

Review of the Native Vegetation Act 2003

Discussion Paper

Department of
Environment, Climate Change and Water NSW



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1. Introduction

From 1 July 2009 the Department of Environment and Climate Change (DECC) referred to in this report was renamed the Department of Environment, Climate Change and Water, with additional responsibilities for water.

The *Native Vegetation Act 2003* (NV Act) was established as the primary vehicle for protecting and improving the condition of native vegetation with a high conservation value and encouraging and promoting the management of native vegetation on a regional basis in the best overall interests of the State. It gave effect to an historic negotiated agreement to end broadscale land clearing, unless it improves or maintains environmental outcomes.

The NV Act was assented to on 11 December 2003 and commenced on 1 December 2005. It is important to periodically review legislation to ensure that it is achieving what was intended. Under Section 55 of the NV Act, the Minister for Climate Change and the Environment is required to undertake a review of the Act as soon as possible after a period of five years from the date of assent. The Minister will table a report of the review to both houses of Parliament.

The Minister has requested that the Department of Environment, Climate Change and Water (DECCW) undertake the NV Act review on her behalf. This Discussion Paper outlines the scope of this review.

1.1. Scope of the review

The purpose of this review is to determine whether the policy objectives of the Act are still valid and whether the terms of the Act are appropriate for meeting these objectives.

Terms of Reference

Section 55 of the NV Act specifies the Terms of Reference and timing requirements for the review:

1. *The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.*
2. *The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.*
3. *A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.*

Scope

It is important to note that this review process is only concerned with the NV Act and will not address provisions contained within the Native Vegetation Regulation 2005. Therefore, this review will not address the regulatory arrangements for Private Native Forestry, as this is primarily dealt with under the Regulation. There is a separate process for the review of Regulations under the *Subordinate Legislation Act 1989*. The Environmental Outcome Assessment Methodology (EOAM) used by catchment management authorities to assess whether clearing proposals for Property Vegetation Plans (PVPs) and Development Consents meet certain criteria, is part of the Native Vegetation Regulation. The EOAM was partly reviewed in 2008 and other elements remain under review as the science that underpins the methodology improves.

1.2. Purpose of Discussion Paper

The purpose of this discussion paper is to outline the scope of the review and to encourage individuals, businesses and organisations to provide input to the review. The paper includes:

- **Section 1:** introduction to the review
- **Section 2:** explanation of the background to the development of the Act and the key reforms it delivered
- **Section 3:** discussion about the effectiveness of the NV Act in relation to its objects
- **Section 4:** summary of how the provisions of the Act have been implemented since the Act came into force in 2005.

Sections 3 and 4 include key questions regarding the objects of the Act and its operation to help stimulate discussion as part of the review.

1.3. Invitation to make a submission

As part of the review, DECCW is seeking written submissions responding to the review's Terms of Reference. The questions included in each section of the discussion paper are designed to assist in the preparation of submissions. Comments about other aspects of the Act are welcome. However, it should be noted that the report submitted to Parliament will focus on the Terms of Reference.

The **closing date for submissions is 23 September 2009.**

Submissions should be addressed to:

Tom Grosskopf
Director Landscapes and Ecosystems Conservation
Department of Environment, Climate Change and Water
PO Box A290
SYDNEY SOUTH 1232

Questions about the review can be directed to the Secretariat:

NVact.review@environment.nsw.gov.au

1.4. Other reference materials

The *Native Vegetation Act 2003* and *Native Vegetation Regulation 2005* are available at www.legislation.nsw.gov.au.

Further information including information sheets, public registers and a copy of the EOAM is available from the DECCW website at www.environment.nsw.gov.au/vegetation/nvmanagement.htm

The *NSW Native Vegetation Annual Report 2008* is available at www.environment.nsw.gov.au/resources/nativeveg/09523arnv08.pdf

2. Overview of the Native Vegetation Act 2003

This Section explains the reasons for the introduction of the *Native Vegetation Act 2003* (NV Act) the key reforms it delivered and the agencies responsible for its administration.

2.1. Why the NV Act was introduced

The NV Act was introduced in 2005 to end broadscale clearing of native vegetation in NSW and to improve the regional native vegetation management and revegetation of land. The NV Act repealed the *Native Vegetation Conservation Act 1997*. It regulates the clearing of native vegetation on all land in NSW except national parks and other conservation areas, state forests and reserves and urban areas.

