



## Clearing Vegetation

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Northern Rivers:	1800 626 239
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### Overview

Clearing vegetation of all types is a highly regulated activity in NSW. Native vegetation in particular plays a vital role in supporting biodiversity and ecosystems. Clearing is recognised as a key threatening process affecting the survival of threatened species. It is a major factor contributing to soil erosion, salinity and climate change.

This Fact Sheet describes the principal laws governing the clearing of vegetation in rural areas.

Land clearing in **urban areas** is covered in our [Fact Sheet on Trees \(including tree disputes\)](#).

**Forestry** on public and land is covered in our [Fact Sheet on Forestry](#).

Land clearing which affects a matter of **national environmental significance** such as a nationally listed threatened species or a migratory species is regulated under the EPBC Act by the [Australian Environment Department](#). For more information, see our [Fact Sheet on the EPBC Act](#).

For information on protecting **threatened species** and their habitat from land clearing, see below as well as our [Fact Sheet on threatened species and ecological communities](#).

For information about protecting vegetation in **national parks**, see our [Fact Sheet on protected areas](#).

<sup>1</sup> See: [http://www.edonsw.org.au/legal\\_advice](http://www.edonsw.org.au/legal_advice)

For information on how to protect **vegetation on private land**, see our [Fact Sheet on conservation on private land](#).

## Land clearing in rural areas

Land clearing in rural areas of NSW is regulated under the [Native Vegetation Act 2003 \(NSW\)](#) and the [Native Vegetation Regulation 2013 \(NSW\)](#).

The NSW Minister for the Environment is responsible for the NV Act, which is administered by the [NSW Office of Environment and Heritage \(OEH\)](#).

## Where does the Native Vegetation Act apply?

The NV Act applies to rural land that is privately owned or leased (such as land in the Western Division). For more information about the Western Division see our [Fact Sheet](#).

### Land excluded from the Act

[Schedule 1 of the Act](#) lists areas that are excluded from the operation of the Act. The Act does **not** apply to:<sup>2</sup>

- Urban land (being land zoned ‘residential’, ‘village’, ‘township’, ‘industrial’ or ‘business’, or other zones with a similar urban character)
- The Sydney Metropolitan Area
- State forests
- National parks and conservation areas
- Lord Howe Island

The Act also does **not** apply to land which is:<sup>3</sup>

- Subject to an interim protection order under Part 6A of the [National Parks and Wildlife Act 1974 \(NSW\)](#)
- Listed or subject to an interim heritage order on the [State Heritage Register](#) under the [Heritage Act 1977 \(NSW\)](#)
- Subject to development for seniors housing under the [SEPP - Housing for Seniors or People with a Disability 2004 \(NSW\)](#)
- Declared as critical habitat under the [Threatened Species Conservation Act 1995 \(NSW\)](#) or the [Fisheries Management Act 1994 \(NSW\)](#)

Clearing on land which is excluded from the Act will be subject to clearing controls under local environmental plans and tree preservation orders.

### What sort of vegetation is covered by the Act?

The Act categorises native vegetation as:

<sup>2</sup> *Native Vegetation Act 2003 (NSW)*, s. 5, Schedule 1.

<sup>3</sup> *Native Vegetation Act 2003 (NSW)*, s. 5, Schedule 1.

- Regrowth – any native vegetation that has regrown since 1 January 1983 in the case of land in the Western Division and 1 January 1990 in the case of other land,<sup>4</sup>
- Protected regrowth – regrowth that is identified as protected regrowth in a property vegetation plan, environmental planning instrument (such as a local environmental plan), natural resource management plan or an interim protection order,<sup>5</sup> and
- Remnant native vegetation – any native vegetation other than regrowth.<sup>6</sup>

The Act applies to native trees as well as native:<sup>7</sup>

- saplings, shrubs and scrub,
- understorey plants,
- groundcover, and
- plants occurring in wetlands.

The Act **does not** apply to mangroves, seagrasses or any other types of marine vegetation.<sup>8</sup> These are protected under the [Fisheries Management Act 1994 \(NSW\)](#).<sup>9</sup> For more information on protecting native plants and animals, see our [Fact Sheet](#).

## How is clearing controlled under the Native Vegetation Act?

### **Offence to clear land**

It is an offence to clear native vegetation unless:<sup>10</sup>

- the vegetation is non-protected regrowth or certain groundcover (see above);<sup>11</sup>
- the clearing is subject to an exemption (see exemptions below); or
- the clearing is approved under either a development consent or a property vegetation plan (PVP).

