



New South Wales

Local Land Services Amendment (Land Management—Native Vegetation) Regulation 2017

under the

Local Land Services Act 2013

His Excellency the Governor, with the advice of the Executive Council and on the joint recommendation of the Minister for Primary Industries and the Minister for the Environment, has made the following Regulation under the *Local Land Services Act 2013*.

NIALL BLAIR, MLC
Minister for Primary Industries

GABRIELLE UPTON, MP
Minister for the Environment

Explanatory note

The object of this Regulation is to prescribe a number of matters for the purposes of Part 5A (Land management (native vegetation)) of the *Local Land Services Act 2013*, as inserted by the *Local Land Services Amendment Act 2016*.

This Regulation amends Schedule 5A to the *Local Land Services Act 2013*, (which lists allowable activities clearing of native vegetation):

- (a) to allow clearing of mulga for stock fodder on the landholding from which it is cleared, and
- (b) to provide that allowable clearing on category 2-regulated land does not apply to the proposed sub-category of category 2-sensitive regulated land (and that the allowable clearing for category 2-vulnerable regulated land applies instead), and
- (c) to require any clearing for allowable activities on category 2-vulnerable regulated land or category 2-sensitive regulated land to be carried out in a manner that minimises the risk of erosion, and
- (d) to continue the special provisions under the *Native Vegetation Regulation 2013* relating to the maximum allowable clearing of native vegetation for the construction, operation or maintenance of certain rural infrastructure on land authorised to be used for private native forestry.

This Regulation also deals with the following matters:

- (a) the circumstances in which it can be presumed that a species of plant is native to New South Wales, for the purposes of determining whether it is “native vegetation”,
- (b) the preparation and publication of draft native vegetation regulatory maps,

- (c) the categorisation of land, including the following:
 - (i) an additional sub-category of category 2-regulated land (known as category 2-sensitive regulated land) and the land that is to be included in that sub-category (being land where clearing under land management (native vegetation) codes will not be permitted),
 - (ii) determining whether grasslands are low conservation grasslands (and thus category 1-exempt land),
 - (iii) additional land that is to be categorised as category 2-regulated land,
 - (iv) determining whether native vegetation has been significantly disturbed or modified,
 - (v) determining whether land was unlawfully cleared of native vegetation,
- (d) the re-categorisation of land, including the following:
 - (i) the additional grounds on which land can be re-categorised,
 - (ii) consultation with landholders before land is re-categorised,
 - (iii) the review of categorisation decisions,
 - (iv) appeals against categorisation or re-categorisation,
- (e) the clearing of native vegetation under land management (native vegetation) codes, including the following:
 - (i) obtaining the consent of landholders and others with an interest in land to be cleared,
 - (ii) the issue of certificates under such codes,
 - (iii) the keeping of a public register of land that is set aside under a requirement made in accordance with such codes,
 - (iv) land that may not be used as such a set aside area,
- (f) applications for approvals for clearing native vegetation that is not otherwise authorised.

This Regulation is made under the *Local Land Services Act 2013*, including under the provisions of Part 5A as inserted by the *Local Land Services Amendment Act 2016* and under section 206 (the general regulation-making power).

Local Land Services Amendment (Land Management—Native Vegetation) Regulation 2017

under the

Local Land Services Act 2013

1 Name of Regulation

This Regulation is the *Local Land Services Amendment (Land Management—Native Vegetation) Regulation 2017*.

2 Commencement

This Regulation commences on 25 August 2017 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Local Land Services Act 2013 No 51

[1] Section 60A Rural areas of State to which Part applies

Omit “*State Environmental Planning Policy (Urban Vegetation) 2017*” from section 60A (a).

Insert instead “*State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*”.

[2] Schedule 5A Allowable activities clearing of native vegetation

Omit the note to Part 2 and the note to Part 3. Insert instead in both Parts:

Note. Part 4 of this Schedule sets out special provisions that apply to category 2-vulnerable regulated land and category 2-sensitive regulated land etc. Part 5 of this Schedule sets out special provisions that apply to land subject to a private native forestry plan.

[3] Schedule 5A, clause 25A

Insert after clause 25:

25A Mulga species used for stock fodder on landholding

- (1) Clearing native vegetation (comprising mulga) for the purpose of obtaining fodder for stock on the same landholding from which the native vegetation is cleared.
- (2) Clearing for that purpose is not authorised:
 - (a) on a small holding, or
 - (b) on land in the Coastal Zone, or
 - (c) on category 2-vulnerable regulated land, or
 - (d) within 20 metres of an estuary, wetland or incised watercourse.
- (3) Clearing for that purpose is authorised only if:
 - (a) the clearing does not exceed 50% of the total area of mulga on the landholding in any period of 10 years, and
 - (b) the cleared mulga remains on the ground where it is cleared or is windrowed along a contour on the landholding, and
 - (c) the clearing does not result in remaining mulga plants being over 20 metres apart, and
 - (d) the clearing does not cause land degradation or the introduction of non-native vegetation.
- (4) In this clause:

mulga means the species of plant *Acacia aneura*.

[4] Schedule 5A, Part 4, heading

Insert “and category 2-sensitive regulated land etc” after “land”.