Clearing of native vegetation, which affects important habitat of many species, has been identified as the process that represents the greatest single threat to biodiversity in NSW. Clearing also has a significant impact on salinity, soils and water quality.

2.2. Reforms delivered by the NV Act

The NV Act delivered significant reforms to native vegetation management in NSW. These reforms were informed by extensive stakeholder consultation and the recommendations of the Wentworth Group of Concerned Scientists and the Native Vegetation Reform Implementation Group. The key reforms delivered by the Act include:

- an end to broadscale land clearing unless it improves or maintains environmental outcomes
- voluntary vegetation management agreements between landholders and catchment management authorities (CMAs) which allow a landholder to negotiate appropriate management actions that can offset the negative impacts of proposed clearing
- greater autonomy for farmers to manage vegetation through clearly identified regrowth dates and routine agricultural management practices
- a streamlined system for the management of invasive native scrub
- flexibility and incentives for farmers to manage native vegetation sustainably.

2.3. Who administers the NV Act?

DECCW is responsible for ensuring the sustainable management of native vegetation in NSW through the administration of the NV Act.

CMAs play a key role in the implementation of the NV Act and its regulation. As the approval authorities (delegated from the Minister) for vegetation clearing across the state, CMAs are responsible for assessing and approving clearing proposals through the Property Vegetation Plan (PVP) or Development Consent process. They assist farmers to make practical decisions based on the best scientific information available. The *NSW Catchment Management Authorities Act 2003* provides the legislative authority for CMAs and covers their operations. It should be noted that DECCW is currently undertaking a separate review of the Catchment Management Authorities Act.

The former NSW government departments of Primary Industries, Planning, Lands and Local Government also have roles in the management of native vegetation, especially with regard to aquatic threatened species, weeds, aquatic native vegetation, coastal planning and development, public land and vegetation planning.

2.4. Objectives of the NV Act

The objects of the NV Act are defined in section 3 of the Act as follows:

- a) *to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State, and*
- b) *to prevent broadscale clearing unless it improves or maintains environmental outcomes, and*
- c) *to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation, and*
- d) *to improve the condition of existing native vegetation, particularly where it has high conservation value, and*
- e) *to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation*

in accordance with the principles of ecologically sustainable development.

Question 1: Overview questions

- a) Do the objectives of the Act remain valid?
- b) Should the objectives be changed? If so, what should the changes be?

3. Effectiveness of the NV Act

This section outlines the key achievements of the NV Act and discusses its effectiveness in relation to each of its objects.

Since its commencement in 2005, the NV Act has resulted in some significant achievements for native vegetation management in NSW. As a direct result of the Act, approximately 270,000 hectares of native vegetation across the State were conserved or improved through revegetation or restoration between 2006 and 2008. In the same period only 5440 hectares were approved to be cleared under the NV Act. For this clearing, environmental values were improved or maintained through mechanisms such as the use of offsets.

The objects of the NV Act are set out in Section 3 of the Act. These objects seek to end broadscale clearing and encourage positive management of vegetation. The effectiveness of the Act is considered against each of the five objects of the Act below.

3.1. Encouraging and promoting the management of native vegetation on a regional basis

The first object of the Act is **to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State.**

The NSW Government is committed to ending broad scale native vegetation clearing unless it improves or maintains environmental outcomes, while allowing for day-to-day farm management activities, bushfire hazard reduction and emergency management. This has been achieved through the Act by providing for the following processes.

Flexibility for landholders

PVPs are negotiated agreements between the landholder and CMA. The CMA and landholder can explore innovative solutions which may enable some additional clearing if environmental impacts are avoided or offset, deliver incentives for conservation or management of native vegetation, change or certify the regrowth date, protect vegetation and/or clarify the landholders rights and responsibilities in relation to native vegetation management.

Practical tools to assist landholders make decisions based on the best science (EOAM and Native Vegetation Assessment Tool)

The Government is committed to ensuring that the best available science informs decision making. This seeks to overcome the inconsistencies and subjectivity of decision making that operated under previous legislation. In 2005, the EOAM was initiated to provide a published, objective, transparent and scientific methodology to assess clearing proposals. The software that supports the methodology is known as the Native Vegetation Assessment Tool (previously the PVP Developer). This tool is used by CMAs to assist farmers to prepare PVPs. It weighs up the positive and negative aspects of different management proposals, which helps assessment officers and landholders to make practical decisions based on the best scientific information available.