Clearing does not just include cutting down trees. It also includes thinning, removing native vegetation (e.g. with a bulldozer), clearing groundcover (e.g. by ploughing) poisoning (e.g. by herbicide spray drift), ringbarking, uprooting, or burning native vegetation.<sup>12</sup>

Land clearing in NSW is regulated by the OEH. The OEH regularly assesses satellite images and compares them to images taken in previous years in order to identify recent clearing. The OEH investigates clearing which is not accounted for under a property vegetation plan or development consent.

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<sup>4</sup> The applicable date for 'regrowth' can also be set out in a property vegetation plan. Where this is the case, it is the earlier date that applies. See *Native Vegetation Act 2003 (NSW)*, s. 9.

<sup>5</sup> *Native Vegetation Act 2003 (NSW)*, s. 10.

<sup>6</sup> *Native Vegetation Act 2003 (NSW)*, s. 9.

<sup>7</sup> *Native Vegetation Act 2003 (NSW)*, s. 6.

<sup>8</sup> *Native Vegetation Act 2003 (NSW)*, s. 6(3).

<sup>9</sup> *Fisheries Management Act 1994 (NSW)*, s. 205.

<sup>10</sup> *Native Vegetation Act 2003 (NSW)*, s. 12(1).

<sup>11</sup> *Native Vegetation Act 2003 (NSW)*, s. 20.

<sup>12</sup> *Native Vegetation Act 2003 (NSW)*, s. 7.

A person who carries out or authorises (e.g. by engaging a contractor) clearing of remnant native vegetation or protected regrowth without development consent or a property vegetation plan is guilty of an offence.<sup>13</sup> It is not just the landholder who may be charged with an offence; the person who actually carries out the clearing (e.g. the bulldozer operator) may also be charged.<sup>14</sup>

It is a defence if the person can point to an exemption under the Act.<sup>15</sup> [OEH's website](#) contains information on clearing native vegetation and exemptions.

### ***Development consent for clearing***

A landholder who wishes to clear land may either apply for development consent or negotiate a Property Vegetation Plan (PVP) with [Local Land Services](#) (see below).

Local Land Services (LLS) issue development consents for clearing.<sup>16</sup>

In deciding whether to grant consent, the LLS must consider any relevant catchment action plans of Local Land Services.<sup>17</sup>

The LLS must not grant consent for broadscale clearing unless the clearing will improve or maintain environmental outcomes.<sup>18</sup> Whether or not environmental outcomes will be improved or maintained is determined using the [Environmental Outcomes Assessment Methodology](#).<sup>19</sup>

The [Environmental Outcomes Assessment Methodology](#) (EOAM) is used by Local Land Services to assess whether clearing development applications meet certain criteria and can be approved. The EOAM is applied using objective, computer-based decision support software known as the Native Vegetation Assessment Tools (NVAT). This software weighs up the positive and negative benefits of different management actions, helping assessment officers to make practical decisions based on the best scientific information available.

The [EOAM](#) is currently being updated. Visit the [OEH website](#) for more information.<sup>20</sup>

Development consents can be issued subject to legally binding conditions.<sup>21</sup> It is an offence to clear land in breach of a development consent.<sup>22</sup> People who can be charged include the landholder, the person who authorises the clearing, and the person who does the clearing.<sup>23</sup>

Landholders can appeal a refusal or the conditions of consent in the NSW Land and Environment Court.

<sup>13</sup> *Native Vegetation Act 2003* (NSW), s. 12(2), *Environmental Planning and Assessment Act 1979* (NSW), s. 126.

<sup>14</sup> *Native Vegetation Act 2003* (NSW), s. 44.

<sup>15</sup> *Native Vegetation Act 2003* (NSW), s. 12(3).

<sup>16</sup> *Native Vegetation Act 2003* (NSW), s. 48.

<sup>17</sup> *Native Vegetation Act 2003* (NSW), s. 14(2).

<sup>18</sup> *Native Vegetation Act 2003* (NSW), s. 14(3).

<sup>19</sup> *Native Vegetation Regulation 2013* (NSW), cl. 16.

<sup>20</sup> See: <http://www.environment.nsw.gov.au/vegetation/eoam/>

<sup>21</sup> *Native Vegetation Act 2003* (NSW), s. 33.

<sup>22</sup> *Native Vegetation Act 2003* (NSW), s. 12.

<sup>23</sup> *Native Vegetation Act 2003* (NSW), s. 44.

A [public register](#)<sup>24</sup> of development consents issued under the NV Act is published on OEH's website.<sup>25</sup>

### **Property Vegetation Plans (PVPs)**

An alternative to applying for development consent is to enter into a [property vegetation plan](#) (PVP). PVPs are agreements made between the landholder and the LLS. The process for making a PVP begins with the landholder submitting a draft PVP to the [Local Land Services](#) (LLS) who will decide whether or not to approve the PVP.<sup>26</sup>

The PVP allows the landholder to lawfully carry out the clearing which is identified in the plan. They usually require the clearing to be offset by agreeing to conserve and maintain native vegetation elsewhere on the property.