[5] Schedule 5A, clause 34

Omit the clause. Insert instead:

34 Application

This Part sets out:

- (a) the only clearing of native vegetation (and of dead and non-native vegetation) that is authorised on category 2-vulnerable regulated land, and
- (b) the only clearing of native vegetation that is authorised on category 2-sensitive regulated land and other land on which the clearing of native vegetation is excluded by the regulations under section 60S (2) of the Act from the clearing authorised by a land management (native vegetation) code.

Note. Dead and non-native vegetation on category 2-vulnerable regulated land is taken to be native vegetation by the operation of section 60B (3) of the Act. Clause 124 of the *Local Land Services Regulation 2014* excludes category 2-sensitive regulated land and certain other land from clearing authorised by a code.

[6] Schedule 5A, clause 35 Clearing that is authorised

Omit clause 35 (1). Insert instead:

- (1) The clearing of native vegetation for allowable activities under the other Parts of this Schedule does not apply to the clearing of native vegetation:
 - (a) on category 2-vulnerable regulated land, or
 - (b) that is excluded by the regulations under section 60S (2) of the Act from the clearing authorised by a land management (native vegetation) code, and the clearing authorised by this clause applies instead.

[7] Schedule 5A, clause 36

Omit the clause. Insert instead:

36 Limitation on clearing under this Part in relation to soil erosion

The clearing of native vegetation that is authorised by this Part authorises only clearing that achieves the purpose of the clearing in a manner that minimises the risk of soil erosion.

[8] Schedule 5A, Part 5

Insert after Part 4:

Part 5 Special provisions applying to land subject to a private native forestry plan

37 Definitions

In this Part:

critical environmental area means any of the following areas to which a private native forestry plan applies:

- (a) riparian exclusion zones,
- (b) old-growth forest,
- (c) rainforest,
- (d) steep land (that is, land with a slope greater than 30 degrees).

PNF code of practice means a private native forestry code of practice within the meaning of Part 5C of the *Forestry Act 2012*.

PNF regulatory authority means the regulatory authority under Part 5C of the *Forestry Act 2012*.

private native forestry plan means a private native forestry plan approved under Part 5C of the *Forestry Act 2012* (including land that is subject to a property vegetation plan that was approved under the *Native Vegetation Act 2003* before its repeal and that is taken to be a private native forestry plan approved under Part 5C of the *Forestry Act 2012*).

rural infrastructure has the same meaning it has in Part 3.

38 Application

This Part sets out the only clearing of native vegetation that is authorised on land that is subject to a private native forestry plan, and is not land to which Part 4 applies.

39 Clearing for construction, operation or maintenance of certain rural infrastructure on land to which a private native forestry plan applies

- (1) The clearing of native vegetation for allowable activities under the other Parts of this Schedule does not apply to the clearing of native vegetation on land to which a private native forestry plan applies, and the clearing authorised by this clause applies instead.
- (2) The clearing of native vegetation for the construction, operation or maintenance of rural infrastructure specified in the following table if the clearing does not exceed the maximum distance of clearing specified in the table in relation to that rural infrastructure:

Rural infrastructure	Maximum distance of clearing
permanent boundary fences	12 metres
permanent internal fences	6 metres
roads and tracks	maximum distance permitted in accordance with the PNF code of practice
pipelines	3 metres
ground tanks	15 metres
pumps	3 metres
tanks	3 metres
water points	3 metres
dams	15 metres
bores	10 metres
stockyards	20 metres

- (3) However, clearing under subclause (2) for the construction of rural infrastructure in a critical environmental area is not authorised unless the PNF regulatory authority has authorised the clearing by order in writing on the application of the landholder. The PNF regulatory authority is not to authorise the clearing unless 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.
- (4) The clearing of native vegetation for the construction, operation or maintenance of stockyards is not authorised by this clause if the stockyard can reasonably be placed on another part of the landholding that does not require the clearing of native vegetation or that is category 1-exempt land.
- (5) The clearing of native vegetation for the construction, operation or maintenance of rural infrastructure is not authorised by this clause unless:
- (a) the minimum standards for tree retention set out in the PNF code of practice are complied with, or
 - (b) the PNF regulatory authority:
 - (i) is satisfied that strict adherence to those minimum standards is unreasonable and unnecessary in the circumstances, and
 - (ii) makes an order in writing, on application by the landholder, that those minimum standards do not need to be complied with.
- (6) In the application of clause 10 to clearing under this Part, a reference to Local Land Services is to be construed as a reference to the PNF regulatory authority.

Schedule 2 Amendment of Local Land Services Regulation 2014

[1] Part 13, heading

Omit the heading. Insert instead:

Part 13 Miscellaneous (other than native vegetation land management)

[2] Part 14

Insert after Part 13:

Part 14 Land management (native vegetation)

Division 1 Preliminary

105 Definitions

- (1) Words and expressions used in this Part have the same meanings they have in Part 5A of the Act.
- (2) A reference in this Part to Part 5A of the Act includes a reference to Schedule 5A to the Act.

106 Meaning of “native vegetation”—species native to New South Wales (s 60B (2))

- (1) For the purposes of Part 5A of the Act, a species of plant may be conclusively presumed to be native to New South Wales if it is listed on the official database, unless it is identified on that database as an introduced species only.
- (2) In this clause:
the official database means the database of flora known as “New South Wales Flora Online”, maintained by the Royal Botanic Gardens and Domain Trust and published on the website of the Trust.

