

Minister for the Environment
Native Vegetation Regulation Review
Facilitator's Final Report

25 March 2013

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Executive summary

Joe Lane was appointed as the facilitator to provide advice on ways of improving the native vegetation management system including the *Native Vegetation Regulation 2005*. The terms of reference considered that recommendations will:

- Maintain the environmental protection standard prescribed by the Native Vegetation Act 2003 (NV Act)
- Reduce administrative and other costs to landholders
- Place greater trust in farmers by exploring options for a self-assessment based system where codes of practice are maximised
- Streamline native vegetation assessment processes
- Rationalise dual consents
- Encouraging voluntary compliance

The facilitator prepared a Discussion Paper on major issues identified following a public call for submissions in 2012. The paper was the basis for individual discussions by the facilitator with targeted stakeholders held in February 2013. These recommendations consider feedback from those discussions.

There are 40 recommendations for priority reform directions and associated supporting reforms to native vegetation management. Major recommendations include:

1. Self-assessable codes for certain types of clearing activities

Self-assessable codes for clearing considered to be low risk, including:

- clearing of isolated paddock trees
- clearing of invasive native species at a paddock scale
- thinning of native vegetation

It is considered that the codes would require pre-clearing notification and record keeping requirements and would not result in a change of land use.

2. Increase focus on sustainable management of grassland

- clearing of feral native species in grasslands

3. Streamlined assessment for certain types of clearing activities

- clearing of scattered trees and small clumps
- clearing of very small areas
- clearing invasive native species (as per the draft *NV Regulation 2012*)

4. Supporting reforms

- With the introduction of Local Land Services, establish an improved extension and governance framework for native vegetation management focussed on supporting sustainable agricultural production with better access to information via user-friendly on-line services
- Provide more timely determination of property vegetation plans (40 days for streamlined assessments) and improve mapping products that will enable regional assessments where appropriate
- Maintain effective compliance approaches that optimise voluntary compliance and include appropriate audits
- Conduct research into the benefits and costs of agricultural development in areas of high conservation value

2. Introduction

2.1 Background

In November 2012 Joe Lane was appointed as the Facilitator to re-engage with key stakeholder groups and agencies and provide advice on ways of improving the native vegetation management system including the *Native Vegetation Regulation 2005*, the governance structure of native vegetation management in New South Wales, as well as service delivery and extension models.

The Terms of Reference (ToR) envisaged that the project would involve a series of staged activities and accompanying reports leading up to a final recommendations report. A Discussion Paper was prepared and circulated to targeted stakeholder groups. This paper guided meetings held in February 2013 with individual stakeholder groups.

This report summarises the outcomes of the stakeholder feedback and provides recommendations on opportunities to improve native vegetation management. This review is occurring at the same time that other reviews/changes are occurring which are likely to impact on the Regulation including the introduction of Local Land Services (LLS) and review of the Planning system.

2.2 Terms of reference

The Terms of Reference for the facilitator were to:

1. Facilitate discussion between key stakeholder groups, relevant agencies, Catchment Management Authorities and the Natural Resources Commission to identify the issues that require consideration in developing a new regulatory framework;
2. Consider stakeholder and community submissions received during the consultation process;
3. Examine interstate systems (including any proposed changes to those systems) to ensure relevant best practice approaches are incorporated into NSW legislation;
4. Recommend changes to the *Native Vegetation Regulation 2005* and necessary implementation measures including ways to improve service delivery;
5. Any other matters that the Facilitator considers should be included in advice back to Government.

Consistent with the objectives of the Regulation review, the Facilitator was required to recommend ways to improve the current Regulation that will:

- Maintain the environmental protection standard prescribed by the Native Vegetation Act 2003 (NV Act)
- Examine whether the regulatory regime is delivering economically efficient outcomes and, consistent with the Government's legislated and policy position, reduces the burden of unnecessary regulation and red tape, while increasing flexibility and maximising benefits to NSW stakeholders. This includes, but is not limited to, exploring means of:
 - a. Reducing administrative and other costs to landholders
 - b. Placing greater trust in farmers by exploring options for a self-assessment based system where codes of practice are maximised
 - c. Streamlining native vegetation assessment processes
 - d. Rationalising dual consents
 - e. Encouraging voluntary compliance

- Not jeopardise biodiversity certification of the native vegetation reform package conferred under the Threatened Species Conservation Act 1995.

The Facilitator was required not to directly review the content of the Environmental Outcomes Assessment Methodology (EOAM) however, general observations and conclusions should be made where necessary.

Given the less wide-ranging nature of views expressed by submissions related to Private Native Forestry (PNF), changes to the PNF Code and PNF-related amendments to the Regulation will be progressed separately.

3. Summary of stakeholder consultation

Meetings were held in February 2013 with representatives from the following stakeholder groups:

- Natural Resources Commission (NRC)
- NSW Farmers Association
- Nature Conservation Council, Total Environment Centre, Environmental Defenders Office
- Landcare
- Local Government and Shires Association
- Catchment Management Authorities, Department of Primary Industries, Department of Planning & Infrastructure.

