificate, or
- (ii) for allowable activities under Schedule 5A that improve the native vegetation on the set aside area as determined under that code and certificate,
- (c) the landholder must carry out such land management actions as are required by that code or certificate to protect the biodiversity values of the set aside area or other part of the landholding concerned.
- (6) A landholder who contravenes an obligation of the landholder under subsection (5) is guilty of an offence if the set aside area and obligation concerned are recorded on the public register of set aside areas.
- Maximum penalty:
- (a) in the case of a corporation—\$1,650,000, or
- (b) in the case of an individual—\$330,000.
- (7) The obligations of landholders under this section have effect despite section 42 of the *Real Property Act 1900*.
- (8) The regulations may make provision for or with respect to set aside areas, including the following:
- (a) the registration of set aside areas (and any changes to set aside areas) on the public register of set aside areas and inquiries in connection with information on the register,
- (b) the notification of set aside areas to relevant local councils,
- (c) authorising Local Land Services to change the location of a set aside area to an area of equal or higher biodiversity value or to reduce or extinguish a set aside area if clearing on the set aside area under other legislative authority is inconsistent with the continuation of the set aside area,
- (d) authorising Local Land Services to change or suspend land management activities required to be carried out on set aside areas.

Note. The *Environmental Planning and Assessment Act 1979* and the instruments made under that Act (and the biodiversity offsets scheme under the *Biodiversity Conservation Act 2016*) may deal with the obligations of planning authorities with respect to the impact of development on set aside areas and relevant offsets for any loss of biodiversity values associated with clearing for development in a set aside area.

Division 6 Approval for clearing native vegetation not otherwise authorised

60ZD Definitions: Division 6

In this Division:

biodiversity development assessment report—see section 6.12 of the *Biodiversity Conservation Act 2016*.

biodiversity values—see section 1.5 of the *Biodiversity Conservation Act 2016*.

Panel means the Native Vegetation Panel established under section 60ZE.

60ZE The Panel

- (1) The Minister is to establish a panel for the purposes of this Division, to be called the Native Vegetation Panel.
- (2) The Panel is to consist of the following 3 members appointed by the Minister:
 - (a) a Chairperson of the Panel, being a person with expertise in planning, public administration or social assessment,
 - (b) a person with expertise in economics, agricultural economics or agricultural land production systems,
 - (c) a person with expertise in ecology or the protection and conservation of biodiversity.
- (3) The Panel has the function of determining applications under this Division for approval to clear native vegetation.
- (4) The Panel is not subject to the direction or control of the Minister (except in relation to the procedure of the Panel or as provided by or under this Act).
- (5) The Panel is a NSW Government agency.
- (6) Schedule 5B contains provisions with respect to the members and procedure of the Panel. The regulations may amend Schedule 5B.
- (7) The Minister may make arrangements for the provision to the Panel of staff and facilities of (and information relating to the administration of this Part held by) Local Land Services or a Public Service agency responsible to the Minister.
- (8) Legal proceedings by or against the Panel are to be taken in the name of the Panel and not by or against the members of the Panel.

60ZF Obtaining approval for clearing of native vegetation

- (1) An application may be made to the Panel by or on behalf of the landholder for approval to clear native vegetation on land in any area of the State to which this Part applies.
- (2) The Panel may, in accordance with this Division, grant an approval to clear the native vegetation under this Division or refuse the application.
- (3) An approval for the clearing of native vegetation on any land may only be granted under this Division if the land comprises or includes category 2-regulated land.

- (4) An approval may only be granted under this Division if the land is being cleared for a purpose specified in the application for approval and:
- (a) the land can be used for that purpose without development consent or State significant infrastructure approval under the *Environmental Planning and Assessment Act 1979*, and
 - (b) the clearing of the land is not part of an activity that is carried out by, or that requires the approval of, a determining authority within the meaning of Part 5 of that Act.
- (5) In determining an application for approval under this Division, the Panel is to take into consideration the environmental, social and economic impacts of the proposed clearing (in accordance with the principles of ecologically sustainable development) having regard to the purpose for which the land is to be used after it is cleared. In relation to the environmental impacts, the Panel is to take into consideration (without limitation) the following:
- (a) the likely impact of the proposed clearing on biodiversity values as set out in a biodiversity development assessment report that has been submitted by the applicant for the approval in accordance with section 60ZG,
 - (b) whether the clearing of the native vegetation is likely to cause or increase soil erosion, salination, acidification, land slip, flooding, pollution or other adverse land or water impacts,
 - (c) any future clearing of native vegetation on the land that has been duly authorised or notified but not yet carried out.
- (6) The Panel must refuse to grant approval under this Division if the Panel is of the opinion that the proposed clearing of native vegetation is likely to have serious and irreversible impacts on biodiversity values. ***Serious and irreversible impacts on biodiversity values*** means serious and irreversible impacts on biodiversity values as determined under section 6.5 of the *Biodiversity Conservation Act 2016* that would remain after the measures proposed to be taken to avoid or minimise the impact of the proposed clearing on biodiversity values.
- (7) An approval under this Division may be granted subject to such conditions relating to the clearing as are specified in the approval (including in relation to any matter referred to in subsection (5)). However, an approval cannot be granted subject to conditions relating to the use of the land after it has been cleared.
- Note.** The *Environmental Planning and Assessment Act 1979* deals with land use.
- (8) An approval under this Division may be granted even if part of the clearing is otherwise authorised under this Part or under section 60O (Clearing authorised under other legislation etc).
- (9) An approval under this Division may be granted subject to a condition that any development consent under the *Environmental Planning and Assessment Act 1979* that authorises the clearing of native vegetation on the land is surrendered under that Act. Any such development consent may be granted subject to a condition that any approval under this Division is surrendered under this Division.
- (10) An application for approval under this division may be made jointly by or on behalf of a group of landholders. In that case, the application is to be assessed and determined under this Division having regard to the whole area that is the subject of the application.

