

Native Vegetation: Compliance and Enforcement Strategy

Department of
Environment, Climate Change and Water NSW



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Terminology

Clearing means any one or more of the following:

- cutting down, felling, thinning, logging or removing native vegetation
- killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.

Landholder is a person who owns land or who, whether by reason or ownership or otherwise, is in lawful occupation or possession, or has lawful management or control of land.

Native vegetation means any of the following types of indigenous (existing in NSW before European settlement) vegetation:

- trees (including any sapling or shrub or any scrub)
- understorey plants
- groundcover (being any type of herbaceous vegetation)
- plants occurring in a wetland.

Native vegetation *does not* include mangroves, seagrasses or any type of marine vegetation.

Property vegetation plan is a voluntary but legally binding agreement between a landholder and the local catchment management authority.

Regulated community includes landholders, land managers, occupiers or any person(s) responsible for clearing native vegetation, such as land-clearing contractors.

Stakeholder is any person or group with a vested interest in the outcome of a project or plan. A stakeholder *may* include one or all of the regulated community.

Abbreviations

CMA	catchment management authority
DECCW	Department of Environment, Climate Change and Water NSW
EPRG	Environment Protection and Regulation Group
NV Act	<i>Native Vegetation Act 2003</i>
PVP	Property vegetation plan

1 Purpose

This document outlines the strategy for the Department of Environment, Climate Change and Water (DECCW) to undertake compliance and enforcement activities relating to native vegetation.

The objectives of this strategy are to ensure:

- that the environmental objects of the *Native Vegetation Act 2003* (NV Act) are met
- that DECCW staff follow consistent principles in taking compliance and enforcement action under NSW native vegetation legislation using transparent decision making
- that DECCW staff use a problem-solving approach to regulating land clearing and are aware of the tools available to them in facilitating compliance and enforcement of native vegetation legislation.

2 Scope

This document sets out DECCW's compliance and enforcement strategy under the NV Act. It provides DECCW staff with a framework for making consistent and transparent compliance and enforcement decisions.

It will also assist stakeholders in their understanding of the principles and approaches DECCW will follow when deciding on a particular course of action. The native vegetation compliance and enforcement framework is 'risk-based' and provides DECCW with a cost-effective approach to monitoring compliance, enabling investigation of the highest priority regulatory risks and proactive response to changing or emerging risks.

3 Background

Widespread clearing of native vegetation has had a significant impact on the environment of many parts of NSW. In particular, over-clearing has resulted in increased soil salinity and erosion, changes to the water table, and loss of habitat for plants and animals. Clearing of native vegetation, with the associated destruction of habitat, is the greatest single threat to biodiversity in NSW.¹

The NSW Government has stated its intention to put an end to broadscale clearing in NSW (unless it improves or maintains environmental outcomes) and to protect native vegetation of high conservation value. The NV Act is the primary legislation for the prevention and reversal of the harmful effects of over-clearing in NSW.

3.1 Native Vegetation Act 2003

Land clearing in NSW is managed and controlled through a regulatory framework under the NV Act which commenced in December 2005. The objects of the Act are to:

- provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of NSW
- end broadscale clearing unless it improves or maintains environmental outcomes
- 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

¹ *NSW State of the Environment* (2006), Department of Environment and Conservation (NSW), www.environment.nsw.gov.au/soe/soe2006/chapter6

- improve the condition of existing native vegetation, particularly where it has high conservation value
- encourage the revegetation and rehabilitation of land with appropriate native vegetation, in accordance with the principles of ecologically sustainable development.

A copy of the NV Act can be viewed on the NSW Government website,² and further information regarding native vegetation management is provided in DECCW's native vegetation information sheets.³

DECCW's responsibility

DECCW is charged with promoting compliance with the NV Act and is the lead agency for delivering environmental outcomes that achieve the performance target for native vegetation management in the NSW Government's *State Plan – A New Direction for NSW*. A key component in achieving native vegetation management is compliance with the NV Act and DECCW's approach to its regulation.