Participants had received a Discussion Paper prepared by the facilitator well in advance of the meetings and this paper was used to guide feedback. Additional supporting documents with extra details on the major issues were distributed at the meetings to aid discussion. Following is a brief summary of the feedback.

3.1 Discussion Paper

The Paper was generally considered to capture the main issues concerning regulation of native vegetation and provided useful guidance to stakeholders to provide feedback on the main topic areas. Three areas that stakeholders considered could have been included were:

- The fact that the current *Native Vegetation Act* (Act) and Regulation have evolved over time and have replaced past legislative approaches that were considered to have failed.
- Poor awareness of clearing provisions under the current Regulation results in perceived rather than real obstacles to property management
- The paper did not canvass repeal or major amendments to the Act especially in the context of landholders bearing the cost of public good outcomes, and that socio-economic outcomes were not considered. (The ToR precluded this from being a major focus at this stage).

Feedback summaries of the major issues were as follows:

3.1.1 Risk-based approach

Currently clearing can legally occur if it is a Routine Agricultural Management Activity (RAMA) or via approval under a Property Vegetation Plan (PVP). The draft *Native Vegetation Regulation 2012* includes a Ministerial Order proposal to provide a middle ground for medium risk activities. Feedback included:

- Supportive of the concept although with reservations that the self-assessment approach assumes landholders have good knowledge of species identification and appropriate management

- Less support if the process leads to intensification of land use (eg grazing to cropping) without proper assessment
- Potential activities include clearing of paddock trees in cultivation/irrigation, INS, thinning
- There will need to be a transparent mechanism for differentiating risk levels and how to address the 'improve or maintain' provisions in the Act and consequences for other legislation (eg TSC Act)
- In the absence of prescribed offsets for individual landholders, whether offsets can be provided in Catchment Action Plans (CAPs)
- Can any limitations/conditions included in a Code of Practice (CoP) be enforced after the clearing event
- General agreement that self-assessment approach requires strong compliance/audit approach
- The draft Regulation includes a public consultation period for Ministerial Orders. The NRC supports this approach and considers it need only be consulted on more substantive, strategic issues.

3.1.2 Managing grasslands

Some considered that grasslands should not be captured within the Act because of the continually changing nature and composition of grasslands in response to variable climatic events irrespective of grazing pressure. General feedback included:

- Management of grasslands requires timely adaptive responses to species composition (weed control, re-seeding, pasture cropping) which can be jeopardised if formal assessment is required that involves a lengthy approval process
- It may be more appropriate to restrict regulatory action to iconic sites/communities that require specialist input
- Any relaxation of regulation should be limited to the continuation of current land use and should not lead to a change from predominantly grazing to cropping unless a full assessment is completed.

3.1.3 Rationalising of dual consent requirements

There was widespread support for removal of dual consent in particular for expanding the current RAMA for Crown Land infrastructure works so that it also applies to works undertaken by councils on public land and operations land.

With respect to expanding the current list of land use zones excluded from the operation of the Act, stakeholders were hesitant until the outcomes of planning review and Standard Instrument zones is known. Of major concern was the provision of RAMAs to the R5 (large lot residential) zone in coastal areas.

It is important to recognise the distinction between the duplication of clearing consent requirements compared to consent for a particular development (eg greenhouse construction) being provided by one authority but conditional on satisfying the native vegetation requirements administered by LLS.

3.1.4 Monitoring and compliance

As stated in section 3.1.1 support for relaxation in regulation was conditional on having suitable monitoring, compliance and audit arrangements in place. This included the responsibility of landholders to keep records and/or notify of the intention to clear. The mechanism of how this would occur needs to be further explored, including:

- The extent, format and length of time for records

- The process for notification (if any) including whether notification is required for each clearing event or whether a single notification can capture multiple clearing events throughout the year
- Whether any approval is required and if so what is the format of the approval. It is considered that 'deemed' approval by LLS in the absence of a response is not supported for legal reasons. Also, if LLS is required to formally approve it is likely that an assessment would be required and therefore would be little different to a PVP.
- LLS is likely to be involved in monitoring in the role of assisting landholders to achieve outcomes. It is considered that random audits could be conducted by OEH.

3.1.5 Service delivery and extension

It was recognised that many of the current issues raised by landholders were due to

- a perceived if not actual delay in the PVP approval process
- a lack of awareness of the various exemptions within the legislation that enables effective land management (eg control of weeds, clearing of regrowth).

It is important that both of these issues are addressed (service level agreement, appropriate extension) but there is a concern that the move to LLS and potential reduction in the number of technical and extension staff will not support this being achieved.

3.1.6 Process for approving changes

The draft Regulation proposed that Ministerial Order RAMAs would require a public consultation phase prior to gazettal with no referral requirement to the NRC. For amendments to the EOAM, a public consultation phase is also proposed and the Minister may provide a copy to the NRC and request advice.

While some considered the NRC should take a more active role in the approval of the documents, the NRC itself in a written response to the Discussion Paper considered its role should be more on substantive, strategic issues.