Division 2 Native vegetation regulatory map

107 Preparation and publication of draft native vegetation regulatory maps during transition period (s 60F (6))

- (1) The Environment Agency Head is, during the transition period referred to in section 60F of the Act, to prepare a draft native vegetation regulatory map and publish the draft map on a government website.
- (2) The draft map is (subject to this Division) to be prepared in accordance with the provisions of Part 5A of the Act relating to the preparation of the native vegetation regulatory map.
- (3) Sections 60K (except subsection (7)), 60L and 60M of the Act apply, during the transition period, to the draft map in the same way as they apply to the native vegetation regulatory map.

108 Additional sub-category of regulated land: category 2-sensitive regulated land (s 60G (3) (c))

- (1) A native vegetation regulatory map may also designate category 2-sensitive regulated land as a sub-category of category 2-regulated land.

- (2) Land is to be designated as category 2-sensitive regulated land if the Environment Agency Head reasonably believes that:
- (a) the land is required to be designated as category 2-regulated land by section 60I (2) (f) of the Act (that is, because the land is in an area that is or was subject to a requirement to take remedial action to restore or protect the biodiversity values of the land under Part 5A of the *Local Land Services Act 2013*, the *Biodiversity Conservation Act 2016*, the *National Parks and Wildlife Act 1974* or the *Native Vegetation Act 2003* before its repeal) but only for the period during which that requirement is in effect, or
 - (b) the land is required to be designated as category 2-regulated land by section 60I (2) (c), (d) or (g)–(m) of the Act, or
 - (c) the land is required to be designated as category 2-regulated land by clause 113 (except subclause (1) (a), (c), (g) or (l)), or
 - (d) the land is subject to a private native forestry plan approved under Part 5C of the *Forestry Act 2012* or to a property vegetation plan that was approved under the *Native Vegetation Act 2003* before its repeal and that authorised the clearing of native vegetation for the purposes of forestry operations, or
 - (e) the land continues to be subject to a property vegetation plan under the *Native Vegetation Act 2003* that is described as a conservation property vegetation plan or an incentive property vegetation plan (being land that is required to be conserved or in respect of which public funding was provided to improve biodiversity), or
 - (f) the land contains high conservation value grasslands or other groundcover:
 - (i) as determined under the “Interim Grasslands and other Groundcover Assessment Method” published by the Minister for the Environment in the Gazette on 25 August 2017, or
 - (ii) as determined by an independent field assessment undertaken before the commencement of Part 5A of the Act, or
 - (g) the land has been recommended by the Environment Agency Head under section 3.3 (1) (a) of the *Biodiversity Conservation Act 2016* for declaration as an area of outstanding biodiversity value (unless a determination has been made not to proceed with or adopt the recommendation).
- (3) Sections 60K, 60L and 60M of the Act extend to the categorisation of land as category 2-sensitive regulated land.
- (4) An area of the State to which Part 5A of the Act applies is, during the period from the commencement of that Part until the area has been designated on a native vegetation regulatory map, taken to be category 2-sensitive regulated land if the land is so designated on a transitional native vegetation regulatory map published by the Environment Agency Head.

Note. Category 2-sensitive regulated land (including land taken to be so categorised under subclause (4)) is not authorised to be cleared under a land management (native vegetation) code—see clause 124.

109 Categorisation of low or high conservation value groundcover that is not grasslands (ss 60H (2) (c) and 60I (2) (n))

- (1) For the purposes of section 60H (2) (c) of the Act, land is to be designated as category 1-exempt land if the Environment Agency Head reasonably believes

that the land contains only low conservation value groundcover (not being grasslands).

- (2) For the purposes of section 60I (2) (n) of the Act, land is to be designated as category 2-regulated land if the Environment Agency Head reasonably believes that the land contains groundcover that is not grasslands or low conservation value groundcover.

110 Determining conservation value of grasslands or other groundcover (s 60H (5))

- (1) For the purposes of section 60H (5) of the Act, land contains low conservation value grasslands for the purposes of Division 2 of Part 5A of the Act if the land is determined to contain low conservation value grasslands under the “Interim Grasslands and other Groundcover Assessment Method” published by the Minister for the Environment in the Gazette on 25 August 2017.
- (2) For the purposes of clause 109, land contains low conservation value groundcover (not being grasslands) if the land is determined to contain low conservation value groundcover (other than grasslands) under the “Interim Grasslands and other Groundcover Assessment Method” published by the Minister for the Environment in the Gazette on 25 August 2017.
- (3) A determination referred to in this clause is not required under the published methods if the Environment Agency Head reasonably believes that an independent field assessment undertaken before the commencement of Part 5A of the Act has determined that the land contains high conservation value grasslands or other groundcover.

111 Core koala habitat to be designated as category 2-regulated land (s 60I (2) (j))

Koala habitat that is to be designated as category 2-regulated land is land identified as koala habitat under a plan of management approved under *State Environmental Planning Policy No 44—Koala Habitat Protection*, being land that in the opinion of the Environment Agency Head is core koala habitat.