Various groups within DECCW implement and support this strategy.

- Environment Protection and Regulation Group (EPRG) is responsible for implementing and evaluating the compliance and enforcement strategy.
- Scientific Service Division provides specialist ecological advice, satellite and other aerial imagery, and interpretation of land clearing activity.
- Legal Services Branch provides expert advice and assistance during investigations and also leads strategic prosecutions.
- Climate Change, Policy and Programs Group provides policy advice for biodiversity and natural resource management.

Compliance and enforcement activities will be evaluated regularly to assess their contribution to environmental improvements.

3.2 Achieving the State Plan targets

In 2006 the NSW Government released its vision for NSW in the *State Plan – A New Direction for NSW*. It included key priority actions for environmental management with specific performance targets for native vegetation.

Compliance with the NV Act provides an important foundation in the delivery of priority E4 of the *State Plan*:

E4 – Better outcomes for native vegetation, biodiversity, land, rivers and coastal waterways.

DECCW will actively promote compliance with native vegetation legislation to achieve the NSW Government's performance target set for priority E4 in native vegetation management:

By 2015 there is an increase in native vegetation extent and an improvement in native vegetation condition.

² www.legislation.nsw.gov.au

³ www.environment.nsw.gov.au/vegetation/publications

4 Compliance – the goal of enforcement

The NSW Government and the community expect DECCW to actively promote compliance with native vegetation laws and deliver improved environmental and conservation outcomes. This will be achieved by integrating the following two approaches:⁴

- 1 assisting the community to understand and meet its legislative obligations
- 2 driving compliance through transparent, consistent and accountable regulatory actions targeting those who consciously choose not to comply with the law.

Effective compliance and enforcement raise environmental awareness and encourage behavioural change. Changes in attitudes and behaviour will together result in long-term improvements to the environment. There is no 'one size fits all' response to non-compliance – the choice of approaches and tools depends on the issue.

DECCW will use a mix of tools depending on the circumstances. These include:

- setting minimum standards in legislation
- education
- incentives and market-based instruments
- mandatory reporting
- compliance auditing
- risk-based compliance and enforcement.

DECCW will continually evaluate the effectiveness of these tools and, if they are not working, amend them or develop new tools and will also establish measures for environmental conservation outcomes, regulatory activities and compliance assistance that accurately reflect DECCW's performance.

Importantly, DECCW will communicate the outcomes of compliance actions to inform stakeholders and promote deterrence for non-compliance.

4.1 A problem-solving approach

Compliance problems come in different forms, and a problem-solving approach which follows six stages is the most effective way to address them.⁵

1 Nominate the potential problem

This involves the examination of patterns or trends, applying insight and breaking down broader issues into actionable parts.

2 Define the problem precisely

Explore and define the problem carefully and rigorously using available data and other evidence to support conclusions.

3 Determine how to measure impact

Using relevant indicators and measures, determine what success would look like when the problem is solved.

⁴ Better Regulation Office (2008), *Risk-Based Compliance*, Department of Premier and Cabinet, www.betterregulation.nsw.gov.au.

⁵ Sparrow, Malcolm K. (2000), *The regulatory craft: Controlling risks, solving problems and managing compliance*, Brookings Institution Press, Washington DC.

4 Develop solutions

Appraise what has or has not worked in the past, keeping an open mind to new approaches, so that the strengths and weaknesses of each proposed solution can be assessed. The best response, or combination of responses, can then be selected.

5 Implement the plan and monitor, review and adjust

Carry out the plan, periodically assessing progress and revisiting earlier decisions if necessary. Adjust the plan when needed.

6 Close the project, allowing for long-term monitoring and maintenance

Terminate the project because it was successful or the problem is no longer a priority, or because it failed. Ensure successful outcomes are sustainable, learn from mistakes, and give a performance account of the effectiveness of the project.