At 30 June 2009, 1476 PVPs were negotiated and approved; of which 1046 (or 71%) involved incentive payments to farmers to improve or protect native vegetation. See Table 1 for information on the area of land covered by each type of PVP.

Table 1: PVPs issued since the NV Act – 2006 to 2008

Type of PVP	Area (hectares)
Incentives	226,620
Offsets	18,320
Clearing	5,440
Thinning	1,330
Invasive native scrub	1,342,770

Source: NSW Annual Report on Native Vegetation 2008, DECCW.

Reducing red tape

DECCW consults widely with the community and stakeholders to reduce red tape. Recent examples include streamlining the management of invasive native scrub, allowing clearing for the development of essential public infrastructure, and enabling groups of landholders to work together to develop landscape scale plans for native vegetation management. Also, from 1 December 2005 the Biocertification of the Native Vegetation Reform Package ensured that approved PVPs and development consents do not require a separate threatened species impact assessment under the *Environmental Planning and Assessment Act 1979*.

Social and economic considerations

Social and economic considerations in the Act are considered and incorporated principally at the State level. The approach taken in making the Act was that broadscale land clearing needed to cease, because of the very serious impacts that unrestricted clearing had and would continue to cause.

The Government recognised that the change in approach would cause impacts for some individual landholders who would not be able to realise expectations of future gain in property values and/or farming outputs. Since 2002, over \$700 million of State and Commonwealth Government funding has been allocated to CMAs to help landowners protect and repair landscapes. In addition, an \$18 million structural adjustment package was established for those individual landholders whose farming was rendered non-viable. Both packages have been delivered, and the government continues to invest in landscape restoration. In the 2009–10 financial year, \$66 million of State and Commonwealth Government funding will be invested in this area which includes programs to assist landowners to undertake landscape restoration. These programs are delivered through the 13 CMAs.

3.2. Preventing broadscale clearing

The second object of the Act is **to prevent broadscale clearing unless it improves or maintains environmental outcomes**.

Framework for assessing environmental outcomes associated with land clearing

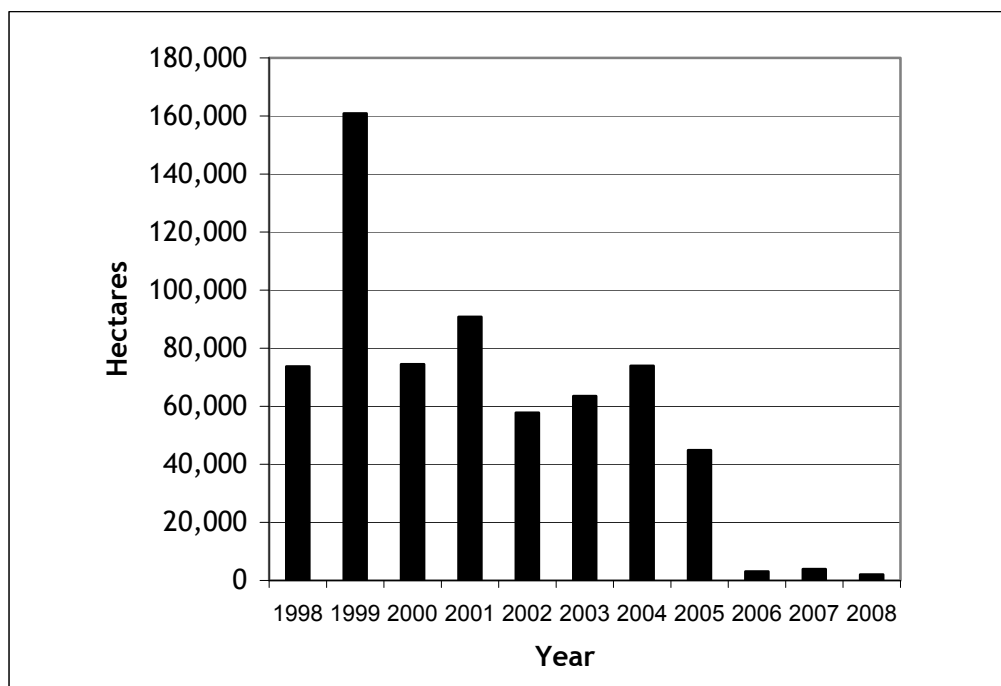
The NV Act established a rigorous EOAM for assessing the environmental outcomes associated with land clearing. The EOAM sets out the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes. It provides the scientific underpinning for, and the logic used in, this assessment. It will continue to be refined as the science improves.