3.1.7 Definitions/consistency

Stakeholders provided specific examples within the draft Regulation of the need for clarification and consistency throughout as well as identifying legitimate land clearing activities by councils that currently do not have exemptions (eg gravel pits, management of community land). Stakeholders provided advice on how these anomalies could be corrected.

3.1.8 Future option - regional approach using mapping

The use of mapping to assist in the definition of protected native vegetation areas was supported but there was an acceptance that the current quality of mapping was not of sufficient standard for its sole use in decision making, especially for landholder self-assessment of clearing requirements. In addition, mapping of groundcover was problematic compared to woody vegetation.

There were mixed responses to the usefulness of a regional approach to vegetation management as this would require a 'lines on maps' approach that could cause division in the community compared to a merit-based individual assessment (whether self-assessment or otherwise).

Despite this, development of better mapping tools was supported especially if this could be done on a priority basis (eg clearing 'hotspot' region, high conservation grasslands).

Following is a list of priority reform directions (section 4) and supporting reforms (section 5) for further targeted consultation.

4. Priority reform directions

The following reform directions have been identified as priority areas for effort over the short-term. The foundation for each reform direction is an approach that focuses on lifting regulatory burden, delivers a sensible, balanced and effective regulatory regime and encourages good land management practices.

The scope of consideration of regulatory and non-regulatory options in many cases is limited because of the existing powers of the *Native Vegetation Act 2003*. Communication and extension activities will be essential to the reforms achieving the required outcomes. This is discussed further in Section 5 – Supporting Reforms.

4.1 Priority reform 1: Introduce self-assessable codes for certain types of clearing activities

Opportunities exist to reduce the regulatory burden on landholders and encourage appropriate vegetation management practices and at the same time reduce impediments to adopting more efficient agricultural systems.

Self-assessable codes provide an alternative way for landholders to undertake low impact clearing activities. An approval under the *Native Vegetation Act 2003* would not be required for works performed under a self-assessable code if completed within the code's restrictions. However, notification and record keeping requirements would apply.

Notification and record keeping serves a dual purpose:

1. provides documentary evidence that the clearing was legally undertaken in the event that a complaint is received by the Office of Environment and Heritage or the Local Land Service
2. provides a mechanism by which Government can explain changes in vegetation cover.

Self-assessable clearing activities must comply with the applicable code. Before proceeding, the landholder will be responsible for ensuring the proposed clearing will comply with the code. If a landholder is unsure that their clearing proposal will comply or is unclear of the requirements of the code, the advice of the Local Land Service should be sought.

Where proposed clearing activities cannot comply with the code, the clearing activity may still be allowed under a property vegetation plan.

Self-assessable clearing activities have limited potential for impact on the environment due to the minor or low risk nature of the activities authorised under a code. Types for clearing activities that are considered to be low risk and therefore self-assessable are:

- clearing of isolated paddock trees
- clearing of invasive native species
- thinning of native vegetation

Clearing carried out under a self-assessable code must not result in a change of land use.

Recommendation 1:

Amend the *Native Vegetation Regulation 2005* to extend the RAMAs in section 11(1) of the *Native Vegetation Act 2003* to include clearing of isolated paddock trees in areas that have been previously cleared for permanent or rotational cropping.

The *Native Vegetation Act 2003* defines broadscale clearing to mean the clearing of any remnant native vegetation or protected regrowth.¹ The definition includes the clearing of single trees. Consequently, unless otherwise exempt the clearing of a single tree requires approval under the *Native Vegetation Act 2003*.

¹ Section 8 *Native Vegetation Act 2003*.

The *Native Vegetation Act 2003* contains a number of exemptions that permit the clearing of single trees without approval. These include clearing in the course of carrying out a routine agricultural management activity (RAMA). RAMAs are defined in section 11 of the NV Act and include the construction, operation and maintenance of rural infrastructure and the collection of firewood (except for commercial purposes). The *Native Vegetation Regulation 2005* contains an expanded list of RAMAs including, obtaining construction timber.

Despite the above, the *Native Vegetation Act 2003* is regarded as presenting an impediment to adopting more efficient cropping systems.

Paddock trees provide valuable resources and are a visually defining feature of the agricultural landscape. At a regional level, paddock trees are important for the conservation of some vegetation communities (for example, White box - yellow box - Blakely's red gum grassy woodlands and derived native grasslands).

However in heavily cultivated and irrigated landscapes, single, isolated trees are subject to intense pressure from the surrounding land use and their survival is limited. In such instances, removal of the tree to facilitate the adoption of more efficient conservation farming systems may be justified given both production and environmental efficiency outcomes.

