



# Review of the Native Vegetation Act 2003

*Report*

Department of  
**Environment, Climate Change and Water** NSW



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## Foreword

The New South Wales Government has comprehensive environmental legislation in place to protect the state's natural resources and natural biodiversity. One important component is the *Native Vegetation Act 2003* (NV Act).

The NV Act was established as the primary vehicle for protecting and improving the condition of native vegetation and encouraging and promoting the management of native vegetation on a regional basis in the best overall interests of the state. It gave effect to an historic negotiated agreement to end broadscale land clearing, except where approved actions improve or maintain environmental outcomes.

There has been extensive consultation with the community and industry in the process of conducting this review. I am pleased to report that this review found that the policy objectives of the NV Act remain valid and a major overhaul of the legislation is not needed at this time. It did, however, find that certain terms of the Act and administrative practices could be refined in order to better secure those objectives. The report acknowledges that for any future changes, further examination and consideration of legislative amendment, in specific areas would need to be done in consultation with stakeholders.

I am pleased to submit this report to Parliament.

**John Robertson, MLC**

Minister for Climate Change and the Environment



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## Summary

The purpose of the first five-yearly review of the *Native Vegetation Act 2003* (NV Act) is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act are appropriate for meeting these objectives.

The NV Act was assented to on 11 December 2003 and commenced on 1 December 2005. The NV Act principally deals with the regulation of land clearing. Along with the *Catchment Management Authorities Act 2003* and the *Natural Resources Commission Act 2003*, it represents a major overhaul of the previous natural resources management legislation.

This review was developed through public submissions and consultations undertaken with major stakeholders as well as detailed analysis by the Department of Environment, Climate Change and Water NSW (DECCW) of the effectiveness of the Act.

This review supports maintaining the framework and philosophy of the Act; noting, that there has been some call for broader reform to be considered in the longer term.

Feedback from stakeholders consistently expressed a view that there is a need to consider simplifying, streamlining and/or strengthening some aspects of the regulation of clearing of native vegetation and to consider clarification of certain aspects of the Act in the following areas:

1. The objects of the NV Act
2. Key concepts and definitions
3. Socio-economic concerns
4. Exclusions and exemptions from application of the NV Act
5. Interaction of the NV Act with other Acts
6. The assessment process
7. Compliance and enforcement of the NV Act.

Not all issues raised as a result of the review would require legislative change. Some of the issues identified can be addressed by improving and streamlining operations. Where changes to operational procedures are to be implemented, they will be done through transparent processes that involve affected stakeholders.

This statutory review only deals with the NV Act. It does not cover the *Native Vegetation Regulation 2005*. The Regulation is scheduled to be reviewed by September 2011 as part of the staged-repeal program under the *Subordinate Legislation Act 1989*.

This review provided a valuable opportunity for analysis and comment by stakeholders. A number of possible areas for further government consideration have been identified. These would build upon, rather than alter, the principles underlying the NV Act. The report concludes that the regulatory framework for protection of native vegetation set out in the NV Act has, on the whole, been effective in meeting its objectives, and will continue to be so.





## Introduction to the review

The purpose of this review of the *Native Vegetation Act 2003* (NV Act) is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act are appropriate for meeting these objectives.

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

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

While the NV Act was assented to by the NSW Parliament in December 2003, it did not become operational until December 2005 when the Native Vegetation Regulation came into effect. As a result, the period of operation that this review is based on is shorter than 5 years.

## Method for the review

The consultation process for the review was designed to allow interested stakeholders adequate opportunity to contribute.

The Minister for Climate Change and the Environment issued a discussion paper in August 2009, which summarised the progress that had occurred since the Act's inception, and posed questions for consideration. This discussion paper was circulated to key stakeholders (listed below) and posted on the DECCW website.

An advertisement requesting submissions was placed in *The Sydney Morning Herald*, *The Daily Telegraph*, *Koori Mail*, *Mildura Sunraysia Daily*, *Deniliquin Pastoral Times*, *Goodiwindi Argus* and *The Land* as well as on the DECCW website.

A letter inviting submissions was sent to key stakeholders, including the Natural Resources Advisory Council, Chairs Council of Catchment Management Authorities, Natural Resources Commission, NSW Farmers' Association, Total Environment Centre, Local Government Association of NSW, Shires Association of NSW, Nature Conservation Council of NSW, Worldwide Fund for Nature, The Wilderness Society, Wentworth Group of Concerned Scientists as well as other relevant NSW government agencies. Face-to-face meetings were held with key stakeholders on request.

Public submissions closed in September 2009. A total of 49 submissions were received from a wide range of stakeholders including, farmers and graziers, farming organisations, catchment management authorities (CMAs), conservation organisations, industry groups, local government organisations, various state government agencies and individuals (see Table 1).

