



Native Vegetation Regulation Review
Conservation Policy and Strategy Section
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Submission to the draft *Native Vegetation Regulation 2012*

The Nature Conservation Council of NSW, National Parks Association of NSW, Total Environment Centre and Colong Foundation for Wilderness welcome the opportunity to comment on the draft *Native Vegetation Regulation 2012*.

Our organisations have a long standing interest in the protection of native vegetation, and have played an active role in the development of the existing regulatory framework for native vegetation and for private native forestry.

The *Native Vegetation Act 2003* has played a critical role in reducing the loss of native vegetation in NSW. The extent to which the Act meets its statutory purpose, 'to prevent broadscale clearing unless it improves or maintains environmental outcomes', depends to a large degree on the integrity and scientific rigour of the regulations and assessment methodology underpinning the administration of the legislation. We are strongly opposed to changes to the regulations, Environmental Outcomes Assessment Methodology, or Codes of Practice that undermine the integrity of those instruments are strongly opposed by NCC.

The four areas of significant change in the draft regulation are:

- extension of the types of RAMAs (Routine Agricultural Management Activities);
- streamlining of the EOAM (Environmental Outcomes Assessment Methodology);
- changes to grasslands clearing;
- alteration to the management of Private Native Forests.

This submission addresses two of those matters – the extension of RAMAs and the streamlining of the EOAM. The changes to the management of Private Native Forests and grasslands are addressed in a separate submission.

Of the proposed amendments to the Regulation and to the EOAM, we have significant concerns in regard to the following matters:

1. Extension of the scope of RAMAs to include clearing of "invasive native species" (INS), thinning of native vegetation, clearing of feral native plants and clearing for environmental works provides for an

extensive increase in the amount of clearing that is exempt from assessment under the *Native Vegetation Act 2003*. Landholders will be required to comply with Codes of Practice, with no formal requirement to obtain advice and approval from their local Catchment Management Authority (CMA) This creates significant compliance challenges for government and exposes landholders to uncertainty and potential legal liability. Self-assessment by landholders under these RAMA's is unlikely to improve or maintain environmental outcomes. Clearing for these purposes should be assessed either under the EOAM or in accordance with a policy approved by the Minister under Clause 19 of the draft Regulation – and embodied in a PVP.

2. Providing for minor variations to be made to the requirements of the EOAM so that assessments can be altered to allow the passage of Property Vegetation Plans undermines the integrity of the assessment methodology. We do not consider that certainty can be given that improved outcomes will result by allowing variations which enable PVPs to be negotiated that allow clearing, particularly where the determination that environmental outcomes will be improved or maintained is based on proposed management actions in offset areas.
3. The results from the new streamlined methodologies in the EOAM, for the clearing of three 'low risk' categories of vegetation – paddock trees, small clumps in cultivation, and very small areas – needs to be closely monitored. These remnant native vegetation types perform very important roles in highly modified landscapes and streamlining the assessment of their removal and the required offset areas must attain similar results as the full assessment process. Sufficient value has not been given to the connectivity function that this often isolated vegetation plays as 'islands' of biodiversity in a highly modified landscape. There is little assessment of the potential for that vegetation to recover from its current condition and increase its future habitat value. The assessment of paddock trees in particular does not take into account fauna habitat value other than for threatened species, their potential to become future habitat for threatened species e.g. to develop hollows, nor their connectivity value to other patches of vegetation.
4. The ability of offset areas to immediately meet the habitat values of existing areas of native vegetation is disputable. Those areas where replanting forms a major component of the offset may mean that mature trees are being replaced with plantings that are unlikely to provide the same habitat features for decades. Offsets that do not provide the same extent of mature habitat value as the area to be cleared are not improving or maintaining environmental outcomes. Offsets need to provide at least the same level of biodiversity value before clearance of existing native vegetation is allowed. It is also a concern that the vegetation in an offset site must only support the same suite of threatened species as the native vegetation to be cleared. The offset site should provide the same habitat that is provided for all species that occur in the area to be cleared, not only threatened species.

It is inevitable that environmental standards will decline and significant clearing of remnant vegetation will take place.

Response to the Regulatory Impact Statement

The Regulatory Impact Statement (RIS) canvasses three options to replace the existing regulation – with the RIS preferred option to amend the existing regulation with the proposed regulation –citing administrative and environmental improvements as the primary rationale behind the amendments. It is our belief that the proposed regulation has fundamental flaws and does not provide a satisfactory basis to ensure that the amendments will produce broad-scale clearing that results in improved or maintained environmental outcomes.

The improvements that the RIS has suggested result from the revised regulation include increased flexibility for landholders, reduced assessment times, and reduced administrative costs. Other than an increase in protection of regrowth following Private Native Forestry and improved protection to riparian areas from clearing, the proposed regulation provides little in the way of additional environmental

benefits. The RIS is clear in defining that the main benefits of the draft Regulation are administrative and cost driven. This has led to a significantly increased level of clearing allowed under RAMAs in the proposed Regulation, which have no regulatory oversight other than to self-regulatory codes of practice.

The RIS states that from 2006-2010 approximately 2.6 million hectares of native vegetation were cleared under Invasive Native Species Property Vegetation Plans (PVPs), thinning to benchmark PVPs or Private Native Forestry PVPs¹. During the same period, 430,250 hectares was restored or rehabilitated, i.e. only about 16.4% of land restored or revegetated comparative to that legally cleared under PVPs. The relatively low area actively restored indicates that the primary achievement of the Regulation has not been to benefit environmental values, but rather for agricultural advantage. This is clearly apparent in the proposed regulation, with amendments seeking to improve flexibility for landholders, cut red tape and dual consents, increase efficiency and increase clarity of some provisions.