112 Land mapped as containing critically endangered species of plants to be designated as category 2-regulated land (s 60I (2) (l))

Land may be mapped by the Environment Agency Head as category 2-regulated land because it contains critically endangered species of plants under the *Biodiversity Conservation Act 2016* only if it is land around the location of particular plants of that species (being a location identified in the records of the Environment Agency Head).

113 Additional land to be designated as category 2-regulated land (s 60I (2) (n))

- (1) Land is also to be designated as category 2-regulated land if the Environment Agency Head reasonably believes that:
 - (a) the land is (or was previously) subject to a private native forestry plan approved under Part 5C of the *Forestry Act 2012* or to a property vegetation plan that was approved under the *Native Vegetation Act 2003* before its repeal and that authorised the clearing of native vegetation for the purposes of forestry operations, or
 - (b) the land is subject to a conservation agreement under the *National Parks and Wildlife Act 1974*, or
 - (c) the land was, immediately before the repeal of the *Native Vegetation Act 2003*, subject to a property vegetation plan under that Act that was described as a conservation property vegetation plan or an incentive property vegetation plan (being land that was required to be conserved

- or in respect of which public funding was provided to improve biodiversity), or
- (d) the land was, immediately before the repeal of the *Native Vegetation Conservation Act 1997*, subject to a property agreement under that Act (being an agreement that has been registered), or
 - (e) the land was, immediately before the repeal of the *Nature Conservation Trust Act 2001*, subject to a Trust agreement under that Act, or
 - (f) the land contains native vegetation that is required to be retained under a condition of an authorisation that approves establishment operations for a plantation or proposed plantation under the *Plantations and Reafforestation Act 1999*, or
 - (g) the land contains low conservation grasslands beneath the canopy or drip line of woody vegetation (being woody vegetation that satisfies the criteria for classification of the land as category 2-regulated land), or
 - (h) the land is in the Southern Mallee Planning Group Region and is subject to a lease under the *Western Lands Act 1901* whose conditions require the conservation of the land through the prohibition of grazing and active conservation management, or
 - (i) the land is, by a condition of a development consent or approval under the *Environmental Planning and Assessment Act 1979* that has been notified to the Environment Agency Head, required to be set aside for nature conservation, for re-vegetation of native vegetation or as a native vegetation offset, or
 - (j) the land is identified by the Environment Agency Head as containing old-growth forests, on the basis of:
 - (i) the mapping of old-growth forests for the purposes of the Comprehensive Regional Assessment under the *National Forest Policy Statement* (being the agreement between the Commonwealth, State and Territory governments made in 1992 and so described), but
 - (ii) excluding any land containing native vegetation that does not meet the criteria for old-growth forests published jointly from time to time by the Minister for Primary Industries and the Minister for the Environment (as determined in accordance with the procedure so published), or
 - (k) the land is identified by the Environment Agency Head as containing rainforests, on the basis of:
 - (i) the mapping of rainforests for the purposes of the Comprehensive Regional Assessment under the *National Forest Policy Statement* (being the agreement between the Commonwealth, State and Territory governments made in 1992 and so described), but
 - (ii) excluding any land containing native vegetation that does not meet the criteria for rainforests published jointly from time to time by the Minister for Primary Industries and the Minister for the Environment (as determined in accordance with the procedure so published), or
 - (l) the land is a travelling stock reserve (unless the land is located in the Western Division of the State).
- (2) Land that is designated as category 2-regulated land on the basis of its identification as containing old-growth forests or rainforests and the Environment Agency Head has determined under subclause (1) (j) (ii)

or (k) (ii) that the land meets the relevant criteria at that time as old-growth forests or rainforests, the land is not subject to re-categorisation as a result only of a change in the relevant criteria published under subclause (1) (j) (ii) or (k) (ii). This subclause extends to the application of subclause (1) (j) or (k) under clause 108 and a designation of the land as category 2-regulated sensitive land.

114 Determining whether native vegetation has been significantly disturbed or modified (s 60J (2))

- (1) Native vegetation that comprises grasslands or other non-woody vegetation is taken to have been significantly disturbed or modified (and therefore cleared) only if:
 - (a) there has been a detectable variation (from information obtained from aerial or satellite imagery) in the structure or composition, or both, of non-woody vegetation, and
 - (b) that variation is consistent with management of pasture or crops for agricultural purposes, and
 - (c) that variation has been sustained for at least 12 months on more than one occasion before the commencement of Part 5A of the Act, and
 - (d) that variation has not been caused only by grazing on the land, and
 - (e) that variation occurred (from information obtained from aerial or satellite imagery) between 1 January 1990 and the date of commencement of Part 5A of the Act.
- (2) During the transitional period referred to in section 60F of the Act, the information that may be used for the purposes of this clause includes information obtained from a source other than from aerial or satellite imagery, but only if the landholder has prepared a record of the information and a map showing the areas to which it applies. The landholder is required to retain the record and map for at least 5 years after any clearing that is carried out in reliance on that information.

