



New South Wales

Native Vegetation Regulation 2013

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*.

ROBYN PARKER, MP
Minister for the Environment

Explanatory note

The object of this Regulation is to repeal and remake, with some amendments, the *Native Vegetation Regulation 2005*.

The Regulation makes provision for and with respect to the following:

- (a) development consent for clearing of native vegetation,
- (b) the form and content of property vegetation plans (*PVPs*), the variation and termination of *PVPs* and a register of *PVPs*,
- (c) the assessment of broadscale clearing, including the adoption of an Assessment Methodology for determining whether proposed broadscale clearing will improve or maintain environmental outcomes,
- (d) clearing for private native forestry,
- (e) routine agricultural management activities,
- (f) special provisions for vulnerable land,
- (g) miscellaneous and savings and transitional matters.

The Regulation also amends the *Native Vegetation Act 2003* to clarify the non-rural land zones as described in a standard instrument local environmental plan to which the Act does not apply.

This Regulation is made under the *Native Vegetation Act 2003* including sections 5, 10, 11, 15, 20, 26, 27, 28, 30, 32, 43 and 51 (the general regulation-making power).

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Native Vegetation Regulation 2013

under the

Native Vegetation Act 2003

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Native Vegetation Regulation 2013*.

2 Commencement

This Regulation commences on 23 September 2013 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

council means a council, or a county council, within the meaning of the *Local Government Act 1993*.

development consent means development consent required by the Act for the clearing of native vegetation.

landholding means:

- (a) a parcel of land, or
- (b) several parcels of land which:
 - (i) are contiguous with one another or are separated from one another only by a road, river, creek or other watercourse, and
 - (ii) constitute or are worked as a single property,

irrespective of whether those parcels are held under the same title or different titles or titles of different kinds.

offset means any natural resource management action or work required by a PVP for the purpose of ensuring that broadscale clearing proposed by the PVP improves or maintains environmental outcomes.

private native forestry means the management of native vegetation on privately owned land or Crown land that is not Crown-timber land within the meaning of the *Forestry Act 2012* 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.

PVP means a property vegetation plan.

the Act means the *Native Vegetation Act 2003*.

Western Division has the same meaning as it has in the *Crown Lands Act 1989*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Development consent for clearing

4 Exclusion of matters for consideration

- (1) Matters required to be considered under section 79C of the EPA Act are excluded from the matters required to be considered under Part 4 of that Act for the purposes of the Minister determining an application for development consent for clearing native vegetation under the *Native Vegetation Act 2003*.
- (2) An application for development consent for clearing native vegetation under the Act is not required to comply with clause 1 (1) (d), (e), (f) or (h) or 2 (1) (b), (c) or (f) of Part 1 of Schedule 1 to the *Environmental Planning and Assessment Regulation 2000*.

Note. This clause does not affect the operation of Part 4 of the EPA Act in respect of the granting of additional development consent by a council or other consent authority to any such clearing of native vegetation that is required by an environmental planning instrument made before the granting of consent for the clearing under the *Native Vegetation Act 2003* (see section 17 of that Act).

5 Conditions of development consent

- (1) A condition of development consent for clearing native vegetation under the Act may be imposed if it relates to any matter to which the Minister must or may have regard under the Act in determining an application for that development consent.
- (2) This clause does not limit the conditions that may be imposed on development consent under the EPA Act.

6 Limitation on granting of development consent

Development consent under the Act is not to be granted for broadscale clearing on any land identified in a private native forestry PVP as land on which broadscale clearing may be carried out.

Part 3 Property vegetation plans

7 Form of PVPs

A PVP must be in such form as the Minister may from time to time approve.

8 Draft PVPs

- (1) The form and content of a draft PVP must comply with the requirements of clause 9.
- (2) A draft PVP may also provide information regarding the social and economic impacts (including on-farm impacts, impacts on the regional community and implications for any socio-economic targets established by the Natural Resources Commission or the relevant catchment management authority) of any matters provided for in the draft PVP, such as clearing proposals, proposed natural resource management activities or proposals relating to the continuation of existing farming or other rural practices.

Note. While this information is not to be used in assessing whether proposed broadscale clearing improves or maintains environmental outcomes, it may be used for other purposes, including:

- (a) assessing whether management of native vegetation is promoting the social, economic and environmental interests of the State in accordance with the principles of ecologically sustainable development, and
- (b) providing the Natural Resources Commission with social and economic information to which it can have regard when preparing recommendations and advice.

9 Content of PVPs

- (1) A PVP must:
 - (a) contain a description of the land to which the PVP applies, and
 - (b) specify the period for which the PVP has effect, and
 - (c) specify the address of, and formal particulars of title to, the land to which the PVP applies, and
 - (d) include a remotely-sensed image (indicating the date of the image), or (if such an image is not available) a topographical map of the largest scale reasonably available, identifying:
 - (i) any land on which broadscale clearing is proposed by the PVP, and
 - (ii) any land for which the PVP specifies a date for the purposes of the definition of *regrowth* in section 9 (2) (b) of the Act, and
 - (iii) any land on which native vegetation management activities are to be carried out under the PVP, and
 - (e) specify the nature of the clearing (if any) that is proposed by the PVP and the period within which the clearing may occur, and

Note. Section 30 of the Act provides that 15 years is the maximum period for which provisions of a PVP for the clearing of native vegetation can have effect.
 - (f) include details of any proposals (including management actions or works) provided for by the PVP for which financial incentives have been or are to be provided, and
 - (g) include details of any offsets that are proposed by the PVP and the period for which or within which they are required to be carried out, and
 - (h) include details of the extent (if any) to which provisions of the PVP exclude clearing for routine agricultural management or other activities from being permitted clearing, and

- (i) include details of any other proposals for the protection and management of native vegetation provided for by the PVP, whether or not financial incentives have been or are to be provided.
- (2) A continuing use PVP is not required to include the material referred to in subclause (1) (d) (i), (f), (g), (h) or (i).
- (3) A private native forestry PVP is not required to include the material referred to in subclause (1) (d) (ii) or (g).
- (4) In this clause, **continuing use PVP** means a PVP that provides only for any one or more of the following matters in relation to the land to which the PVP applies:
 - (a) identifying native vegetation on the land as regrowth,
 - (b) identifying routine agricultural management activities that are to be carried out on the land,
 - (c) identifying practices as existing cultivation, grazing or rotational farming practices (for the purposes of section 23 of the Act),
 - (d) specifying a date for the purposes of the definition of **regrowth** in section 9 (2) (b) of the Act,
 - (e) identifying existing rotational farming practices (for the purposes of clause 10 of this Regulation).

10 PVPs that change regrowth date

A PVP that specifies a date for the purposes of the definition of **regrowth** in section 9 (2) of the Act that is earlier than the relevant date specified in section 9 (2) (a) of the Act is not to be approved under Part 4 of the Act unless the Minister is satisfied that:

- (a) the specified date is based on existing rotational farming practices and is not earlier than the following dates:
 - (i) 1 January 1943 in the case of land in the Western Division,
 - (ii) 1 January 1950 in the case of other land, and
- (b) the PVP contains a requirement that any clearing of regrowth in accordance with the PVP will not exceed clearing of regrowth in accordance with those existing rotational farming practices.

