

Environment and Planning Law Committee

Submission to the Native Vegetation Regulation Review

29 August 2012

*Attn: Native Vegetation Regulation Review
Conservation Policy and Strategy Section
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About Us

NSW Young Lawyers is a Division of the Law Society of NSW and is made up of legal practitioners and law students who are under the age of 36 or in their first 5 years of practice. It is the largest body of young and newly practising lawyers, and law students in Australia, with a membership comprising of some 13,000 members. NSWYL supports practitioners in their early career development in numerous ways, including by encouraging involvement in its 15 separate committees, each dedicated to a particular area of practice. Membership is automatic for all NSW lawyers under the age of 36 and/or in their first five years of practice, as well as law students.

The NSW Young Lawyers Environment and Planning Law Committee (the Committee) brings together a network of the state's young practitioners to discuss a shared interest in our environment. The Committee focuses on environmental and planning issues, raising awareness in the profession and the community about developments in legislation, case law and policy. We also concentrate on international environment and climate change laws and their impact within Australia.

Introduction

The Committee welcomes the opportunity to comment on the Native Vegetation Regulation Review. This submission will focus on:

- The expansion in the draft *Native Vegetation Regulation 2012* of routine agricultural management activities in for which formal approval to clear native vegetation is not required; and
- The inclusion of Traditional Owners' Interests in the Assessment Process for Clearing of Native Vegetation.

The Committee supports a robust but efficient native vegetation management system for NSW. This native vegetation management system should support landholders to manage native vegetation in a way that encourages positive environmental outcomes and protects biodiversity.

Routine Agricultural Management Activities

The Committee recognises that the native vegetation management system in NSW needs to address changes in land management practices, and that from time to time changes in the types of routine agricultural management activities (RAMAs) listed in the *Native Vegetation Regulation* (the Regulation) will be required. However, the Committee is concerned that the draft Regulation's expansion of RAMAs for which formal approval is not required has the potential to result in a large increase in native vegetation and biodiversity loss. If not coupled with adequate reporting and compliance activities, this increase in RAMAs has the potential to result in losses of native vegetation above what is intended at this strategic planning stage, and risks falling short of the native vegetation protection required to maintain biodiversity throughout NSW.

The Committee is concerned that the risk of negative cumulative impacts of increased clearing due to the expansion of the RAMAs has the potential to not be able to be adequately managed due to it being "difficult to determine the number of times that clearing is undertaken under a RAMA,"¹ resulting in a system that makes it easier to clear without approval without being able to assess or managing the potential negative impacts of this.

The Committee recommends that the RAMAs should not be expanded without adequate planning, reporting, and compliance safeguards in place.

¹ Proposed *Native Vegetation Regulation 2012* Regulatory Impact Statement Final Report, 11.

The inclusion of Traditional Owners' Interests in the Assessment Process for Clearing of Native Vegetation

The clearing of native vegetation has the potential to significantly affect the Aboriginal cultural and ecological values and native title rights and interests asserted by Traditional Owners. These values are highly significant to Traditional Owners. The clearing of native vegetation has the potential to reduce the amount of flora and fauna available in an area. This may undermine Traditional Owners' ability to continue cultural practices such as hunting and gathering on land within which clearing of native vegetation has occurred, and on land adjacent to areas where such clearing has occurred. Accordingly, the committee submits that the Regulation should provide for some means of assessing the impact of a proposed clearing of native vegetation in the Property Vegetation Plan (PVP) approval process, including by the consultation of Traditional Owners in that process.

Additionally, the draft Regulation does not consider the effect that clearing activities may have on objects and places of cultural significance to Traditional Owners. This is particularly pertinent in respect of the designated Routine Agricultural Management Activities (RAMAs), which are not in all instances required to undergo any form of assessment which would assess the potential risk of clearing activities interfering with and/or damaging objects and places of cultural significance. As well as not providing sufficient protection for and consideration of the potential for such damage, the committee submits that the way in which the use of RAMAs fits in with the offence provisions of the *National Parks and Wildlife Act 1979* (NSW) relating to damage caused to Aboriginal objects and places should also be considered. The designation of a clearing activity as a RAMA has the potential to give landholders a false impression that they have been given a 'green light' to conduct clearing activities without assessing the potential effect of those activities on Aboriginal objects and places, leading them open to prosecution under that Act.

Changes Allowing Some Clearing to Occur Without PVP from CMA

The draft Regulation proposed to create a number of new RAMAs and amend existing RAMA categories, which would expand the number of clearing activities for which a Property Vegetation Plan (PVP) is not required from the relevant Catchment Management Authority (CMA). The Committee makes the following submissions in that regard.

1. Clause 27

Clause 27 amends the current RAMA for obtaining construction timber by removing the requirements that, to come under the category of a RAMA, the cleared vegetation must be used within a set timeframe and must be followed by the carrying out of a restoration program. These requirements of the current Regulation act as a safeguard to ensure that:

- a. Timber cleared under this RAMA is genuinely used for construction purposes, and not simply stockpiled indefinitely; and
- b. The land the subject of the clearing is appropriately managed after the clearing has occurred.

The committee questions the merit of removing these safeguards.

1. Clauses 28 & 29

Clause 28 and 29 of the draft Regulation provide that clearing for construction of boundary fences and a shed for non-agricultural purposes. We consider such a RAMA to

be outside the purpose of the Regulation, which is to provide for the clearing of native vegetation for native forestry and routine.

2. Clause 42

Clause 42 of the draft Regulation provides that clearing of native vegetation for certain approved dwellings is a RAMA. This effectively means that for such dwellings the local council makes the assessment and management decisions regarding native vegetation clearing. This does not recognise the specialised nature of CMAs in assessing the impacts (including cumulative impacts) of clearing upon native vegetation and consequently negatively impacts upon the sustainability of land use decisions.

3. Clause 43

Clause 43 of the draft Regulation provides that clearing pursuant to certain permanent agreements is a RAMA. Again, this does not allow the relevant CMA to play its role in determining best practice management for clearing activities.