115 Compliance or enforcement action required for determination that land was unlawfully cleared (s 60J (3))

- (1) For the purposes of section 60J (3) of the Act, any of the following compliance or enforcement action is required to have been taken for a determination that land was unlawfully cleared:
 - (a) the conviction of a person for a relevant offence in relation to the clearing (or a finding of guilt in respect of the offence),
 - (b) an order of a court in civil proceedings instituted by any person to remedy or restrain a contravention of a provision that is a relevant offence in relation to the clearing.
- (2) In this clause:

relevant offence means an offence under any of the following provisions:

 - (a) section 2.2, 2.3 or 2.4 of the *Biodiversity Conservation Act 2016*,
 - (b) section 125 of the *Environmental Planning and Assessment Act 1979*, but only in respect of the carrying out of clearing that required development consent under *State Environmental Planning Policy No 46—Protection and Management of Native Vegetation*,
 - (c) section 60N, 60X or 60ZC (6) of the *Local Land Services Act 2013*,

- (d) section 118A (2), 118C (1) or 118D (1) of the *National Parks and Wildlife Act 1974*,
- (e) section 12 of the *Native Vegetation Act 2003*,
- (f) section 17 of the *Native Vegetation Conservation Act 1997*.

116 Additional grounds on which land is authorised to be re-categorised to category 1-exempt land (s 60K (3) (f))

- (1) An additional ground on which the Environment Agency Head may re-categorise land from category 2-regulated land to category 1-exempt land is if:
 - (a) the land was unlawfully cleared between 1 January 1990 and the date of commencement of Part 5A of the Act, and
 - (b) the land was subsequently lawfully cleared, after the vegetation had regrown, between 1 January 1990 and the date of commencement of Part 5A of the Act, and
 - (c) the landholder has requested re-categorisation of the land on the basis of that lawful clearing.
- (2) A further additional ground on which the Environment Agency Head may re-categorise land from category 2-regulated land to category 1-exempt land is if:
 - (a) the land:
 - (i) was subject to a private native forestry plan approved under Part 5C of the *Forestry Act 2012* (or a property vegetation plan under the *Native Vegetation Act 2003* that is taken to be such a private native forestry plan), but
 - (ii) has been subsequently excised from that plan by a variation of that plan, and
 - (b) the land had been cleared of native vegetation when the plan was made, and
 - (c) the land would otherwise be required to be categorised as category 1-exempt land, and
 - (d) the landholder requests the land to be categorised as category 1-exempt land.

117 Consultation with landholders affected by proposed re-categorisation (s 60K (7))

- (1) Consultation with the landholders concerned on a proposed re-categorisation under section 60K (7) of the Act is to be undertaken by individual notification to all those landholders, except as provided by this clause.
- (2) Consultation with landholders of the relevant land who do not have a registered freehold or leasehold interest in the land may be by public notification (in substitution for or in addition to individual notification).
- (3) Consultation may be by public notification (in substitution for or in addition to individual notification) if:
 - (a) the relevant land is proposed to be re-categorised as a result of the annual review of published maps under section 60K (2) of the Act, or
 - (b) the relevant land is otherwise proposed to be re-categorised from category 2-regulated land to category 1-exempt land, or

- (c) all landholders of the relevant land who have a registered freehold or leasehold interest in the land were:
 - (i) directly notified of the event that triggered the proposed re-categorisation, or
 - (ii) otherwise directly involved in the event that triggered the proposed re-categorisation (for instance, as an applicant or by making submissions during a public consultation process).
- (4) The following applies to a public notification:
 - (a) a notice must be published:
 - (i) in at least one newspaper circulating generally throughout the State, or
 - (ii) if the re-categorisation relates only to one local government area—in at least one local newspaper circulating at least once a week in that local government area,
 - (b) the notice must:
 - (i) identify the area to which the proposed re-categorisation relates and indicate where the draft map may be viewed by the public, and
 - (ii) state that any person may make submissions to the Environment Agency Head within the period specified in the notice (being a period of not less than 30 days), and
 - (iii) specify the process for making such submissions.

118 Period category 1-exempt land is taken to be category 2-regulated land during process of dealing with proposed re-categorisation as category 2 (s 60K (9) (b))

For the purposes of section 60K (9) (b) of the Act, 60 days is prescribed as the period during which land is taken to be category 2-regulated land (unless the landholder is sooner notified of the re-categorisation decision by the Environment Agency Head).

119 Provision applying during process of re-categorisation to category 2-sensitive regulated land (s 60K (11))

If the Environment Agency Head notifies the landholder of category 2-regulated land (that is not category 2-sensitive regulated land), or of category 1-exempt land of a proposed re-categorisation of the land to category 2-sensitive regulated land, the land is taken to be category 2-sensitive regulated land until whichever of the following first occurs:

- (a) the Environment Agency Head notifies the landholder that the land is not to be re-categorised or the land is re-categorised,
- (b) the period of 60 days expires.

120 Request for review of categorisation or re-categorisation decisions (s 60L)

- (1) A request for a review of a decision relating to the categorisation or re-categorisation of land on a native vegetation regulatory map must:
 - (a) be made in the form approved by the Environment Agency Head, and
 - (b) specify the information that the applicant is relying on in seeking a particular categorisation of the land, including (but not limited to):
 - (i) the provision of Part 5A of the Act, or of this Regulation, that authorises the categorisation, and

- (ii) any information that is relevant to determining whether or not the land meets the requirements for categorisation specified in that provision, and
 - (c) include a description of the relevant land, including:
 - (i) if the request relates only to the whole of a lot or lots—by detailing the lot and deposited plan number for the land, or
 - (ii) if the request relates to part only of a lot or lots—by including a spatially accurate map for the land, which includes geographic co-ordinates for the land, and
 - (d) be accompanied by a fee of \$300 for dealing with a request for review.
- (2) The Environment Agency Head may waive or refund any fee for dealing with a request for review, in full or in part, at his or her discretion.