Some of the submissions were from peak organisations that represented many individual stakeholders. These included the NSW Farmers' Association, Nature Conservation Council of NSW, Environmental Defender's Office, Local Government and Shires Association of NSW and the Natural Resources Advisory Council.

All stakeholder comments received were taken into account during the process of this review.

**Table 1: Submissions received for the review of the NV Act**

<b>Type of submission</b>	<b>Number</b>
Farmers/graziers	10
Other individuals	5
Landholder organisations	4
Catchment management authorities	9
Environment organisations	8
Industry groups	4
Local government organisations	3
State government agencies	5
Other organisations	1
<b>Total</b>	<b>49</b>

## Overview of the NV Act

The forests, woodlands, grasslands and other vegetated landscapes of New South Wales are important for a healthy environment and society. Effective retention and management of native vegetation is critical in the control of erosion, land degradation, biodiversity loss, water quality and impact of salinity on agricultural, urban and aquatic environments. The retention of existing native vegetation is the most effective way to ensure the future habitat of unique flora and fauna, many of which are rare and endangered. This retention of native vegetation is also a key climate change mitigation strategy by storing carbon.

The NV Act was introduced to end broadscale clearing of native vegetation in NSW and to improve the regional native vegetation management and revegetation of land. The NV Act repealed the *Native Vegetation Conservation Act 1997*. The NV Act regulates the clearing of native vegetation on all land in NSW except national parks and other conservation areas, state forests and reserves and urban areas. It represented a major overhaul of the previous legislation, which was criticised widely by the communities of interest as subjective and uncoordinated.

### Reforms delivered by the NV Act

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

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

### Who administers the NV Act?

The Minister for Climate Change and the Environment is responsible for ensuring the sustainable management of native vegetation in NSW through the administration of the NV Act by DECCW and the CMAs.

DECCW develops native vegetation policy and assessment methodologies. It undertakes science and monitoring processes, and regulates clearing through compliance and enforcement programs. CMAs play a key role in the implementation of the NV Act. As the approval authorities (delegated from the Minister) for vegetation clearing across the state, CMAs are responsible for assessing and approving clearing proposals through a Property Vegetation Plan (PVP) or Development Consent. They assist farmers to make practical decisions based on the best scientific information available. The *NSW Catchment Management Authorities Act 2003* provides the legislative authority for CMAs and covers their operations. A separate review of the Catchment Management Authorities Act is underway, and is reported on separately.

## Objectives of the NV Act

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

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

*in accordance with the principles of ecologically sustainable development.*

## The content of the NV Act

Part 1 of the NV Act includes the objects of the Act as well as definitions, and land excluded from operation of the Act. Land excluded from the operation of the Act includes national parks and other conservation areas, state forestry land and urban areas (as defined in Parts 1–3 of Schedule 1 of the Act).

Part 2 of the Act identifies key concepts and definitions essential for the effective operation of the Act including native vegetation, clearing native vegetation, broadscale clearing, remnant vegetation and regrowth, protected regrowth and routine agricultural management activities (RAMAs). RAMAs are explained in Part 4 of the Native Vegetation Regulation 2005.

Part 3 of the NV Act regulates the clearing of native vegetation. Under this Part, clearing of native vegetation requires approval, unless the Act specifically states that approval is not required. Approval is given in the form of a PVP or development consent, and is only given if the clearing will ‘improve or maintain’ environmental outcomes. The methodology to determine whether the clearing and associated offsets will improve or maintain environmental outcomes is established by clause 26 of the Native Vegetation Regulation 2005, and is called the environmental outcomes assessment methodology (EOAM). This Part also describes the relationship of the NV Act to the *Environmental Planning and Assessment Act 1979* (EP&A Act).

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

- **permitted clearing** (for example, clearing of certain regrowth and groundcover)
- **permitted activities** (for example, clearing required for RAMAs, sustainable grazing and continuation of existing farming practices)
- **excluded clearing** (for example, clearing that is authorised under other legislation such as the *Rural Fires Act 1997*).

These three classes of clearing that do not require approval build flexibility into the Act to enable farmers and other land managers to continue carrying out their existing management activities and businesses. The NV Act makes it very clear what classes

of clearing do not require consent. This was an important improvement over its predecessor, the Native Vegetation Conservation Act.

Part 4 of the Act describes the contents of PVPs and processes for submission and approval of PVPs.

PVPs are voluntary arrangements and a landholder or group of landholders may submit a draft property vegetation plan. Among other things, a PVP can be used to:

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

The maximum period for the provisions in a PVP that allow clearing is 15 years. Clearing PVPs are now registered on title, and in so doing, bind future owners of the land to the management actions. CMAs are responsible for assessing and approving clearing proposals using the EOAM to assess the positive and negative aspects of different management plans and activities.