- (11) The regulations may make provision for or with respect to the fees payable in connection with an application for an approval under this Division.

60ZG Biodiversity development assessment report and retirement of biodiversity credits

- (1) An approval may only be granted under this Division if a biodiversity development assessment report in respect of the proposed clearing has been obtained by the applicant for that approval and provided to the Panel.
- (2) The Panel is to provide the Environment Agency Head with a copy of any biodiversity development assessment report that is submitted to the Panel in connection with an application for approval.
- (3) If the Panel decides to grant approval, the conditions of the approval must require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of the number and class set out in the report (subject to subsection (4)). The residual impact is the impact after the measures that are required to be carried out by the terms or conditions of the approval to avoid or minimise the impact on biodiversity values of the proposed clearing (being measures on which the report was based).

Note. Division 6 of Part 6 of the *Biodiversity Conservation Act 2016* enables a person who is required under this section to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payment calculator.

- (4) The Panel may reduce or increase the number of biodiversity credits that would otherwise be required to be retired if the Panel determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed clearing and the agricultural purpose for which the land is to be used after it is cleared. The Panel must give reasons for a decision to reduce or increase the biodiversity credits.
- (5) An approval under this Division does not authorise the clearing of native vegetation until any obligation under the approval to retire biodiversity credits has been complied with.
- (6) However, an approval under this Division may provide for the staged clearing of native vegetation and for the corresponding staged retirement of the relevant number of biodiversity credits before each such stage of clearing is carried out.
- (7) For the purposes of this Division, the impact on biodiversity values of proposed clearing includes the impact of clearing or retaining dead vegetation on the land concerned, and accordingly the measures required to be carried out by the terms or conditions of an approval may include the retention of dead vegetation.
- (8) This section does not operate to limit the measures that the Panel may require to avoid or minimise the impacts of proposed clearing or the power of the Panel to refuse to grant approval because of those impacts.

60ZH Regulations and application of planning approval provisions to approvals under this Division

- (1) The regulations may make provision for or with respect to applications for approvals under this Division and to approvals granted under this Division.
- (2) In particular, the regulations may apply provisions (with or without modification) of the *Environmental Planning and Assessment Act 1979* relating to applications for development consent or to development consent to applications for approvals or to approvals under this Division.

60ZI Modification of approvals under this Division

- (1) An application may be made to the Panel for the modification of an approval granted under this Division to clear native vegetation on any land. The application may be made by or on behalf of the landholder concerned.
- (2) A further biodiversity development assessment report is to be provided to the Panel in connection with the application unless the Panel determines that the application will not increase the impact on biodiversity values.
- (3) The biodiversity development assessment report is to be made in relation to the clearing as proposed to be modified, but is to take into account any measures to avoid, minimise or offset the impacts of the proposed clearing to which the modification relates that have already been taken in connection with the approval before its modification.
- (4) The Panel may:
 - (a) grant the application and modify the approval granted under this Division accordingly, or
 - (b) refuse the application.The Panel may vary the terms of the modification sought by the applicant.
- (5) The regulations may make further provision with respect to applications for the modification of approvals under this Division (including exemptions to the application of this section).

60ZJ Appeal against approval decisions

- (1) A landholder may appeal to the Land and Environment Court against a decision to refuse an application by the landholder for approval under this Division or for the modification of any such approval or against a decision to impose a condition of any such approval.
- (2) An appeal is to be made within the time prescribed by the regulations.
- (3) The regulations may provide that a failure to determine an application for an approval or for the modification of an approval within the period provided by the regulations is taken to be a refusal of the application for the purposes of this section.
- (4) In this section, a reference to a landholder includes a reference to a person who makes a relevant application on behalf of the landholder.

