



New South Wales

Native Vegetation Amendment Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Native Vegetation Act 2003* (*the Act*) as follows:

- (a) to modify the current controls on clearing native vegetation so that they apply only to the clearing of indigenous trees,
- (b) to provide that broadscale clearing of native vegetation may be carried out only if the clearing is in the social, economic and environmental interests of the region in which it is carried out rather than, as is presently the case, if it improves or maintains environmental outcomes,
- (c) to ensure that the objects of the Act are pursued in order to promote the social, economic and environmental interests of the State,
- (d) to reduce the penalties for unauthorised clearing of native vegetation and for certain other offences under the Act,
- (e) to make other amendments relating to the clearing of native vegetation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Native Vegetation Act 2003 No 103

Changes to the objects of the Act

Schedule 1 [1]–[3] modify the objects of the Act which will include the prevention of broadscale clearing unless it is in the social, economic and environmental interests of the region in which it is carried out. At present, the relevant object is to prevent broadscale clearing unless it improves or maintains environmental outcomes. The objects will also include involving landholders in improving the condition of existing native vegetation of high conservation value. The amendments also provide that the objects of the Act are to be pursued in order to promote the social, economic and environmental interests of the State.

Native vegetation to which the Act applies

Schedule 1 [6] defines *native vegetation* as any indigenous tree (that is, a tree of a species that existed in the State before European settlement). As a result of this amendment, the controls on clearing native vegetation under the Act will no longer apply to indigenous understorey plants or groundcover.

Schedule 1 [5] defines *tree* as a large perennial woody plant that usually has one main trunk, a number of branches and a crown of foliage.

Schedule 1 [4] and [16] omit a definition of *groundcover* and a provision that permits the clearing of certain groundcover in certain circumstances. The definition and provision will be redundant as a result of groundcover no longer being within the scope of the Act.

Changes to the control of broadscale clearing

At present, *broadscale clearing* means the clearing of any native vegetation or protected regrowth. **Schedule 1 [7]** provides instead that broadscale clearing will mean the non-selective clearing of large areas of remnant native vegetation. The clearing of single trees on a selective basis is not broadscale clearing. **Schedule 1 [4] and [9]** omit the definition of *protected regrowth* which will be redundant as a result of the new definition of broadscale clearing. **Schedule 1 [15]** is a consequential amendment.

The term *remnant native vegetation* does not at present include native vegetation that has regrown (*regrowth*) since certain specified dates. **Schedule 1 [8]** sets a date (1 January 1983) for the whole of the State for the purposes of the definition of *regrowth*.

Schedule 1 [13] changes the test for granting development consent for broadscale clearing. As a result of the amendment, development consent for broadscale clearing is not to be granted by the Minister unless the clearing is in the social, economic and environmental interests of the region in which it is carried out. At present, development consent is not to be granted unless the clearing concerned will improve or maintain environmental outcomes.

Schedule 1 [14] omits a regulation-making power concerning the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes. The provision will be redundant as a result of the changed test.

Schedule 1 [19] provides that the Minister is not to approve a property vegetation plan that proposes broadscale clearing of native vegetation unless the clearing concerned is in the social, economic and environmental interests of the region in which it is carried out. At present the test is that the clearing concerned must improve or maintain environmental outcomes.

Schedule 1 [20] omits a regulation-making power concerning the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for the purposes of a property vegetation plan.

Extension of routine agricultural management activities and other activities that are excluded from prohibition on clearing

Schedule 1 [10] provides that the term *routine agricultural management activities* includes any activity reasonably considered necessary to remove or reduce the risk of serious personal injury or damage to property. At present the risk must be imminent for the activity to constitute a routine agricultural management activity and therefore be exempt from the prohibition on clearing native vegetation.

Schedule 1 [11] includes within that definition the undertaking of such drought preparation or recovery measures as are reasonably necessary and any activity necessary to control non-indigenous species of vegetation. These activities will be excluded from the prohibition on clearing native vegetation.

Schedule 1 [17] provides that any clearing that is reasonably necessary to be carried out for the purposes of complying with the requirements of the *Work Health and Safety Act 2011* will be excluded from the prohibition on clearing native vegetation.

Reductions in penalties and changes to proceedings for offences

Schedule 1 [12] reduces the maximum penalty for carrying out or authorising the clearing of native vegetation otherwise than in accordance with a development consent or a property vegetation plan to 1,000 penalty units (\$110,000). At present a person guilty of the offence is liable to the maximum penalty provided under section 126 of the *Environmental Planning and Assessment Act 1979* which is 10,000 penalty units (\$1,100,000), with a further daily penalty not exceeding 1,000 penalty units (\$110,000).

Schedule 1 [21] reduces the maximum penalty for the offences of obstructing an authorised officer in the exercise of the officer's investigative functions, failing or refusing to comply with a requirement made by an authorised officer in the exercise of the officer's functions, failing to comply with a notice requiring the person to provide information or produce a document and giving false or misleading information. The maximum penalty is reduced from 100 penalty units (currently \$11,000) to 10 penalty units (\$1,100).

Schedule 1 [22] omits a provision that prevents a person from exercising the right not to provide information in the event that it may tend to incriminate the person.

Schedule 1 [23] and [24] reduce the maximum penalty for failing to comply with a "stop work" order or a direction to carry out remedial work from (in the case of a corporation) 2,000 penalty units and 200 penalty units for each day the offence continues to 200 penalty units and 20 penalty units for each day the offence continues. The maximum penalty for an individual is reduced from 1,000 penalty units and 100 penalty units for each day the offence continues to 100 penalty units and 10 penalty units, respectively.