121 Environment Agency Head may request further information about requests for review of categorisation or re-categorisation decisions (s 60L)

- (1) The Environment Agency Head may request a relevant landholder who has requested a review of a decision relating to the categorisation or re-categorisation of land to provide the Environment Agency Head with such further information about the categorisation or re-categorisation as the Environment Agency Head considers necessary for his or her proper consideration of the request for review.
- (2) The request for further information:
 - (a) must be in writing, and
 - (b) may specify a reasonable period within which the information must be provided to the Environment Agency Head, and
 - (c) must include notice of the effect of a failure to provide the information on the determination of the request for review and on the relevant landholder's rights of appeal with respect to the categorisation or re-categorisation.
- (3) The Environment Agency Head may deal with the request for review if the relevant landholder notifies the Environment Agency Head in writing that the information will not be provided or if the information has not been provided within the period specified by the Environment Agency Head or within such further period as the Environment Agency Head may allow.

122 Time for dealing with requests for review of categorisation or re-categorisation decisions (s 60L)

- (1) The Environment Agency Head is to determine a request by the relevant landholder for a review of a decision relating to the categorisation or re-categorisation of land within 40 days after the date on which the request was duly made.
- (2) Any period after the relevant landholder is requested by the Environment Agency Head to provide further information to enable the request for review to be dealt with and until the information is provided (or the relevant landholder notifies the Environment Agency Head the information will not be provided) is not to be counted in calculating that 40-day period. This subclause applies only if the request for further information is made within 25 days of the request for review.
- (3) A request for review that has not been determined is taken to have been refused after the expiration of that 40-day period.

- (4) The Environment Agency Head may make a decision on a request for review even if the request is taken to have been refused under this clause.

123 Appeal period—categorisation and re-categorisation decisions (s 60M)

An appeal to the Land and Environment Court against a decision relating to the categorisation or re-categorisation of land on a native vegetation regulatory map is to be made within 90 days after:

- (a) the date on which the relevant landholder is notified of the decision made after a review under section 60L of the Act, or
(b) the date the Environment Agency Head is taken to have refused the request for review,

whichever is the later.

Division 3 Clearing native vegetation under land management (native vegetation) code

124 Category 2-sensitive regulated land and certain other land excluded from application of codes (s 60S (2))

- (1) The following land is excluded from the regulated rural area in which clearing of native vegetation is authorised by a land management (native vegetation) code:
- (a) category 2-sensitive regulated land,
(b) land that is required to be designated as category 2-regulated land by section 60I (2) (a) of the Act (that is, because the land contains native vegetation that was grown or preserved with the assistance of public funds other than funds for forestry purposes), but only for the period during which any obligations attached to the receipt of funding are ongoing.
- (2) Subclause (1) (a) does not apply to land that is category 2-sensitive regulated land only because it is subject to be set aside under a requirement made in accordance with a land management (native vegetation) code and any clearing of native vegetation on the set aside area is permitted by that code as referred to in section 60ZC (5) (b) of the Act.

125 Owner's consent required for clearing under codes (s 60S (4) (c))

A land management (native vegetation) code does not permit clearing or any other activity without the prior written consent of:

- (a) in the case of land that is not Crown land—all the owners of the land, or
(b) in the case of Crown land—the Minister administering the *Crown Lands Act 1989*.

126 Additional content of codes (s 60W (3) (l))

A land management (native vegetation) code may make provision for or with respect to the following:

- (a) the withdrawal by the landholder or Local Land Services of authority to clear native vegetation under the code by the revocation of a notice of clearing given by the landholder that is required by the code before clearing is carried out,
(b) the maximum period of clearing for which a notice of clearing may be given by the landholder under the code.

127 Certificates issued by Local Land Services under codes (s 60Y (12))

- (1) An application for a certificate under section 60Y of the Act:
 - (a) is to be made in the form approved by Local Land Services for that type of certificate, and
 - (b) is to include any information or documents required by that form.
- (2) A certificate under section 60Y of the Act is to set out the aspects of the clearing of native vegetation (by reference to relevant provisions of the relevant land management (native vegetation) code) that are subject to the conclusive presumption referred to in section 60Z (2) of the Act. This subclause does not operate to exclude compliance with any other aspects of the clearing that are regulated by the code.
- (3) The surrender of a certificate under section 60Y of the Act only has effect when the surrender is approved by Local Land Services. Local Land Services is not to approve the surrender of a certificate if:
 - (a) the certificate requires the establishment of a set aside area for native vegetation, and
 - (b) the landholder has carried out some or all of the clearing authorised by the certificate.