This EOAM is adopted into the Native Vegetation Regulation 2005 and is therefore outside the scope of this review. The EOAM is publicly available at www.environment.nsw.gov.au/resources/vegetation/eoam.pdf

Approved clearing

Since the implementation of the NV Act, there has been an overall reduction in the area of land approved for clearing in NSW (see Figure 1). For example, in 1999 just over 160,000 hectares of land was approved for clearing compared with under 10,000 hectares of approved clearing over the first three years of the operation of the NV Act.

Figure 1: Area approved for clearing



Source: Department of Natural Resources June 2006 and DECCW 2009

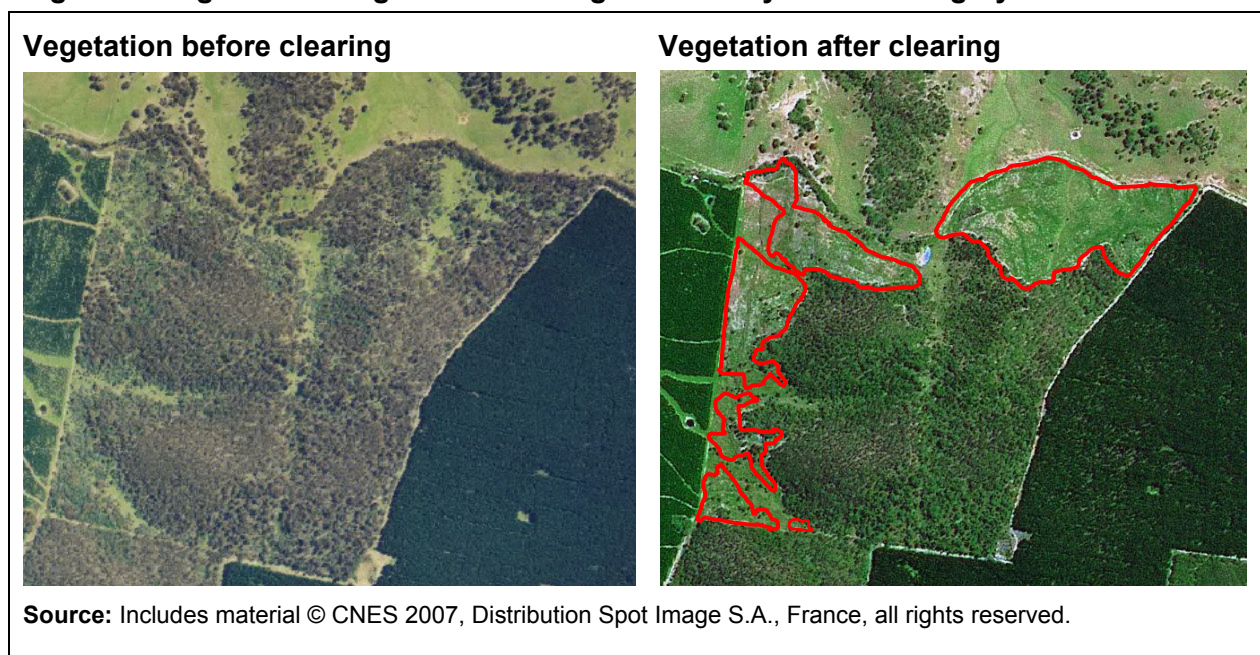
Note: Approved clearing in 2006 to 2008 also includes clearing approved under the *Native Vegetation Conservation Act 1997* and the *Plantation and Reafforestation Act 1999*.

Monitoring

How is change in woody vegetation assessed?

Estimates of change in woody vegetation are produced by analysing Landsat remote sensing data with techniques based on the Statewide Landcover and Tree Survey (SLATS) methodology developed in Queensland. This method detects woody vegetation that is more than 2 metres tall with over 20% canopy cover. These estimates of change apply to open and closed forests and woodlands. High resolution SPOT 5 imagery has been acquired for 2008 and 2009. This will provide information on woody vegetation with less than 20% canopy cover. Figure 2 shows before and after imagery of native vegetation clearing.

