

Native Vegetation Regulation **EDO NSW Briefing Note – KEY ISSUES SUMMARY**

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1. Background

On 13 September 2011, the Minister for Environment, the Hon. Robyn Parker MP, announced the commencement of the review of the regulations for the *Native Vegetation Act 2003*. This includes a review of the *Native Vegetation Regulation 2005*, the *Environmental Outcomes Assessment Methodology* (EOAM) and the *Private Native Forestry Code of Practice* (PNF Code). The documents on exhibition are:¹

- Draft Native Vegetation Regulation 2012
- Regulatory Impact Statement
- Draft Revised Environmental Outcomes Assessment Methodology (EOAM)
- Draft Code of Practice for the Management of Invasive Native Species in the Namoi CMA
- Draft Code of Practice for the Thinning to Benchmark Stem Densities in the Namoi CMA
- Managing Native Grasslands: Discussion Paper
- A range of documents on changes to private native forestry (PNF).²

There are also a number of fact sheets on the OEH website, and details of public consultation sessions.³

The draft Regulation and associated documents will be on exhibition until **Friday 24 August 2012**. Comments can be sent to:

Native Vegetation Regulation Review
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fax: 02 9995 6791 (attn: Native Vegetation Regulation Review)

¹ See - <http://www.environment.nsw.gov.au/vegetation/consultreview.htm>

² See - <http://www.environment.nsw.gov.au/vegetation/pnfreview.htm>, and see *Private Native Forestry - EDO key issues summary*.

³ Details of regional information sessions can be found at:
<http://www.environment.nsw.gov.au/vegetation/reginfosessions.htm>

2. Overview of the proposed changes

It is noted on the OEH website that: “The review is not examining the **Native Vegetation Act 2003**. Issues raised during the review about the Act will be collated and presented to the government for further consideration.”

Key changes to the **Native Vegetation Regulation** are principally focussed on expanding the scope of clearing that can be done without requiring formal approval, ie, clearing under routine agricultural management activities (RAMAs). Key changes include:

- A new definition of landholding (cl 3)
- Extension of PNF to certain Crown land (cl 3)
- Replacement of the requirement to consult with the Natural Resources Commission (NRC) on changes to the assessment methodology with a broad public consultation requirement (cl 17)
- New exemption for broadscale clearing for conservation purposes (cl 19)
- Changes to process for amending PNF code of practice (cl 23)
- A suite of new **routine agricultural management activities** (RAMAs):
 - New meaning of rural infrastructure (cl 20)
 - Reference to clearing to the “minimum extent necessary” under RAMAs (cl25)
 - Slight rewording of infrastructure buffer distances (cl 26)
 - Changes to obtaining construction timber – removal of requirement to use timber within 18 months and undertake restoration (cl 27)
 - New RAMA for any permanent boundary fence (cl 28)
 - New RAMA for construction of a shed (cl 29)
 - Telecommunications RAMA applies to all land (cl 32)
- A new group of RAMAs that allows clearing without approval if the clearing is done in accordance with a code of practice (made by publicly exhibited Ministerial orders – cl 37) in relation to:
 - Clearing of feral native plant species (cl 33)
 - Clearing of invasive plant species (cl 34)
 - Clearing for environmental works (cl 35)
 - Thinning of native vegetation (cl 36)
- Amendments to activities on PNF PVP land (Division 4)
- RAMAs have also been extended in relation to clearing for:
 - ‘dwellings’ (cl 42)
 - conservation purposes (cl 43)
 - scientific licences (cl 44)
 - pest animals (cl 45)
 - planted native vegetation (cl 46)
- The new RAMAs have been listed in relation to limitations on RAMAs on protected riparian land (cl 51)
- New mechanism for the Minister to make natural resource management plans for protected regrowth (instead of using interim protection orders), and removal of requirement to register a PVP on title (cl 53)
- Clarification of land use zones that are excluded from the Act (schedule 2).

