



New South Wales

# Native Vegetation Amendment (Private Native Forestry) Regulation 2007

under the

Native Vegetation Act 2003

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Native Vegetation Act 2003*.

PHILIP KOPERBERG, M.P.,  
Minister for Climate Change, Environment and Water

## Explanatory note

The object of this Regulation is to make special provision for the clearing of native vegetation for the purposes of private native forestry in accordance with a code of practice approved by the Minister.

This Regulation is made under the *Native Vegetation Act 2003*, including sections 11, 32 and 51 (the general regulation-making power).

## **2007 No 372**

Clause 1 Native Vegetation Amendment (Private Native Forestry) Regulation 2007

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# **Native Vegetation Amendment (Private Native Forestry) Regulation 2007**

under the

Native Vegetation Act 2003

### **1 Name of Regulation**

This Regulation is the *Native Vegetation Amendment (Private Native Forestry) Regulation 2007*.

### **2 Commencement**

This Regulation commences on 1 August 2007.

### **3 Amendment of Native Vegetation Regulation 2005**

The *Native Vegetation Regulation 2005* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

### [1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

*private native forestry* means the management of native vegetation on privately owned land for the purpose of obtaining, on a sustainable basis, timber products (including sawlogs, veneer logs, poles, girders, piles and pulp logs).

*private native forestry PVP* means a PVP that provides for the clearing of native vegetation as part of private native forestry.

### [2] Clause 6A

Insert after clause 6:

#### 6A Limitation on granting of development consent

Development consent for broadscale clearing on any land is not to be granted under the new Act if the land is subject to a private native forestry PVP.

### [3] Clause 9 Content of PVPs

Insert “or subclause (2A) in the case of a private native forestry PVP” after “continuing use PVP” in clause 9 (1).

### [4] Clause 9 (2A)

Insert after clause 9 (2):

(2A) A private native forestry PVP is not required to include the material referred to in subclause (1) (d) (ii), (f) or (h).

### [5] Clause 12 Information about PVPs and development consents

Insert after clause 12 (5):

(6) Subclauses (1) (b) and (c), (2) and (3) do not apply in relation to a private native forestry PNF.

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##### [6] Clause 12A

Insert after clause 12:

##### **12A Limitation on approval of PVPs**

A PVP that provides for broadscale clearing is not to be approved under Part 4 of the Act in relation to any land if the land is subject to a private native forestry PVP.

##### [7] Clause 23A

Insert after clause 23:

##### **23A Restrictions on RAMAs when clearing for private native forestry purposes**

- (1) Despite any other provision of the Act or this Regulation, the following activities do not comprise routine agricultural management activities on land that is being cleared for the purposes of private native forestry:
  - (a) the construction of farm roads,
  - (b) obtaining timber for use in the construction of rural infrastructure.
- (2) Without limiting subclause (1), the activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act are limited, in the case of land that is being cleared for the purposes of private native forestry, to the operation or maintenance of the following types of rural infrastructure only:
  - (a) permanent boundary and internal fences,
  - (b) roads and tracks,
  - (c) stockyards,
  - (d) windmills and bores,
  - (e) buildings (whether habitable or non-habitable),
  - (f) ground tanks,
  - (g) pumps,
  - (h) tanks,
  - (i) water points,
  - (j) dams.

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**[8] Clause 24A**

Insert before clause 24 (in Part 5):

**24A Part does not apply to clearing for private native forestry purposes under PVP**

This Part does not apply in relation to the clearing of native vegetation for the purposes of private native forestry if the clearing is carried out in accordance with a PVP.

**Note.** See Part 5A for clearing for private native forestry purposes under a PVP.

**[9] Part 5A**

Insert after Part 5:

**Part 5A Clearing under PVP for purposes of private native forestry****29A PNF code of practice**

In this Part:

*PNF code of practice* means the document called *Private Native Forestry Code of Practice* that makes provision for the clearing of native vegetation for the purposes of private native forestry, being the document:

- (a) approved by the Minister, and
- (b) as in force and as published in the Gazette on 1 August 2007.

**29B Clearing under PVP in accordance with PNF code of practice**

- (1) Broadscale clearing for the purposes of private native forestry is, for the purposes of the Act, taken to be clearing that will improve or maintain environmental outcomes if it is carried out in accordance with the PNF code of practice.
- (2) An application for approval of a private native forestry PVP that proposes broadscale clearing is not to be granted by the Minister unless the PVP:
  - (a) adopts the PNF code of practice, and
  - (b) provides for the clearing to be carried out in accordance with the PNF code of practice.
- (3) This clause is subject to any variation approved by the Minister under clause 29C.

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- (4) This clause does not apply in relation to the clearing of native vegetation with development consent.

#### **29C Special provisions for minor variation**

- (1) This clause only applies in relation to a private native forestry PVP that has been approved by the Minister if the area of the restricted area under the PVP is greater than 10% of the net harvestable area under the PVP.
- (2) The Minister may approve of a variation of the PNF code of practice in its application to a private native forestry PVP if an accredited expert certifies that:
- (a) the variation is minor, and
  - (b) the variation does not apply to a critical environmental area, and
  - (c) any clearing carried out in accordance with the proposed variation will improve or maintain environmental outcomes, and
  - (d) strict adherence to the PNF code of practice is in the particular case unreasonable and unnecessary.
- (3) In certifying for the purposes of this clause that clearing will improve or maintain environmental outcomes, an accredited expert must:
- (a) provide reasons for the opinions of the accredited expert, and
  - (b) comply with any assessment protocols approved by the Minister and the Minister for Primary Industries.
- (4) If the Minister approves of a variation of the PNF code of practice in its application to a private native forestry PVP, the Minister must:
- (a) approve of the PVP being modified in accordance with the variation, and
  - (b) make publicly available the reports of the accredited expert in relation to the variation.
- (5) In this clause:  
***accredited expert*** means a person accredited by the Minister as an expert for the purposes of this clause, being accreditation on the basis of criteria approved by the Minister and the Minister for Primary Industries.