60ZK Miscellaneous provisions relating to approvals

- (1) An approval under this Division applies to the clearing of native vegetation by or on behalf of the landholder to whom it was granted and by or on behalf of any other person who becomes a landholder of the land concerned after the approval was granted.
- (2) If an application for approval (or for the modification of an approval) under this Division is refused by the Panel, the applicant is to be given the reasons for the decision.
- (3) To avoid doubt, the Panel is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting or modifying an approval under this Division.

60ZL SEPP may apply approvals under this Division to the clearing of native vegetation on urban land

- (1) A State environmental planning policy under the *Environmental Planning and Assessment Act 1979* may apply the provisions of this Division to any urban area of the State that is not an area of the State to which this Part applies.
- (2) The provisions of this Division may be so applied, with or without modifications or additions.

Division 7 Miscellaneous

60ZM Enforcement under Biodiversity Conservation Act 2016

- (1) The *Biodiversity Conservation Act 2016* contains provisions relating to the enforcement of this Part and Schedule 5A.
Note. The following provisions of that Act apply (to the extent specified in those provisions) to the enforcement of this Part:
 - (a) Part 11 (Regulatory compliance mechanisms),
 - (b) Part 12 (Investigation powers),
 - (c) Part 13 (Criminal and civil proceedings).
- (2) Accordingly:
 - (a) functions under Part 11 (Powers of authorised officers) are not exercisable in relation to any matter arising under this Part or Schedule 5A,
 - (b) proceedings for an offence against this Part or the regulations under this Part cannot be instituted under Part 12 (Enforcement provisions) and that Part does not apply to any such alleged offence.

60ZN Local Land Services to report on rates of allowable clearing

- (1) Local Land Services is to publicly report on an annual basis on its estimate of the overall rate of clearing of native vegetation in regulated rural areas:
 - (a) as a result of clearing for allowable activities under Division 4 and Schedule 5A, and
 - (b) as a result of clearing authorised by a land management (native vegetation) code under Division 5.
- (2) Local Land Services may include that report in its annual report under the *Annual Reports (Statutory Bodies) Act 1984*.

60ZO Local Land Services to maintain public information registers in relation to native vegetation management

- (1) Local Land Services is to maintain and make publicly available registers of the following (**public information registers**):
 - (a) aggregate information about notices given under section 60X (Notice to Local Land Services of clearing),
 - (b) aggregate information about certificates under section 60Y (Certification by Local Land Services prior to clearing—general),
 - (c) aggregate information about certificates under Schedule 5A to which section 60Y applies,
 - (d) approvals (and any modification of approvals) granted under Division 6,

- (e) applications for approval (or for modifications of approvals) that have been refused and the reasons for the refusal.

Aggregate information about notices or certificates is to be compiled on a regional basis and is not to identify the particular landholder who gave the notice or to whom the certificate was issued (or the address of the landholding concerned).

- (2) Public information registers are to be made available on or from a government website maintained by Local Land Services.
- (3) Where a public information register contains only aggregate information in relation to notices or certificates, Local Land Services is required to make arrangements with other public authorities to enable them to obtain access to individual notices or certificates for the purposes of exercising their functions.
- (4) The regulations may make further provision for or with respect to public information registers (including the information required to be included in, or excluded from, the registers and the correction of the registers).

60ZP Regulations: Part 5A

- (1) Regulations made under Divisions 1, 2, 4 and 5 are to be made on the joint recommendation of the Minister and the Minister administering the *Biodiversity Conservation Act 2016*.
- (2) In addition to any other regulations specifically authorised by this Part, the regulations may make provision for or with respect to the clearing of native vegetation authorised by or under this Part.

[4] Section 69 Relationship to other Acts

Omit “contrary to the *Native Vegetation Act 2003*”.

Insert instead “contrary to Part 5A or to the *Biodiversity Conservation Act 2016*”.

[5] Section 130 Minister may make pest control orders

Omit “protected fauna or a threatened species” from section 130 (5).

Insert instead “a protected animal or an animal or fish of a threatened species under the *Biodiversity Conservation Act 2016* or Part 7A of the *Fisheries Management Act 1994*”.

[6] Section 211 Review of Act (other than native vegetation provisions)

Insert after section 211 (4):

- (5) Part 5A and Schedules 5A and 5B are not required to be reviewed under this section.

[7] Section 212

Insert after section 211:

212 Review of native vegetation provisions of this Act

- (1) The Minister is to review Part 5A and Schedules 5A and 5B to determine whether the policy objectives of those provisions remain valid and whether the terms of those provisions remain appropriate for securing those objectives.
- (2) The review is to be undertaken in conjunction with the review of the *Biodiversity Conservation Act 2016* that is undertaken under that Act by the Minister administering that Act.