11 Variation and termination of PVPs

- (1) A PVP cannot be terminated by the Minister under section 30 of the Act unless the following procedure has been followed:
 - (a) the landholder must be provided with the proposed notice of termination and must be given at least 14 days in which to make written submissions to the Minister with respect to the proposed termination,
 - (b) before proceeding to determine whether to terminate the PVP the Minister must have regard to any written submission made by the landholder within the period allowed for submissions.
- (2) If a PVP was approved by the Minister under section 29 of the Act as a PVP that proposes broadscale clearing of native vegetation:
 - (a) the Minister is not to approve a variation of the PVP unless the PVP as varied could have been approved under that section, and
 - (b) in the case of a PVP that is not a private native forestry PVP—the Minister is not to approve the termination of the PVP unless the Minister is satisfied that any clearing that has occurred under the PVP has improved or maintained

environmental outcomes and any offsets that are required by the PVP have been completed.

12 Information about PVPs and development consents

- (1) The Minister is to make publicly available on the Internet:
 - (a) the Global Positioning System (**GPS**) coordinates of the location of land that is the subject of a development consent or PVP that provides for broadscale clearing of native vegetation on the land or that is the subject of a PVP that specifies a date for the purposes of the definition of **regrowth** in section 9 (2) of the Act, and
 - (b) a statement of the area (expressed in hectares) of land:
 - (i) in the case of a private native forestry PVP—land to which the PVP applies, or
 - (ii) in the case of a PVP authorising clearing of paddock trees in cultivation—land that comprises the effective clearing area under the PVP, or
 - (iii) in any other case—land that is authorised to be cleared by the development consent or PVP concerned, and
 - (c) a statement of the area (expressed in hectares) of land that is land to which offsets apply under the PVP concerned and the GPS coordinates of the location of that land.
- (2) The following information is to be available for inspection without charge at the principal office of the catchment management authority in the area of operations in which the relevant land is situated:
 - (a) detailed information as to the clearing authorised by a development consent or PVP that provides for broadscale clearing of native vegetation on the land, including details of the location (by providing GPS coordinates only) of the land authorised to be cleared,
 - (b) detailed information as to the offsets provided for by a PVP that provides for broadscale clearing of native vegetation on the land, including details of the location (by providing GPS coordinates only) of the land to which any offsets apply,
 - (c) the date specified in a PVP for the purposes of the definition of **regrowth** in section 9 (2) of the Act.
- (3) A catchment management authority may charge a reasonable fee for providing a copy of any information that is available for inspection under subclause (2).
- (4) The Minister is to make the following information concerning a PVP available to a person who satisfies the Minister that the person is a bona fide prospective purchaser of the land to which the PVP applies:
 - (a) details of the provisions made by the PVP in respect of proposals to enable the landholder to obtain financial incentives for the management of natural resources,
 - (b) details of the provision made by the PVP for the provision and expenditure of those financial incentives.
- (5) Information required to be made available under this clause must be available within 10 days after the development consent or PVP concerned is granted or approved.
- (6) Subclauses (1) (c), (2) and (3) do not apply in relation to a private native forestry PVP.

13 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 identified in a private native forestry PVP as land on which broadscale clearing may be carried out.

14 Consent to draft PVP required from person with forestry right in land

A forestry right within the meaning of section 87A of the *Conveyancing Act 1919* is prescribed as an interest in land for the purposes of section 26 (2) (b) of the Act.

Part 4 Assessment of broadscale clearing—environmental outcomes

Note. The Natural Resources Commission has the function of providing the Government with independent advice on natural resource management, which includes the management of native vegetation.

15 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 5 for clearing for private native forestry purposes under a PVP.

16 Adoption of Minister's Assessment Methodology

- (1) The Assessment Methodology is adopted for the purposes of this Regulation.
- (2) In this Part, **Assessment Methodology** means the methodology titled *Environmental Outcomes Assessment Methodology* approved by the Minister for the purpose of providing a methodology for assessing and determining whether proposed broadscale clearing will improve or maintain environmental outcomes, as in force and as published in the Gazette on 4 March 2011.

17 Procedure for amendment of Assessment Methodology

- (1) The following procedure applies for the purposes of any amendment by the Minister of the Assessment Methodology:
 - (a) the Director-General is to cause notice of the proposed amendment to be published in a newspaper circulating generally throughout the State and on the website of the Office of Environment and Heritage, Department of Premier and Cabinet,
 - (b) the notice must invite the public to make written submissions to the Director-General on the proposed amendment before a closing date for submissions specified in the notice (being a date that is not less than 30 days after the date the notice is first published in a newspaper and on the specified website under this clause),
 - (c) until the closing date for submissions, the Director-General is to cause copies of the proposed amendment, and any other explanatory material or information the Director-General considers appropriate, to be exhibited at the head office of the Office of Environment and Heritage, Department of Premier and Cabinet and on the website of that Office,
 - (d) after the closing date for submissions, the Director-General is to provide a report to the Minister on the public consultation that:
 - (i) summarises the main issues raised in any submissions received before the closing date for submissions, and
 - (ii) makes such recommendations as the Director-General considers appropriate in relation to those submissions.
- (2) The Minister may provide the Natural Resources Commission with a copy of the proposed amendment and the Director-General's report on the public consultation and request the Commission to provide advice and recommendations in relation to the proposed amendment within a specified period of time.
- (3) The Minister is not to make an amendment that relates to the assessment of biodiversity without the concurrence of the Minister for Primary Industries (and the Minister for the Environment if the Minister for the Environment is not the Minister administering the Act).

- (4) An amendment is to be published in the Gazette and does not take effect until the definition of *Assessment Methodology* in clause 16 is amended to give effect to the amendment.
- (5) The Minister may amend the Assessment Methodology without complying with the public consultation requirements specified in subclause (1) if:
 - (a) the Minister is of the opinion that the amendment is of a minor nature, and
 - (b) the Minister certifies in writing that the amendment is of a minor nature.
- (6) Without limiting the circumstances in which an amendment can be regarded as being of a minor nature, amendments of a minor nature include amendments that:
 - (a) correct any minor error or omission in the Assessment Methodology, such as a spelling or grammatical error, a redundant or obsolete reference, obviously missing words, or wrong cross-references, or
 - (b) make any other change necessary to address matters that are of a consequential, transitional, machinery or other minor nature.

18 Proposed broadscale clearing to be assessed using Assessment Methodology

- (1) An application for development consent for development involving broadscale clearing, or for approval of a PVP that proposes broadscale clearing, is not to be granted unless:
 - (a) there has been an assessment and determination in accordance with the Assessment Methodology of whether the proposed clearing will improve or maintain environmental outcomes and the determination resulting from that assessment is that the proposed clearing will improve or maintain environmental outcomes, or
 - (b) an accredited expert has assessed and certified in accordance with clause 19 that in the accredited expert's opinion the proposed clearing will improve or maintain environmental outcomes.
- (2) Proposed broadscale clearing is to be regarded for the purposes of the Act as clearing that will improve or maintain environmental outcomes if the determination resulting from an assessment of the proposed clearing in accordance with the Assessment Methodology is that the proposed clearing will improve or maintain environmental outcomes.