128 Owner's consent for set aside areas (s 60ZC)

Local Land Services is not to issue a mandatory code compliant certificate with respect to a set aside area for native vegetation unless:

- (a) in the case of a set aside area on land that is not Crown land—all owners of the land have given their written consent to the establishment of the set aside area, or
- (b) in the case of a set aside area on Crown land—the Minister administering the *Crown Lands Act 1989* has given the Minister's written consent to the establishment of the set aside area.

129 Additional areas of land that cannot be established as set aside areas (s 60ZC (4) (c))

The following areas are excluded from being a set aside area:

- (a) an area that is already a set aside area under the Act or under a Ministerial order under Division 3 of Part 6 of the *Native Vegetation Regulation 2013*,
- (b) an area that is subject to a private native forestry plan approved under Part 5C of the *Forestry Act 2012* or to a property vegetation plan that was approved under the *Native Vegetation Act 2003* before its repeal and that authorised the clearing of native vegetation for the purposes of forestry operations,
- (c) an area that was, immediately before the repeal of the *Nature Conservation Trust Act 2001*, subject to a Trust agreement under that Act,
- (d) an area that is subject to a conservation agreement under the *National Parks and Wildlife Act 1974*,
- (e) an area that was, immediately before the repeal of the *Native Vegetation Conservation Act 1997*, subject to a registered property agreement under that Act,

- (f) an area that was, immediately before the repeal of the *Native Vegetation Act 2003*:
 - (i) subject to an offset required by a property vegetation plan under that Act, or
 - (ii) a conservation area, or an area subject to incentive funding, under a property vegetation plan under that Act,
- (g) land that is required to be designated as category 2-regulated land by section 60I (2) (a) of the Act (that is, because the land contains native vegetation that was grown or preserved with the assistance of public funds other than funds for forestry purposes), but only for the period during which any obligations attached to the receipt of funding are ongoing,
- (h) an area that is subject to a requirement to take remedial action to restore or protect the biodiversity values of the land under:
 - (i) the *Biodiversity Conservation Act 2016* (including a requirement that was made under the *Native Vegetation Act 2003* before its repeal and that is taken to be remedial action required under the *Biodiversity Conservation Act 2016*), or
 - (ii) the *National Parks and Wildlife Act 1974*,
- (i) an area that is subject to an approved conservation measure that was the basis for the biodiversity certification of land under Part 8 of the *Biodiversity Conservation Act 2016*, or under any Act repealed by that Act,
- (j) an area that, by a condition of a development consent or approval under the *Environmental Planning and Assessment Act 1979*, is required to be land set aside for nature conservation, for re-vegetation of native vegetation or as a native vegetation offset,
- (k) an area that contains native vegetation that is required to be retained under a condition of an authorisation that approves establishment operations for a plantation or proposed plantation under the *Plantations and Reafforestation Act 1999*,
- (l) an area in the Southern Mallee Planning Group Region that is subject to a lease under the *Western Lands Act 1901* whose conditions require the conservation of the area through the prohibition of grazing and active conservation management.

Note. Section 60ZC (4) also excludes from set aside areas land covered by private land conservation agreements under the *Biodiversity Conservation Act 2016* and certain other land subject to obligations to set aside from clearing under agreements or statutory obligations.

130 Public register of set aside areas (s 60ZC (3))

- (1) This clause applies to the public register of set aside areas required to be maintained by Local Land Services under section 60ZC (3) of the Act.
- (2) The public register is to be kept in such electronic or other form as Local Land Services determines.
- (3) The public register must include the following:
 - (a) the precise location of each set aside area,
 - (b) information about any variation to the set aside area, including the date the variation took effect.

- (4) Local Land Services may amend the public register:
 - (a) to remove any area (or part of an area) that has ceased to be a set aside area, or
 - (b) to update any particulars relating to obligations or other matters affecting set aside areas, or
 - (c) to correct any error or omission in the public register.
- (5) Local Land Services is to give public access to the public register in such manner as Local Land Services determines.

Division 4 Approval for clearing native vegetation not otherwise authorised

131 Application form (ss 60ZH and 60ZI)

An application to the Panel for approval to clear native vegetation or to modify an approval of the Panel:

- (a) is to be made in the form and manner required by the Panel, and
- (b) is to include any information or documentation required by that form.

132 Fees for applications for approval or modification of approval (ss 60ZF (11) and 60ZI)

- (1) The Native Vegetation Panel may charge a fee for an application to the Panel for approval to clear native vegetation or to modify an approval of the Panel.
- (2) The maximum charge for an application for approval to clear native vegetation in an area of the Coastal Zone is:
 - (a) if the area contains no threatened ecological community and is less than 10 hectares—\$3,000, or
 - (b) if the area contains no threatened ecological community and is between 10 hectares and 20 hectares—\$6,000, or
 - (c) if the area contains a threatened ecological community or is greater than 20 hectares—\$9,000.
- (3) The maximum charge for an application for approval to clear native vegetation in an area of the Central Zone is:
 - (a) if the area contains no threatened ecological community and is less than 50 hectares—\$3,000, or
 - (b) if the area contains no threatened ecological community and is between 50 hectares and 100 hectares—\$6,000, or
 - (c) if the area contains a threatened ecological community or is greater than 100 hectares—\$9,000.
- (4) The maximum charge for an application for approval to clear native vegetation in an area of the Western Zone is:
 - (a) if the area contains no threatened ecological community and is less than 150 hectares—\$3,000, or
 - (b) if the area contains no threatened ecological community and is between 150 hectares and 300 hectares—\$6,000, or
 - (c) if the area contains a threatened ecological community or is greater than 300 hectares—\$9,000.