- (3) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of Part 5A and Schedules 5A and 5B.
- (4) 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.

[8] Schedule 5A

Insert after Schedule 5:

Schedule 5A Allowable activities clearing of native vegetation

(Section 60Q)

Part 1 Preliminary

1 Application

- (1) This Schedule sets out the clearing of native vegetation for allowable activities that is authorised without any other approval under Part 5A of this Act in a regulated rural area (that is, an area of the State to which that Part applies that is category 2-regulated land on the native vegetation regulatory map).
- (2) Section 60O sets out other clearing that is authorised by legislative and other provisions.
Note. Section 60Q provides that this Schedule does not authorise clearing or other activities without obtaining any authority required by or under, or in contravention of, other Acts (including provisions of this Act other than Part 5A).

2 Only landholders authorised to clear

- (1) Clearing of native vegetation authorised by this Schedule to be carried out on a landholding may only be carried out by or on behalf of the landholder (unless this Schedule provides to the contrary).
- (2) If this Schedule authorises the clearing of native vegetation by an infrastructure owner or other person who is not the landholder, this Schedule does not authorise the entry onto land to carry out the clearing.

3 The allowable activity zones

The allowable activity zones for the purposes of this Schedule are as follows:

(a) **Coastal Zone**

The local government areas of Ballina, Bega Valley, Bellingen, Byron, Central Coast, Clarence Valley (to the east of the line that follows Summerland Way from the north, then Armidale Road until its intersection with Orara Way, then Orara Way), Coffs Harbour, Eurobodalla, Kempsey, Kiama, Lake Macquarie, Lismore, Maitland, Mid-Coast (except the former area of Gloucester), Nambucca, Port Macquarie-Hastings, Port Stephens, Richmond Valley, Shellharbour, Shoalhaven, Tweed and Wollongong.

(b) **Central Zone**

The local government areas (except any areas or parts of an area in the Western Zone) of Albury, Armidale Regional, Balranald, Bathurst Regional, Berrigan, Bland, Blayney, Blue Mountains, Bogan, Cabonne, Carrathool, Cessnock, Clarence Valley (to the west of the line that follows Summerland Way from the north, then Armidale Road until its

intersection with Orara Way, then Orara Way), Coolamon, Coonamble, Cootamundra-Gundagai Regional, Cowra, Dubbo Regional, Dungog, Edward River, Federation, Forbes, Gilgandra, Glen Innes Severn, Goulburn Mulwaree, Greater Hume, Griffith, Gunnedah, Gwydir, Hay, Hilltops, Inverell, Junee, Kyogle, Lachlan, Leeton, Lithgow, Liverpool Plains, Lockhart, Mid-Coast (but only the former area of Gloucester), Mid-Western Regional, Moree Plains, Murray River, Murrumbidgee, Muswellbrook, Narrabri, Narrandera, Narromine, Oberon, Orange, Parkes, Queanbeyan-Palerang Regional, Singleton, Snowy Monaro Regional, Snowy Valleys, Tamworth Regional, Temora, Tenterfield, Upper Hunter, Upper Lachlan, Uralla, Wagga Wagga, Walcha, Walgett, Warren, Warrumbungle, Weddin, Wingecarribee, Wollondilly and Yass Valley.

(c) **Western Zone**

The Western Division of the State (within the meaning of the *Crown Lands Act 1989*).

4 Definition of “small holding”

For the purposes of this Schedule, a *small holding* is a single landholding in the same ownership that has an area of less than:

- (a) in the case of the Western Zone—40 hectares, or
- (b) in any other case—10 hectares.

5 Measurement of maximum distances for clearing

- (1) For the purposes of this Schedule, the maximum distance of clearing of native vegetation comprises:
 - (a) in the case of linear infrastructure—the total width of clearing that is authorised for the infrastructure, or
 - (b) in the case of fixed point infrastructure—the maximum distance of clearing that is authorised measured from the perimeter of the infrastructure.
- (2) For fixed point infrastructure, clearing of native vegetation is authorised for the area occupied by the infrastructure in addition to the authorised maximum distance of clearing from the perimeter of the infrastructure.

6 No stacking of maximum distances for clearing

- (1) The maximum distances of clearing of native vegetation authorised by this Schedule in relation to linear or fixed point infrastructure are not cumulative.
- (2) Accordingly, if the maximum distance for an item of infrastructure overlaps with the maximum distance for another item of infrastructure on the land concerned, those distances are not to be combined to form a composite distance or area. For example, if a road is situated next to a pipeline, the maximum distance of clearing is not the sum of the maximum distance for the road and the maximum distance for the pipeline.

7 Clearing only to minimum extent necessary

The clearing of native vegetation that is authorised by this Schedule for any purpose only authorises clearing to the minimum extent necessary for that purpose.