Healthy, biodiverse landscapes result in more productive agricultural systems. With the onset of climate change and its associated increase in extreme weather events and temperature fluctuations, conserving native vegetation will not only benefit biodiversity, but the livelihoods of farmers and the Australian economy into the future. Yet neither the RIS nor the draft *Native Vegetation Regulation 2012* reflect this knowledge nor is the cost included of the potential loss of further vegetation clearing on biodiversity or agriculture.

The RIS also admits that it is difficult to determine the number of times that clearing is undertaken under a RAMA², with reporting not undertaken on activities exempted from the Act. Although it is advised that many instances of clearing investigated following reporting to the Environment Line were identified as lawful activities³, it is not known how many clearing incidents undertaken under the guise of a RAMA were illegal or improperly carried out. We consider that before extending the type and scale of exemptions from the Act, a notification system must be put in place whereby those seeking to undertake a RAMA activity must notify the local CMA of the location and occurrence of a proposed activity. This is not an onerous requirement, as there is a similar example in the long-standing duty for landholders to notify relevant authorities and neighbours prior to igniting a fire on their property.

The stated intent of the proposed amendments to the Regulation is to entrust farmers to undertake appropriate land management activities by increasing extension activities rather than using existing negotiated agreement provisions such as PVPs. Should the primary amendments of the draft Regulation be adopted, part of its reporting requirements must be that a record of all extension requests (including type) be kept and reported on in the Native Vegetation Report Card. Landowners are often distrustful of government agencies and may choose not to engage with CMA staff if a PVP is not required. The high level of knowledge required to treat many of the natural resource issues covered in the draft *Native Vegetation Regulation 2012*, will mean that if advice is not being sought, there will be a further increase in environmental degradation. We also recommend that the penalties in Schedule 1 be commensurate with the scale of the breach. Penalties should be sufficient to deter wilful non-compliance, and encourage due diligence, particularly in relation to compliance with codes of practice. Failure to maintain an effective compliance regime will result in poorer environmental outcomes, undermine the rule of law and disadvantage those landholders who ensure compliance with their legal responsibilities.

The RIS outlines only a small reduction in costs (\$110,000 annually across all CMAs) due to widening the application of RAMAs comparative to the existing Regulation. We assert that this is a very modest saving when compared to the potential for illegal and unsustainable clearing which may be undertaken due to misunderstanding or misuse of RAMAs. Costs related to investigation and compliance with the new RAMA

¹ Arche Consulting (2012) Proposed Native Vegetation Regulation 2012 Regulatory Impact Statement p8

² Arche Consulting (2012) Proposed Native Vegetation Regulation 2012 Regulatory Impact Statement p11

³ OEH (2011) NSW Annual Report on Native Vegetation p3

provisions have not been included in the cost and benefits attributed to the proposed regulation (Table 16), and we suggest that new funding will need to be allocated to ensure the integrity of the regulation.

The net benefit attributable to the draft regulation is estimated at \$2.63 million over 5 years, or \$526,000 annually, comparative to the existing Regulation. This is not a large financial or administrative gain, and is not proportionate to the significant increase in environmental risk associated with the proposed changes.

Response to Draft *Native Vegetation Regulation 2012*

Draft Clause No	Proposed Provision	Comment
Part 4	Note – function of Natural Resources Commission	Agreement with insertion of this Note, but note that removing existing consultation with the NRC in parts of the draft regulation has weakened their role under this Regulation.
17 17(6)	Amendment of EOAM	Replacing the regulated consultation with the NRC when amending the EOAM, with a public consultation process and only possible referral to the NRC, is a step backwards in providing a scientifically rigorous, transparent methodology. As an independent body the NRC is well placed to guide revisions of the methodology. NCC strongly believes that the NRC’s oversight role should be maintained, with its role in proposing amendments to the Minister maintained. We are not opposed to the proposal to enable minor amendments to the EOAM of the types listed without requirement for public consultation. However there should be wide public notification of the changes.
19 (1)(b)	Exemptions for broadscale clearing for conservation purposes	If broadscale clearing is exempt from the EOAM, unless it falls within legitimate RAMA exemptions, it should be carried out as per a Clause 19 policy regardless of whether the works is for conservation purposes; and embodied in a PVP.
20	PNF code of practice	No change and no objections.
21	Clearing under PVP in accordance with PNF code of practice	Submission coming
22	Minor variation of PNF code of practice	Submission coming
23	Amendment of PNF code of practice	Submission coming
26	Infrastructure buffer distances	There has been no change to the buffer distances, but in our view the buffers for certain types of rural infrastructure are unnecessarily large, particularly in the Western Division (e.g. 40 metre corridor for fences, 30 metre corridor for cables and pipelines). Unless it can be demonstrated that the ‘minimum extent necessary’ rule has been meaningfully and consistently enforced, these buffer distances should be substantially reduced, unless there is a clearly documented evidence base supporting their retention in each case.
26(3)(f)	Existing habitable	The inclusion in the Rural Infrastructure RAMA allowing clearance