It is considered that there will need to be certain limitations such as:

1. The need for a pre-clearing notification and record keeping requirement.
2. To assist in defining the term *isolated*, the code should be limited so that the RAMA does not authorise the clearing of trees that have connectivity values. This could be determined by prescribing a distance from other trees. Regional variance in vegetation cover needs to be considered.
3. To ensure that the RAMA is not used excessively, the code could include a limit on the number of trees in proportion to paddock size that can be cleared per year, with a requirement for landholders to maintain clearing records.
4. The code could include a requirement for offsets or other management actions (including protection of existing vegetation elsewhere on the property).
5. To ensure that the RAMA does not result in the removal of significant habitat features, the clause could be limited so that the RAMA did not authorise the clearing of hollow bearing trees of a specified size that are habitat components for a significant species. Specified tree size restriction could be the diameter at breast height over bark (eg. the mid-Lachlan regional vegetation management plan prescribed a diameter at breast height over bark of more than 35 centimetres). Significant species could be identified through Catchment Action Plans or alternatively prescribed via the Regulation.

Recommendation 2:

Amend the *Native Vegetation Regulation 2005* to extend the RAMAs in section 11(1) of the *Native Vegetation Act 2003* to include the clearing of invasive native species.

It is considered that there will need to be certain limitations such as:

1. The need for a pre-clearing notification and record keeping requirement.
2. The clause would be similar intent to clause 36 of the public consultation draft *Native Vegetation Regulation 2012*.
3. The clause would require that the clearing must be in accordance with a code for self-assessment or other similar approach (for example, ministerial order).
4. The code may contain standards that restrict how clearing may be carried out including: conditions as to the time of year in which clearing may or may not be undertaken, allowable methods of clearing, and maximum area of clearing.

5. Self-assessable clearing activities permitted under the invasive native species clearing code should include; management burning, clearing individual plants with no disturbance to groundcover, clearing individual plants with minimal disturbance to groundcover, clearing plants at paddock scale with nil to minimal disturbance to soil and groundcover, short term cropping using direct drill technology.
6. The code should set a standard that ensures once an area has been cleared, there is still a mosaic of native vegetation states across the landscape.

Recommendation 3:

Amend the *Native Vegetation Regulation 2005* to extend the RAMAs in section 11(1) of the *Native Vegetation Act 2003* to include the thinning of native vegetation.

It is considered that there will need to be certain limitations such as:

1. The need for a pre-notification and record keeping requirement.
2. The clause would be similar intent to clause 36 of the public consultation draft *Native Vegetation Regulation 2012*.
3. The clause would require that the clearing must be in accordance with a code for self-assessment or other similar approach (for example, ministerial order).
4. The code may contain standards that restrict how clearing may be carried out including: conditions as to the time of year in which clearing may or may not be undertaken, allowable methods of clearing, and maximum area of clearing.
5. The use of chaining or roping should not be permissible under the thinning code.
6. The code should set a standard that ensures once an area has been thinned, it still contains vegetation of different densities.

4.2 Priority reform 2: Increase focus on sustainable management of grassland

Well-managed native grasslands provide a range of benefits to the agricultural industries of NSW. Well managed native grasslands also provide biodiversity benefits in a productive grazing landscape. Grasslands, native or non-native, play a major role in limiting soil erosion, improving water penetration into soils and adding organic matter that improves moisture holding capacity and plant growth. High quality areas of native grasslands are becoming very rare and therefore have high conservation value.

In some cases, the details in the *Native Vegetation Regulation 2005* do not support landholders automatically proceeding with existing rotational farming. For example the continued management of large areas of native grasslands, such as in the Monaro region, which have traditionally been used for agricultural practices, may require approval by the catchment management authority. This is not the intent of the *Native Vegetation 2003*.

The review is an opportunity to build an effective partnership between government and graziers. This could be done by increasing the flexibility of native grassland management allowed by *Native Vegetation Regulation 2005*.

Recommendation 4:

Amend the *Native Vegetation Regulation 2005* section 17 (2) to enable the listing of specified native species as a feral native species to be cleared under a RAMA, without the need for the species to be outside of its natural range on the land or in the area for which it is to be listed.

The relevant catchment management authority must recommend the listing of the species as a feral species for that land or area. The targeted feral native species are those with poor

livestock grazing attributes (eg. low palatability or digestibility) or with undesirable features (eg. seeds or awns that cause animal welfare issues). Examples include spear grass (*Stipa* and *Heteropogon* spp.) and wire grass (*Aristida* spp.).

As currently provided, the listing may be subject to conditions that restrict how clearing of the species may be carried out including:

- conditions as to the time of year in which clearing may or may not be undertaken
- allowable methods of clearing
- maximum area of clearing

Recommendation 5:

Increase program initiatives including education and advisory services to raise awareness of what can be done in relation to the use of native groundcover and managing environmental weeds (ie. non-native species) under the *Native Vegetation Act 2003*.

Recommendation 6:

Identify grasslands of high conservation significance in Catchment Management Plans. The identification of such areas within Catchment Action Plans can provide a framework for the objectives of individual property planning and including incentive delivery.

Recommendation 7:

Develop management guidelines or other materials to promote best practice for the sustainable management of native grasslands, including best practice grazing management, best practice pasture intensification guidelines, and restoration guidelines.

Recommendation 8:

Continue program initiatives including education, advisory services and incentive delivery to:

- raise awareness of the values of native grasslands
- encourage and support landholders protect and manage native grasslands.