8 Separate items of infrastructure to be constructed so as to reduce overall distance of clearing

- (1) This Schedule does not authorise clearing of native vegetation in relation to an item of infrastructure constructed by a landholder on the same landholding as another item of infrastructure for which clearing is authorised by this Schedule if:
 - (a) the item of infrastructure could have been constructed closer to the other item of infrastructure so as to reduce the overall distance of clearing for both items of infrastructure to the smallest overall distance, and
 - (b) the landholder does not provide a reasonable justification for the location of the item of infrastructure constructed by the landholder.
- (2) This clause applies only if the item of infrastructure was constructed after the commencement of Part 5A of this Act.

9 Clearing for maximum distance that straddles different holdings

A maximum distance of clearing authorised by this Schedule in relation to an item of infrastructure on a landholding applies even if part of the clearing within that maximum distance is carried out on an adjoining landholding.

10 Local Land Services may increase maximum clearing distances

- (1) Local Land Services may, on application by a landholder, issue a certificate that increases a maximum distance specified in this Schedule in its application to the land concerned.
- (2) Local Land Services is to issue that certificate if it is satisfied that:
 - (a) the proposed increase is for a legitimate purpose associated with the management of the land concerned, and
 - (b) the increase is reasonable in the circumstances, and
 - (c) the environmental impact of the increase would only be minor,and is to refuse to issue that certificate if it is not so satisfied.
- (3) The maximum distance in its application to the land concerned is increased in accordance with that certificate while it remains in force.
- (4) Section 60Y (Certification by Local Land Services prior to clearing—general) also applies to a certificate issued under this clause.

11 Exclusion of land subject to remediation direction, stop work order etc

Despite anything to the contrary in this Schedule, clearing of native vegetation is not authorised on land that is subject to an order under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016*.

Part 2 Clearing for allowable activities—general

Note. Part 4 of this Schedule sets out special provisions that apply to category 2-vulnerable regulated land.

12 Application

This Part sets out the clearing of native vegetation that is generally authorised on land.

13 Imminent risk

Clearing of native vegetation that is reasonably necessary to remove or reduce an imminent risk of serious personal injury or damage to property.

14 Construction timber

- (1) Clearing of native vegetation to obtain timber for the purpose of, and used in, the construction, operation or maintenance of rural infrastructure on the same landholding from which the native vegetation was cleared.
- (2) The clearing must not cause land degradation, including soil erosion, rising water tables, increase in salinity, mass movement by gravity of soil or rock, stream bank instability and any process that results in declining water quality.
- (3) The native vegetation must not comprise (or be likely to comprise):
 - (a) a threatened species or part of a threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or
 - (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.

This subclause does not apply to habitat that the landholder concerned does not know is habitat of the relevant kind.

- (4) The clearing of native vegetation to obtain timber for use in the construction, operation or maintenance of rural infrastructure is not authorised if timber suitable for the purpose could be obtained from any other clearing that is authorised under this Schedule or by a land management (native vegetation) code.

15 Collection of firewood

- (1) Clearing native vegetation on land for the purpose of obtaining firewood for use by the landholder on that land or on other land of the landholder.
- (2) Clearing for that purpose is not authorised if the firewood could be obtained from any other clearing authorised under this Schedule or by a land management (native vegetation) code.
- (3) The native vegetation must not comprise (or be likely to comprise):
 - (a) a threatened species or part of a threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or
 - (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.

This subclause does not apply to habitat that the landholder concerned does not know is habitat of the relevant kind.

16 Exempt farm forestry

Clearing of native vegetation that is exempt farm forestry within the meaning of section 6 of the *Plantations and Reafforestation Act 1999*.

17 Planted native vegetation

- (1) The clearing of native vegetation that has been planted.

- (2) Clearing for that purpose is not authorised if the native vegetation was planted with the assistance of public funds granted for any purpose other than for forestry purposes.

18 Traditional Aboriginal cultural activities

Clearing native vegetation for a traditional Aboriginal cultural activity (other than a commercial cultural activity).

19 Environmental protection works

- (1) Clearing native vegetation for the purpose of environmental protection works.
- (2) ***Environmental protection works*** means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes re-vegetation or bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works (within the meaning of the *Coastal Protection Act 1979*).

20 Public works

- (1) Clearing native vegetation for the construction, operation or maintenance of infrastructure by a public or local authority in the exercise of its land management activities.
- (2) The native vegetation must not comprise (or be likely to comprise):
 - (a) a threatened species or part of a threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or
 - (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.
- (3) For the purposes of this clause, ***infrastructure*** includes cemeteries.