5 Compliance and enforcement activities

All reports of unexplained land clearing will undergo a risk assessment to determine the appropriate regulatory response. Those reports not resulting in enforcement action will also provide intelligence to inform future awareness-raising, education and compliance campaigns.

DECCW undertakes three major types of compliance and enforcement activities.

1 Strategic investigations and enforcement actions

DECCW is committed to identifying non-compliance by undertaking strategic investigations and responding with appropriate enforcement actions including issuing stop-work orders, penalty notices, remedial directions and prosecuting significant non-compliance. Strategic investigations and enforcement also demonstrate DECCW's support for those who comply.

2 Compliance campaigns

Compliance campaigns will be carried out to address environmental and compliance problem areas. Compliance problems will be identified using intelligence gathered from reports by the public, remote sensing data (satellite imagery and aerial photography) and other sources.

3 Effective stakeholder engagement

Effective engagement of landholders will ensure that legislative requirements are clearly explained and understood, as are the consequences of non-compliance. Other stakeholders and responsible agencies are important sources of information to help identify and define compliance risks.

6 Elements of the compliance and enforcement strategy

The compliance and enforcement strategy covers:

- identifying the regulated community
- establishing compliance and enforcement priorities
- promoting compliance
- monitoring compliance
- responding to non-compliance
- working with other responsible agencies and bodies
- establishing management accountability – implementation and evaluation
- communicating results – performance accounting.

6.1 Identifying the regulated community

The regulated community includes landholders, land managers, occupiers or any person(s) responsible for clearing native vegetation, such as land-clearing contractors.

The regulated community will be identified through:

- information and reports from DECCW staff
- information and reports from catchment management authorities (CMAs), local government, State and Commonwealth agencies, environment groups and other key stakeholders
- public reporting (DECCW's Environment Line and other sources)
- property vegetation plans (PVPs)
- property agreements
- development consents
- site inspections
- remote sensing data from satellite imagery and aerial photography.

Information from these sources will be used to identify people who have obligations under the NV Act. DECCW will undertake both proactive and responsive compliance and enforcement activities and respond appropriately to non-compliance.

6.2 Establishing compliance and enforcement priorities

Priority areas for compliance will be selected by identifying compliance problems. DECCW will collect, collate and analyse data and information to identify environmental and compliance risks.

A risk-based compliance approach targets the problems that pose the highest environmental and compliance risks. Therefore, the regulatory approach will be balanced by a combination of education and information, and for significant breaches the necessary enforcement measures will be taken.

Compliance and enforcement priorities will be based on:

- identifying risks, problems or patterns of non-compliance that represent the greatest ecological harm or that will have the greatest multiplier effect for behavioural change. These situations will be identified from information on biodiversity, clearing patterns and

trends, farming practices, property agreements, development consents, permitted clearing patterns and uptake of PVPs.

- the most effective use of resources to achieve the best outcomes for the environment and conservation. This will involve strategic priority setting, flexible and tailor-made solutions and responses, and periodic evaluation of outcomes and impacts.
- public interest from, for example, public notifications and media reports.

6.3 Promoting compliance

The community, industry, landholders, contractors, interest groups, CMAs and government agencies all have an important role in delivering improvement to native vegetation. As well as helping DECCW to identify important environmental and compliance problems, these stakeholders play an important role in communicating messages about compliance to the community.

Strategies to promote compliance include:

- disseminating information and providing technical assistance to the regulated community, general public, landholders and local government. This may include workshops, training, information brochures, fact sheets and guidance material.
- issuing media releases that:
 - highlight successful compliance outcomes, campaigns and prosecutions to maximise the deterrent effect
 - report success stories that raise the profile of native vegetation management issues and publicise the benefits of compliance with the NV Act.
- publishing priority areas for compliance and enforcement before taking action. This can provide an incentive for the regulated community to seek information and assistance.
- liaising with other agencies such as CMAs to assist integration of compliance and enforcement actions with other regulatory activities.