Part 5 of the Act covers enforcement provisions such as appointment of authorised officers, powers of entry and inspection, powers to obtain information, stop work orders, remedial directions, penalty and evidentiary provisions. There can be large penalties for illegal clearing.

Part 6 of the Act contains miscellaneous provisions to cover issues including the collection of commercial firewood, the Act binding the Crown, serving of notices, delegation of functions, the making of regulations, repeal of the *Native Vegetation Conservation Act 1997*, and savings, and transitional provisions. It is through the provisions related to delegations that CMAs are empowered to assess and approve PVPs and other activities identified by the Minister. The regulation-making powers enable the Government to continue to refine and develop the management of the Act, particularly improving the science which underpins its implementation.

Schedule 1 defines the types of land that are excluded from the operation of the Act. These include national parks and other conservation areas, state forestry land and urban areas. In each of these cases, other legislation is in place to manage native vegetation.

Schedule 3 provides savings and transitional arrangements that were required from the repeal of the Native Vegetation Conservation Act.

## Outcomes of the review

This section summarises the analysis of the operation of the NV Act and responses from the stakeholder consultation. It also identifies aspects of the NV Act that may need refinement, subject to further consultation, to better secure the Act's policy objectives.

### Themes

Based on issues raised through public submissions and the department's analysis, 7 key thematic areas were identified:

1. The objects of the Act
2. Socio-economic concerns
3. Key concepts and definitions
4. Exclusions and exemptions from application of the Act
5. Interaction of the NV Act with other Acts
6. The assessment process
7. Compliance and enforcement of the Act.

Analysis of the effectiveness of the Act and feedback from stakeholders are arranged under these seven themes. Included are options that the government might employ to address issues arising from this review.

### Theme 1: The objects of the Act

The review considered whether the objects of the NV Act are still valid or if additional concepts should be defined in the Act.

Stakeholders are generally of the view that, while certain terms of the Act may require refinement, the Act should continue to operate with no immediate need to amend its objects.

Particular views were that:

- greater emphasis should be placed on particular objects
- the NV Act makes no mention of the role of native vegetation in mitigating climate change, its role in promoting biodiversity adaptation to climate change or the implications of climate change on the resilience of native vegetation.

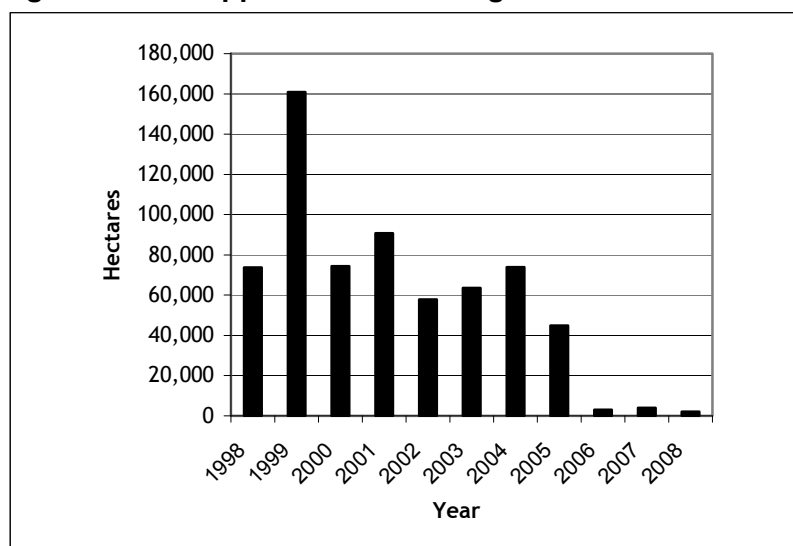
#### *Reducing area approved for clearing*

Analysis of the effectiveness of the NV Act shows that it has resulted in significant outcomes for native vegetation management in NSW. It has achieved this by better regulating the level of clearing of native vegetation, providing better tools to facilitate restoration investment and improving knowledge about change in cover of woody vegetation.

As a direct result of the Act, approximately 250,000 hectares of native vegetation across the state were conserved or rehabilitated through revegetation or restoration between 2006 and 2008. In the same period only 5440 hectares were approved to be cleared under the NV Act. For this clearing, environmental values were improved or maintained through mechanisms such as the use of offsets.

Since the implementation of the NV Act, there has been an overall reduction in the area of land approved for clearing in NSW (see Figure 1). For example, in 1999 over 160,000 hectares of land was approved for clearing compared with 1660 hectares of approved clearing in 2008 under the NV Act.