19 Special provisions for minor variation

- (1) An accredited expert may make an assessment that proposed clearing will improve or maintain environmental outcomes only if there has been an assessment in accordance with the Assessment Methodology of whether the proposed clearing will improve or maintain environmental outcomes (not resulting in a determination that the proposed clearing will improve or maintain environmental outcomes) and the accredited expert is of the opinion that:
 - (a) a minor variation to the Assessment Methodology would result in a determination that the proposed clearing will improve or maintain environmental outcomes (other than a variation that is not allowable under this clause), and
 - (b) strict adherence to the Assessment Methodology is in the particular case unreasonable and unnecessary.
- (2) A variation to the Assessment Methodology is not allowable under this clause if it is a variation of any of the following aspects of the Assessment Methodology:
 - (a) riparian buffer distances or associated offset requirements,
 - (b) classification of vegetation as likely habitat for threatened species,

- (c) classification of a plant species as a threatened species or a component of an endangered ecological community,
 - (d) classification of the condition of vegetation,
 - (e) classification of the vegetation type or landscape type as overcleared,
 - (f) the assessment of the regional value of vegetation.
- (3) However, a variation to the Assessment Methodology in relation to the following aspects of the Assessment Methodology is allowable if an accredited expert is also of the opinion that the proposed clearing will have additional conservation benefits on a landscape scale:
- (a) classification of the condition of vegetation,
 - (b) classification of the vegetation type or landscape type as overcleared,
 - (c) the assessment of the regional value of vegetation.
- (4) In certifying that proposed 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 for the Environment (in relation to aspects of assessment concerned with salinity, soil and water quality, threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with threatened fish and marine vegetation and aquatic biodiversity).
- (5) In determining that the proposed clearing will have additional conservation benefits on a landscape scale, 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 for the Environment.
- (6) Any assessment protocol approved for the purposes of subclause (4) (b) or (5) is to be published on the website of the Office of Environment and Heritage, Department of Premier and Cabinet.
- (7) 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 for the Environment (in relation to aspects of assessment concerned with salinity, soil and water quality, threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with threatened fish and marine vegetation and aquatic biodiversity).
- minor variation**, in relation to the Assessment Methodology, includes, but is not limited to, a variation that involves or results in the reclassification of vegetation from “not of low condition” to “low condition” (as referred to in the Assessment Methodology).

20 Exemption for broadscale clearing for conservation purposes or long-term environmental benefits

- (1) Proposed broadscale clearing is exempt from the requirement for assessment in accordance with the Assessment Methodology if the Minister is satisfied that:
- (a) the clearing is minor clearing, and
 - (b) the clearing:
 - (i) comprises management action or works for conservation purposes, or

- (ii) will be carried out in accordance with a policy approved by the Minister under this clause.
- (2) The Minister may approve a policy that sets out the following matters:
 - (a) the circumstances in which minor clearing of native vegetation on land is likely to improve the condition of native vegetation on the land or prevent the long-term degradation of native vegetation on the land,
 - (b) the circumstances in which the long-term environmental benefits resulting from the improved condition of native vegetation on the land or the prevention of long-term degradation of native vegetation on the land outweigh the short-term environmental impacts of the clearing,
 - (c) the requirements for the restoration and maintenance of native vegetation on land.
- (3) Before approving a policy for the purposes of this clause, the Minister is to:
 - (a) consult with the Minister for the Environment on the draft policy (if the Minister for the Environment is not the Minister administering the Act), and
 - (b) place the draft policy on public exhibition for a reasonable period and give notice of the public exhibition of the draft policy, and invite public submissions on it, by notice in a newspaper circulating generally in the area of operations of the catchment management authority in which land covered by the draft policy is situated, and
 - (c) consider any public submissions made during the period allowed for the making of public submissions.
- (4) A policy approved for the purposes of this clause is to be published on the website of the Office of Environment and Heritage, Department of Premier and Cabinet and the website of any catchment management authority in which land covered by the policy is situated.

Part 5 Clearing under PVP for purposes of private native forestry

21 PNF code of practice

- (1) In this Part, *PNF code of practice* means the code comprised of the following component documents approved by the Minister:
 - (a) the *Private Native Forestry Code of Practice for Northern NSW* published in the Gazette on 16 August 2013,
 - (b) the *Private Native Forestry Code of Practice for Southern NSW* published in the Gazette on 8 February 2008,
 - (c) the *Private Native Forestry Code of Practice for River Red Gum Forests* published in the Gazette on 8 February 2008,
 - (d) the *Private Native Forestry Code of Practice for Cypress and Western Hardwood Forests* published in the Gazette on 8 February 2008.
- (2) A reference in this Regulation to the PNF code of practice is a reference to the relevant component document of the code.

22 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 23.
- (4) This clause does not apply in relation to the clearing of native vegetation with development consent.

23 Minor variation of PNF code of practice

- (1) This clause only applies in relation to a private native forestry PVP that has been approved by the Minister if more than 10% of the area to which the PVP applies (excluding any critical environmental area) consists of areas that are restricted areas.
- (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) the variation does not apply to an endangered ecological community, a critically endangered ecological community or a vulnerable ecological community within the meaning of the *Threatened Species Conservation Act 1995*, and
 - (d) the variation does not apply to canopy openings (as determined in accordance with the PNF code of practice), and
 - (e) any clearing carried out in accordance with the proposed variation will improve or maintain environmental outcomes, and

- (f) 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 his or her opinions, and
 - (b) comply with any assessment protocols approved by the Minister, the Minister for Primary Industries and the Minister for the Environment (if the Minister for the Environment is not the Minister administering the Act).
- (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, the Minister for Primary Industries and the Minister for the Environment (if the Minister for the Environment is not the Minister administering the Act).
- 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).
- restricted area**, in relation to a private native forestry PVP, means that part of any of the following types of areas to which the PVP applies (other than any critical environmental area) that is not permitted to be cleared, or in which clearing is restricted, under the PNF code of practice:
- (a) rocky outcrops and cliffs (as defined in the PNF code of practice),
 - (b) areas of existing mass movement (as defined in the PNF code of practice),
 - (c) exclusion zones (as set out in the listed ecological prescriptions in the appendix to each Part of the PNF code of practice),
 - (d) riparian buffer zones (as set out in the relevant tables in the PNF code of practice),
 - (e) caves, tunnels and disused mineshafts (excluding open pits less than 3 metres deep),
 - (f) endangered ecological communities (as set out in Part 3 of Schedule 1 to the *Threatened Species Conservation Act 1995*),
 - (g) vulnerable ecological communities (as set out in Part 2 of Schedule 2 to the *Threatened Species Conservation Act 1995*),
 - (h) areas containing Aboriginal objects or Aboriginal places (within the meaning of the *National Parks and Wildlife Act 1974*),
 - (i) areas containing items identified as heritage items in an environmental planning instrument.

24 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 (and the Minister for the Environment if the Minister for the Environment is not the Minister administering the Act),
 - (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 21 is amended to give effect to the amendment.
- (2) This clause does not apply in relation to any variation of the PNF code of practice that is approved by the Minister under clause 23.

Part 6 Routine agricultural management activities

Note 1. Section 22 of the Act provides that clearing of native vegetation for routine agricultural management activities is permitted (but only to the minimum extent necessary for carrying out the activity). Section 11 of the Act sets out the activities that are routine agricultural management activities and provides that the regulations may extend, limit or vary the activities that are routine agricultural management activities.

Note 2. See clause 59 for the only activities that are routine agricultural management activities on protected riparian land. Clause 60 contains additional routine agricultural management activities related to the clearing of lignum on special category land.