6.4 Monitoring compliance

Collecting and assessing compliance-related information will enable DECCW to:

- detect non-compliance in a reliable and timely manner
- assist landholders and contractors to achieve and maintain compliance, help those who want to comply, while also deterring those who do not want to comply
- provide evidence to support enforcement actions
- provide data and information to identify risks and problems, and establish patterns and trends to direct regulatory activities
- provide statistics to evaluate the progress of compliance and enforcement activities.

Information sources

Data and information will be collected from a variety of sources.

1 Remote sensing

DECCW's Scientific Services Division gathers medium- and high-resolution imagery from satellites and aerial photography for the whole of NSW. The information is analysed to detect changes in native vegetation, and to identify trends in clearing and geographic areas or issues where compliance activities should be focused.

Satellite imagery and aerial photography are also used to inform compliance and enforcement activities, such as compliance campaigns, and as evidence for compliance and enforcement action, including prosecutions.

2 Public notification

Reports made to Environment Line⁶ are an important means of detecting non-compliance and of identifying geographic areas or activities where there are compliance risks, problems or patterns. Public notification is particularly important in isolated areas where only neighbours can see land clearing.

3 Inspection campaigns

Inspection campaigns will target priorities based on internal and external intelligence information. Inspections provide an enforcement presence, enable evidence to be collected and help identify the need for further compliance activities, including compliance audits. They can also assist in educating landholders about their responsibilities.

4 Compliance audits

Compliance audits evaluate whether legal requirements are being met. They can also be used to review achievable environmental and conservation standards for people engaged in native vegetation management, such as farmers, landholders, land managers, occupiers and contractors.

All audits include a monitoring component for follow-up actions on non-compliance. DECCW's *Compliance Audit Handbook* provides general procedures and protocols to ensure a consistent approach to audits.⁷

5 Other stakeholders

A number of government agencies and stakeholder groups have information resources and databases that could be used to assist DECCW undertake compliance investigations and monitoring, for example the NSW Department of Industry and Investment has a public register of authorised plantations.

Other sources of information include remedial directions, PVPs, property agreements and development consents.

6.5 Responding to non-compliance

DECCW's response to non-compliance escalates in accordance with the risk that non-compliance poses to the environment and to conservation. This provides a considered and consistent approach to obtaining the best value from available resources while delivering effective regulatory outcomes.

The criteria for risk assessment of land-clearing reports and information are:

- 1 environmental harm and/or public interest (consequence)
- 2 likelihood of harm having occurred (probability).

Proactive activities

DECCW uses information gathered from compliance monitoring to systematically identify compliance risks, problems and patterns of non-compliance.

⁶ DECCW's Environment Line (131 555) can be contacted 24 hours a day, 7 days a week to report suspected illegal clearing of native vegetation or other environmental or Aboriginal cultural heritage offences.

⁷ www.environment.nsw.gov.au/resources/licensing/cahandbook0613.pdf

Using a risk-based problem-solving approach, local, regional and Statewide campaigns will be developed to address issues of concern. This may involve using a combination of regulatory tools.

Responsive activities

Information from compliance monitoring will also be used to identify specific instances of land clearing. Each land-clearing report is assessed and prioritised according to the risk it poses to the environment or the integrity of the regulatory framework to determine the appropriate regulatory response.

There is a wide range of potential responses to non-compliance:

- non-statutory responses – phone calls, site visits, advisory and notification letters, warning letters and corrective requests
- statutory responses – stop work orders, remedial directions, penalty notices, injunctions and prosecution.

In making decisions about appropriate responses, DECCW staff will use the policy advice and information contained in overarching documents such as DECCW's *EPA Prosecution Guidelines*⁸ and the EPRG Operating Principles (see Appendix).

6.6 Working with other agencies and stakeholders

A number of other Government agencies have either direct or indirect responsibilities for the management or clearing of native vegetation in NSW. The NV Act interacts with other legislation by:

- excluding certain activities authorised under other legislation
- permitting activities without the need for clearing approval
- requiring concurrent approval to clear under other legislation.