**Figure 1: Area approved for clearing**

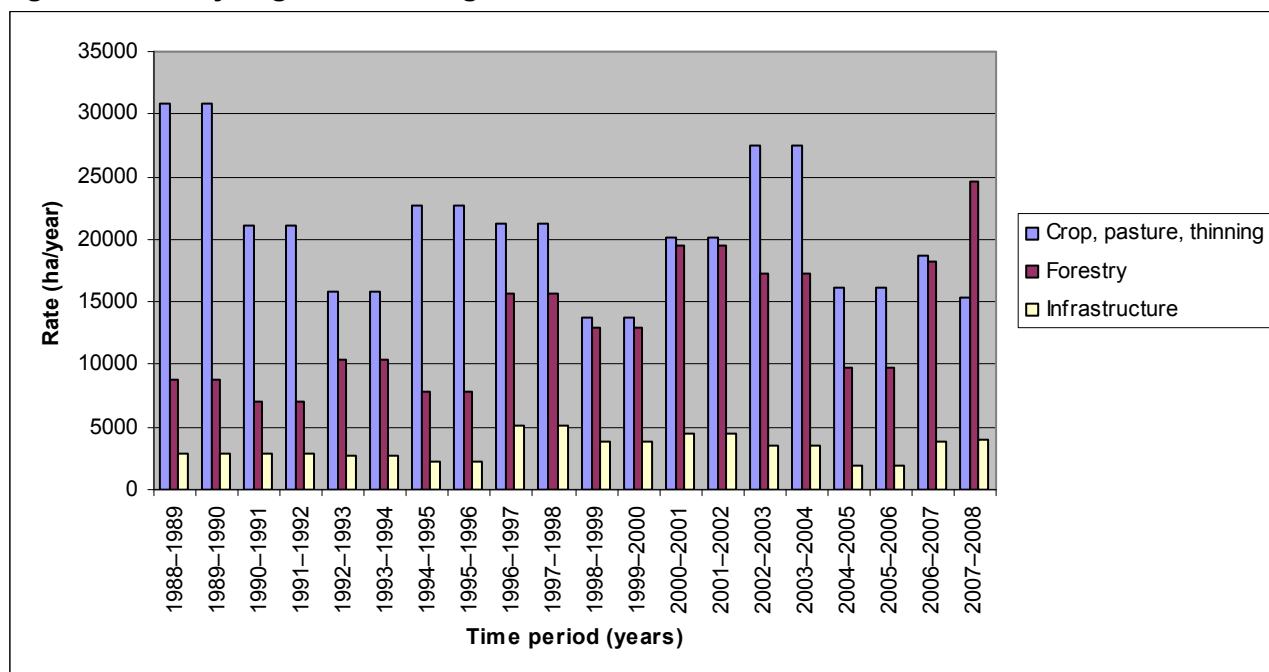


**Source:** Department of Natural Resources data, 2006 and DECCW data, 2009

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

Data for woody vegetation change over the last 20 years suggests that the average level of clearing for agriculture has declined since the introduction of the Act. Figure 2 shows that the average level of clearing for agriculture before 2004 was 21,600 hectares per year and has dropped to 16,700 per year since 2004. This includes clearing for pasture or thinning, exclusions and permitted clearing and some unexplained clearing. While the early indications are positive, ongoing monitoring of the woody vegetation change in future years will provide further data which will reveal the overall impact of the Act. It will take additional time to establish a clear relationship between long-term clearing trends and the introduction of the NV Act.

**Figure 2: Woody vegetation change – 1998 to 2008**



Source: DECCW data, 2009

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

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

As a result of the NV Act, between 2006 and 2008 about 244,940 hectares of native vegetation across the state was restored or rehabilitated. This land included:

- land incorporated into incentives PVPs (226,620 hectares)
- land incorporated into PVP offsets (18,320 hectares).

*Protecting native vegetation of high conservation value*

As a result of the NV Act, between 2006 and 2008 over 3000 hectares of native vegetation across the state was conserved through private conservation areas with PVPs in perpetuity. This area of conservation complements other measures taken by the NSW Government to protect native vegetation of high conservation value. Additional private conservation areas under conservation agreements, conservation covenants and wildlife refuges as well as additions to the public reserve estate of national parks and flora reserves have protected an additional 400,000 hectares of native vegetation.



## Review findings

In light of gains in native vegetation management and a decline in the rate of clearing, this review concludes that the policy objects of the Act remain valid and there is no immediate cause for amendment.

Climate change adaptation programs can be brought forward under the existing objects, although it may be useful to consider explicitly recognising climate change among any future legislative amendment to the Act.

## Theme 2: Socio-economic concerns

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

Submissions from landholders, farming organisations and some CMAs expressed the view that socio-economic considerations were not sufficiently taken into account by the Act.