26(4)(g)	building asset protection zones	for asset protection zones (APZs) around existing habitable buildings, in accordance with Planning for Bush Fire Protection 2006 (PBP), we believe unintentionally opens up clearance around existing dwellings to unacceptable levels. Instead, implementation of APZs should only be undertaken to PBP specifications when a development application for the existing habitable building has been approved under Part 4 of the EPA Act. Assessment of these APZs is undertaken in conjunction with building bushfire construction levels and other standards. Allowing existing habitable buildings to implement APZs without prior comprehensive assessment of the DA, would mean that existing dwellings, having no construction standards, could undertake APZ clearance up to either 50m or 100m from the building.
26(7)	Introduction of Central Region, Coastal Region and Eastern Central Region	This change of name to the regions creates no objections and we are not opposed to the amendment.
27	Construction timber	<p>The removal of time limits to use timber obtained on a property for the construction or maintenance of rural infrastructure increases the potential for clearance beyond what is needed for immediate construction purposes. It also encourages the stockpiling and selling of excess timber off-site that is cleared under this RAMA. We believe there should be limits on the volume, the size and the concentration of trees that can be felled under this RAMA.</p> <p>We acknowledge that carrying out restoration of the native vegetation on the cleared land with the same or similar species and to the same extent would be difficult to enforce. However, there should be a requirement to allow regeneration of cleared areas for a specific period of time after the clearance.</p>
28	Permanent boundary fences – non-rural infrastructure	We do not oppose including the construction, operation and maintenance of non-rural infrastructure permanent boundary fences (6m max. clearance either side) as a RAMA similar to that for rural permanent boundary fences.
29	Sheds – non-rural infrastructure	There is no objection to including a single shed no more than 100 ² m per landholding that is not non-rural infrastructure. The inclusion as a RAMA of clearance for the asset protection zone around a single shed should only apply to sheds that have been assessed under Part 4 of the EPA Act.
32	Telecommunications infrastructure	Previously the construction, operation and maintenance of telecommunications infrastructure was limited as a RAMA to Crown land only. It has now been extended to include private lands, allowing for unregulated clearance of native vegetation, potentially without the approval of landholders. NCC has concerns regarding the potential for more extensive clearing to allow for new road access to construct and maintain the infrastructure. Maximum clearance distances should be identified in the Regulation (or Code of Practice). It is

		<p>noted that the second highest number (75) of PVP assessments avoided by RAMAs over the next five years is attributed to a reduction in assessments required for telecommunications infrastructure. This alone warrants the preparation of a Code of Practice for works proposed under this RAMA.</p>
33	Feral Native Plant Species RAMA	<p>Although not a new RAMA, the process for listing a species as a feral native plant species has been made less scientifically rigorous with the deletion of the requirement for consultation with the Natural Resources Commission (NRC). A primary function of the NRC is to provide governments with independent advice on natural resource management. Removing consultation with the NRC reduces rigour and creates a less transparent process.</p>
	New RAMAs	<p>We oppose the inclusion of clauses 34, 35 and 36 as a new group of RAMAs that can be undertaken without approval provided a Code of Practice is followed.</p> <p>Under s29 of the Act, PVPs proposing broadscale clearance are not to be approved unless the clearing will improve or maintain environmental outcomes for the following four environmental values: water quality, prevention of land degradation, prevention of salinity and biodiversity. Exempting types of clearing that are deemed to be a low risk to the environment cannot ensure that the clearing will improve or maintain environmental values, because the risk is dependent on the condition and the location of the native vegetation in question.</p> <p>The implementation of these new RAMAs, particularly clearing of INS, has the potential to negatively impact very large areas of native vegetation. Clearance that was reported will no longer require any record-keeping, and reporting will only be done at the coarse scale using satellite imagery. NSW State of the Environment 2009⁴ identified that better collection of information, including approved clearance activities, would improve understanding thus leading to more effective outcomes over the longer term. Exempting clearance activities from approval under RAMAs will result in a less meaningful understanding of the types of clearance being undertaken and their impacts. It will also reduce the opportunity to learn and improve future agricultural practices through adaptive management.</p> <p>Record-keeping should be mandatory for all RAMAs. Record-keeping encourages compliance, and provides CMAs with useful data on the extent of works being undertaken under each of the different RAMAs, and evidence for changes in administrative procedures. It is not an onerous task, and provides written substantiation of the work that was carried out, useful information for present and future landholders, as well as providing data to assist in understanding native vegetation management trends.</p>

⁴ DECCW (2009) NSW State of the Environment 2009

34	Clearing of invasive native plant species RAMA	<p>The inclusion of a new RAMA enabling invasive native species to be cleared in accordance with a Code of Practice is opposed. According to the NSW State of the Environment Report 2011⁵, from 2006-10 inclusive, 2.438 million ha (approx. 5.5% of the 44.3m ha subject to the Native Vegetation Act⁶) of INS PVPs were approved. This level of approval over a relatively short period of time does not suggest that the PVP process is unduly restricting clearing of INS.</p> <p>The RAMA is a blunt instrument which will enable broadscale clearing to occur, which will be largely unregulated and with no reporting required. Apart from comparative satellite imagery there will be no true understanding of the scale of clearing attributed to that undertaken under the RAMA or that which is done illegally.</p> <p>The best practice management guide for INS in the Central West and Western catchments⁷ recommends the following about INS treatment, highlighting the complexity of this management issue and the importance of the current system of implementation of PVPs:</p> <ul style="list-style-type: none"> - ineffective treatment of INS can be worse than no treatment at all (including not following up treatment) - long-term planning is critical for the successful treatment of INS. Total grazing pressure, follow-up treatments and monitoring should all be costed in the initial budget; - due to the time involved in follow-up activities, it is important not to over extend the initial treatment; - different INS species have different responses to treatment. Therefore correct identification and treatment is critical, which can be more challenging when dealing with INS seedlings; - it is important to concentrate on open areas and early stages of INS treatment for both economic benefit and production gain; - INS should be retained in patches and clumps across the landscape, with untreated patches left as buffers between treated areas of INS; - treatment of additional areas requires demonstration that the areas previously treated have recovered adequately, and reapplication to the CMA. - a whole of property approach is essential and management decisions should not be made in isolation. From a biodiversity conservation perspective a mosaic of native pastures, open woodlands and open and denser INS areas provide greater habitat diversity and biodiversity than one vegetation type alone. The areas that are selected for treatment should be based on the biodiversity benefit of treating them, or at the very least considering the biodiversity value of an INS area that is being treated for
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⁵ OEH (2011) NSW Annual Report on Native Vegetation 2010

⁶ DIPNR (2004) Draft Native Vegetation Regulation 2004 Regulatory Impact Statement

⁷ Central West and Western Catchment Management Authorities (2010) Managing Invasive Native Scrub to rehabilitate native pastures and open woodlands. A best management practice guide for the Central West and Western catchments.