Recommendation 9:

The clearing of native grasslands for long-term, permanent change of land use (for example, conversion from grazing to cropping) or conversion of high condition native grassland to exotic pasture, should continue to be subject to the assessment and approval processes of the *Native Vegetation Act 2003* and require a property vegetation plan or development consent.

4.3 Priority reform 3: Streamlined assessment for certain types of clearing activities

The Environmental Outcomes Assessment Methodology has been reviewed to create faster and simpler assessment for certain types of clearing activities. A property vegetation plan is still required under a streamlined assessment as this instrument provides the best way to:

1. manage risks to the environment
2. secure offsets (where offsets are required).

The benefits of the streamlined assessment process include:

1. the property vegetation plan will be assessed and determined as efficiently as possible
2. the need for further information will generally be avoided
3. the use of standard management actions including offset requirements provides landholders with a greater level of consistency and certainty.

Types of clearing activities that are valid for streamlined processes include:

- Clearing of scattered trees and small clumps
- Clearing of very small areas
- Clearing invasive native species.²

Recommendation 10:

Develop a guarantee of service that requires Local Land Service to make a determination within 40 working days of receiving a fully completed property vegetation plan (see Section 2 for further detail).

This recommendation does not require an amendment to the *Native Vegetation Regulation 2005*.

Recommendation 11:

Develop transparent procedures to resolve disputes arising from the streamlined assessment process and a failure for a Local Land Services not to deliver an assessment on a property vegetation plan assessed under the streamlined process within 40 working days.

This recommendation does not require an amendment to the *Native Vegetation Regulation 2005*.

4.4 Priority reform 4: Greater practicality in changing the regrowth date

The *Native Vegetation Regulation 2005* allows the regrowth date to be changed to a date that is earlier than the relevant date specified the *Native Vegetation Act 2003*³ if the vegetation has been cleared twice since 1950 (or 1943 in the Western division).⁴ This requires landholders to prove two clearing events before a change of regrowth date can be approved.

It is difficult to prove these clearing events because after the initial clearing the land has been kept clear as a result of grazing by sheep and rabbits and continual clearing of regrowth by the landholders. Consequently, the required two clearing events do not occur as distinctly separate and identifiable events.

Additionally, the standard of evidence is high and is heavily reliant on the memory of the existing landholders and an aerial photo history for verification. New landholders do not have the intergenerational knowledge of the property to assist in substantiating the two clearing events thus leaving the often patchy aerial photo history with little context.

The restrictive nature of the current provisions has resulted in them being applied in a very small number of cases, creating considerable frustration among landholders and failing to deliver the original intent of the legislation to provide a legitimate pathway for landholders to manage regrowth when existing rotational farming practices can be proved.

Recommendation 12:

Amend clause 10(a) of the *Native Vegetation Regulation 2005* to give greater discretion to Local Land Services to document evidence of earlier rotational farming practices.

The change of regrowth date via this process is to recognise existing rotational farming. The provision is not to be used to approve a change of land use.

² Note, certain clearing activities may be carried out under a RAMA (see Proposed recommendation 3). Landholders proposing to use other clearing activities or prefer have their clearing activities authorised by a property vegetation plan will be able have their proposal assessed under streamlined assessment processes.

³ Section 9(2) *Native Vegetation Act 2003*.

⁴ Clause 10(a) *Native Vegetation Regulation 2005*.

To ensure that the discretionary power is consistently applied across the State, the Office of Environment and Heritage in consultation with the Department of Primary Industries and Local Land Service should develop guidelines.

Recommendation 13:

Amend clause 10(b) of the *Native Vegetation Regulation 2005* that limits the extent of clearing to be consistent with the outcome of the original clearing.

Clause 10(b) of the *Native Vegetation Regulation 2005* currently states that the regrowth may only be cleared in a manner that is consistent with those earlier rotational farming practices. This requirement does not acknowledge the introduction of modern and efficient clearing methods.

The intent of this clause is to ensure that any clearing maintains a similar outcome as the original clearing and does not intensify or result in a change of land use.

Recommendation 14:

Amend clause 10 of the *Native Vegetation Regulation 2005* to provide for a property vegetation plan to include details of proposals to protect and manage native vegetation.

The current provisions do not provide for the inclusion of measures in a property vegetation plan to protect vulnerable land or vegetation that is of high conservation value (for example, critically endangered ecological communities or threatened species).

4.5 Priority reform 5: Clarify clearing exemptions for existing farming activities and routine agricultural activities

Submissions received during the public consultation phase indicated a lack of understanding by landholders of the legislative exemptions. Many landholders are simply not aware that many of the clearing activities that they wish to undertake are permitted without the need to obtain an approval.

Recommendation 15:

Amend the *Native Vegetation Regulation 2005* to extend the RAMAs in section 11(1) of the *Native Vegetation Act 2003* to include the clearing of regrowth for the continuation of existing cultivation, rotational or grazing practices except, in the Western Division for native vegetation comprising River Red Gum, Belah and White Cypress Pine when any of these is taller than 3 metres.

