

[Act 1997 No 133]



New South Wales

# Native Vegetation Conservation Bill 1997

## Explanatory note

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

### Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the conservation and management of native vegetation on a regional basis,
- (b) to encourage and promote native vegetation management in the social, economic and environmental interests of the State,
- (c) to protect native vegetation of high conservation value,
- (d) to improve the condition of existing native vegetation,
- (e) to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation,
- (f) to prevent the inappropriate clearing of vegetation,
- (g) to promote the significance of native vegetation.

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\* Amended in committee—see table at end of volume.

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The principles of ecologically sustainable development will apply in relation to these objects.

This Bill replaces the existing legislative controls relating to the clearing of native vegetation and protected land (eg the controls provided under *State Environmental Planning Policy No 46—Protection and Management of Native Vegetation* (“SEPP 46”) and the *Soil Conservation Act 1938* (the “1938 Act”)) with a consolidated legislative framework that provides a single regime for controlling clearing throughout the State.

The development consent process under the *Environmental Planning and Assessment Act 1979* (the “EPA Act”) will be the basis for controlling the clearing of native vegetation and protected land in accordance with the proposed Act. The requirement for development consent to clear native vegetation and protected land will be subject to (and determined by) the proposed Act (including regional vegetation management plans made under the proposed Act). The Minister for Land and Water Conservation will be the consent authority under the EPA Act in relation to development applications to clear native vegetation and to clear protected land.

## Outline of provisions

### Part 1 Preliminary

**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 a day or days to be appointed by proclamation.

**Clause 3** sets out the objects (as set out in the above overview) of the proposed Act.

**Clause 4** defines certain terms used in the proposed Act. Among the terms defined are *development consent* (which means development consent under Part 4 of the EPA Act) and *protected land* (which refers to 2 types of protected land, namely State protected land and regional protected land). State protected land includes any protected land presently defined under the 1938 Act, whereas regional protected land is land that is identified as such in a regional vegetation management plan made under the proposed Act. In both cases, the criteria (based on the existing criteria under the 1938 Act) for determining protected land is the same (eg the land must have a steep slope or be adjacent to a river or lake).

**Clause 5** defines *clearing* in relation to native vegetation and protected land. The definition has a wide meaning and is based on the current definitions in SEPP 46 and the 1938 Act. In the case of protected land, clearing will cover any vegetation on the land (whether or not native vegetation, and whether dead or alive), but will not extend to non-indigenous groundcover.

**Clause 6** defines *native vegetation* for the purposes of the proposed Act. The term covers indigenous species of trees (which includes saplings, shrubs and scrub), understorey plants, groundcover and plants in wetlands, but does not include marine vegetation such as mangroves. The term groundcover refers to any type of herbaceous vegetation (but only if occurring in an area where at least 50% of the herbaceous vegetation is indigenous).

**Clause 7** enables the Minister, by order published in the Gazette, to identify land as State protected land for the purposes of the proposed Act. Land that is presently defined as protected land under the 1938 Act does not need to be further identified by an order under the proposed section, but that land can be varied or otherwise dealt with by an order under the proposed section.

**Clause 8** enables the Minister to designate regions for the purposes of the proposed Act. Regions are relevant for the purposes of Regional Vegetation Committees, and for determining the land to which a regional vegetation management plan will apply.

**Clause 9** excludes various types of land from the operation of the proposed Act. The excluded land will include residentially zoned land, State forests, national parks, critical habitat and various other types of strictly managed land under existing legislation.

**Clause 10** excludes certain other land described in Schedules 1 and 2 to the proposed Act from the operation of the proposed Act. Land that is excluded will continue to be subject to clearing controls that may apply under a local environmental plan made under the EPA Act.

In the case of land within a local government area specified in Schedule 1 to the proposed Act, that land will be partially excluded from the operation of the proposed Act (ie the requirements of the proposed Act will apply only to the extent that the land comprises State protected land). These local government areas consist generally of the areas that are presently excluded from the operation of SEPP 46 (but not necessarily from the operation of the 1938 Act).

Land within a local government area specified in Schedule 2 to the proposed Act will be wholly excluded from the operation of the proposed Act.

**Clause 11** enables the Governor, by order published in the Gazette, to amend Schedules 1 and 2 to the proposed Act to add or remove the names of local government areas.

**Clause 12** excludes various authorised types of clearing activities from the operation of the proposed Act. These activities include emergency bush fire clearing, clearing of noxious weeds and the harvesting of accredited timber plantations.

## **Part 2 Clearing native vegetation and clearing protected land**

Part 2 of the proposed Act applies the development consent process under the EPA Act in relation to the clearing of native vegetation and the clearing of protected land. The basic scheme of Part 2 is that development consent under Part 4 of the EPA will generally be required by the proposed Act.

### **Division 1 General provisions**

**Clause 13** contains a definition for the purposes of proposed Division 1 of Part 2.

**Clause 14** provides that the Minister for Land and Water Conservation will be the consent authority under the EPA Act in relation to any development application that requires development consent because of Part 2 of the proposed Act.