Division 1 Preliminary

25 Meaning of “rural infrastructure”

- (1) A building, structure or work on land is *rural infrastructure* for the purposes of section 11 (1) (a) of the Act and this Part only if the building, structure or work is used for the purposes of, or in connection with, an agricultural activity or private native forestry that is being carried out on the land.
- (2) In this clause, *agricultural activity* has the same meaning as *agriculture* has in the *Standard Instrument (Local Environmental Plans) Order 2006*. However, an activity is taken to be *agricultural activity* for the purpose of this clause even if the activity is not undertaken for a commercial purpose.

26 Clearing not to exceed minimum extent necessary

The distances and areas for clearing that are provided for in this Part are maximum distances and areas and do not affect the operation of section 22 of the Act which provides that clearing for routine agricultural management activities is not authorised if it exceeds the minimum extent necessary for carrying out the activity.

Division 2 Infrastructure

Subdivision 1 Rural infrastructure

27 Infrastructure buffer distances

- (1) The construction, operation and maintenance of the following kinds of rural infrastructure are routine agricultural management activities in the Western Division but only if the clearing is carried out within the distance or area specified for that kind of rural infrastructure:
 - (a) permanent fence—20 metres either side,
 - (b) access trail, cut line for stock movement, road, telephone line or cable, power line or cable, drain to a water storage, bore drain, pipeline, or irrigation channel—30 metres total width of clearing,
 - (c) firebreak, except where mallee species predominate—30 metres total width of clearing,
 - (d) firebreak where mallee species predominate—100 metres total width of clearing,
 - (e) airstrip—distances and area sufficient to meet civil aviation standards for construction of an airstrip,
 - (f) house, shearing or machinery shed, ground tank, dam or stock yards, or similar utility—5 hectares total area of clearing.
- (2) The construction, operation and maintenance of the following kinds of rural infrastructure are routine agricultural management activities in the Central Region

but only if the clearing is carried out within the distance and area specified for that kind of rural infrastructure:

- (a) permanent boundary fence—10 metres either side,
- (b) permanent internal fence—10 metres total width of clearing,
- (c) temporary fence—3 metres total width of clearing,
- (d) road or track—6 metres total width of clearing,
- (e) airstrip—distances and area sufficient to meet civil aviation standards for construction of an airstrip.

Note. Subclauses (1) and (2) only impose distance and area clearing restrictions on the activities listed and do not limit the kinds of activities that can be carried out in the Western Division and Central Region under section 11 (1) (a) of the Act.

- (3) The activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act in the Coastal Region are limited to the following rural infrastructure only and are further limited so as to permit clearing only within the distance or area specified:
 - (a) permanent boundary fence—6 metres either side,
 - (b) permanent internal fence—6 metres total width of clearing,
 - (c) temporary fence—3 metres total width of clearing,
 - (d) road or track—6 metres total width of clearing,
 - (e) pipeline—3 metres total width of clearing,
 - (f) shearing or machinery shed—20 metres from the outer edge of the structure,
 - (g) ground tank—15 metres from the outer edge of the structure,
 - (h) tank (other than a ground tank)—3 metres from the outer edge of the structure,
 - (i) dam—15 metres from the outer edge of the structure,
 - (j) stockyards—20 metres from the outer edge of the structure,
 - (k) bore—10 metres from the outer edge of the structure,
 - (l) pump—3 metres from the outer edge of the structure,
 - (m) water point—3 metres from the outer edge of the structure,
 - (n) windmill—10 metres from the outer edge of the structure.
- (4) The activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act on small holdings (as defined in clause 57) and on land in an area zoned as rural-residential or large lot residential under an environmental planning instrument are limited to the construction, operation and maintenance of the following kinds of rural infrastructure only and are further limited so as to permit clearing only within the distance or area specified:
 - (a) permanent boundary fence—6 metres either side,
 - (b) permanent internal fence—6 metres either side,
 - (c) temporary fence—3 metres total width of clearing,
 - (d) roads and tracks—6 metres total width of clearing,
 - (e) windmills and bores—10 metres from the outer edge of the structure,
 - (f) stockyards—20 metres from the outer edge of the structure,
 - (g) buildings other than habitable buildings—20 metres from the outer edge of the structure,
 - (h) pipeline—3 metres total width of clearing,
 - (i) dam—15 metres from the outer edge of the structure,

- (j) pump—3 metres from the outer edge of the structure,
 - (k) water point—3 metres from the outer edge of the structure,
 - (l) tank—3 metres from the outer edge of the structure.
- (5) The Minister may, by order in writing, on application by the landholder (and after consultation with the Minister for the Environment if the Minister for the Environment is not the Minister administering the Act), increase a distance or an area specified in this clause in its application to the land concerned, but only if the Minister is satisfied that:
- (a) the proposed increase is minor, and
 - (b) the proposed increase is for a legitimate purpose associated with the management of the land concerned, and
 - (c) the increase is necessary in the circumstances.
- (6) The Minister is to make details of any order issued under subclause (5) publicly available on a register kept by the Minister for the purpose and is to include in the register a statement of the reasons for the increase concerned.
- (7) In this clause:

Central Region means land within the local government area of Albury, Armidale Dumaresq, Balranald, Bathurst Regional, Berrigan, Bland, Blayney, Blue Mountains, Bogan, Bombala, Boorowa, 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), Conargo, Coolamon, Coonamble, Cooma-Monaro, Cootamundra, Corowa, Cowra, Deniliquin, Dubbo, Dungog, Forbes, Gilgandra, Glen Innes Severn Shire, Gloucester, Goulburn Mulwaree, Greater Hume, Griffith, Gundagai, Gunnedah, Guyra, Gwydir, Harden, Hay, Inverell, Jerilderie, Junee, Kyogle, Lachlan, Leeton, Lithgow, Liverpool Plains, Lockhart, Mid-western Regional, Moree Plains, Murray, Murrumbidgee, Muswellbrook, Narrabri, Narramine, Narrandera, Oberon, Orange, Palerang, Parkes, Queanbeyan, Singleton, Snowy River, Tamworth Regional, Temora, Tenterfield, Tumbarumba, Tumut, Upper Hunter, Upper Lachlan Shire, Uralla, Urana, Wagga Wagga, Wakool, Walcha, Walgett, Warren, Warrumbungle, Weddin, Wellington, Wingecarribee, Wollondilly, Yass Valley and Young (other than land in the Western Division).

Coastal Region means land within the local government areas of Ballina, Bega Valley, Bellingen, Byron, 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, Gosford, Great Lakes, Greater Taree, Kempsey, Kiama, Lake Macquarie, Lismore, Maitland, Nambucca, Port Macquarie-Hastings, Port Stephens, Richmond Valley, Shellharbour, Shoalhaven, Tweed, Wollongong and Wylong.

Note. Section 100C (4) of the *Rural Fires Act 1997* provides that bush fire hazard reduction work may be carried out on land despite any requirement for an approval, consent or other authorisation for the work made by the *Native Vegetation Act 2003* in certain circumstances.

28 Obtaining construction timber

- (1) The clearing of native vegetation on land is a routine agricultural management activity if the cleared native vegetation is obtained for the purpose of, and used in, the construction or maintenance of rural infrastructure on that land.
- (2) This clause authorises clearing of native vegetation only if the clearing will not cause land degradation, including soil erosion, rising water tables, the expression of salinity, mass movement by gravity of soil or rock, stream bank instability, and any process that results in declining water quality.