The inclusion of a RAMA would effectively duplicate the existing provisions in the *Native Vegetation Act 2003* (ie. section 23 of the *Native Vegetation Act 2003* provides for the continuation of existing farming activities).⁵

Recommendation 16:

Amend the provisions in the public consultation draft *Native Vegetation Regulation 2012* as they relate to *rural infrastructure* to:

⁵ Section 23 *Native vegetation Act 2003*:

- 1) The continuation of existing cultivation, grazing or rotational farming practices is permitted if it does not involve the clearing of:
 - a) remnant native vegetation, and
 - b) in the case of the Western Division—native vegetation comprising trees not less than 3 metres high of any of the following species: *Eucalyptus camaldulensis* (river red gum), *Casuarina cristata* (belah), *Casuarina pauper* (belah) or *Callitris glaucophylla* (white cypress pine).
- 2) In this section, existing means existing at the commencement of this Act.

- address definitional concerns that a landholding must be land in the same ownership
- ensure that horticultural activities are encompassed within the definition of rural infrastructure
- limit the types of rural infrastructure permitted as a routine agricultural management activity on small holdings, and on land zoned rural-residential or large lot residential
- ensure that the provision does not facilitate intensification or change in land use.

Recommendation 17:

Increase program initiatives including education and advisory services to raise awareness of what can be done under the *Native Vegetation Act 2003* and subordinate legislation.

4.6 Priority reform 6: Cut red tape, improve provision of local government services and remove ambiguity

With the introduction of the State Environmental Planning Policy (Infrastructure) 2007 many council activities now fall under Part 5 of the *Environmental Planning and Assessment Act 1979* and are consequently exempt from the requirements of the *Native Vegetation Act 2003*. However, some of the provisions of the *Native Vegetation Regulation 2005* and amendments proposed in the consultation draft *Native Vegetation Regulation 2012* continue to create unnecessary red tape for local councils increasing administrative burden, delays and uncertainty in providing local services.

Dual consent scenarios (ie. where a consent under the *Native Vegetation Act 2003* and the *Environmental Planning and Assessment Act 1979*) have also been created and are most likely to be triggered for rural and rural residential subdivision, and rural tourism ventures. In circumstances where rigor in environmental assessment is lacking, dual consent may be warranted.

The consultation draft *Native Vegetation Regulation 2012* has created confusion in landholder obligations to comply with regulatory requirements for the provision of asset protection zones.

Recommendation 18:

Amend the *Native Vegetation Regulation 2005* to extend the RAMAs in section 11(1) of the *Native Vegetation Act 2003* to include the construction, operation and maintenance of infrastructure by a council on public land in the exercise of its land management activities.

The clause should only apply to community and operations land.

Consistent with clause 14 of the *Native Vegetation Regulation 2005* (ie. Crown land infrastructure works), the clause should not authorise the clearing of native vegetation that comprises a threatened species, population or ecological community under the *Threatened Species Conservation Act 1995* or is likely to comprise habitat of such a threatened species; or habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.

Recommendation 19:

Retain clauses 18A(1)(e) and (f) of the *Native Vegetation Regulation 2005* which extends the RAMAs in section 11(1) of the *Native Vegetation Act 2003* to include the construction, operation or maintenance of gravel pits and cemeteries by a council.

Consistent with clause 18A of the *Native Vegetation Regulation 2005*, the clause should:

- not authorise the clearing of native vegetation that comprises; a threatened species, population or ecological community under the *Threatened Species Conservation Act 1995* or is likely to comprise habitat of such a threatened species; or habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*
- ensure that clearing is to the minimum extent necessary, not being more than two hectares of a single area of land
- require arrangements to be put in place that sets aside land to protect native vegetation and that such 'managed areas' be protected in perpetuity. Managed areas should be negotiated and agreed between the council and Local Land Service.

Recommendation 20:

Extend the RAMAs in section 11(1) of the *Native Vegetation Act 2003* to include clearing of asset protection zones around an existing habitual dwelling and non-rural sheds if a current Bush Fire Hazard Reduction Certificate has been issued by the NSW Rural Fire Service.

It should be noted that:

1. The consultation draft *Native Vegetation Regulation 2012* should refer to a Bush Fire Hazard Reduction Certificate instead of the document *Planning for Bush Fire Protection*.
2. Section 100C of the *Rural Fires Act 1997* provides for the carrying out of bushfire hazard reduction works despite the requirements of the *Native Vegetation Act 2003*.⁶

Recommendation 21:

Investigate opportunities with the Department of Planning and Infrastructure through reforms to the *Environmental Planning and Assessment Act 1979* to:

- extend the area of land currently described in Schedule 1 of the *Native Vegetation Act 2003* without weakening the requirement that adequate provision has been made in environmental planning instruments or other statutory instruments for the conservation and management of native vegetation. Current zones that should be investigated include R5, RE1, RE3, SP1, SP3
- exclude clearing authorised under the proposed replacement legislation ensuring that any such clearing is subject to stringent assessment and approval procedures
- streamline processes where dual consent scenarios are likely.