Social and economic considerations in the NV Act are considered and incorporated principally at the state level. The approach taken in making the Act was that broadscale land clearing needed to cease because of the very serious impacts that unrestricted clearing had caused and would continue to cause. These included habitat loss, land degradation, dryland salinity and water quality decline.

However, in introducing the NV Act, the Government recognised that the change in approach would affect some individual landholders who would not be able to realise expectations of future gain in property values and/or farming outputs. Thus, the NV Act takes account of social and economic factors in a number of ways. These include identifying certain types of clearing that do not need approval such as clearing for RAMAs, permitted clearing of regrowth, and clearing to enable sustainable grazing and continuation of existing farming activities. Also, there are no costs to landholders for the assessment, agreement or administration of a PVP.

These measures were supplemented with various incentives schemes. Since 2002, over \$700 million of State and Australian Government funding has been allocated to CMAs to help landowners protect and repair landscapes. In addition, a structural adjustment package was established to assist adversely affected land owners. Some \$18 million from this package was spent on farmer exit programs for properties of individual landholders whose farming was rendered non-viable. The NSW Government continues to invest in landscape restoration. In the 2009–10 financial year \$66 million of State and Australian Government funding will be invested in programs to assist landowners to undertake landscape restoration. These programs are delivered through the 13 CMAs.

Notwithstanding these measures, some stakeholders from a wide cross-section of interests called for an increase in incentive funds for conservation activities. Incentives funding is a resourcing matter rather than a legislative one and DECCW will continue to investigate opportunities to provide resources for incentive programs, including market-based mechanisms. One idea put forward by some CMAs and farmers is whether farmers should participate in the BioBanking Scheme established under the *Threatened Species Conservation Act 1995*, in the same way as urban developers. Currently, farmers can sell biodiversity credits to land developers who

are clearing land but cannot buy biodiversity credits from somewhere else to offset their own clearing.

Submissions from landholders, farming organisations and some CMAs advocated the incorporation of socio-economic considerations into the assessment process for individual clearing applications. This contrasted with the view of some environment groups who were concerned about 'narrow and regionally-based social and economic interests' having dominance.

### **Review findings**

This review has found that because the NV Act allows certain clearing without the need for approval and has been supported by incentive and structural adjustment programs, then the social and economic interests of the state have been considered.

Incorporating future social and economic provisions would require a substantial rewrite of the Act and at this stage in the implementation of the Act, legislative amendment in this area is not proposed.

### **Theme 3: Key concepts and definitions**

The review considered whether the definitions and key concepts outlined in Part 1 of the Act are still valid or if additional concepts should be defined.

There was a high degree of support for the retention of the key concepts, without amendment.

There were however several suggestions for clarifying definitions and meanings of certain key concepts in the Act. These suggestions included the definitions of 'clearing', 'broadscale', 'native vegetation', 'regrowth', 'sustainable grazing', 'high conservation value', 'ecologically sustainable development', 'protected regrowth', 'rotational farming practices', 'routine agricultural management activities', 'minimum extent necessary', 'existing farming activities', 'wetlands' and 'groundcover'.

Some stakeholders identified that compliance and enforcement were difficult because of a lack of clarity with aspects of these definitions.

## Review findings

The nature of the issues raised under this theme poses the question of whether the ambiguity in key concepts and definitions is a function of communication and administrative practice or whether legislative amendment is necessary.

In the short term, the government will request DECCW to increase its efforts to provide clear information to all stakeholders on the meanings of these terms and review its administrative practices to ensure consistency in the application of these terms. Following this, the government will consider further whether greater clarity of these definitions is required within the legislation.

### Theme 4: Clearing excluded from operation of the NV Act

The review considered the appropriateness of the categories of clearing which do not require approval.

Considerable feedback was received relating to certain RAMAs, including those relating to firewood collection, stock fodder, rural infrastructure, rural subdivision roads, public utilities, construction timber, commercial harvesting and local government infrastructure.

Some new RAMAs were proposed to enable clearing for revegetation or establishment of scientific trials to occur without the need for approval. Issues were also raised relating to rural infrastructure, buffer distances, impacts of clearing for RAMAs on endangered ecological communities and threatened species.

The RAMA which allows clearing for rural infrastructure was identified by a large number of stakeholders as being of concern. There is no limit on the minimum separation of roads, tracks or fences, or on the amount of temporary fencing that can be constructed, and claimed as a RAMA under this section. Some landholders in rural subdivisions have cleared for multiple fence lines or roads, separated by a minimal distance resulting in a single large area of land being cleared. This process (colloquially known as 'stacking') has been suggested by some stakeholders as resulting in land-use change (particularly on the coast), an outcome counter to the objects of the NV Act.