- (3) This clause authorises the clearing of native vegetation only if the native vegetation does not comprise:
 - (a) a threatened species, or a component of a threatened population or threatened ecological community, under the *Threatened Species Conservation Act 1995* or is likely to comprise habitat of such a threatened species, or
 - (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.
- (4) This clause does not authorise the clearing of native vegetation to provide timber for use in the construction or maintenance of rural infrastructure if timber suitable for the purpose could be obtained from clearing permitted as a routine agricultural management activity (otherwise than under this clause) comprising the construction or maintenance of the rural infrastructure concerned.

Subdivision 2 Fences, sheds, trails and tracks—non-rural infrastructure

29 Permanent boundary fences

The construction, operation and maintenance of any permanent boundary fence (other than a fence that is rural infrastructure) is a routine agricultural management activity, but only if the clearing is carried out within 6 metres on either side of the fence.

30 Construction, operation and maintenance of sheds

- (1) The construction, operation and maintenance of one, but not more than one, shed on any landholding is a routine agricultural management activity, but only if the shed has an area of no more than 100 square metres.
- (2) The construction, operation and maintenance of a road to such a shed on any landholding is a routine agricultural management activity, but only if the total width of clearing for the purposes of the road does not exceed 6 metres.
- (3) In this clause, *shed* does not include a shed that is rural infrastructure.

31 Construction, operation and maintenance of access trails and tracks

The construction, operation and maintenance of an access trail or track for the purpose of managing a landholding is a routine agricultural management activity, but only if the total width of clearing for the purposes of the access trail or track does not exceed 6 metres.

32 Minister may increase clearing distances or areas

- (1) The Minister may, by order in writing, on application by the landholder (and after consultation with the Minister for the Environment if the Minister for the Environment is not the Minister administering the Act), increase a distance or an area specified in this Subdivision in its application to the land concerned, but only if the Minister is satisfied that:
 - (a) the proposed increase is minor, and
 - (b) the proposed increase is for a legitimate purpose associated with the management of the land concerned, and
 - (c) the increase is necessary in the circumstances.
- (2) The Minister is to make details of any order issued under subclause (1) publicly available on a register kept by the Minister for the purpose and is to include in the register a statement of the reasons for the increase concerned.

Subdivision 3 Public infrastructure

33 Crown land and council management infrastructure

- (1) The construction, operation and maintenance of infrastructure by an instrumentality of the Crown, a reserve trust or a council in the exercise of its land management activities, including roads, tracks, viewing platforms, signs and recreational facilities (such as picnic and barbecue facilities), are routine agricultural management activities.
- (2) This clause does not authorise the clearing of native vegetation that comprises:
 - (a) a threatened species, or a component of a threatened population or threatened ecological community, under the *Threatened Species Conservation Act 1995* or is likely to comprise habitat of such a threatened species, or
 - (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.

34 Other infrastructure works by councils

- (1) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the construction, operation or maintenance of any of the following (referred to in this clause as **infrastructure works**) by a council:
 - (a) gravel pits,
 - (b) cemeteries.
- (2) This clause authorises the clearing of native vegetation only if:
 - (a) the clearing is, in each case, 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 Division—5 hectares, and
 - (ii) in relation to the construction, operation or maintenance of gravel pits (other than in the Western Division) and cemeteries—2 hectares, and
 - (b) the native vegetation does not comprise (or is not likely to comprise):
 - (i) a threatened species, or a component of a threatened population or threatened ecological community, under the *Threatened Species Conservation Act 1995*, or
 - (ii) habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*, and
 - (c) in relation to clearing for the purpose of the construction, operation or maintenance of gravel pits—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.

35 Maintenance of public utilities—electricity transmission

- (1) The maintenance of public utilities associated with the transmission of electricity (as referred to in section 11 (1) (h) of the Act) 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 powerlines (conductors and structures) and around communication sites associated with the supply of electricity,

- (b) minimising fuel loads under powerlines to minimise the chance of smoke from a fire resulting in a line trip,
 - (c) maintaining existing access roads and tracks.
- (2) The maintenance of public utilities associated with the transmission of electricity (as referred to in section 11 (1) (h) of the Act) 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 powerlines that exceed either of the following:
 - (i) the distance (measured from the centreline of the powerline) set out in Column 2 of the Table to this clause opposite the nominal operating voltage of the powerline set out in Column 1 of the Table,
 - (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

Table

Column 1	Column 2
Nominal operating voltage of powerline	Maximum clearing distance
not more than 11 kV	10 metres
above 11 kV up to 33 kV	12.5 metres
33 kV up to and including 66 kV	15 metres
above 66 kV up to and including 132 kV	22.5 metres
above 132 kV up to and including 330 kV	30 metres
above 330 kV	35 metres

36 Telecommunications infrastructure

The construction, operation and maintenance of telecommunications infrastructure are routine agricultural management activities.

Division 3 Routine agricultural management activities subject to Ministerial orders

37 Clearing of feral species

- (1) The Minister may by order declare a species of native vegetation as a feral species for specified land (or all land in a specified area), or extend the area for which a species is declared as a feral species, if:
 - (a) the Minister is satisfied that the species is outside its natural range on the land or in the area specified, or
 - (b) the species of vegetation is groundcover.
- (2) The clearing of a declared feral species of native vegetation, carried out in accordance with any declaration by an order under this clause (and, if the order is subject to any conditions, in accordance with those conditions), is a routine agricultural management activity.

38 Clearing of invasive species

- (1) The Minister may by order declare a species of native vegetation as an invasive species for specified land (or all land in a specified area), or extend the area for which a species is declared as an invasive species, if the Minister is satisfied that:
 - (a) the species is within its natural range on the land or in the area specified, and
 - (b) the species is densely regenerating or is invading plant communities in which the species does not generally occur, which is causing decline in the structure or composition of the vegetation community.
- (2) The clearing of a declared invasive species of native vegetation, carried out in accordance with any declaration by an order under this clause (and, if the order is subject to any conditions, in accordance with those conditions), is a routine agricultural management activity.

39 Environmental works

- (1) The Minister may by order declare a type of work as an environmental work for specified land (or all land in a specified area), if the Minister is satisfied that the carrying out of the work will have an overall positive effect on the environment.
- (2) The kinds of work that the Minister may declare as *environmental works* include revegetation and rehabilitation.
- (3) The clearing of native vegetation for the purpose of environmental works, carried out in accordance with any declaration by an order under this clause (and, if the order is subject to any conditions, in accordance with those conditions), is a routine agricultural management activity.

40 Thinning of native vegetation

- (1) The Minister may by order declare the thinning of native vegetation on specified land (or on all land in a specified area) to be a routine agricultural management activity.
- (2) The thinning of native vegetation, carried out in accordance with any declaration by an order under this clause (and, if the order is subject to any conditions, in accordance with those conditions), is a routine agricultural management activity.
- (3) In this clause, *thinning* of native vegetation means the selective removal of individual trees, or parts of trees, for the purposes of reducing competition between trees, allowing growth of remaining trees, tree regeneration and groundcover growth and improving or maintaining the structure and composition of native vegetation.

41 Clearing of paddock trees

- (1) The Minister may by order declare the clearing of a paddock tree in a cultivation area (being a tree within an area that is cropped, ploughed, fallow or covered in perennial or annual non-indigenous pasture) to be a routine agricultural management activity.
- (2) The clearing of a tree, carried out in accordance with any declaration by an order under this clause (and, if the order is subject to any conditions, in accordance with those conditions), is a routine agricultural management activity.