21 Gravel pits

- (1) Clearing native vegetation for the construction, operation or maintenance of gravel pits.
- (2) The clearing of native vegetation for gravel pits is authorised only if:
 - (a) the clearing is carried out by or on behalf of a local council, and
 - (b) the clearing is, in the case of each gravel pit, limited to a single area of land of no more than:
 - (i) in relation to the construction, operation or maintenance of gravel pits in the Western Zone—5 hectares, and
 - (ii) in relation to the construction, operation or maintenance of gravel pits (other than in the Western Zone)—2 hectares, and
 - (c) the native vegetation must not comprise (or be likely to comprise):
 - (i) a threatened species or threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or
 - (ii) a protected plant under the *Biodiversity Conservation Act 2016*, or
 - (iii) habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*, and

- (d) the clearing is carried out in a way that does not harm any animal that is (or is part of) a threatened species or threatened ecological community under the *Biodiversity Conservation Act 2016* or that is a protected animal under that Act, and
- (e) the clearing is carried out in conjunction with a restoration program or other arrangements that will ensure the restoration of native vegetation on the cleared land of the same or a similar species as the native vegetation cleared and to the same or a similar extent as existed on the cleared land.

22 Telecommunications infrastructure

- (1) Clearing native vegetation for the construction, operation or maintenance of telecommunications infrastructure.
- (2) The clearing is authorised if carried out by or on behalf of the owner of the infrastructure (in addition to by or on behalf of the landholder).

23 Private power lines

Clearing native vegetation that is reasonably necessary for the construction, operation or maintenance of privately owned power lines on private land.

24 Electricity transmission infrastructure

- (1) Clearing native vegetation for the maintenance of public utilities associated with the transmission of electricity.
- (2) The maintenance of those public utilities includes the following activities but only when those activities are being undertaken by or at the written direction of the body in which the public utility concerned is vested or that has the responsibility for that public utility's safe operation:
 - (a) maintaining the necessary safety clearances under power lines (conductors and structures) and around communication sites associated with the supply of electricity,
 - (b) minimising fuel loads under power lines to minimise the chance of smoke from a fire resulting in a line trip,
 - (c) maintaining existing access roads and tracks.
- (3) The maintenance of those public utilities does not include any of the following activities:
 - (a) construction of new access roads or tracks,
 - (b) removal of low growing groundcover,
 - (c) maintaining safety clearances from power lines that exceed either of the following:
 - (i) the maximum distance set out in the following table:

Nominal operating voltage of power line	Maximum clearing distance
Not more than 11 kV	20 metres
Above 11 kV up to and including 33 kV	25 metres
Above 33 kV up to and including 66 kV	30 metres
Above 66 kV up to and including 132 kV	45 metres
Above 132 kV up to and including 330 kV	60 metres

Nominal operating voltage of power line	Maximum clearing distance
Above 330 kV	70 metres

- (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

25 Sustainable grazing

- (1) Clearing of native vegetation during the course of sustainable grazing.
- (2) Sustainable grazing is grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation. Management of grasslands includes (without limitation) the over-sowing or fertilisation of grasslands.

26 Airstrips

- (1) Clearing of native vegetation for the construction, operation or maintenance of an airstrip.
- (2) The clearing is limited to the minimum clearing required to meet civil aviation standards for airstrips.

27 Firebreaks

Clearing of native vegetation for a firebreak in the Western Zone to a maximum distance of 100 metres where the native vegetation predominantly comprises mallee species.

Part 3 Clearing for rural infrastructure

Note. Part 4 of this Schedule sets out special provisions that apply to category 2-vulnerable regulated land.

28 Application

This Part sets out the clearing of native vegetation that is authorised on land for rural infrastructure to which this Part applies.

29 Definition of “rural infrastructure”

- (1) For the purposes of this Schedule:
 - (a) *infrastructure* is a building, structure or work, and
 - (b) *rural infrastructure* is infrastructure of a kind referred to in this clause that is used for the purposes of, or in connection with, an activity that is being carried out in a regulated rural area or other area of the State to which Part 5A of this Act applies, but only if the activity may be carried out without development consent or State significant infrastructure approval under the *Environmental Planning and Assessment Act 1979*.
- (2) In the Western and Central Zones (other than on small holdings), infrastructure includes (but is not limited to) the following:
 - (a) fences, roads, tracks, irrigation channels or pipelines, stock or domestic water supply pipelines, soil conservation earthworks, cut lines for stock movement, bore drains, drains to water storages, telephone lines or cables, power lines or cables or areas for movement of large machinery,

- (b) shearing, machinery, grain, hay or similar sheds, stock handling facilities, dams, ground tanks, windmills, bores, pumps, tanks or water points.

The infrastructure is limited to stationary infrastructure, and does not include any moveable component of infrastructure that extends the area of operation of the infrastructure when it is used.