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***critical environmental area***, in relation to a private native forestry PVP, means any of the following areas to which the PVP applies:

- (a) riparian exclusion zones,
- (b) old growth forest,
- (c) rainforest,
- (d) steep land (that is, land with a slope greater than 30 degrees),
- (e) an endangered ecological community or vulnerable ecological community within the meaning of the *Threatened Species Conservation Act 1995*,
- (f) canopy openings (as determined in accordance with the PNF code of practice).

***net harvestable area***, in relation to a private native forestry PVP, means the total area in which broadscale clearing is proposed to be carried out under the PVP, and does not include any restricted area.

***restricted area***, in relation to a private native forestry PVP, means that part of the area to which the PVP applies (other than any critical environmental area) that is not permitted to be cleared under the PNF code of practice.

**29D Procedure for amendment of PNF code of practice**

- (1) The following applies for the purposes of any amendment of the PNF code of practice:
  - (a) the Minister is not to make an amendment that relates to the protection of habitat or biodiversity without the concurrence of the Minister for Primary Industries,
  - (b) an amendment is to be published in the Gazette,
  - (c) an amendment does not take effect until the definition of ***PNF code of practice*** in clause 29A is amended to give effect to the amendment.
- (2) Subclause (1) does not apply in relation to any variation of the PNF code of practice that is approved by the Minister under clause 29C.

**[10] Clause 30 Former Act not to apply to State protected land**

Insert “and clause 40A” after “except as provided by this clause” in clause 30 (1).

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### [11] Clause 40A

Insert after clause 40:

#### **40A Exemption of clearing authorised under existing authorities (State protected land)**

- (1) Any clearing of native vegetation authorised under an existing authority is taken to be clearing that is exempt from any requirement under section 12 of the new Act that the clearing be in accordance with a development consent or a PVP.
- (2) If the existing authority concerned has a specified expiry date, this clause ceases to have effect in relation to the exempt clearing:
  - (a) on that expiry date, or
  - (b) if the existing authority otherwise ceases to be in force, or
  - (c) if the land on which the clearing is authorised becomes land to which a PVP applies,whichever first occurs.
- (3) If the existing authority concerned does not have a specified expiry date, this clause ceases to have effect in relation to the exempt clearing:
  - (a) if the existing authority ceases to be in force, or
  - (b) if the land on which the clearing is authorised becomes land to which a PVP applies, or
  - (c) on 1 October 2008,whichever first occurs.
- (4) In this clause:

*existing authority* means an authority issued under section 21D of the *Soil Conservation Act 1938* and in force immediately before 1 January 1998.

### [12] Clauses 41 and 41A

Omit clause 41. Insert instead:

#### **41 Existing private native forestry—clearing under SEPP 46 exemptions**

- (1) If the clearing of native vegetation for a purpose described in paragraph (i) of Schedule 3 to SEPP 46 was being carried out on land immediately before 1 August 2007, the clearing continues to be clearing that the new Act does not apply to, but only until:
  - (a) 1 November 2007 in the case of land in northern NSW (unless it is land referred to in paragraph (c) or (d)), or



- (b) 1 December 2007 in the case of land in southern NSW (unless it is land referred to in paragraph (c) or (d)), or
- (c) 1 January 2008 in the case of land comprising a river red gum forest, or
- (d) 1 February 2008 in the case of land comprising a cypress forest or a western hardwood forest,

and only if the landholder notifies the Director-General, on or before 31 August 2007 in the manner approved by the Director-General, that the clearing is being carried out.

- (2) In this clause:

***cypress forest*** means a forest dominated by white cypress pine (*Callitris glaucophylla*), being a forest in which at least 80% of the stand basal area comprises trees of that species.

***northern NSW*** means the part of the State north of the Sydney Latitude.

***river red gum forest*** means a forest dominated by *Eucalyptus camaldulensis*, being a forest that is consistent with the description of Forest Type 199 (River Red Gum) set out in the document called *State Forests of NSW Research Note 17*.

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

***southern NSW*** means the part of the State south of the Sydney Latitude.

***Sydney Latitude*** means Latitude 33° 52' 02.71 S.

***western hardwood forest*** means a forest that is consistent with the description of any of the Forest Types 99, 103, 104, 124, 171–178, 180–185, 203–210 and 213 set out in the document called *State Forests of NSW Research Note 17*.

- (3) For the purposes of the definition of ***cypress forest*** in subclause (2):

***basal area*** means the cross-sectional area of a tree measured at 1.3 metres above the ground and over bark.

***stand*** means an aggregation of trees sufficiently uniform in composition and condition within one (but not more than one) broad forest type, or defined by natural or artificial boundaries, to be regarded as a unit for silvicultural or management purposes.

***stand basal area*** means the sum of the basal areas of all trees within a stand that have a diameter of more than 10 centimetres measured at 1.3 metres above the ground and over bark.

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### **41A Development consents and pending applications under former Act to clear State protected land for private native forestry purposes**

- (1) Any development consent for clearing State protected land for the purposes of private native forestry granted in accordance with the former Act after its repeal is taken to be a development consent granted in accordance with the new Act.

**Note.** Up until 1 August 2007, clearing for private native forestry purposes on State protected land was subject to the provisions of the former Act as if that Act had not been repealed on 1 December 2005.

- (2) An application for development consent under the former Act to clear State protected land for the purposes of private native forestry that was made before (but not determined by) 1 August 2007 is not to be granted.

BY AUTHORITY

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