42 Clearing of mulga

- (1) The Minister may by order declare the clearing of mulga in the Western Division for stock fodder to be a routine agricultural management activity.
- (2) The clearing of mulga, carried out in accordance with any declaration by an order under this clause (and, if the order is subject to any conditions, in accordance with those conditions), is a routine agricultural management activity.

43 Notification of intended clearing

- (1) A landholder must, at least 14 days before carrying out or authorising another person to carry out the clearing of vegetation in accordance with a declaration by an order under this Division, notify the Minister of the proposed clearing.
Maximum penalty: 50 penalty units.
- (2) The notification must:
 - (a) be given to the Minister in the manner and form approved by the Minister, and
 - (b) must include the following information:
 - (i) details of the land on which the clearing is to be carried out (including the address and Lot and DP details of the land),
 - (ii) the area of the land to be cleared,
 - (iii) the date or dates on which the intended clearing is to take place,
 - (iv) the name of the person who is to carry out the intended clearing,
 - (v) if the order in accordance with which the clearing takes place is subject to a condition restricting the species of native vegetation that may be cleared—the species of native vegetation intended to be cleared,
 - (vi) if the order in accordance with which the clearing takes place is subject to a condition restricting the method of clearing—the method of the intended clearing,
 - (vii) whether the land on which the clearing is to be carried out is subject to a private native forestry PVP,
 - (viii) if the intended clearing is to be carried out in accordance with an order under clause 41 (Clearing of paddock trees)—the number of trees intended to be cleared,
 - (ix) such other information as the Minister may require by notice published in the Gazette.

Note. Section 80 (Compliance with forms) of the *Interpretation Act 1987* provides that a form is prescribed by, or approved under, an Act or statutory rule (such as a regulation), strict compliance with the form is not necessary but substantial compliance is sufficient.

44 Making of orders

- (1) Before making an order under this Division, the Minister is to:
 - (a) consult with the Minister for the Environment on the proposed order (if the Minister for the Environment is not the Minister administering the Act), and
 - (b) place the proposed order on public exhibition for a reasonable period and give notice of the public exhibition of the proposed order, and invite public submissions on it, by notice in a newspaper circulating generally in the area of operations of the catchment management authority in which the land or area concerned is situated, and
 - (c) consider any public submissions made during the period allowed for the making of public submissions.
- (2) An order under this Division may be made subject to conditions that:
 - (a) restrict how clearing of native vegetation may be carried out, including but not limited to conditions as to the time of year in which clearing may or may not be carried out, allowable methods of clearing and maximum area of clearing, or

- (b) identify which species of vegetation may or may not be cleared under the order.

Note. Section 43 (2) of the *Interpretation Act 1987* provides that, if a statutory rule (such as a regulation) confers a power on any person or body to make an order, the power includes power to amend or repeal any order made in the exercise of that power.

45 Minor amendment of orders

- (1) The Minister may amend an order made under this Division without complying with the consultation requirements specified in clause 44 (1) if:
 - (a) the Minister is of the opinion that the amendment is of a minor nature, and
 - (b) the Minister certifies in writing that the amendment is of a minor nature.
- (2) Without limiting the circumstances in which an amendment can be regarded as being of a minor nature, amendments of a minor nature include amendments that:
 - (a) correct any minor error or omission in the order, such as a spelling or grammatical error, a redundant or obsolete reference, obviously missing words, or wrong cross-references, or
 - (b) make any other change necessary to address matters that are of a consequential, transitional, machinery or other minor nature.

46 Publication of orders

- (1) The Minister is to cause each order made under this Division to be published in the Gazette.
- (2) A catchment management authority must publish on its website a list of any orders in force under this Division that relate to any land in its area of operations.
- (3) A list of any orders in force under this Division must also be published on the website of the Office of Environment and Heritage, Department of Premier and Cabinet.

Division 4 Activities on private native forestry PVP land

47 Activities on land to which a private native forestry PVP applies (excluding critical environmental areas)

- (1) This clause does not apply in respect of land within a critical environmental area.
- (2) Despite any other provision of the Act or this Regulation, the following are not routine agricultural management activities on land identified in a private native forestry PVP as land on which broadscale clearing may be carried out:
 - (a) obtaining timber for use in the construction of rural infrastructure (as referred to in clause 28),
 - (b) the construction, operation or maintenance of a permanent boundary fence, shed, access trail or track which is not rural infrastructure (as referred to in Subdivision 2 of Division 2),
 - (c) clearing of invasive species in accordance with an order under Division 3,
 - (d) thinning of native vegetation in accordance with an order under Division 3,
 - (e) clearing of a paddock tree in accordance with an order under Division 3.
- (3) Without limiting subclause (2), the activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act are limited, in the case of land identified in a private native forestry PVP as land on which broadscale clearing may be carried out, to the construction, operation or maintenance of the following

types of rural infrastructure only, and are further limited so as to permit clearing only within the distances or areas specified:

- (a) permanent boundary fence—6 metres either side,
 - (b) permanent internal fence—6 metres total width of clearing,
 - (c) roads and track—in accordance with the PNF code of practice,
 - (d) pipeline—3 metres total width of clearing,
 - (e) ground tank—15 metres from outer edge of structure,
 - (f) pumps—3 metres from outer edge of structure,
 - (g) tanks—3 metres from outer edge of structure,
 - (h) water point—3 metres from outer edge of structure,
 - (i) dam—15 metres from outer edge of structure,
 - (j) bore—10 metres from outer edge of structure,
 - (k) stockyard—20 metres from outer edge of structure.
- (4) Clearing must not be carried out under subclause (3) unless:
- (a) the minimum standards for tree retention set out in clause 4.2 of the PNF code of practice are complied with, or
 - (b) the Director-General:
 - (i) is satisfied that strict adherence to those standards is unreasonable and unnecessary in the circumstances, and
 - (ii) makes an order in writing, on application by the landholder, that those standards do not need to be complied with.
- (5) The Director-General may, by order in writing, on application by the landholder, increase a distance specified in this clause in its application to the land concerned, but only if the Director-General is satisfied that:
- (a) the proposed increase is minor, and
 - (b) the proposed increase is for a legitimate purpose associated with the management of the land concerned, and
 - (c) the increase is necessary in the circumstances.
- (6) The Director-General is to make details of any order issued under subclause (5) publicly available on a register kept by the Director-General for the purpose and is to include in the register a statement of the reasons for the authorisation or increase concerned.
- (7) In this clause:
critical environmental area has the same meaning as it has in clause 23.
PNF code of practice has the same meaning as it has in Part 5.