- (3) In the Coastal Zone (other than on small holdings), infrastructure is limited to the following:
 - (a) permanent boundary fences, permanent internal fences, roads, tracks or pipelines,
 - (b) shearing or machinery sheds, tanks, dams, stockyards, bores, pumps, water points or windmills.
- (4) On small holdings in any Zone, infrastructure is limited to the following:
 - (a) permanent boundary fences, permanent internal fences, roads, tracks or pipelines,
 - (b) windmills, bores, stockyards, buildings other than habitable buildings, dams, pumps, tanks or water points.
- (5) Local Land Services may, on application by a landholder in the Coastal Zone or of a small holding, issue a certificate that infrastructure on the land concerned includes any additional infrastructure specified in the certificate. While the certificate remains in force, this clause has effect as if the additional infrastructure concerned was infrastructure in relation to the land concerned.
- (6) Local Land Services is to issue that certificate if it is satisfied that the additional infrastructure is required by the landholder for a genuine agricultural activity purpose, and is to refuse to issue that certificate if it is not so satisfied.
- (7) Section 60Y (Certification by Local Land Services prior to clearing—general) also applies to a certificate issued under this clause.

30 Clearing for construction, operation or maintenance of rural infrastructure allowable

The clearing of native vegetation for the construction, operation or maintenance of rural infrastructure on land if:

- (a) the infrastructure is rural infrastructure in the relevant Zone or holding in which it is located, and
- (b) the clearing does not exceed the maximum distance of clearing authorised by this Part in relation to the rural infrastructure.

31 Maximum authorised clearing for rural infrastructure

The maximum distance of clearing for rural infrastructure that is authorised by this Part is as follows:

- (a) in the Western Zone (except on small holdings and for temporary fences)—40 metres,
- (b) in the Central Zone (except on small holdings and for temporary fences)—30 metres,
- (c) in the Coastal Zone (except on small holdings and for temporary fences)—15 metres,
- (d) on a small holding or for temporary fences (in any Zone)—12 metres.

32 Landholders of large holdings may be authorised to use allowable activities rules applicable to adjoining zones

- (1) Local Land Services may, on application by a landholder, issue a certificate that the applicable maximum distances of authorised clearing under this Part for a landholding (other than a small holding) are the maximum distances for an adjoining allowable activity zone.
- (2) Local Land Services is to issue that certificate if it is satisfied that the landholding displays landscape characteristics consistent with the adjoining zone, and is to refuse to issue that certificate if it is not so satisfied.
- (3) While the certificate remains in force, this Part has effect as if the land concerned was situated in the adjoining zone.
- (4) Section 60Y (Certification by Local Land Services prior to clearing—general) also applies to a certificate issued under this clause.

33 Stockyards

Clearing for stockyards is not authorised by this Part if the stockyard can reasonably be placed on another part of the landholding that does not require the clearing of native vegetation or that is category 1-exempt land.

Part 4 Special provisions applying to category 2-vulnerable regulated land

34 Application

This Part sets out the only clearing of native vegetation (and of dead and non-native vegetation) that is authorised on category 2-vulnerable regulated land.

35 Protected riparian land—special provisions relating to any clearing

- (1) The clearing of native vegetation for allowable activities under the other Parts of this Schedule does not apply to the clearing of native vegetation on category 2-vulnerable regulated land that is shown on the native vegetation regulatory map as protected riparian land, and the clearing authorised by this clause applies instead.
- (2) **Imminent risk**
Clearing of native vegetation that is reasonably necessary to remove or reduce an imminent risk of serious personal injury or damage to property.
- (3) **Environmental protection works**
Clearing native vegetation for the purpose of environmental protection works.
Environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes re-vegetation or bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works (within the meaning of the *Coastal Protection Act 1979*).
- (4) **Electricity transmission infrastructure**
The clearing of native vegetation for the maintenance of public utilities associated with the transmission of electricity.

The maintenance of those public utilities includes the following activities, but only when those activities are being undertaken by or at the written direction of the body in which the public utility concerned is vested or that has the responsibility for that public utility's safe operation:

- (a) maintaining the necessary safety clearances under power lines (conductors and structures) and around communication sites associated with the supply of electricity,
- (b) minimising fuel loads under power lines to minimise the chance of smoke from a fire resulting in a line trip,
- (c) maintaining existing access roads and tracks.

The maintenance of those public utilities does not include any of the following activities:

- (a) construction of new access roads or tracks,
- (b) removal of low growing groundcover,
- (c) maintaining safety clearances from power lines that exceed either of the following:
 - (i) the maximum distance set out in the following table:

Nominal operating voltage of power line	Maximum clearing distance
Not more than 11 kV	20 metres
Above 11 kV up to and including 33 kV	25 metres
Above 33 kV up to and including 66 kV	30 metres
Above 66 kV up to and including 132 kV	45 metres
Above 132 kV up to and including 330 kV	60 metres
Above 330 kV	70 metres

- (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

(5) Permanent boundary fence

The clearing of native vegetation for the construction or maintenance of boundary fencing, with a maximum distance of clearing for the purposes of a boundary fence not exceeding 6 metres.