Several submissions raised issues relating to land exclusions and legislative exclusions (Schedule 1 of the Act). These are considered in Theme 5: Interaction of the NV Act with other Acts, below. Many of the suggestions relating to exclusions are relevant to the review of the Native Vegetation Regulation 2005 and will be considered in that context.

## Review findings

The application of RAMA exclusions is a sensitive issue. Some stakeholders (including some CMAs, local governments and environment organisations) suggested that certain RAMA exclusions may allow more clearing than is intended by the NV Act, while other stakeholders (including individual farmers and farming organisations) suggested that certain RAMA exclusions were too restrictive. Many submissions to the review sought some changes to these exclusions.

Objective evidence of the systemic use of RAMAs to undermine the achievement of the objects of the Act is not currently available. DECCW will conduct ongoing investigations with stakeholders and data collection about the definition and application of RAMA exclusions with a view to advising the government on options to ensure the practical delivery of the objects of the NV Act.

## Theme 5: Interaction of the NV Act with other Acts

### *Reducing 'red tape'*

The implementation of the NV Act has reduced regulatory compliance costs and 'red tape'. From 1 December 2005 the biodiversity certification of the Native Vegetation Reform Package ensured that approved PVPs did not require a separate approval under the *Threatened Species Conservation Act 1995*, and development consents did not require a separate threatened species impact assessment under the EP&A Act. More recent examples include streamlining the management of invasive native scrub, allowing clearing for the development of essential public infrastructure, and enabling groups of landholders to work together to develop landscape scale plans for native vegetation management.

Notwithstanding these measures, the review found that there were other opportunities to reduce red tape.

### *Interaction with the EP&A Act*

Urban areas (as defined in Schedule 1 to the NV Act) are excluded from the operation of the NV Act. Approval to clear native vegetation in urban areas does not require approval under the NV Act as local councils administer vegetation controls under their Local Environmental Plan (LEP) made under the EP&A Act. However, there are circumstances where development which involved clearing of native vegetation requires approval under the NV Act and the LEP. This is referred to as 'dual consent'. Most frequently these are for rural residential developments (including subdivisions).

The red tape resulting from the need to gain two approvals was of concern to some stakeholders. The Department of Planning (DoP), some local governments and some developer groups argued that additional areas should be excluded from the NV Act. Alternatively, some CMAs and environment organisations were concerned that a reduction of the application of the NV Act in peri-urban and coastal environments may lead to an increase in clearing of native vegetation. This is a particular problem on the fringes of large urban areas, where population growth and urban expansion necessitates a conversion of land that is zoned 'rural' (to which the NV Act applies) to

land that is zoned 'urban' (to which the EP&A Act applies). Land that is in the peri-urban fringe (e.g. rural residential properties) presents a particular challenge. There can be competition between managing economic development whilst conserving native vegetation and fauna. Some submissions advocated an extension of the improve or maintain principle to urban areas.

#### *Interaction with the Native Vegetation Conservation Act 1997*

Some provisions from the former Native Vegetation Conservation Act are saved by the NV Act. These provisions relate to the protection of dead and exotic vegetation on what used to be known as State Protected Land (steep land, and land near watercourses) to protect it from erosion. These provisions were carried over because the NV Act did not deal with dead and exotic vegetation. The carry over of these provisions has been identified by the CMAs as creating problems in administration of the NV Act as there are two sets of exclusions, exemptions and assessment procedures. It is also a complex issue for landholders to deal with.

#### *Interaction with other Acts*

The NV Act is excluded from applying to certain types of clearing under several other Acts.

Some submissions identified areas where clarity was required in the way that the NV Act interacted with the *Rural Fires Act 1997*, *Surveying Act 2002*, *Threatened Species Conservation Act 1995*, *National Parks and Wildlife Act 1974*, *Plantations and Reafforestation Act 1999*, *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*. Some submissions from CMAs and industry groups also suggested that the principle of improve and maintain should be adopted in a whole-of-government approach, and adopted by other relevant Acts.

## Review findings

Although examples are not large in number or scale, the regulatory duplication created by the interaction of the EP&A Act with the NV Act is not consistent with the government's commitment to reduce red tape. DECCW will continue to work with DoP and local government to resolve duplication of environmental assessment and approval while maintaining the policy intent of the NV Act.

In the medium- to longer-term, resolving the overlap between vulnerable and State Protected Land will allow easier regulation of the NV Act, reduce red tape and provide clarity for landholders. DECCW is exploring the options to resolve this overlap.

Improved administrative practices are needed to provide stakeholders clearer information describing the interaction of the NV Act with other Acts. The government will request DECCW to increase its efforts to provide clear information to stakeholders and to consider whether any legislative amendments are needed to improve the clarity of the interaction of the NV Act with other Acts.