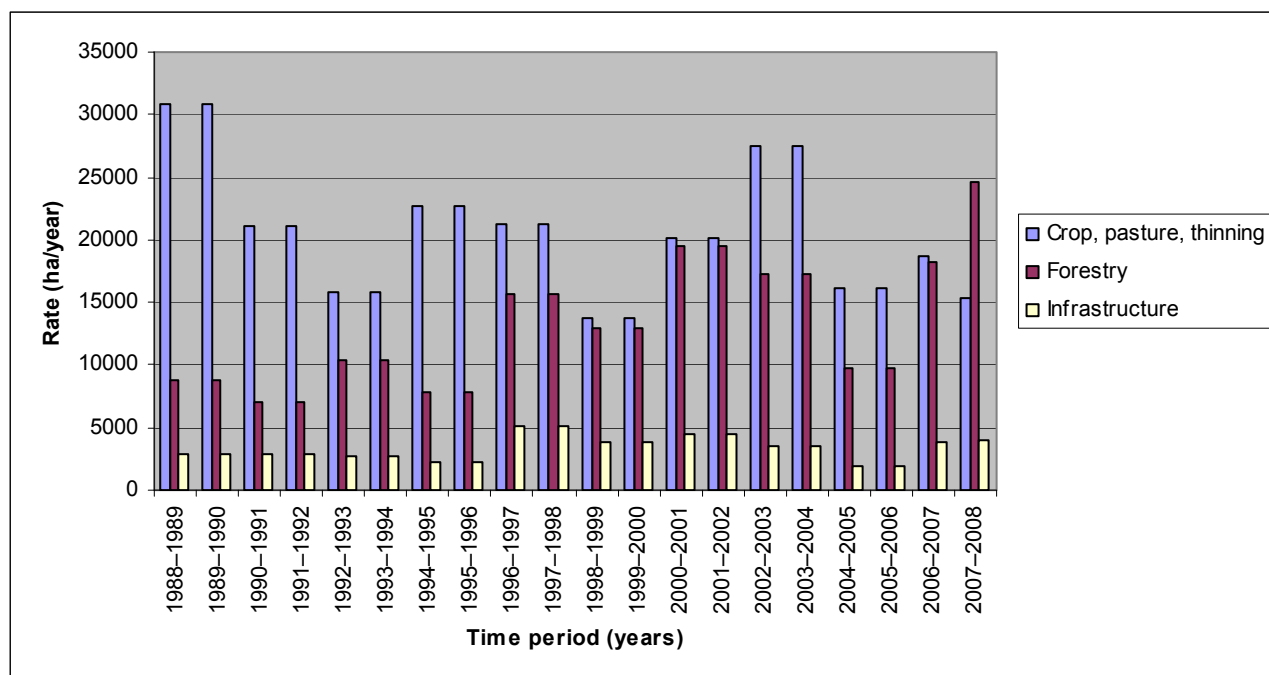
Figure 2: Illegal native vegetation clearing detected by SPOT 5 imagery



Woody vegetation change over the last 20 years

It will take additional time to establish a clear relationship between long-term clearing trends and the introduction of the NV Act. However data for woody vegetation change over the last 20 years does suggest that the average level of clearing in agriculture has declined since the introduction of the Act. Figure 3 shows that the average level of clearing in agriculture before 2004 was 21,600 hectares per year and has dropped to 16,700 per year since 2004. Ongoing monitoring of the woody vegetation change in future years will provide further data which will reveal the impact of the Act and enable a more precise measurement of the rate of change of woody vegetation.

Figure 3: Woody vegetation change (1998 to 2008)