5. Supporting reforms

The Office of Environment and Heritage and Catchment Management Authorities have collaboratively delivered important services to landholders and the broader community including the development of catchment action plans, handling of requests for property vegetation plans,

⁶ Section 100C *Rural Fires Act 1997*:

- (4) Bush fire hazard reduction work may be carried out on land despite any requirement for an approval, consent or other authorisation for the work made by the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act 1995*, the *National Parks and Wildlife Act 1974* or any other Act or instrument made under an Act if:
 - (a) the work is carried out in accordance with a bush fire risk management plan that applies to the land, and
 - (b) there is a bush fire hazard reduction certificate in force in respect of the work and the work is carried out in accordance with any conditions specified in the certificate, and
 - (c) the work is carried out in accordance with the provisions of any bush fire code applying to the land specified in the certificate.

providing extension services, development of assessment tools and supporting guidelines and policies, and undertaking compliance activities. These services are fundamental in achieving the objectives of the *Native Vegetation Act 2003*.

Major reforms are now occurring to ensure that services are more customer-focused and deliver locally prioritised services. The Local Land Services will continue to be responsible for delivering critical native vegetation management services. Proposed recommendations for priority reforms (outlined above) will free up Local Land Service staff to work more closely with landholders to offer greater extension and advisory services.

Drivers for service delivery improvement include the need to:

1. make it easier for landholders to do business with Government
2. provide landholders with better Government services that encourage and support sustainable agricultural management
3. improve access to conservation incentives and management assistance
4. encourage voluntary compliance.

5.1 Proposed supporting reform 1: Establish clear governance arrangements

With the establishment of the Local Land Services, the opportunity exists to establish a renewed and improved governance framework that will better support landholders, and deliver more integrated approach to native vegetation management.

Recommendation 22:

Establish a joint high level Government forum comprising representatives of the Office of Environment and Heritage, Department of Primary Industries and Local Land Services to oversee delivery of the native vegetation program, including the development of key performance indicators and service delivery guarantees.

Recommendation 23:

Utilise the Land and Water Advisory Panel to better facilitate coordinated stakeholder and community advice on native vegetation management.

Recommendation 24:

Convene regular officer level meetings to resolve technical issues such as mapping support. The current role and function of the Native Vegetation Steering Committee could be used.

5.2 Supporting reform 2: Develop clear and simple policies

A key feature of the proposed reforms is the introduction of self-assessable codes for certain types of clearing activities. These codes must be written in unambiguous language, and set clear and concise objectives, standards and management practices.

The Environmental Outcomes Assessment Methodology will be retained to assess those clearing activities that are not self-assessable. The scientific and technical nature of the assessment methodology is difficult for many members of the community to comprehend. A clearer and more easily understood assessment methodology or explanatory guide will assist in addressing the perception that the process for assessment is a 'black box'.

Recommendation 25:

The Office of Environment and Heritage with input from the Department of Primary Industries and Local Land Services will be responsible for the development of relevant policies, self-assessable codes and the Environmental Outcomes Assessment Methodology.

These documents should be prepared in consultation with stakeholders, the Natural Resources Commission and be subject to public consultation.

5.3 Supporting reform 3: Provide better access to information and enable more business to be done on-line

Under recommended regulatory reforms to the *Native Vegetation Regulation 2005*, there is an opportunity to deliver a greater range of services online, simplifying landholder interactions with Local Land Services, and making it easier and quicker to access information and services.

Notification requirements for self-assessable clearing activities could also be delivered through an on-line service.

Recommendation 26:

The Office of Environment and Heritage to develop an online system that:

- simplifies clearing assessment tools
- provides public access to the assessment tools and the scientific data that underpins the environmental assessment methodology.

OEH to collaborate with the Department of Primary Industries to ensure its online system:

- allows for on-line notification of clearing activities under self-assessable codes
- delivers a farmer friendly navigation and inquiry tool.

5.4 Supporting reform 4: Provide timely determination of property vegetation plans, and prompt and accurate advice on self-assessable codes

It is assumed that Local Land Services will provide regulatory services under the *Native Vegetation Act 2003* on behalf of the Minister for the Environment (ie. the granting of development consent and the approval of property vegetation plans).

Landholders are seeking more rapid responses on clearing proposals.

Recommendation 27:

Office of Environment and Heritage, Department of Primary Industries and Local Land Services to enter into a Service Level Agreement that includes a guarantee of service that Local Land Services will:

- contact landholders within 15 working days of initial receipt of a property vegetation plan or self assessable code inquiry
- make a determination within 40 working days of receiving a fully completed property vegetation plan that is to be assessed under the streamlined assessment process, except if additional information is required.

Recommendation 28:

Office of Environment and Heritage to continue to provide training and accreditation of Local Land Service staff in the operation of the *Native Vegetation Act 2003*, including legislative and regulatory changes.

Recommendation 29:

Office of Environment and Heritage to develop a new training package for extension and advisory staff so they can provide specified advice on the *Native Vegetation Act 2003* and changes to the *Native Vegetation Regulation 2005*.

Recommendation 30:

The Office of Environment and Heritage to explore opportunities for the development of third-party accreditation scheme to undertake assessment of property vegetation plans.