## Theme 6: The assessment process

The review considered whether there were other uses that PVPs should be put to, whether the maximum 15-year period for clearing PVPs was still appropriate, and other issues surrounding PVPs.

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

At 31 October 2009, 1647 PVPs had been negotiated and approved, of which 1149 (or 70%) involved incentive payments to farmers to improve or protect native vegetation. Table 2 provides an analysis of the area of land covered by each type of PVP.

**Table 2: PVPs issued under the NV Act – 2006 to 2008**

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

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

The NV Act established a rigorous EOAM for assessing the environmental outcomes associated with land clearing. The software that supports the methodology is the Native Vegetation Assessment Tool (NVAT), previously known as the PVP Developer. The EOAM is used by CMAs to assist farmers to prepare PVPs. It weighs up the positive and negative aspects of different management proposals. This approach helps assessment officers and landholders make practical decisions based on the best scientific information available. The EOAM and relevant parts of the NVAT will continue to be refined as the science improves. The EOAM is publicly available at [www.environment.nsw.gov.au/resources/vegetation/eoam.pdf](http://www.environment.nsw.gov.au/resources/vegetation/eoam.pdf)

From the outset, the government has planned to be responsive to changes in the science underlying vegetation management. The review has found that some of the administrative processes used under the Act to update data used in assessment methodologies are unnecessarily cumbersome.

No submissions proposed an alternative mechanism to assessing clearing applications to the PVP and most submissions agreed that the contents of PVPs and the processes for submission and approval were adequate (although opinions varied on whether the maximum period for PVPs was adequate – some wanted it longer and others shorter). Most landholder and CMA submissions identified particular improvements to PVP assessments that they wanted considered. Particular issues highlighted by these submissions included:

- ways of increasing flexibility with offset requirements
- introducing a simplified assessment procedure for minor clearing where the environmental impact from the clearing is low
- allowing landholders the ability to surrender a PVP where the clearing did not proceed
- avoiding constraints to future use of cleared land
- allowing third parties to do PVP assessments
- improving the science behind the benchmarks in the EOAM
- changing the way invasive native scrub is assessed
- providing red light reports to landowners
- ensuring that the NV Act does not override protection provided for Aboriginal objects or places under the *National Parks and Wildlife Act 1974*.

One CMA and some farming organisations suggested that trading of environmental values should be allowed to substitute for offsets, for example, trading water quality benefits for biodiversity loss. Currently there is no suitable methodology to enable this.

Changes to the assessment procedure regarding Aboriginal objects or places was considered unnecessary given that the destruction of or damage to Aboriginal objects or places is regulated under the *National Parks and Wildlife Act 1974*.

#### *Assessment of groundcover*

Native groundcover includes wetlands, natural grasslands and grasslands that are derived from woodlands from which most of the trees have been cleared. Native groundcover is composed of non-woody herbaceous plants such as grasses, sedges and forbs and does not include woody plants as a major element (although it can sometimes include some woody shrubs or tree seedlings). In many parts of the state,

native groundcover contains a high proportion of introduced plants or native plants that are adapted to high levels of disturbance. Groundcover which is wholly native and composed of the original dominant species is now relatively rare in NSW. Unlike woody vegetation, groundcover is highly variable in its composition over the year depending on the season.

Under the NV Act, the clearing of native vegetation comprising only groundcover is permitted where native plant cover is less than 50% of total living plant cover (as long as there is more than 10% groundcover). Landholders are able to self-assess whether the groundcover is more than 50% native. If the groundcover is less than 50% native or can be considered as 'regrowth from clearing', it can be cleared (e.g. by ploughing) without approval under the NV Act.

Several submissions from landholders, farming organisations, CMAs and environment groups stated that the existing groundcover exemption is confusing and hard to implement in practice.

### **Review findings**

The majority of the issues raised in this theme will be considered through review of the EOAM, which is linked directly to the Native Vegetation Regulation 2005, not the NV Act. The government has an established practice and a clear commitment to the regular review of the EOAM as the science underpinning the methodology improves.

In relation to groundcover, the government will investigate options to improve the management of native groundcover consistent with the objects of the Act. These investigations will commence in 2010, in consultation with relevant stakeholders.

## **Theme 7: Compliance with, and enforcement of, the Act**

It is important that the NV Act can be effectively enforced to ensure the credibility of the native vegetation management framework, and to provide a level playing field for all under the law.

The review considered whether the provisions for enforcement in the Act were effective and if the range of regulatory tools was adequate and comprehensive. Stakeholders were asked if there were additional regulatory tools that could be included under the Act and whether the provisions in relation to evidentiary provisions and penalties in criminal proceedings were effective and in line with current practices.