		<p>agricultural purposes i.e. if a particular thicket contains threatened species then another thicket should be treated instead.</p> <p>- planning of INS treatments should be undertaken across landscapes and should be planned to encourage a mosaic and support wildlife movement.</p> <p>Additionally, small patches (5 hectares or less in the middle of paddocks) are not acting invasively and are not a significant INS issue. These patches should not be cleared.</p> <p>Allowing burning over considerable areas and clearing of individual plants with nil to minimal disturbance to soil and groundcover as per the draft Code of Practice for the Management of Invasive Native Species in the Namoi CMA will allow considerable areas to be exempt from approval under the Act. The draft EOAM requires an accredited assessor to determine whether a species is an INS species acting invasively, as compared to the draft Code of Practice that allows a landholder to make the same assessment. We do not consider it appropriate that landholders are expected to make this determination without advice and approval from their local CMA.</p> <p>Enabling management burning of INS to be undertaken as per a Code of Practice should require specification of a fire regime that will maximise the re-establishment and regeneration of native vegetation. The draft Code of Practice only specifies area-based restrictions and non-introduction of non-native vegetation as limitations to management burning. Seasonality, frequency and intensity must all be considered when designing appropriate burn prescriptions, and the Code needs to identify broad thresholds for maximising desired regeneration dependent on landscape and vegetation types.</p> <p>Clearing of individual plants with nil to minimal native groundcover disturbance, using methods such as stem injection and ringbarking still provides the potential for considerable numbers of trees to be killed over large areas. However, the remaining dead trees will not be able to be cleared under the RAMA. It is unlikely that burning of dead standing trees will be practical. The Codes of Practice should explain how those remaining dead trees are to be treated. We believe that standing dead trees and fallen logs have biodiversity value and should be retained. Logs and branches can reduce soil erosion as well as protecting grasses and herbage as they become established.</p> <p>Finally, since 2005 only 392 INS PVPS were issued – an average of 61 per year⁸. Only about 20 INS PVPs per year use only management burning or clearing of individual plants with nil – minimal disturbance to soil and native groundcover⁹ i.e. the types of clearing proposed under the INS RAMA. The RIS estimates that this is unlikely to change over the next five years, with only 20 INS RAMAs likely to</p>
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⁸ Arche Consulting (2012) Proposed Native Vegetation Regulation 2012 Regulatory Impact Statement p13

⁹ Arche Consulting (2012) Proposed Native Vegetation Regulation 2012 Regulatory Impact Statement p14

¹⁰ Arche Consulting (2012) Proposed Native Vegetation Regulation 2012 Regulatory Impact Statement p31

		<p>be initiated per year¹⁰. With analysis showing nearly all other INS PVPs utilise these methods as well as additional methods not available under the RAMA, it is estimated there will be few INS RAMAs that will not involve the issue of a PVP anyway, although each INS RAMA undertaken could extend over a substantial area. As the clearing methods able to be used under the RAMA are meant to have a low risk to the environment, it is likely that assessment under a PVP would be at the lower end of costs incurred, and the overall savings will be small – difficult to justify comparative to the potential increase in unregulated clearing.</p>
35	Environmental Works RAMA	<p>The creation of an environmental works RAMA is not supported. There is no evidence that an exemption to remove regulatory barriers to landholders to carry out environmental works is necessary.</p> <p>A code of practice for ecological burning would need to involve an equally or more rigorous assessment process than is currently undertaken under the Bush Fire Environmental Assessment Code, where certificates are issued to landholders to undertake hazard reduction activities. Otherwise, landholders will seek to use the easier RAMA pathway. There is no data showing that landholders are seeking to undertake genuine ecological fire management. Understanding what is required for appropriate ecological burning is complex, and is generally undertaken with input by officers from appropriate land management agencies using the latest scientific literature. Those seeking to undertake burning for authentic ecological benefits are likely to continue to seek assistance in designing, planning and monitoring the biodiversity outcomes of burns. To ensure that burns are truly for ecological purposes, a policy under Clause 19 of the new Regulation is the most appropriate pathway.</p> <p>The existing Clause 28 policies enabling native revegetation, pasture cropping and no kill cropping, and native groundcover rehabilitation contain special assessment provisions for minor clearing for long-term benefits. All policies are limited to specific CMAs.</p> <p>The Clause 28 policies relating to revegetation and rehabilitation are now being transferred to the environmental works RAMA, prescribed by Codes of Practice.</p> <p>We do not support provision of an exemption from CMA approval for these activities, in the absence of evidence that it is required, particularly where a strong process of oversight is not in place. A RAMA does not provide any defence against clearing contrary to a Code of Practice, unless there is a strong regulatory presence supported by effective penalty provisions.</p>
36	Thinning of native vegetation RAMA	<p>We are opposed to a RAMA enabling thinning of native vegetation. In</p>