48 Activities on land to which a private native forestry PVP applies (critical environmental areas)

- (1) This clause applies only in respect of land within a critical environmental area.
- (2) Despite any other provision of the Act or this Regulation, the following are not routine agricultural management activities on land identified in a private native forestry PVP as land on which broadscale clearing may be carried out:
 - (a) obtaining timber for use in the construction of rural infrastructure (as referred to in clause 28),

- (b) the construction, operation or maintenance of a permanent boundary fence, shed, access trail or track which is not rural infrastructure (as referred to in Subdivision 2 of Division 2),
 - (c) clearing of invasive species in accordance with an order under Division 3,
 - (d) thinning of native vegetation in accordance with an order under Division 3,
 - (e) clearing of a paddock tree in accordance with an order under Division 3.
- (3) Without limiting subclause (2), the activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act are limited, in the case of land identified in a private native forestry PVP as land on which broadscale clearing may be carried out, to the operation or maintenance of the following types of rural infrastructure only, and are further limited so as to permit clearing only within the distances or areas specified:
- (a) permanent boundary fence—6 metres either side,
 - (b) permanent internal fence—6 metres total width of clearing,
 - (c) roads and track—in accordance with the PNF code of practice,
 - (d) pipeline—3 metres total width of clearing,
 - (e) ground tank—15 metres from outer edge of structure,
 - (f) pumps—3 metres from outer edge of structure,
 - (g) tanks—3 metres from outer edge of structure,
 - (h) water point—3 metres from outer edge of structure,
 - (i) dam—15 metres from outer edge of structure,
 - (j) bore—10 metres from outer edge of structure,
 - (k) stockyard—20 metres from outer edge of structure.
- (4) The Director-General may, by order in writing, on application by the landholder, authorise the clearing of land for the construction of the types of rural infrastructure specified in subclause (3), within the areas or distances specified in subclause (3), but only if the Director-General is satisfied that:
- (a) the proposed clearing is minor, and
 - (b) the proposed clearing is for a legitimate purpose associated with the management of the land concerned, and
 - (c) the clearing is necessary in the circumstances.
- (5) The Director-General is to make details of any order issued under subclause (4) publicly available on a register kept by the Director-General for the purpose and is to include in the register a statement of the reasons for the authorisation or clearing concerned.
- (6) In this clause:
critical environmental area has the same meaning as it has in clause 23.
PNF code of practice has the same meaning as it has in Part 5.

Division 5 Other activities

49 Dwellings

- (1) The clearing of native vegetation in carrying out the following development is a routine agricultural management activity if development consent is required under

the EPA Act for the clearing and the clearing is carried out in accordance with that consent:

- (a) development for the purpose of a dual occupancy, a dwelling house, a secondary dwelling, a semi-detached dwelling or a rural worker's dwelling (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006*),
 - (b) development that is ordinarily incidental or ancillary to such development.
- (2) The clearing of native vegetation in carrying out development for the purposes of a dual occupancy, a dwelling house, a secondary dwelling, a semi-detached dwelling or a rural worker's dwelling (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006*) is not a routine agricultural management activity if development consent is not required under the EPA Act.
 - (3) The clearing of native vegetation in carrying out development for the purposes of any type of dwelling or habitable building not referred to in subclause (1) is not a routine agricultural management activity.
 - (4) This clause operates despite any other provision of the Act or this Regulation.

50 Clearing for conservation purposes

The clearing of native vegetation under and in accordance with any of the following agreements is a routine agricultural management activity:

- (a) a conservation agreement under the *National Parks and Wildlife Act 1974*,
- (b) a biobanking agreement under the *Threatened Species Conservation Act 1995*,
- (c) a biodiversity certification agreement under the *Threatened Species Conservation Act 1995*,
- (d) a conservation agreement under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (e) a Trust agreement under the *Nature Conservation Trust Act 2001*,
- (f) a property agreement under the *Native Vegetation Conservation Act 1997* in force at the time the clearing is carried out.

51 Clearing in accordance with scientific licence under National Parks and Wildlife Act 1974

The clearing of native vegetation under and in accordance with a scientific licence under section 132C of the *National Parks and Wildlife Act 1974* is a routine agricultural management activity.

52 Control of pest animals

Anything done pursuant to an obligation arising under an eradication order or pest control order under Part 11 of the *Rural Lands Protection Act 1998* is a routine agricultural management activity.

53 Clearing of planted native vegetation

- (1) The clearing of native vegetation that has been planted is a routine agricultural management activity.
- (2) However, clearing of native vegetation that has been planted with the assistance of funds granted for any of the following purposes is not a routine agricultural management activity:
 - (a) biodiversity conservation,
 - (b) improving water quality,

- (c) reducing soil salinity,
- (d) preventing land degradation,
- (e) carbon sequestration.

54 Clearing for privately owned powerlines

The clearing of native vegetation for the construction, operation or maintenance of privately owned powerlines on privately owned land is a routine agricultural management activity.

Division 6 Activities that are not routine agricultural management activities

55 Land set aside for management or protection of native vegetation by PVP

Despite any other provision of the Act or this Regulation, clearing of native vegetation on land identified in a PVP as land set aside for the management or protection of native vegetation (other than any activity that is specifically authorised for that land by the PVP) is not a routine agricultural management activity.

56 Land subject to direction for remedial work

The clearing of native vegetation on land that is the subject of a direction under section 38 of the Act is not a routine agricultural management activity to the extent that the activity conflicts with the work directed to be carried out by the direction.

Division 7 Miscellaneous

57 Definition of “small holding”

For the purposes of section 11 (1) (a) (ii) of the Act, a *small holding* is defined as a landholding that has an area:

- (a) in the case of land in the Western Division—of less than 40 hectares, or
- (b) in any other part of the State—of less than 10 hectares.

Part 7 Special provisions for vulnerable land

58 Identification of protected regrowth on steep or highly erodible land or protected riparian land

- (1) The Minister may prepare a natural resource management plan for the purposes of:
 - (a) identifying land as *steep or highly erodible land, protected riparian land or special category land* for the purposes of this Part, and
 - (b) identifying as protected regrowth for the purposes of section 10 of the Act all native vegetation on land identified by the plan as steep or highly erodible land or protected riparian land.
- (2) A natural resource management plan prepared by the Minister under this clause is prescribed for the purposes of section 10 (1) (c) of the Act.

59 Limitation of routine agricultural management activities on protected riparian land

Despite any other provision of the Act or this Regulation, the following activities are the only routine agricultural management activities on land identified as protected riparian land by a natural resource management plan under clause 58:

- (a) the maintenance of safety clearances around electricity transmission lines to a distance of no more than 15 metres where any clearing is carried out by an employee of or contractor to a local government or electricity supply authority,
 - (b) the removal of noxious weeds under the *Noxious Weeds Act 1993*,
 - (c) the construction and maintenance of boundary fencing, with a total width of clearing for the purposes of a boundary fence not to exceed 6 metres on either side of the fence,
 - (d) the construction and maintenance of fencing (other than boundary fencing) to improve management of the protected riparian land, with a total width of clearing for the purposes of a fence not to exceed 6 metres and only for fencing that is reasonably required to be constructed on protected riparian land,
 - (e) the construction and maintenance of farm roads, with a total width of clearing for the purposes of a farm road not to exceed 6 metres and only if:
 - (i) the road is reasonably required to access sites within or on the other side of the protected riparian land, and
 - (ii) the route of the road minimises the clearing that is required to be undertaken on protected riparian land,
- Note.** Planning the route of a road to minimise clearing on protected riparian land may, for example, require its construction on land that has already been cleared or on land that is not protected riparian land, or for the road to take the most direct route through or across the protected riparian land.
- (f) anything done pursuant to an obligation arising under an eradication order or pest control order under Part 11 of the *Rural Lands Protection Act 1998*,
 - (g) clearing of feral species in accordance with an order under Division 3 of Part 6,
 - (h) clearing of invasive species in accordance with an order under Division 3 of Part 6 (other than on land identified in a private native forestry PVP as land on which broadscale clearing may be carried out),
 - (i) clearing of native vegetation for the purpose of environmental works in accordance with an order under Division 3 of Part 6,
 - (j) thinning of native vegetation in accordance with an order under Division 3 of Part 6 (other than on land identified in a private native forestry PVP as land on which broadscale clearing may be carried out),

- (k) clearing of native vegetation for conservation purposes as referred to in clause 50,
- (l) clearing of native vegetation under and in accordance with a scientific licence under section 132C of the *National Parks and Wildlife Act 1974*,
- (m) any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property.

