



Office of Environment and Heritage approach to managing compliance actions for alleged unlawful clearing under the Native Vegetation Act

From 25 August 2017, the Office of Environment and Heritage (OEH) is responsible for compliance and enforcement of the *Biodiversity Conservation Act 2016* and Part 5A of the *Local Land Services Act 2016*, specifically native vegetation clearing under the Land Management (Native Vegetation) Code which is administered by Local Land Services.

Consistent with NSW Government policy, OEH will continue to assess potential unlawful clearing activities that may have occurred prior to 25 August 2017 as possible breaches of the *Native Vegetation Act 2003* (NV Act), in accordance with its published *OEH Prosecution Guidelines* and compliance policies.

In considering all notifications of clearing, including those that may have occurred prior to 25 August, OEH prioritises the assessment using a risk-based approach. As part of this process, OEH considers:

- harm caused to the environment
- mitigating and aggregating circumstances
- the need to deter breaches of the law
- the public interest.

One factor amongst others OEH will consider is whether the alleged breach under the NV Act may have been permitted under the new Land Management Code and the current opportunity to secure an environmental outcome through education and cooperation with landholders. This approach will ensure that the most serious cases are pursued to the full extent of the law.

Office of Environment and Heritage detects many clearing events through an annual satellite monitoring program. This program will produce results for the period up to 25 August 2017 by mid-2018. Matters relating to possible breaches of the former Act may also be notified to OEH by complaint or other means in the future. This means that legal action may be initiated under the NV Act well into the future, and at any time prior to August 2020.

Consistent with the above approach, OEH will seek to prioritise matters within one month after the satellite imagery or complaint is received, and to finalise low risk matters within a further three months. Those matters that proceed to prosecution will be managed as expeditiously as possible.

Office of Environment and Heritage has also secured funding for additional compliance resources over a four-year period to work on:

- managing the caseload under the NV Act
- compliance action under the new legislation
- undertaking proactive compliance strategies, including audit and strategic project capabilities that will improve compliance and environmental outcomes.

The Government has also agreed to establish an Engagement and Enforcement Advisory Committee to provide independent advice to agencies on regulatory and engagement approaches for improved compliance outcomes. This advice will be particularly relevant in administering the new legislative framework.

Office of Environment and Heritage and Local Land Services will continue to work closely together to ensure successful outcomes are delivered as part of the new biodiversity reforms.

This approach achieves the appropriate balance between protecting biodiversity, allowing lawful clearing and preventing unlawful clearing under the new legislation and ensuring that serious unlawful activity under the previous legislation will be pursued.

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