		<p>the five years 2006-10, thinning to benchmark PVPs accounted for only 2770ha¹¹, with an average of only 6 PVPs issued per annum¹². This does not indicate a large demand. The RAMA requires considerable assessment skills by landholders, as landholders must know whether the vegetation is of a type listed as able to be thinned, ensure that only trees less than a certain DBHOB are removed, and the stem density of the vegetation type remains above a certain stem density per hectare. We believe this complex level of assessment opens up the likelihood for clearing contrary to the Code of Practice.</p> <p>Apart from the potential for unintended removal of native vegetation that does not meet the conditions for thinning, self-assessment by untrained landholders using a Code of Practice such as the draft Thinning to Benchmark Stem Densities in the Namoi CMA Code, may cause loss of particular habitat elements, such as fauna habitat continuity, and change soil and hydrological conditions in unpredictable ways.</p>
37	Making of orders	We strongly oppose amendments to the regulation that weaken the oversight role of the Natural Resource Commission and do not take all measures to ensure Codes of Practice which are scientifically sound.
38, 39	Minor amendment of orders and Publication of orders	We are not opposed to these amendments.
40(2)	Activities on land where a private native forestry PVP applies (excluding critical environmental areas)	We support measures that ensure additional clearing due to RAMAs is not carried out in areas to which a private native forestry PVP applies.
40(4)	Minimum standards for tree retention	We concur with the principle to require the minimum standards for tree retention in the PNF Codes to apply to clearing for rural infrastructure RAMAs in areas covered by PNF PVPs. The circumstances when the Director-General is able to make an order altering those minimum standards should be clearly defined.
41	Activities on land where a private native forestry PVP applies (critical environmental areas)	We support measures that ensure additional clearing due to RAMAs is not carried out in critical environmental areas to which a private native forestry PVP applies.
42	Clearing for dwellings RAMA	Including the clearing of native vegetation as a RAMA when development consent is required under the EPA Act and expanding the types of residential accommodation for which clearing is allowed, is not opposed. However, it is noted that expanding the types of dwellings for which clearance is allowed is likely to increase the incremental clearance and fragmentation of native vegetation.
43	Conservation purposes RAMA	We are not opposed to the provision of an exemption for clearing undertaken in accordance with a conservation agreement declared

¹¹ Arche Consulting (2012) Proposed Native Vegetation Regulation 2012 Regulatory Impact Statement p8

¹² Arche Consulting (2012) Proposed Native Vegetation Regulation 2012 Regulatory Impact Statement p14

		under the listed State Acts and Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i> . However, it is noted that the discretion of the Minister in relation to the conditions of such agreements is broad and relatively unconstrained.
44	Scientific licence RAMA	Provided issuing of scientific licences under the <i>National Parks and Wildlife Act 1974</i> remains only for scientific, educational or conservation purposes, we are not opposed.
46	Clearing of planted native vegetation	We oppose the clearing of planted native vegetation as a RAMA. Many revegetation projects, particularly in the past, have been undertaken without funding assistance. This does not mean the planted native vegetation is not ecologically valuable. Transfer of land title often involves a loss of understanding of past management. Good management involving planted native revegetation should be rewarded with a careful assessment process prior to any removal.
50	Protected regrowth on steep or highly erodible land or protected riparian land.	We are not opposed to the minor amendments.
51	Limitations on the carrying out of RAMAs on protected riparian land	As well as reference to existing RAMAs allowed under this provision, the majority of the new RAMAs described in the Regulation have been added. Riparian land that has been identified as protected in a management plan prepared under this Act should require increased assessment prior to permitting RAMAs to be undertaken. It is not appropriate that RAMAs e.g. clearing of feral native plant species, clearing of invasive native plant species, clearing for environmental works, thinning of native vegetation, clearing for conservation purposes; are allowed in protected riparian zones, where much more sensitive management is often required to maintain very site specific riparian habitat requirements.
52	Clearing of lignum on special category land	No change to this clause is suggested, however it is noted that the distances from infrastructure allowed for clearing of lignum are considerable. Unless a clearly documented evidence base supporting their retention shows the 'minimum extent necessary' rule has been meaningfully enforced in each case, these clearance distances should be reassessed.
53	Natural resource management plans	The inclusion of this clause aiming to improve protection for regrowth, is supported. Providing protection to vegetation which has regrown following legitimate clearance e.g. from planned activities under the <i>Rural Fires Act 1997</i> , removes existing concerns raised by some CMAs. However, it is noted that protected regrowth can be cleared using any RAMA, making available a range of potential clearing mechanisms of protected regrowth that are exempt from the Act.
54	Calculation of percentage groundcover	No change and no objection.

55	Penalty notice offences	No change and no objection
56	Repeal and savings	There is no opposition to replacement of the existing savings and transitional provisions with the general savings provision.
Schedule 1	Penalty notice offences	No change, however we consider more substantial penalties for offences are warranted, particularly in light of the increased loosening of restrictions that is proposed.
Schedule 2	Amendment of Schedule 1 (Clause 14) of the <i>Native Vegetation Act 2003</i>	Includes zones available in environmental planning instruments based on Standard Instrument – Principal Local Environmental Plan, made pursuant to s33A of the <i>Environmental Planning and Assessment Act 1979</i> . There is no opposition from us.

Response to Draft Environmental Outcomes Assessment Methodology

In our submission to the proposed amendments to the EOAM dated 28 November 2011, our support for any streamlining of the assessment methodology was based on two conditions:

1. That the proposed amendments did not result in environmental outcomes being significantly compromised, either by:
 - a. allowing of clearing that would not otherwise have been allowed; or
 - b. substantially increasing the risk that environmental harm that would not otherwise have been allowed will in fact occur; and
2. The amendments will result in a genuine reduction in processing times that could not be achieved by changes in operational or administrative practice.

The inclusion of clearing of paddock trees, small clumps in cultivation and very small areas of native vegetation as “low risk categories” of clearing, which can be assessed by a streamlined methodology because they have predictable offsets has some merit, but only if assessment is correctly carried out over time. The foundation behind streamlining, that it will produce time efficiencies and offer additional flexibility in offset negotiations, is only sustainable if the resulting offset requirements are at least equal to or superior to those resulting from a full assessment. Advice from OEH suggests that testing to date of the streamlined assessment methodologies has produced similar results as full assessments. However, we do not believe that a streamlined assessment process for paddock trees, clumps and small areas should be immediately adopted as the primary methodology. Until actual PVP assessment data has been gathered and assessed across a wide range of vegetation types and landscapes across the State, involving a representative number of current PVP assessment officers across all CMAs, full assessments should be carried out simultaneously with streamlined assessments. Only when this comparative data has been made publicly available, and is able to demonstrate that streamlined assessments provide similar or improved solutions to those of full assessments, should full adoption occur.