An overview of legislation that interacts with the NV Act can be found in DECCW's native vegetation information sheet 13: How does the Native Vegetation Act 2003 interact with other legislation?⁹

DECCW will engage with other agencies that administer legislation affecting the clearing of native vegetation and work closely with them to achieve regulatory objectives. In particular, DECCW will seek the assistance of the following agencies to assist in the regulation of native vegetation management.

Catchment management authorities

CMAs undertake and facilitate works to manage natural resources and native vegetation. They provide community information, technical advice and support on vegetation management issues.

CMAs are responsible for administering and managing native vegetation development consents under the NV Act, including PVPs that may permit broadscale clearing of native vegetation where environmental outcomes are improved or maintained through appropriate offsets. Either the CMA's Board or General Manager may exercise delegated power to approve PVPs or grant development consents.

Although CMAs do not undertake enforcement, they are an essential part of the regulatory framework for native vegetation. They have a strong, on-ground presence which allows them to gather information regarding vegetation clearing; accordingly, it is important that DECCW develops strong relationships with CMAs. The sharing of information between CMAs and

⁸ www.environment.nsw.gov.au/legislation/prosguide/index.htm

⁹ www.environment.nsw.gov.au/resources/vegetation/nvinfosheet13.pdf

DECCW relating to non-compliance is encouraged. This includes information such as property files, site assessments, monitoring information, discussions and advice provided to landholders.

Local councils

The NV Act requires approval, in the form of either a development consent or a PVP, for the clearing of native vegetation.

A development consent granted by a local council (as required under an environmental planning instrument such as a local environmental plan) does not constitute a development consent under the NV Act. It may be necessary, in some circumstances, for a landholder to obtain both a development consent from the local council and a development consent or PVP under the NV Act to carry out clearing.

6.7 Establishing management accountability – implementation and evaluation

Traditional indicators of compliance are outputs such as the number of penalty notices issued or successful prosecutions. However, these indicators do not measure whether environmental outcomes have been achieved.

Native vegetation compliance activities and campaigns will provide measurements for both outputs and outcomes to monitor the effectiveness and efficiency of activities, enhance accountability and assess performance.

In many cases it is difficult to evaluate whether compliance activities and campaigns have achieved their objectives. Other techniques may be used for longer-term evaluation, such as analysis of satellite imagery, land-clearing trends and related data, community and landholder feedback, awareness of guidance material and follow-up campaigns and audits.

6.8 Communicating results – giving an account of performance

DECCW will provide feedback to and communicate with stakeholders regarding the outcome of compliance and enforcement activities, especially if a stakeholder has provided information of a suspected or alleged breach of the NV Act.

For the broader community, the primary communication tools will be DECCW's Annual Report and the NSW Native Vegetation Annual Report, which combines three reports related to native vegetation. The Native Vegetation Report Card and the Woody Vegetation Change Report provide a comprehensive picture of native vegetation in NSW. The Compliance and Enforcement Report Card summarises DECCW's native vegetation compliance and enforcement activities.

DECCW will collect, collate and analyse data and information to identify environmental and compliance risks. Priority areas will then be identified for compliance activities.

This will demonstrate DECCW's effectiveness in ensuring compliance with the NV Act and performance in meeting the NSW Government's *State Plan* targets.

7 How DECCW does its job

The sound and consistent application of the EPRG Operating Principles is the foundation for credible regulation. The EPRG Operating Principles ensure that as a regulator DECCW:

- is in touch with the community
- is relevant and flexible
- selects a proportional response to non-compliance
- chooses important problems and fixes them

- clearly articulates its actions
- follows through on its commitments.

Ethical conduct

Compliance decisions will be made in accordance with NSW Public Sector guidelines to the highest ethical and professional standards.

DECCW has a code of ethical conduct¹⁰ with which all officers are required to comply.