60 Clearing of lignum on special category land

- (1) The following kinds of clearing of lignum on land identified as special category land by a natural resource management plan under clause 58 are routine agricultural management activities, subject to subclause (2):
 - (a) clearing within 50 metres of an existing shed, silo, pump house, residence or air strip,
 - (b) clearing for the purpose of fence maintenance or stock management involving the clearing of not more than 30 metres on either side of a fence,
 - (c) clearing for the purpose of maintaining an existing flood control work or storage control bank involving the clearing of not more than 30 metres from the toe of the outside batter of the work or bank,
 - (d) clearing for the purpose of maintaining an existing irrigation channel involving the clearing of not more than 30 metres from the toe of the outside batter of the channel,
 - (e) clearing for the purpose of maintaining a local council road or an existing farm road or track that has been built up at least 50 centimetres above the adjacent floodplain level involving the clearing of not more than 30 metres from the toe of the outside batter of the road or track,
 - (f) clearing within 50 metres of an existing ground tank or trough that is used for stock watering,
 - (g) clearing for the purpose of stock management or internal paddock access involving the clearing of any number of parallel strips of lignum up to 20 metres in width.
- (2) Clearing of lignum on special category land is restricted as follows:
 - (a) cleared strips exceeding 10 metres in width must be bounded on both sides by uncleared strips of lignum at least 1,000 metres wide,
 - (b) cleared strips of lignum between 5 metres and 10 metres in width must be bounded on both sides by uncleared strips of lignum at least 500 metres wide,
 - (c) cleared strips of lignum less than 5 metres in width must be bounded on both sides by uncleared strips of lignum at least 250 metres wide.

Part 8 Miscellaneous

61 Natural resource management plans

- (1) A natural resource management plan prepared by the Minister for the purposes of identifying any of the following kinds of native vegetation as protected regrowth is prescribed for the purpose of section 10 (1) (c) of the Act:
 - (a) regrowth on land on which broadscale clearing was carried out in accordance with a PVP that is no longer in force,
 - (b) regrowth on land on which clearing was carried out for the routine agricultural management activities specified in the plan,
 - (c) regrowth on land on which excluded clearing as specified in the plan was carried out.
- (2) A natural resource management plan may do one or both of the following:
 - (a) identify regrowth on land generally or on land specified in the plan,
 - (b) identify regrowth following clearing carried out after the plan is prepared.
- (3) For the avoidance of doubt, a natural resource management plan that identifies regrowth referred to in subclause (1) (a):
 - (a) may identify a relevant PVP generally or specifically (including any PVP that may be approved after the plan is prepared), and
 - (b) may be prepared before or after the expiry of a relevant PVP.However, the identification of regrowth by such a plan only has effect on and from the expiry of the relevant PVP.
- (4) In this clause, *excluded clearing* means any type of clearing of native vegetation referred to in section 25 of the Act.

62 Clearing of groundcover—calculations

- (1) The percentages referred to in section 20 of the Act are to be calculated in accordance with the following methodology:
 - (a) the percentages are to be calculated by the landholder in a scientific and objective manner that is appropriate to the area proposed to be cleared and the species of vegetation that are present,
 - (b) the calculation can only be made at the time of year when the proportion of the amount of indigenous vegetation in the area to the amount of non-indigenous vegetation in the area is likely to be at its maximum.
- (2) The landholder must retain for at least 5 years after the clearing of native vegetation that comprises only groundcover a record of the calculation carried out for the purposes of this clause, consisting of:
 - (a) a map showing the area that was the subject of the calculation, and
 - (b) a record of the season in which the calculation was made, and
 - (c) a statement as to how the calculation was made, and
 - (d) photographs that clearly show the type of groundcover in the mapped area, taken at the time the calculation was made.
- (3) This clause does not apply to land that is declared by the Minister by order published in the Gazette to be land that is not subject to this clause. The Minister's order may declare land by reference to a map deposited in the office of the Minister.

63 Penalty notice offences and penalties

- (1) For the purposes of section 43 of the Act:
 - (a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of Schedule 1 or, if the person alleged to have committed the offence is a corporation and a greater penalty is specified in Column 3 of Schedule 1, the amount specified in Column 3 of Schedule 1.
- (2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

64 Repeal

The *Native Vegetation Regulation 2005* is repealed.

65 Savings and transitional provisions

- (1) Any act, matter or thing that, immediately before the repeal of the *Native Vegetation Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.
- (2) Without limiting subclause (1), clauses 30, 37 and 40A of the *Native Vegetation Regulation 2005* continue to have effect despite their repeal.
- (3) An order made by the Minister under clause 17 (2) of the *Native Vegetation Regulation 2005* is taken to be an order made under clause 37 (1) of this Regulation and continues to have effect until it is revoked by the Minister.
- (4) A policy approved by the Minister under clause 28 (2) of the *Native Vegetation Regulation 2005* is taken to be a policy adopted under clause 20 (2) of this Regulation and continues to have effect until it is revoked by the Minister.
- (5) The criteria approved by the Minister and the Minister for Primary Industries under clause 29C of the *Native Vegetation Regulation 2005* for the purposes of the accreditation of experts is taken to be criteria approved by criteria approved by the Minister, the Minister for Primary Industries and the Minister for the Environment (if the Minister for the Environment is not the Minister administering the Act) under clause 23 of this Regulation.
- (6) A person accredited by the Minister as an expert under clause 29C of the *Native Vegetation Regulation 2005* is taken to be a person accredited by the Minister as an expert under clause 23 of this Regulation.
- (7) A natural resource management plan prepared by the Minister under clause 31 (2) of the *Native Vegetation Regulation 2005* is taken to be a plan adopted under clause 58 of this Regulation and continues to have effect until it is revoked by the Minister.

Schedule 1 Penalty notice offences

(Clause 63)

Column 1	Column 2	Column 3
Provision	Penalty (individuals)	Penalty (corporations)
Offences under the Act		
section 12	\$3,300	\$5,500
section 35 (5)	\$1,100	
section 36 (4)	\$1,100	
section 37 (5)	\$1,650	\$3,300
section 38 (4)	\$1,650	\$3,300
Offences under this Regulation		
clause 43 (1)	\$200	

Schedule 2 Amendment of Native Vegetation Act 2003 No 103

[1] Schedule 1 Land excluded from operation of Act

Omit “Baulkham Hills,” from clause 13. Insert in alphabetical order “The Hills Shire,”.

[2] Schedule 1, clause 14

Omit the clause. Insert instead:

14 Land within the following zones (not being land to which a property vegetation plan applies):

- (a) in the case of land to which an environmental planning instrument made pursuant to section 33A of the *Environmental Planning and Assessment Act 1979* applies—Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 Heavy Industrial, Zone IN4 Working Waterfront, Zone SP2 Infrastructure or Zone W3 Working Waterways,
- (b) in any other case—a zone designated “residential” (but not “rural-residential”), “village”, “township”, “industrial” or “business” under an environmental planning instrument or, having regard to the purpose of the zone, having the substantial character of a zone so designated.

[3] Schedule 1, clause 15

Insert “(b)” after “14”.