Even though these three categories of native vegetation clearing are considered to have predictable offset requirements, clearing of them can still have significant impacts on soil and groundcover integrity, water quality and threatened species habitat and connectivity, particularly as a cumulative effect across the landscape. This is demonstrated by the fact that the occurrence of important habitat for threatened species that cannot sustain habitat loss (i.e. red light species) will mean the exclusion of that vegetation from clearing. Of particular concern is that a high percentage of paddock trees, particularly old

myrtaceous trees (primarily eucalypts) are hollow bearing trees. Loss of hollow-bearing trees is a key threatening process under the *Threatened Species Conservation Act 1995*. They cannot be easily replaced, and all trees with hollow-bearing potential should be excluded from clearing. In some areas, the removal of hollow-bearing trees from the agricultural landscape has caused resident owl populations who used the hollows to be displaced, allowing rodent numbers to dramatically increase and cause significant damage to agricultural, domestic and environmental assets.

Improving or maintaining of environmental outcomes must continue to be the mainstay of any clearance assessment approach and we strongly oppose any further amendments which weaken the objectives of the *Native Vegetation Act 2003*, particularly those that aim to improve the condition of existing native vegetation and to encourage the revegetation and/or the rehabilitation of land with appropriate native vegetation.

It is also noted that the EOAM does not include any assessment of the impact that any clearing may have on the resilience of remaining areas of native vegetation and their ability to sustain biodiversity conservation outcomes in the long term. Incorporating adaptive management into PVP agreements, rather than maintaining them as rigid agreements, would enable management actions to be modified as information on climate change impacts is learned and better understood.

As an outcome to the amendments to the EOAM, and following the stakeholder workshop and field demonstration, we make the following comments.

Section No.	Section Heading	Comment
2.8.1	Special provisions for minor variation	Enabling minor variations to enable assessments which do not improve and maintain environmental outcomes to be altered so that a PVP is approved based on that variation, concerns us, particularly in relation to red light species. The filtering system to identify species that cannot withstand temporary loss is already part of the species credit species assessment process (10.3.3). Once species are identified as unable to withstand temporary loss, we do not think there is sufficient certainty that an improved outcome can be guaranteed by allowing a minor variation to the EOAM guidelines based on proposed management actions in the same region.
2.8.3	Publication requirements for PVPs approved on the basis of minor variations	Full versions of the accredited expert assessments of clearing proposals approved on the basis of minor variations should be publicly available on the OEH website.
2.8.4	Special provisions when using minor variations where assessment is under Chapter 6	We are opposed to the removal of the need to provide reasons and comply with any assessment protocols when certifying a minor variation, and to the requirement to make publicly available the reasons for approval of a PVP assessed under low risk categories of clearing (i.e. paddock trees, small clumps, very small areas).
2.8.5	Minor variation when assessing threatened species that cannot withstand loss	See 2.8.1
3.3.6 (4) & (8)(A)	Total areas which may be cleared	With the inclusion of three categories of INS clearing under the INS RAMA, the total area of individual plants with minimal disturbance to groundcover that can be cleared has increased from 60% of the extent of the INS area on the property to 80%. Previously, there was

		discretionary provision for the CMA to allow a further 20% clearance. We do not consider that an extra 20% allowable in the original clearance is warranted with no assessment of previous regeneration of native groundcover included.
3.3.7	Restrictions on clearing types to be used	We do not believe that endangered ecological communities should be available to any forms of INS clearance.
4	Thinning to benchmark stem densities	The requirement to assess for threatened species no longer applies. We consider that thinning of trees and shrubs can impact on some threatened species and would like justification for the removal of this requirement.
5	Pasture cropping systems	The higher the percentage of native species richness comparative to the benchmark the less likely pasture cropping will improve and maintain environmental outcomes. Although management actions are required in pasture cropping zone PVPs aimed at restoration of native groundcover, there is no guarantee that annual pasture crops will persist and become a greater component over time. Although clearing is limited to 3 occasions over 15 years, the minimum frequency between crops should be defined.
5.2	Improve or maintain test for pasture cropping	We would support setting a lower threshold at which pasture cropping could be used to ensure that areas with moderate to high levels of native species richness were not available for pasture cropping. A threshold >70% would be more suitable than the current level for native species richness of >90%. .
5.3.3	Defining pasture cropping zones	Any areas of vegetation types that are poorly represented regionally should be excluded from pasture cropping, regardless of native species richness.
5.3.5	Assessing native species richness	With plots required every 2ha to be representative, but only a maximum of 10 plots per pasture cropping zone, zones that are larger than 20ha may have fewer and fewer plots as they become larger. With up to 500ha of native groundcover generally allowed per property for pasture cropping, and pasture cropping zones based on different vegetation types, it is possible that some cropping zones may have few plots, and so assessment will be inaccurate. There should be a set number of plots dependent on size of cropping zones. We consider that the greater the native species richness is of benchmark the less reason to jeopardise it by allowing pasture cropping, and the less reason that the groundcover will be improved or maintained by the clearing. The lower thresholds used in 5.3.5 are considered appropriate.
5.3.7	Additional areas under pasture cropping	If additional areas of pasture cropping are to be allowed, there is even more reason to utilise the lower thresholds.
5.3.8	Minimum total groundcover targets	Notification of the CMA should be required if the minimum groundcover levels are not being achieved over the duration of the PVP.
6	Low risk categories of native vegetation clearing	We consider that these three types of native vegetation perform extremely important functions, particularly in landscapes where much of the native vegetation has either been removed or is highly modified. It is important to ensure that Chapter 6 produces equal or