### *Improving compliance and enforcement*

DECCW is responsible for implementing a credible compliance and enforcement framework for native vegetation, both to protect the environmental values of native vegetation and to ensure that landholders who comply with the law are not disadvantaged. DECCW undertakes this role through community engagement, education and strategic enforcement action, including targeted compliance campaigns. Table 3 includes a summary of key enforcement and compliance statistics from the *NSW Annual Report on Native Vegetation 2008* ([www.environment.nsw.gov.au/resources/nativeveg/09523arnv08.pdf](http://www.environment.nsw.gov.au/resources/nativeveg/09523arnv08.pdf)).



**Table 3: Key enforcement and compliance actions in 2008**

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

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

Suspected illegal clearing is detected via reports to DECCW's Environment Line (Phone: 131 555) and information gathered by remote sensing (including the woody vegetation change report from satellite monitoring) and information gathered by DECCW and CMA regional staff. This intelligence is analysed based on risk of harm to the environment and ongoing deliberate contravention, to identify trends and patterns of clearing and to identify geographic areas or issues where compliance activities should be focused. When illegal clearing is identified, DECCW selects the most appropriate regulatory response or combination of responses from a range of tools, such as warning and advisory letters, notices to produce information, stop work orders, remedial directions, penalty notices and prosecutions.

DECCW actively promotes compliance by assisting the community to understand and meet their legislative obligations. For example, DECCW has commenced a staged education campaign. The first stage focused on clearing contractors and stock and station agents. Further stages will focus on land developers, local councils and utilities. CMAs are a key partner in this education campaign and information sheets are available on the DECCW website to assist landholders in understanding the Act and their obligations.

As outlined in Table 3, prosecution of illegal clearing matters is one of the strategies to achieve compliance. The number of prosecutions is consistent with the compliance and enforcement strategy which is to target the smaller number of major matters that pose the highest environmental and regulatory risk. Analysis undertaken as part of the review found that, in some cases, the enforcement provisions are not effective in promoting the objects of the Act.

There was a widespread call from the community, environment organisations, local government and CMAs to improve enforcement provisions in the Act in order to encourage compliance with the Act. This could be done by updating certain

provisions in the NV Act and making them consistent with enforcement provisions in the *Protection of the Environment Operations Act 1997*. This view was not universal however, with submissions from most farmers, landholder groups and farming organisations generally opposing any strengthening of enforcement provisions.

Some responses to the review questions on enforcement related to administration of compliance and enforcement by DECCW, rather than the enforcement provisions in the Act itself. A common theme was that both enforcement and educational approaches were both necessary to allow the regulatory framework to operate effectively.

Many submissions stated it is essential the enforcement provisions and penalties are proportional to the offence, and the Act did not reflect current best practice in this regard. There was a call to expand the range of sentencing options so that 'the punishment fits the crime' and acts as a greater deterrent to potential offenders.

Comments in relation to regulatory tools focused on Remedial Directions and the need to ensure environmental outcomes are achieved by improving enforceability and auditability throughout the life of a Remedial Direction. Similar comments were received in relation to compliance with PVP management actions. There were no suggestions for additional regulatory tools.

## **Review findings**

Enforcement action generally applies to a small proportion of any regulated community and this is the case in native vegetation management as well. Despite the very small number of people affected by the enforcement provisions, these provisions elicit some of the strongest responses. It is clear that the community is split as to the effectiveness of the current enforcement provisions in delivering the objects of the NV Act.

In the short-term, the Government will give further consideration to the issues raised about compliance and enforcement and develop legislative amendments in consultation with stakeholders to ensure that administration of this aspect of the Act is appropriate and effective in the delivery of the objects of the NV Act.

## **Conclusion**

The NV Act was developed in close liaison with interested parties. Provisions were included to promote good land management and to encourage revegetation and rehabilitation of land. Above all, the NV Act provides a framework to end broadscale land clearing. Major stakeholders generally agree with the environmental framework set up by the Act and its general philosophy.

This Report identifies the depth and complexity of issues faced in the management of native vegetation in NSW. Whilst no fundamental change in the nature of the Act's framework appears to be needed, this review identifies areas for change that could enhance the current operation of the Act. The government will further consider these issues in consultation with relevant stakeholders.

## Acronyms

CMA	Catchment Management Authority
DECCW	Department of Environment, Climate Change and Water NSW
DoP	Department of Planning
EOAM	Environmental Outcomes Assessment Methodology
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
LEP	Local Environmental Plan
NV Act	<i>Native Vegetation Act 2003</i>
NVAT	Native Vegetation Assessment Tool
PVP	Property Vegetation Plan
RAMAs	Routine agricultural management activities
SLATS	Statewide Landcover and Tree Survey