(6) Permanent internal or temporary fence

The clearing of native vegetation for the construction or maintenance of fencing (other than boundary fencing) to improve the management of the land, with a maximum distance of clearing for the purposes of a fence not exceeding 6 metres and only for fencing that is reasonably required to be constructed on the land.

(7) Farm access track

The clearing of native vegetation for the construction or maintenance of farm tracks, with a total width of clearing not exceeding 6 metres and only if:

- (a) the track is reasonably required to access sites within or on the other side of the land, and

(b) the route of the track minimises the clearing that is required to be undertaken on the land.

(8) **Sustainable grazing**

Clearing of native vegetation during the course of sustainable grazing.

Sustainable grazing is grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation. Management of grasslands includes (without limitation) the over-sowing or fertilisation of grasslands.

36 Steep or highly erodible land (including former mapped State protected land)—additional limitations on clearing native vegetation (including dead or non-native plants)

- (1) This clause applies to category 2-vulnerable regulated land that is shown on the native vegetation regulatory map as steep or highly erodible land or that was, immediately before the repeal of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*, State protected land within the meaning of that clause.
- (2) Clearing of native vegetation (and dead or non-native plants) on land to which this clause applies is subject to the limitations on clearing that applied, before the commencement of Part 5A of this Act, under clause 4 of Schedule 3 to the *Native Vegetation Act 2003* in relation to State protected land.

[9] **Schedule 5B**

Insert in appropriate order:

Schedule 5B Provisions relating to members and procedure of the Panel

(Section 60ZE)

Part 1 Preliminary

1 Definitions

In this Schedule:

member means the chairperson or other member of the Panel.

Panel means the Native Vegetation Panel established under section 60ZE.

Part 2 Provisions relating to members of Panel

2 Terms of office of members

- (1) A member of the Panel holds office, subject to this Act and the regulations, for such period (not exceeding 3 years) as is specified in the member's instrument of appointment.
- (2) A member is eligible (if otherwise qualified) for re-appointment.

3 Part-time office

The office of a member is a part-time office.

4 Remuneration of members

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.

5 Alternate members

- (1) The Minister may, from time to time, appoint a person to be the alternate of a member, and may revoke any such appointment.
- (2) In the absence of a member, the member's alternate may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) A person while acting in the place of 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 person.
- (5) The alternate of a member who is the chairperson has the member's functions as chairperson.

6 Removal from office of members

- (1) The Minister may remove a member from office at any time for any reason and without notice. However, the Minister must provide a written statement of the reasons for removing the member from office and make the statement publicly available.
- (2) The Minister may remove a member from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.

7 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 under this or any other Act, or
 - (e) is absent from 3 consecutive meetings of the Panel of which reasonable notice has been given to the member, except on leave granted by the Panel or unless the member is excused by the Panel 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) If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

8 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to the appointment or office 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 Schedule as a member.

Part 3 Provisions relating to procedure of Panel

9 General procedure

The procedure for the calling of meetings of the Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Panel.

10 Quorum

The quorum for a meeting of the Panel is 3 members.

11 Presiding member

- (1) The chairperson is to preside at a meeting of the Panel.
- (2) The chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Panel at which a quorum is present is the decision of the Panel.

13 Transaction of business outside meetings or by telephone etc

- (1) The Panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Panel 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 Panel.
- (2) The Panel 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 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 of the Panel have the same voting rights as they have at an ordinary meeting of the Panel.

- (4) A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of the Panel.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic transmission of the information in the papers concerned.

14 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the Panel, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Panel.
- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
 - (a) the member, or
 - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
 - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
 - (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the member is a member of a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the Panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the Panel and that record must be open at all reasonable hours to inspection by any person.

- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Panel otherwise determines:
 - (a) be present during any deliberation of the Panel with respect to the matter, or
 - (b) take part in any decision of the Panel with respect to the matter.
- (7) For the purposes of the making of a determination by the Panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Panel for the purpose of making the determination, or
 - (b) take part in the making by the Panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the Panel.

15 Provision of information by Panel

The Panel must provide the Minister with such information and reports as the Minister may, from time to time, request.

16 Exclusion of personal liability

- (1) A matter or thing done, or omitted to be done, by:
 - (a) the Panel, or
 - (b) a member of the Panel, or
 - (c) any individual acting under the direction of the Panel or a member of the Panel,does not subject any such member or individual so acting personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purpose of the exercise of the functions of the Panel.
- (2) However, any such liability attaches instead to the Crown.

[10] Dictionary

Omit the definitions of *fauna*, *protected fauna* and *threatened species*.

[Second reading speech made in—
Legislative Council on 9 November 2016
Legislative Assembly on 16 November 2016]