		improved outcomes to the full landscape assessment process.
6.2.1	Improve or maintain test for paddock trees in cultivation	Paddock trees can be important habitat for species other than threatened species, and location in the landscape can cause their removal to have increased environmental impact. Where the vegetation type has a high clearance percent and offset revegetation requirements are high, there will be a considerable time lag between the clearance of paddock trees and growth to a similar stage of replacements. Additional criteria to assess non-threatened species habitat value should be included.
6.2.8	Calculation of offset area	The ability enabled here for an accredited assessor to determine half normal offsets because trees to be removed do not contain key threatened species habitat is opposed. A recent study ¹³ found that as well as providing habitat to a range of fauna, paddock trees help to maintain connectivity between larger patches of remnant vegetation, and a range of other ecosystem services.
6.2.9	Relative value of existing vegetation v relative value of revegetation in offsets	Offset areas where the existing vegetation has a low % of lower benchmark over-storey % foliage cover and therefore the value of revegetation is high, rely heavily on long term security of the offset site to attain its full value. This is a high risk, as the long-term security of offset sites cannot be guaranteed. Although the relative value of the gain associated with offset revegetation may be high, this lack of security means that use of existing vegetation, where its value can be built on with revegetation, should be more highly valued in practice.
6.3.4	Definition of small clumps in cultivation	As with paddock trees, small clumps can be important fauna habitat even though the understorey may be highly modified, and their location provides opportunities for connectivity across cultivated land. The streamlined assessment fails to protect endangered ecological communities, which may comprise remnant components of small clumps, and the clearance of which could pose a significant threat to these listed communities. With the emphasis on red light species requirements in the assessment of biodiversity values, there is potential for the clearing of significant areas of endangered ecological communities where they exist as components of small, isolated clumps. We believe that the assessment of EECs needs to be included in the streamlined methodology.
6.3.9	Calculation of offset areas	The offset area required for cleared areas in Low Condition (5x) compared to those in Not Low Condition (10x) rewards those who have maintained their areas of native vegetation in low condition and encourages poor management of native vegetation. Reversing the offset area requirements would encourage greater consideration as to whether the clearing is really required.
6.4	Clearing of very small areas	The EOAM allows for the clearing of several small separate areas on the one property, provided offset sites have equal or greater

¹³ Gibbons, OP. and M. Boak (2002). "The value of paddock trees for regional conservation in an agricultural landscape." Ecological Management & Restoration 3(3): 205.

		<p>ecosystem credits and red light species are not predicted. Neither the full or streamlined assessments adequately take into account the incremental loss of small areas, particularly those that are in good condition and have not been overly cleared in the past. This is exacerbated by allowing clearing of areas that are contiguous with other vegetation, thus shrinking the size of existing areas of native vegetation and enabling incremental decreases in the value of the remaining vegetation. We suggest that this be clarified by placing a limit on the number of individual small areas that can be cleared on the one property. We oppose the allowance of clearance of very small areas that are contiguous to other areas of vegetation.</p> <p>Assessment of very small areas concentrates on vegetation types and condition, and includes assessment of the clearance at a landscape level (% cover native vegetation within 1000 ha and 100ha). However, it does not assess impacts such as loss of mosaics within vegetation types, or incremental loss of vegetation in different landscape formations e.g. river flats v mid-slopes v hilltops. These values should be included in the streamlined assessment and in Section 10.</p> <p>The streamlined assessment of very small areas allows clearing of EECs in low condition in areas <2ha. The assessment process does not take into account the potential for rehabilitation of low condition EECs, and we oppose any inclusion of EECs in the definition of very small areas.</p>
6.4.5	Determining the condition category of vegetation	Vegetation condition category assessment is undertaken visually in the streamlined assessment, rather than by transect/plot data, as in the full assessment. Visual assessment by different assessors may produce inconsistencies in results, and we would prefer a period where recording of vegetation condition using both methods is undertaken in order to compare results for accuracy.
6.4.8	Determining the type of offset	We have concerns in allowing offset sites to comprise different vegetation types to the vegetation being cleared, provided the offset vegetation supports the same suite of threatened species. It is likely that the requirement for similar threatened species habitat will result in similar vegetation, but if no threatened species occur at the clearing site then the offset vegetation may be quite different. We consider there should be a requirement for offset vegetation to be of a similar type to the cleared vegetation, whether threatened species occur or not.
7.3.4	Management of riparian zones to maximise effectiveness	If clearing is undertaken within riparian Management Zone B then the capacity for permanent exclusion of domestic livestock from Zones A and B is an important management action to apply in order to ensure effective sediment and nutrient management and to maximise aquatic biodiversity. Alternative off-stream watering points should also be applied as a management action. However, this can be difficult to ensure where stock exclusion from waterways on adjoining properties is not enforced, with unauthorised grazing in “protected”

		Zones A and B resulting. We question how managed zones and offset areas are to be isolated to ensure that off-property impacts are excluded?
9	Prevention of salinity	We urge that the HGL data is made available as soon as possible for all catchments to enable assessments to be undertaken under a uniform system.
10.1	Biodiversity Introduction	'Vulnerable' ecological communities need to be included in 'threatened species'.
10.2.4	Change in site value with clearing	Assessing the change in site values at the clearing site could be difficult for some attributes. If assessment is for the time immediately following the completion of clearing, we would like it made clear that any additional changes to site attributes after clearing which are not identified in PVPs will be followed up by the CMA.
10.2.5	Change in site value with offset	Similar to changes in site values at the clearing site, it may be difficult to predict changes at the offset site. What is the CMA response if the predicted site attribute improvements at the offset site (with management actions) are not realised, and over what timeframe must predicted improvements occur?
10.4.2	Vegetation in low condition	The criteria used to assess vegetation in low condition give a snapshot of the condition of the vegetation at a particular time but do not take into account its ability to recover to moderate condition if managed accordingly.
10.5.1	Contribution to regional biodiversity values	There needs to be greater clarity in how assessments are made regarding the relative abundance, percent remaining of vegetation type, and percent remaining vegetation by area. Areas and percents should be defined for each CMA area.
10.6.1	Ecosystem credits and species credits	The introduction of trading of offset requirements, between those with clearing sites and those with offset sites, potentially exposes biodiversity values to transactions which may not produce secure conservation outcomes in the long term. The combined use of ecosystem and species credits to determine the site and landscape value of two sites and the likelihood of threatened species occurrence and habitat, is appreciated as an improved system for comparing 'like for like' of sites. However, we have concerns that by permitting the use of biodiversity credits created under the NSW Biodiversity Banking and Offsets scheme as offsets for clearance under the <i>Native Vegetation Act 2003</i> , there is increased potential for non-compliance with PVP agreements by the offset provider. This could be exacerbated where negotiation of management actions at the assessment stage will rely on the strength of PVP agreements over their life. Although publicly registered, the public is unable to readily inspect PVPs, so compliance will be reliant on inspection by PVP officers into the long term. Commitment to this cannot be guaranteed.
10.7.1	Ecosystem credits at	Rewarding of previous good management of offset sites is supported