- (5) The maximum charge for an application to modify an approval is:
 - (a) in the case of a minor application—\$850, or
 - (b) in any other case:
 - (i) 50% of the fee paid for the application for approval that is proposed to be modified, or
 - (ii) \$4,500,whichever is the greater.
- (6) For the purposes of this clause, a minor application to modify an approval of the Panel is:
 - (a) an application to correct a minor error, misdescription or miscalculation, or
 - (b) an application for a modification:
 - (i) that is of minimal environmental impact, and
 - (ii) that relates to substantial the same clearing as the clearing to which the approval sought to be modified relates.
- (7) The Native Vegetation Panel may refuse to consider an application if the fee charged is not paid within 14 days after the application was made.

133 Information required in application for approval by Native Vegetation Panel or modification of approval (ss 60ZH and 60ZI)

An application to the Native Vegetation Panel for approval to clear native vegetation (or for the modification of an approval of the Panel) that seeks to vary like for like credit retirement obligations specified in the biodiversity development assessment report is to include information about the reasonable steps that the applicant has taken to secure the like for like biodiversity credits.

134 Panel may request further information about an application for approval or modification of approval (ss 60ZH and 60ZI)

- (1) The Native Vegetation Panel may request an applicant for approval to clear native vegetation, or for the modification of an approval of the Panel, to provide the Panel with such further information about the proposed clearing or the proposed modification as the Panel considers necessary for its proper consideration of the application (including information about previous clearing of native vegetation in the area or surrounding area).
- (2) The request:
 - (a) must be in writing, and
 - (b) may specify a reasonable period within which the information must be provided to the Panel, and
 - (c) must include notice of the effect of a failure to provide the information on the determination of the application and on the applicant's rights of appeal with respect to the application.
- (3) The Panel may deal with the application if the applicant notifies the Panel in writing that the information will not be provided or if the information has not been provided within the period specified by the Panel or within such further period as the Panel may allow.

135 Time for dealing with applications for approval or modification of approval (ss 60ZH and 60ZI)

- (1) The Native Vegetation Panel is to determine an application for approval to clear native vegetation (or to modify an approval of the Panel) within 90 days after the date on which the application was duly made.
- (2) Any period after the applicant is requested by the Panel to provide further information to enable the application to be dealt with and until the information is provided (or the applicant notifies the Panel the information will not be provided) is not to be counted in calculating that 90-day period.
- (3) An application for approval (or the modification of an approval) that has not been determined is taken to have been refused after the expiration of that 90-day period.
- (4) The Panel may grant or refuse to grant an application even if the application is taken to have been refused under this clause.

136 Appeal period—refusal of clearing approval (s 60ZJ (2))

An appeal to the Land and Environment Court against a decision of the Native Vegetation Panel to refuse an application for approval to clear native vegetation (or to modify an approval of the Panel) is to be made within 6 months after the date on which the applicant is notified of the decision or within 6 months after the Panel is taken to have refused the application (whichever is the later).

137 Date from which approval operates (s 60ZH)

- (1) An approval of the Native Vegetation Panel to clear native vegetation operates from the date the approval is granted or, if a later date is specified in the approval, from that later date.
- (2) If an application for approval is refused and the Land and Environment Court decides to grant approval on appeal, the decision is taken to be an approval granted by the Native Vegetation Panel and operates from the date of that decision.

138 Lapsing of approval (s 60ZH)

- (1) An approval of the Native Vegetation Panel to clear native vegetation lapses 5 years after the date from which it operates.
- (2) Any such approval does not lapse if the clearing is commenced before the date on which the approval would otherwise lapse.
- (3) The Native Vegetation Panel may set out, in any such approval, circumstances in which clearing is or is not taken to be commenced for the purposes of this clause.

Division 5 Miscellaneous

139 Offence of contravening certain requirements of approvals, certificates or codes

- (1) This clause applies to a requirement imposed on a person by a relevant instrument (whether or not described as a condition of the instrument) in connection with the clearing of native vegetation to which the relevant instrument applies (whether that requirement arises before, during or after the clearing).

- (2) A person to whom a relevant instrument applies and who contravenes any such requirement of the instrument is guilty of an offence.
Maximum penalty: 100 penalty units.
- (3) It is a defence to a prosecution for an offence against this clause if the person charged is not a landholder of the land to which the clearing relates and establishes that the person was not aware of the relevant instrument.
- (4) If an act or omission constitutes an offence against this clause and an offence against section 60N of the Act, the person may not be convicted of both offences.
- (5) In this clause:
relevant instrument means:
 - (a) an approval to clear native vegetation granted by the Native Vegetation Panel, or
 - (b) a certificate issued by Local Land Services under section 60Y of the Act, or
 - (c) a provision of a land management (native vegetation) code.

140 Native Vegetation Panel may engage consultants

The Native Vegetation Panel may, with the approval of the Minister, engage such consultants as it requires to exercise its functions.