In addition, the following policies, plans and documents are relevant to this strategy:

- DECCW Risk Management – Risk Outcomes
- DECCW Internal Audits
- DECCW Policy and Approach for Managing External Complaints & Allegations
- DECCW Protected Disclosure Guidelines
- NSW Government Personnel Handbook (Chapter 9 – Discipline).¹¹

DECCW's approach to fraud and corruption is designed to comply with the Auditor-General's Ten Attributes of Best Practice in Fraud Control¹² and is based on the standards, principles and strategies in Australian Standard AS 8001-2003 – Corporate Governance – Fraud and Corruption Control.¹³

¹⁰ www.environment.nsw.gov.au/whoweare/ethics.htm

¹¹ www.dpc.nsw.gov.au/personnel_handbook/index.htm

¹² www.audit.nsw.gov.au/publications/better_practice/2005/fraud_control_bpg_feb_05.pdf

¹³ www.standards.com.au/PDFTemp/Previews/OSH/as/as8000/8000/8001-2003%28+A1%29.pdf

Appendix: EPRG Operating Principles

1 Anticipate, find and solve important problems

We will apply our skills and knowledge to identify, prioritise and resolve environmental, conservation and cultural heritage problems, taking into account risks to obtain an achievable, measurable and cost effective solution. We will be innovative and effective in tackling important problems and implement systems to minimise effort on less important ones.

2 Set outcomes focussed regulatory requirements

Our requirements will be linked to achievable environmental, conservation and cultural heritage objectives that can be monitored, easy to understand, widely accepted and unambiguous.

3 Ensure stakeholders understand that compliance is necessary

We will ensure that all stakeholders are aware of their statutory responsibilities/requirements and that we will take appropriate regulatory actions when needed. We will educate stakeholders about their roles and responsibilities and ensure action is taken where there is non-compliance.

4 Recognise our use of discretion

We acknowledge the need to make choices to achieve DECCW's goals and objectives and that discretion is an important and necessary component of our regulatory approach. We should apply our discretion in a rational and demonstrably justifiable way. We must also accept responsibility for the choices we make and be prepared to be challenged over our decisions.

5 Maximise our impact

We can achieve a 'multiplier effect' by influencing and empowering the community, key stakeholders and other agencies to achieve a more healthy and sustainable environment. We can do this through strategic action beyond our direct statutory role as well as through the considered application of our statutory responsibilities.

6 Document our decisions and actions

We must document our decisions, objectives, actions and outcomes in the most efficient way. These should be publicly accessible and available where appropriate. We should communicate proactively and in a way that is easily understood so that our stakeholders understand our rationale and reasoning.

7 Measure and report performance

We should measure the success of our work using a broad mix of indicators and quality summaries to improve our performance and effectiveness and to encourage others to improve their performance. Public reporting should show stakeholders how we allocate and balance our resources on the important issues, how we prevent environmental harm and how we achieve compliance using the best mix of tools. Reporting should encourage clear articulation of relationships between the state of the environment, our selection of regulatory and non regulatory tools and environmental improvements and conservation outcomes resulting from their application.

8 Apply the right tool for the right problem at the right time

An adaptive management approach recognises that there is no 'one size fits all' response. We should select regulatory and non-regulatory tools to achieve positive environmental and conservation outcomes at the time and for the problem at hand. In other words, a 'fit for purpose' response. We should also avoid exaggerated swings in our approach as this can result in adverse delayed effects, are confusing to stakeholders and can be hard to reverse.

9 Provide support and guidance for staff

We will provide and maintain a high standard of support, guidance, training and resourcing for our staff so that they can operate safely, efficiently and effectively with high ethical standards and professionalism under changing circumstances. We will achieve this through both formal and informal processes that empower individuals to solve problems and make decisions in the context of uncertainty.

10 Teamwork and communication

We will develop and utilise teams within and across branches to maximise the effectiveness of our work and to build strong communication networks. In doing this we recognise that required expertise might have to be sought or provided from other branches and divisions or external sources.