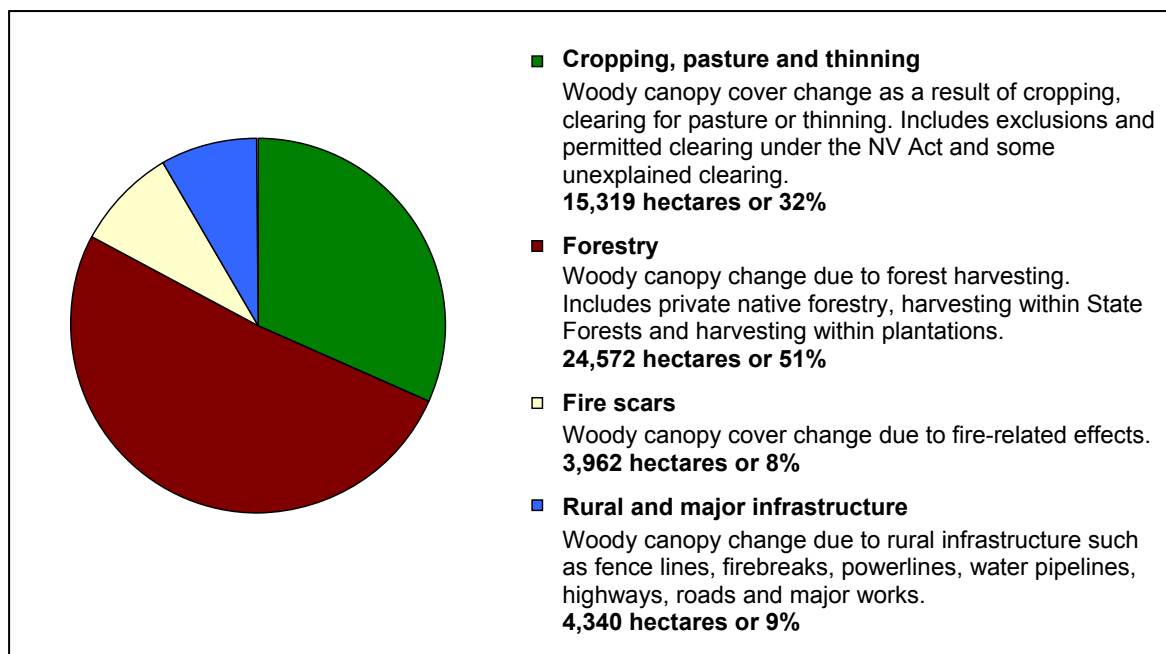


Source: DECCW data, 2009

Woody vegetation change 2007 to 2008

There was a total reduction in the area of woody vegetation in NSW from 2007 to 2008 of 48,193 hectares (0.06% of the area of the State). The changes were due to forestry operations (where it is assumed that the majority of logged forest regenerates as regrowth forest over the term of a production cycle), clearing for agriculture or infrastructure, and natural processes such as fire. (Figure 4).

Figure 4: Reduction in woody vegetation in NSW from 2007 to 2008



Revegetation and regrowth

The current methodology only measures decrease in woody vegetation cover. It is recognised that there are areas where the woody vegetation cover is increasing, in particular within forestry areas. The increase in woody vegetation cover is more difficult to quantify over a short time-frame. Consequently, a longer time series of Landsat imagery spanning the period 1988–2008 has been acquired by DECCW and will be analysed to map increasing woody vegetation cover.

Compliance and enforcement

DECCW is responsible for implementing a credible compliance and enforcement framework for native vegetation, both to protect the environmental values of native vegetation and to ensure that landholders who comply with the law are not disadvantaged. DECCW undertakes this role through community engagement, strategic investigations, appropriate enforcement actions, and targeted compliance campaigns.

Table 2 includes a summary of key enforcement and compliance statistics from the *NSW Annual Report on Native Vegetation 2008*. This report can be viewed at www.environment.nsw.gov.au/resources/nativeveg/09523arnv08.pdf.

Table 2: Key enforcement and compliance actions issued in 2008

Legal directions	
Stop work orders issued	2
Remedial directions issued	4
Notices to produce information issued	51
Advisory and warning letters	
Number sent	103
Prosecutions	
Commenced	10
Convictions	4
Penalty notices	
Number issued	8

Source: NSW Annual Report on Native Vegetation 2008, DECCW

Suspected illegal clearing is detected via reports to DECCW's Environment Line (Ph: 131 555) and information gathered by remote sensing (such as aerial photographs and satellite imagery – see Figure 2). This intelligence is analysed based on risk of harm to the environment and ongoing deliberate contravention, to identify trends and patterns of clearing and to identify geographic areas or issues where compliance activities should be focused. When illegal clearing is identified, DECCW selects the most appropriate regulatory response from a range of tools, such as prosecutions, penalty notices, stop work orders, remedial directions, notices to produce information, and warning and advisory letters.

DECCW actively promotes compliance by assisting the community to understand and meet their legislative obligations. For example, DECCW has commenced a staged education campaign. The first stage targeted clearing contractors and, stock and station agents. Further stages will target land developers, local councils, utility companies and the Rural Fire Service.