5.5 Supporting reform 5: Improve extension and advisory services

Local Land Services have significant experience in providing local extension and advisory services about all aspects of the native vegetation framework to landholders and the community.

Proposed recommendations to introduce self-assessable codes for certain clearing activities will need to be supported by strong extension and advisory services. To ensure voluntary compliance and address understanding of the new regulatory framework, better information and support will be needed.

The introduction of self-assessable codes and streamlined assessment processes for property vegetation plans will increase the capacity of Local Land Services to provide local extension and advisory services to landholders and the community. Services may include:

- an increased investment in whole farm planning and best practice sustainable agriculture
- provision of incentive funding for conservation of native vegetation
- site visits to provide advice on management options
- responding to inquiries via phone, written or electronic media
- development of regionally specific extension materials and delivery processes such as field days and where appropriate in collaboration with other groups such as Landcare.

Recommendation 31:

Local Land Services to develop a program of extension and education to build capacity of landholders in whole farm planning and native vegetation management.

Recommendation 32:

Office of Environment and Heritage to develop a new package of information materials, including a guide to the *Native Vegetation Act 2003* and changes to the *Native Vegetation Regulation 2005*.

Recommendation 33:

Local Land Services to pursue opportunities to work with non-government organisations such as Landcare and NSW Farmers' Association to increase landholder engagement in regional and whole farm planning.

5.6 Supporting reform 6: Maintain effective compliance approaches and optimise voluntary compliance

The Office of Environment and Heritage is responsible for promoting compliance with the *Native Vegetation Act 2003* (except for Private Native Forestry). The Office of Environment and Heritage delivers its native vegetation compliance function through:

- comprehensive procedures and well-trained investigators

- state-wide satellite monitoring and Environment Line reporting
- multi-factor risk management of more than 1000 reports of unexplained clearing annually
- improved investigation quality and completion times leading to a credible level of enforcement
- targeted regulatory and education programs addressing patterns of non-compliance
- transparent annual reporting through the Native Vegetation Annual Report.

With increasing reliance on self-assessment, credible compliance must be maintained. While the majority of landholders will comply, some will not. Successful compliance requires strong education and extension activities to increase landholder confidence about what they can do and to increase voluntary compliance with the legislation.

Recommendation 34:

Undertake targeted joint Office of Environment and Heritage and Local Land Service awareness programs

Recommendation 35:

Establish pre-notification and record keeping requirements for self-assessable clearing activities (see priority reform 1) and consider the role of random audits on compliance

5.7 Supporting reform 7: Develop regional strategies for native vegetation management

It is assumed that regional strategies prepared by Local Land Services will provide guidance on native vegetation management and conservation including spatial identification of priority areas for protection and revegetation through voluntary and/or incentive schemes.

Recommendation 36:

Office of Environment and Heritage to continue to support development of regional strategies by Local Land Services through provision of information and development of regional conservation priorities.

5.8 Supporting reform 8: Improve vegetation information systems

The NSW Vegetation Information System provides users with consistent, reliable and integrated information about NSW vegetation including information on native vegetation classification, flora survey data and access to existing vegetation map information.

Vegetation maps serve multiple purposes including assessment and monitoring of vegetation extent and health, strategic and property-scale planning, and provision of data for the assessment methodology.

OEH has commenced a project to establish agreed specifications to standardise vegetation map specifications. The project will improve alignment with native vegetation tools and threatened ecological community classification and establish consistent map products statewide.

Recommendation 37:

Office of Environment and Heritage to finalise standard vegetation map specifications and identify priority mapping products to provide a sound basis for native vegetation planning.

Recommendation 38:

Office of Environment and Heritage to map priority areas of native vegetation that need protection and revegetation for use by Local Land Services in the development of regional strategies.

Recommendation 39:

Office of Environment and Heritage to use mapping technology (eg Spot 5) to continue to monitor changes to the extent of native vegetation and also expand its native vegetation condition monitoring program to enable more regular updates to the datasets underlying the thresholds within the assessment methodology to better reflect the current status of native vegetation regrowth.

6. Future research

The review has identified the strong preference for some parts of the rural community to undertake broad scale land clearing in order to develop new agricultural opportunities on their land. For example, proposals to convert current grazing land to cropping land using improved conservation farming technology. These types of opportunities are largely prevented by the current Act which effectively prohibits broad scale land clearing where high conservation value bushland exists.

Managing these proposals for land use change should be undertaken within a strategic land-use planning framework and anchored in a sound understanding of likely benefits and costs across a range of social, economic and environmental factors. Currently there is a lack of information on the benefits and costs and further research is required to inform future directions.

Recommendation 40:

Pursue a joint research project between DPI and OEH and potentially CSIRO to better understand the impacts of developing suitable land for more intensive agricultural opportunities. This project would:

- a) articulate the agricultural pressures, risks and perceived opportunities that are driving farmers to propose broad scale land clearing
- b) understand the likely social and economic benefits of allowing broad scale land clearing in these situations
- c) understand the likely environmental costs of allowing broad scale land clearing including costs to third parties