**Clause 15** provides that any such development consent may be obtained by the Minister making a determination in accordance with Part 4 of the EPA Act to grant that consent.

**Clause 16** provides that any clearing carried out in accordance with Part 2 of the proposed Act will not be subject to the environmental assessment or approval procedures of Part 5 of the EPA Act.

**Clause 17** provides that the contravention of Part 2 of the proposed Act will be an offence under the proposed Act, and that the penalties specified in section 126 (1) of the EPA Act for contravening that Act (eg carrying out development without development consent when consent is required by an environmental planning instrument) will apply because of the connection

between Part 2 of the proposed Act and Part 4 of the EPA Act. The penalties presently specified under the EPA Act are 1,000 penalty units and a daily penalty of 100 penalty units (a penalty unit is presently \$110 under section 56 of the *Interpretation Act 1987*).

### **Division 2 Land subject to regional vegetation management plan**

**Clause 18** provides that a regional vegetation management plan may require development consent for clearing native vegetation on land to which the plan applies, or that it may allow such clearing to be carried out without development consent. A regional vegetation management plan will work in much the same way as a regional environmental plan operates under the EPA Act.

**Clause 19** provides that a regional vegetation management plan may require development consent for clearing regional protected land, or that it may allow such clearing to be carried out without development consent.

**Clause 20** provides that the clearing of native vegetation or regional protected land in accordance with development consent, or in accordance with a regional vegetation management plan, cannot be prohibited, restricted or otherwise affected by any environmental planning instrument or any other Act (eg there will generally be no need to obtain any other form of approval or authorisation to clear).

### **Division 3 Land not subject to regional vegetation management plan**

**Clause 21** provides that a person must not clear native vegetation on any land (other than land to which a regional vegetation management plan applies or State protected land) except in accordance with development consent or a native vegetation code of practice.

**Clause 22** provides that a person must not clear State protected land except in accordance with development consent.

**Clause 23** provides that if native vegetation or State protected land is (or is about to be) cleared in accordance with development consent as required by Division 3 of Part 2 of the proposed Act, that clearing cannot be prohibited, restricted or otherwise affected by any environmental planning instrument or any other Act (eg there will generally be no need to obtain any other form of approval or authorisation to clear). However, a development consent may still be required by an environmental planning instrument if the clearing is lawfully carried out under the proposed Act otherwise than in accordance with development consent as required by the proposed Division.

### **Part 3 Regional vegetation management plans**

**Clause 24** provides that a regional vegetation management plan may be prepared (either at the instigation of the Minister or, if the Minister approves, by the relevant Regional Vegetation Committee) for the region to which the plan is intended to apply.

**Clause 25** provides that a regional vegetation management plan must identify the land to which the plan applies, and may contain provisions specifying whether or not development consent is required to clear native vegetation or regional protected land. The provisions of a regional vegetation management plan will control clearing on the land to which the plan applies.

**Clause 26** requires the initiator of a draft regional vegetation management plan to consult with the Director-General of National Parks and Wildlife about certain matters relating to the draft plan.

**Clause 27** specifies certain environmental and other matters that must be taken into consideration when preparing a draft regional vegetation management plan.

**Clause 28** requires certain information to be notified about a draft regional vegetation management plan.

**Clause 29** requires a draft regional vegetation management plan to be publicly exhibited.

**Clause 30** provides for the making of submissions about a draft regional vegetation management plan.

**Clause 31** requires the Director-General of the Department of Land and Water Conservation to submit the draft regional vegetation management plan to the Minister with a report that includes any comments, submissions and recommendations resulting from the consultation process.

**Clause 32** requires the Minister to consult with the Minister for the Environment before making a regional vegetation management plan.

**Clause 33** enables the Minister to make a regional vegetation management plan.

**Clause 34** provides that a regional vegetation management plan must be published in the Gazette. Generally, a plan will operate for 10 years.

**Clause 35** provides that a regional vegetation management plan may be amended by another plan, and may be repealed by the Minister by order published in the Gazette.

**Clause 36** provides that a regional vegetation management plan is taken to be an environmental planning instrument for certain purposes and will prevail over any other environmental planning instrument to the extent of any inconsistency.

#### **Part 4 Native vegetation codes of practice**

**Clause 37** enables the Director-General of the Department of Land and Water Conservation to prepare a native vegetation code of practice (which must be approved by the Minister before it is finalised).

**Clause 38** provides that a native vegetation code of practice may contain provisions relating to the clearing of native vegetation on the land, and for the purpose, specified in the code (eg for the purpose of establishing a timber plantation). Development consent will not be required if the native vegetation is cleared in accordance with a code. A code cannot apply to protected land, and the provisions of a code may be incorporated in (or adopted by) a regional vegetation management plan.

**Clause 39** requires a native vegetation code of practice to be adopted by regulation before it comes into force. Any such regulation will need to comply with the requirements of the *Subordinate Legislation Act 1989* (eg the proposed regulation adopting the code must be advertised, consultation must take place and a regulatory impact statement must be prepared).