3.3. Protecting native vegetation of high conservation value

The third object of the Act is **to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation.**

The forests, woodlands, grasslands and other vegetated landscapes of New South Wales are important for a healthy environment and society. Native vegetation controls erosion, land degradation and discharge of salinity into rivers, and provides habitat for a wealth of unique flora and fauna. It is now understood that the vast amount of carbon stored in native vegetation makes a significant contribution to moderating climate change.

As a result of the NV Act, between 2006 and 2008 over 3000 hectares of native vegetation across the State were conserved through in-perpetuity PVPs. This land complemented other measures taken by the NSW Government to protect native vegetation of high conservation under other Acts. These measures included significant

additions to the public reserve estate of national parks and flora reserves and additional private conservation areas under voluntary conservation agreements, conservation covenants and wildlife refuges.

3.4. Improving the condition of existing native vegetation and encouraging the revegetation and rehabilitation of land

The fourth object of the Act is **to improve the condition of existing native vegetation, particularly where it has high conservation value.**

The fifth object of the Act is **to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation.**

As a result of the NV Act, between 2006 and 2008 the condition of over 1.3 million hectares of native vegetation across the State was improved. This includes land approved for management under invasive scrub PVPs and areas approved for management under thinning to benchmark PVPs.

The NSW and Australian governments have delivered significant funds to restore degraded vegetation across the State. Over \$120 million over four years has been provided through regionally based CMAs in incentive payments to landholders to help restore native vegetation on private property. These on-ground works enhance native vegetation extent and condition through activities such as stock exclusion, new plantings and weed control.

Further, each CMA, in partnership with local governments and other agencies, works with local community groups, Aboriginal communities, and industry to ensure that regional communities have a major voice in land management. DECCW collaborates with CMAs through the provision of expert advice and support.

As a result of the NV Act, between 2006 and 2008 about 267,900 hectares of native vegetation across the State were restored or rehabilitated. This land included:

- land incorporated into incentives PVPs (226,620 hectares);
- land incorporated into PVP offsets (18,320 hectares);
- natural regeneration (excluding invasive native species (22,930 hectares).

Question 2: NV Act objectives

Are changes needed in the mechanisms and approaches used in order to achieve the Act's objects?

4. Overview of provisions of the NV Act

The previous section dealt with the objects of the NV Act. This Section addresses the provisions in the Act that are intended to achieve these objects.

4.1. Land excluded from operation of the NV Act and definitions

Part 1 of the NV Act includes the objects (addressed in Section 3 of this paper), definitions and land excluded from operation of the Act. As noted in Section 2.1 of this paper, land excluded from the operation of the NV Act includes the national park estate, areas declared critical habitat of threatened species, State forests, the Sydney metropolitan area and other land zoned for residential, township, industrial or business purposes under an environmental planning instrument.

Part 2 of the Act identifies key concepts and definitions used in other parts of the Act including native vegetation, regrowth, protected regrowth and routine agricultural management activities.

Question 3: Definitions and key concepts

- a) Are the definitions and key concepts in the Act still valid?
- b) Are there additional concepts that should be defined in the Act?

4.2. Regulating the clearing of native vegetation

Part 3 of the NV Act regulates the clearing of native vegetation. Under this Part, clearing of native vegetation requires approval unless the Act specifically states that approval is not required.

Approval is given in the form of a PVP or development consent, and is only given if the clearing will improve or maintain environmental outcomes, as determined in accordance with clause 26 of the Native Vegetation Regulation 2005.

Part 3 lists a number of classes of clearing and activities where approval is not required. These are broadly categorised as:

- excluded clearing, for example, clearing that is authorised under other legislation such as the *Rural Fires Act 1997*
- permitted clearing, for example, clearing of certain regrowth and groundcover
- permitted activities, for example, clearing required for routine agricultural management activities.

These three classes of clearing that do not require approval build flexibility into the Act to enable farmers and other land managers to continue carrying out their existing activities. The NV Act made it very clear what classes of clearing do not require consent. This was an important improvement over its predecessor, the *Native Vegetation Conservation Act 1997*.

Approval to clear native vegetation in urban areas does not require approval under the NV Act as stringent procedures administered by local councils (under the *Environmental Planning and Assessment Act 1979*) apply in those areas. However, rural residential developments involving clearing of remnant vegetation or protected regrowth do require consent under the NV Act. In some peri-urban areas (i.e. where not zoned for urban

purposes) some developments require consent from local government and the Department of Planning under the Environmental Planning and Assessment Act and the NV Act.