Schedule 1 [25] omits provisions that enable proceedings for an offence under the Act or the regulations to be commenced within 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer. Proceedings for an offence can only be commenced within, but not later than, 2 years after the date on which the offence is alleged to have been committed.

Other amendments

Schedule 1 [18] provides that a property vegetation plan may include proposals relating to the thinning of native vegetation in the central area of the State that has regrown at any time since 1 January 1983. At present any such proposal may relate only to the thinning of native vegetation that has regrown between 1 January 1983 and 1 January 1990.

Schedule 1 [26] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.



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New South Wales

Native Vegetation Amendment Bill 2014

No. , 2014

A Bill for

An Act to amend the *Native Vegetation Act 2003* to make further provision with respect to the clearing of native vegetation.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Native Vegetation Amendment Act 2014*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Native Vegetation Act 2003 No 103	1
[1] Section 3 Objects of Act		2
	Omit “improves or maintains environmental outcomes” from section 3 (b).	3
	Insert instead “is in the social, economic and environmental interests of the region in which it is carried out”.	4 5
[2] Section 3 (d) and (e)		6
	Omit the paragraphs. Insert instead:	7
	(d) to involve landholders in improving the condition of existing native vegetation of high conservation value, and	8 9
	(e) to encourage the revegetation and rehabilitation of land,	10
[3] Section 3		11
	Omit “in accordance with the principles of ecologically sustainable development”.	12
	Insert instead “in order to promote the social, economic and environmental interests of the State”.	13 14
[4] Section 4 Definitions		15
	Omit the definitions of <i>groundcover</i> and <i>protected regrowth</i> from section 4 (1).	16
[5] Section 4 (1)		17
	Insert in alphabetical order:	18
	<i>tree</i> means a large perennial woody plant that usually has one main trunk, a number of branches and a crown of foliage.	19 20
[6] Section 6		21
	Omit the section. Insert instead:	22
	6 Meaning of native vegetation	23
	(1) For the purposes of this Act, <i>native vegetation</i> means any indigenous tree.	24
	(2) A tree is <i>indigenous</i> if it is of a species that existed in the State before European settlement.	25 26
[7] Section 8		27
	Omit the section. Insert instead:	28
	8 Meaning of broadscale clearing	29
	For the purposes of this Act, <i>broadscale clearing</i> of native vegetation means the non-selective clearing of large areas of remnant native vegetation. It does not include the clearing of single trees on a selective basis.	30 31 32
[8] Section 9 Meanings of remnant native vegetation and regrowth		33
	Omit section 9 (2) (a). Insert instead:	34
	(a) 1 January 1983,	35
[9] Section 10 Meaning of protected regrowth		36
	Omit the section.	37

[10] Section 11 Meaning of routine agricultural management activities	1
Omit “an imminent risk” from section 11 (1) (i). Insert instead “the risk”.	2
[11] Section 11 (1) (j) and (k)	3
Insert after section 11 (1) (i):	4
(j) undertaking such drought preparation or recovery measures as are reasonably necessary,	5
(k) any activity necessary to control non-indigenous species of vegetation.	6
[12] Section 12 Clearing approval required	8
Omit section 12 (2). Insert instead:	9
(2) A person who carries out or authorises the carrying out of clearing in contravention of this section is guilty of an offence.	10
Maximum penalty: 1,000 penalty units.	11
[13] Section 14 Granting of development consent	13
Omit section 14 (3). Insert instead:	14
(3) Development consent for broadscale clearing is not to be granted by the Minister unless the clearing is in the social, economic and environmental interests of the region in which it is carried out.	15
[14] Section 15 Regulations	18
Omit section 15 (1) (c).	19
[15] Section 19 Clearing of regrowth permitted	20
Omit “, but not protected regrowth,” from section 19 (1).	21
[16] Section 20 Clearing of certain groundcover permitted	22
Omit the section.	23
[17] Section 25 Legislative exclusions	24
Insert after section 25 (t):	25
(u) any clearing that is reasonably necessary to be carried out for the purposes of complying with the requirements of the <i>Work Health and Safety Act 2011</i> .	26
	27
	28
[18] Section 28 Content of plans	29
Omit “between 1 January 1983 and 1 January 1990” from section 28 (c).	30
Insert instead “since 1 January 1983”.	31
[19] Section 29 Plans proposing broadscale clearing	32
Omit section 29 (2). Insert instead:	33
(2) The Minister is not to approve such a plan unless the clearing concerned is in the social, economic and environmental interests of the region in which it is carried out.	34
	35
	36
[20] Section 32 Regulations	37
Omit section 32 (b).	38

[21] Sections 35 (5) and 36 (4)	1
Omit “100 penalty units” wherever occurring. Insert instead “10 penalty units”.	2
[22] Section 36 Power to obtain information	3
Omit section 36 (5).	4
[23] Sections 37 (5) and 38 (4)	5
Omit “2,000 penalty units and 200 penalty units” wherever occurring.	6
Insert instead “200 penalty units and 20 penalty units”.	7
[24] Sections 37 (5) and 38 (4)	8
Omit “1,000 penalty units and 100 penalty units” wherever occurring.	9
Insert instead “100 penalty units and 10 penalty units”.	10
[25] Section 42 Proceedings for offences	11
Omit section 42 (4) and (5).	12
[26] Schedule 3 Savings, transitional and other provisions	13
Insert at the end of clause 1 (1):	14
<i>Native Vegetation Amendment Act 2014</i>	15