Key changes to the **Environmental Outcomes Assessment Methodology** (EOAM) are focussed on ‘streamlining’ assessment in certain areas. Key changes include:

- A simplified fast-track assessment option is proposed for the clearing of:
 - Very small areas of native vegetation – up to 10 ha (Chapter 6)
 - Clearing scattered paddock trees and small clumps of native vegetation (less than 2ha) in paddocks used for cultivation (chapter 6)

- Certain treatments of invasive native species (INS) (chapter 3)
- Thinning to benchmark stem densities (Chapter 4)
- Pasture cropping (chapter 5)
- Changed definition of “low condition” vegetation
- Increased discretion for CMA offers to vary limits to clearing under the streamlined assessment
- Simplified threatened species (by increasing assessment based on vegetation type rather than individual species)
- Changes to zones of riparian areas (chapter 7)
- Alignment of the EOAM with the Biobanking assessment methodology by proposing a biodiversity credit system being made available to rural landholders
- Amended assessment of grasslands with low conservation value
- It is proposed that the process for amending the EOAM be included in the tool rather than the Regulation.

3. Preliminary comments on key issues

a. Potential improvements

EDO NSW supports an efficient system that encourages landholders to manage their native vegetation to improve and maintain environmental outcomes. We support efforts to work cooperatively with landholders to get PVPs in place in a more timely manner. We also support proposals to improve information delivery and education options for landholders.

Potential benefits may result from the proposed improved assessment of acidic soils, clarification of exclusion of clearing in core riparian areas, and the requirement for salinity risks to be assessed in coastal areas as well as inland areas.

b. Areas of concern

The changes to the **regulation** are focussed on expanding the categories of clearing where a formal approval is not required – ie, clearing that can be done under a RAMA. It is noted in the Regulatory Impact Statement (RIS) that “*it is very difficult to determine the number of times that clearing is undertaken under a RAMA. The Native Vegetation Report card does not report on activities exempted or excluded from the Act*” (p11). The changes envisage that a greatly increased range of clearing activities will be done under RAMAs, however, it will be difficult to know how much clearing will be done under the new RAMAs. It will be impossible to know whether the new Codes of Practice are being complied with for clearing in relation to invasive native species, thinning and environmental works. In addition, there is no provision for assessing cumulative impacts of clearing under RAMAs and/or clearing under new fast-track clearing rules.

The changes to the **methodology** are focussed on reducing assessment requirements in order to (1) speed up assessment times, and (2) to align the methodology with other tools such as for biobanking. In relation to the first issue, the assessment short-cuts and fast-track options are potentially a retrograde step in native vegetation management. The NV Act was introduced in 2003 to address serious problems associated with the previous NVC Act and SEPP 46 – particularly in terms of exemptions that were allowed for clearing – for example: 2 ha per year and 7 trees etc. The proposed changes that are intended to facilitate clearing of small clumps and scattered paddock trees signal a return to a weakened system that

permits incremental loss of native vegetation. In relation to the second issue, proposed changes to potentially allow trading of biobanking credits, and change the definition of “low condition” vegetation to facilitate more clearing and more offsetting, weaken the EOAM. A foundation strength of the EOAM has been the mechanism in the tool to identify ‘red light’ vegetation that cannot be cleared. This is fundamental to the ecological integrity of the scheme and this integrity will be severely eroded if the tool is brought into line with proposed changes to biobanking tool – for example, allowing offset trading between vegetation formations not types. There are also concerns about mechanisms for amending the methodology being included in the tool rather than the regulation (making them easier to change).

c. Key issues where more information is needed

More information is needed on the following issues:

- Compliance and enforcement in relation to new codes of practice and RAMAs
- Data showing that proposed changes to the EOAM do not result in a weakening of environmental standards as stated by OEH.
- What extra resources will be provided to CMAs to improve administration of the Act and regulation.

EDO NSW will be making a detailed submission on the proposed changes which will be publicly available on our website.

For further information, please contact Policy & Law Reform Director Rachel Walmsley on Rachel.walmsley@edonsw.org.au or (02) 9262 6989.