Question 4: Excluded clearing

- a) Are these categories appropriate?
- b) Are changes needed?

Question 5: Permitted clearing

- a) Are these categories appropriate?
- b) Are changes needed?

Question 6: Permitted activities

- a) Are these categories appropriate?
- b) Are changes needed?

4.3. Property vegetation plans

Part 4 of the Act deals with property vegetation plans (PVPs). It details the contents of PVPs and processes for submission and approval of PVPs.

PVPs can be used to:

- certify existing native vegetation practices as in accordance with current laws
- provide access to incentives for on-farm conservation or native vegetation ('incentives PVPs'), or
- give approval for landholders to clear remnant vegetation or protected regrowth, if the proposed clearing will maintain or improve environmental outcomes ('clearing PVPs').

The maximum period for the provisions in a PVP that allow clearing is 15 years. Clearing PVPs must be registered on title, and in so doing, bind future owners of the land to the management actions.

CMAs are responsible for assessing and approving clearing proposals using the EOAM to assess the positive and negative aspects of different management plans and activities.

Question 7: Property Vegetation Plans (PVPs)

- a) Are there other uses PVPs should be put to?
- b) Is the 15-year period of clearing PVPs suitable?

4.4. Enforcement

It is important that the NV Act can be effectively enforced to ensure the credibility of the native vegetation management framework, and to provide a level playing field for all under the law. Part 5 of the Act covers enforcement provisions such as appointment of authorised officers, powers of entry and inspection, powers to obtain information, stop work orders, remedial directions, penalty and evidentiary provisions.

Responsive regulation

DECCW uses a range of tools to respond to specific instances of native vegetation clearing such as stop work orders, remedial directions, notices to provide information, and warning and advisory letters.

Strategic enforcement

Strategic enforcement shows DECCW's support for the land managers that stay within the rules.

Strategic investigations, penalty notices and prosecutions are used to demonstrate to the regulated community that DECCW is committed to identifying and responding to illegal clearing.

Investigations and enforcement

DECCW receives reports of native vegetation clearing through Environment Line and also acquires satellite images and aerial imagery to identify clearing of native vegetation. In 2008, DECC identified two instances of clearing in progress, and immediately issued stop work orders to prevent further damage. DECC issued four directions to remediate some of the harm caused by illegal clearing. During investigations throughout the year DECC issued 51 notices to produce information, which provide an indication of the regulatory effort of DECCW's compliance investigators.

DECC commenced ten native vegetation prosecutions and secured four convictions during 2008. DECC also issued eight penalty notices, which carry a fine of between \$1100 and \$5500, as well as 103 formal warning and advisory letters.

Question 8: Enforcement

- a) Are the provisions for enforcement in the Act effective?
- b) Is the range of regulatory tools adequate and comprehensive?
- c) Are there additional regulatory tools that could be included under the Act?
- d) Are the provisions in relation to evidentiary provisions and penalties in civil and criminal proceedings, effective and in line with current practices?

4.5. Miscellaneous provisions

Part 6 of the Act contains provisions to cover issues such as the making of regulations, serving of notices and delegation of powers and functions. It is through the provisions related to delegations that CMAs are empowered to assess and approve PVPs and other activities identified by the Minister. It is through the provisions for making regulations that the Government is able to continue to refine and develop the management of the Act.

Question 9: Miscellaneous provisions

Are the miscellaneous provisions appropriate?

4.6. Schedules

Schedule 1 provides a list of types of land that are excluded from the operation of the Act. These include national parks and other conservation areas, state forestry land and urban areas. In each of these cases, other legislation is in place to conserve native vegetation and so the NV Act is considered unnecessary to apply.

Schedule 2 provides savings and transitional arrangements that were required from the repeal of the *Native Vegetation Conservation Act 1997* which the NV Act replaced.

Question 10: Schedules

Are changes required regarding the Schedules to the Act?

Acronyms

CMA	Catchment Management Authority
DECCW	Department of Environment, Climate Change and Water NSW
EOAM	Environmental Outcomes Assessment Methodology
NV Act	Native Vegetation Act 2003
PVP	Property Vegetation Plan
SLATS	Statewide Landcover and Tree Survey

www.environment.nsw.gov.au