	offset sites	but we caution that it should not be able to be used to encourage degrading of other areas that will be designated for clearing by landholders.
10.7.1	Equation 10.10	Typo – Equation 9.9 should be 10.9
10.71	Calculation of ecosystem credits at offset sites	Allocating management actions to an offset site that are directly specific to improving the requirements for individual threatened species would provide more direct accountability i.e. to measure whether the management actions are being undertaken or are achieving the required outcomes for that threatened species, rather than averaging the response across all possible management actions.
10.7.2	Equation 10.12	Typo – Equation 9.11 should be 10.11

Response to the draft Code of Practice for the Management of Invasive Native Species in the Namoi CMA under the *Native Vegetation Act 2003*

Noting our objection to the use of a rama and continued support for PVPs – we are also concerned about the lack of prescription. There is a vast difference between ‘empowering the farming community to protect the environment and manage farms sustainably’ and managing by benign neglect by not providing sufficient guidance to allow farmers to successfully manage their land for biodiversity and agricultural outcomes.

There should be a clear definition of what constitutes INS. Many landholders will find it difficult to determine whether a species is ‘acting invasively’. In the absence of an accredited assessor making that determination, as in the case of the EOAM, we recommend that a comparison to benchmark is provided for each species and the bench mark values for all the INS species listed in Appendix 1 are highlighted in the Code of Practice. After the definition, the ‘Improve or maintain test for INS proposals’ from the EAOM should be included where appropriate and the INS assessment process recorded under the Record Keeping Section of the Code of Practice.

Under Section 6: Clearing types and circumstances not permitted, the following additional point should be included: Small patches (5 hectares or less in the middle of paddocks) are not acting invasively and are not a significant INS issue. These patches should not be cleared.

Under Section 10: Limitations on the clearing methods. Other points to be added include:

- In addition to no more than 80 % being cleared, no more should be treated than can be effectively followed up with subsequent treatments.
- The remaining 20% of vegetation should be retained in patches or buffers.
- The overall focus of INS treatment should be on retaining a mosaic of native pasture, open woodland and a mixture of open and more dense areas of INS.
- Early stages of INS should be targeted first including intensive use agricultural areas such as holding paddocks, stock laneways and yards, and around watering points.
- Standing dead trees and fallen logs should be retained for their biodiversity value. Logs and branches can reduce soil erosion as well as protecting grasses and herbage to establish.

- To minimise exposure to erosion and slumping, burning on slopes >18° or in riparian zones should not be undertaken.

We consider that the requirement to keep a diary of INS activities for a minimum period of 7 years is necessary. As well as providing a record of INS activities for reference by future landowners, it would provide a record that could be used to show compliance.

Response to the draft Code of Practice for the Thinning to Benchmark Stem Densities in the Namoi CMA under the *Native Vegetation Act 2003*

Noting our objection to the use of a rama and continued support for PVPs – we are also concerned about the lack of prescription. There needs to be sufficient detail to ensure that each step is correctly followed.

However, we believe that the process involved in a) determining the vegetation type involved; b) assessing the area of thickened vegetation on a property; c) comparing benchmark stem densities with actual stem densities for both stem diameter classes; and d) undertaking the thinning process ensuring that all the conditions under Section 5 are complied with; is a complex task. Although the CMAs will provide easy to understand information to assist landholders, the complexity involved makes it likely that instances of illegal clearing will inadvertently occur. We believe that assessment of thinning to benchmark should remain under the EOAM and be assessed by accredited officers only.

Under Section 5: Other conditions on thinning native vegetation. Other points to be added include:

- In addition to no more than 80 % being cleared, no more should be treated than can be effectively followed up with subsequent treatments, particularly if the thinning encourages growth of weeds.
- The remaining 20% of vegetation should be retained in patches or buffers.
- Standing dead trees and fallen logs should be retained for their biodiversity value. Logs and branches can reduce soil erosion as well as protecting grasses and herbage to establish.
- To minimise exposure to erosion and slumping, thinning on slopes >18° should not be undertaken.

The inclusion of listed Endangered Ecological Communities (EECs) in Appendix 1 of the Code of Practice, such as Coolabah-Black Box woodland of the northern riverine plains, is inappropriate. If any clearance of EECs is to be approved, it should only be following assessment by an accredited officer.

As with the INS Code of Practice, the requirement to keep a diary of thinning undertaken for a minimum period of 7 years is appropriate, as it can be used to show compliance.

Finally, we would like to commend staff from your section of the Office of Environment and Heritage in holding a workshop series to explain the amendments to the EOAM for peak stakeholder organisations. The workshops were greatly appreciated and the time and effort that staff assigned to them was noted. They provided much needed information regarding the intent of OEHL in the application of the draft EOAM and how it is intended to be used in undertaking proposal assessments.

Thank you for taking the time to consider our submission. If you require any further information, please contact me on 02 9516 1488 or email: pclarke@nccnsw.org.au.

Yours sincerely,

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