#### **Part 5 Property agreements**

**Clause 40** enables the Director-General of the Department of Land and Water Conservation to enter into property agreements with landholders.

**Clause 41** describes the nature of property agreements (which is generally to provide for the conservation and management of vegetation on the land to which the agreement relates).

**Clause 42** provides that a property agreement may contain terms that are binding on the parties as well as provisions relating to such matters as vegetation management practices and financial assistance for landholders.

**Clause 43** provides for the duration and variation of property agreements.

**Clause 44** provides that any property agreement that has been registered by the Registrar-General will be binding on the successors in title to the landholders who entered into the agreement.

**Clause 45** provides for the enforcement of property agreements in the Land and Environment Court.

## **Part 6 Other conservation and remedial measures**

**Clause 46** enables the Director-General of the Department of Land and Water Conservation to issue a “stop work” order to a person if the Director-General is of the opinion that the person is contravening (or is about to contravene) Part 2 of the proposed Act (eg if the person is clearing native vegetation without development consent). The failure to comply with such an order will be an offence (the maximum penalty will be 1,000 penalty units and 100 penalty units for each day the offence continues).

**Clause 47** enables the Director-General to give a direction to carry out remedial work in certain circumstances (such as where native vegetation or protected land has been cleared in contravention of Part 2 of the proposed Act). The type of remedial work to be carried out may include work to repair any damage caused by the clearing. The failure to comply with such a direction will be an offence (the maximum penalty will be 1,000 penalty units and 100 penalty units for each day the offence continues).

**Clause 48** provides for appeals to the Land and Environment Court against the decision of the Director-General to issue a stop work order or to make a direction for the carrying out of remedial work.

**Clause 49** provides that the prior notification of any such order or direction is not required.

**Clause 50** enables the Director-General to require a person to provide information concerning a possible offence under Part 6 of the proposed Act.

## **Part 7 Administrative provisions**

### **Division 1 Regional Vegetation Committees**

**Clause 51** provides that the Minister may establish a Regional Vegetation Committee in respect of a region. A Committee is to consist of members appointed by the Minister, and the members are to include representatives of relevant government agencies and interests.

**Clause 52** provides that the functions of a Regional Vegetation Committee will include the preparation, with the approval of the Minister, of a draft regional vegetation management plan for the region in respect of which the Committee is established.

**Clause 53** provides for the dissolution of a Regional Vegetation Committee.

### **Division 2 Native Vegetation Advisory Council**

**Clause 54** provides for the establishment of the Native Vegetation Advisory Council. The Advisory Council is to consist of members appointed by the Minister, and the members are to include representatives of relevant government agencies and interests.

**Clause 55** specifies the functions of the Advisory Council.

### **Division 3 Native Vegetation Management Fund**

**Clause 56** establishes the Native Vegetation Management Fund, and provides for the payment of money into the Fund and for allocation of money out of the Fund.

**Clause 57** enables the Minister to invest money in the Fund.

### **Part 8 Miscellaneous provisions**

**Clause 58** provides that the proposed Act will bind the Crown.

**Clause 59** provides for the appointment by the Director-General of authorised officers for the purposes of the proposed Act.

**Clause 60** enables the Minister, and the Director-General, to delegate their functions under the proposed Act.

**Clause 61** empowers authorised officers to enter land for certain purposes (eg to determine whether native vegetation is being cleared in contravention of the proposed Act), to conduct investigation and to exercise other powers of inspection.

**Clause 62** provides for the service of notices under the proposed Act.

**Clause 63** provides that proceedings for offences under the proposed Act are to be dealt with summarily before a Local Court or the Land and Environment Court.

**Clause 64** makes provision with respect to offences that are committed by corporations.

**Clause 65** provides for certificate evidence of certain matters under the proposed Act.

**Clause 66** empowers the making of regulations for the purposes of the proposed Act.

**Clause 67** gives effect to the Schedule of savings and transitional provisions.

**Clause 68** gives effect to the Schedule of amendments to other Acts (including the 1938 Act).

**Clause 69** repeals SEPP 46.

**Clause 70** provides for a review of the proposed Act after 5 years.

## Schedules

**Schedule 1** lists the local government areas that are partially excluded from the operation of the proposed Act.

**Schedule 2** will contain the local government areas that will be totally excluded from the operation of the proposed Act.

**Schedule 3** contains provisions relating to the members and procedure Regional Vegetation Committees and the Native Vegetation Advisory Council.

**Schedule 4** contains savings and transitional provisions, including a power to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act. In particular, existing development consents under SEPP 46, and existing authorities under the 1938 Act to clear trees on protected land, will continue in accordance with the proposed Act, as will existing clearing licences and exemptions.

**Schedule 5** contains amendments to Acts that are mainly consequential on the enactment of the proposed Act. Apart from the 1938 Act (which is amended to remove provisions relating to protected land), the Acts to be amended are the *Forestry Act 1916*, the *Land and Environment Court Act 1979* and the *Western Lands Act 1901*.