A PVP will identify which areas of land may be cleared, which vegetation must be kept as an offset, and what sort of farming practices can be carried out on the land subject to the PVP.<sup>27</sup>

The LLS cannot approve a PVP which allows broadscale clearing of native vegetation unless the clearing will improve or maintain environmental outcomes.<sup>28</sup> The [Environmental Outcomes Assessment Methodology](#) (EOAM) is used by Local Land Services to assess whether clearing development applications meet certain criteria and can be approved. The EOAM is applied using objective, computer-based decision support software known as the Native Vegetation Assessment Tools (NVAT). This software weighs up the positive and negative benefits of different management actions, helping assessment officers to make practical decisions based on the best scientific information available.

The [EOAM](#) is currently being updated. Visit the [OEH website](#) for more information.<sup>29</sup>

PVPs are voluntary to enter into, but once made they are binding on the landholder and legally enforceable.<sup>30</sup> A landowner who carries out clearing in breach of their PVP is committing an offence.<sup>31</sup>

PVPs may be made for up to 15 years and bind future owners of the land.<sup>32</sup>

A [public register](#)<sup>33</sup> of PVPs made under the NV Act is published on OEH's website.<sup>34</sup>

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<sup>24</sup> See: <http://www.environment.nsw.gov.au/vegetation/publicregister.htm>

<sup>25</sup> *Native Vegetation Act 2003* (NSW), s. 15(1)(e).

<sup>26</sup> *Native Vegetation Act 2003* (NSW), s. 26; *Native Vegetation Regulation 2013* (NSW), Part 3, cls. 7-14.

<sup>27</sup> *Native Vegetation Act 2003* (NSW), s. 28; *Native Vegetation Regulation 2013* (NSW), Part 3, cls. 7-14.

<sup>28</sup> *Native Vegetation Act 2003* (NSW), s. 29.

<sup>29</sup> See: <http://www.environment.nsw.gov.au/vegetation/eoam/>

<sup>30</sup> *Native Vegetation Act 2003* (NSW), s. 33.

<sup>31</sup> *Native Vegetation Act 2003* (NSW), s. 12.

<sup>32</sup> *Native Vegetation Act 2003* (NSW), ss. 30, 31.

<sup>33</sup> See: <http://www.environment.nsw.gov.au/vegetation/publicregister.htm>

<sup>34</sup> *Native Vegetation Act 2003* (NSW), s. 32 (e).

### **No land clearing on vulnerable land**

The NV Act prohibits clearing on [vulnerable land](#).<sup>35</sup> Vulnerable land is land that is especially prone to soil erosion, sedimentation and landslip if appropriate land clearing techniques are not used. Vulnerable land is [mapped](#)<sup>36</sup> and includes:<sup>37</sup>

- Steep or highly erodible land;
- Protected riparian land; and
- Special category land.

Vulnerable land is classified as protected regrowth<sup>38</sup> and therefore requires approval (or a PVP) to clear, unless it is excluded clearing which is authorised under other legislation.

### **Exemptions**

#### **Clearing of regrowth and groundcover is permitted**

The following types of clearing are permitted without the need for development consent or a property vegetation plan:

- Clearing of regrowth that is not 'protected regrowth' (see above);<sup>39</sup>
- Clearing of native vegetation that comprises only groundcover where at least 10% of the area is covered with vegetation (whether dead or alive), and less than 50% of that vegetation is indigenous species.<sup>40</sup>

#### **Routine agricultural management activities are permitted**

A landholder is permitted to clear vegetation for routine agricultural management activities without the need for approval.<sup>41</sup>

'Routine agricultural management activities' include:<sup>42</sup>

- The construction, operation and maintenance of rural infrastructure related to farming or agricultural activities.<sup>43</sup> This may include farm dams, tanks, permanent fences, buildings, windmills, bores, stockyards, telecommunications infrastructure,<sup>44</sup> and farm roads. This is subject to

<sup>35</sup> *Native Vegetation Regulation 2013*, (NSW), Part 7.

<sup>36</sup> See: <http://www.environment.nsw.gov.au/resources/vegetation/vulnerablelandmap.pdf>

<sup>37</sup> *Native Vegetation Regulation 2013*, (NSW), Part 7.

<sup>38</sup> *Native Vegetation Act 2003* (NSW), s. 10(1)(c).

<sup>39</sup> Regrowth is any native vegetation that has regrown since 1 January 1983 in the case of land in the Western Division and 1 January 1990 in the case of other land. The relevant date can also be specified in a property vegetation plan. See: *Native Vegetation Act 2003* (NSW), ss. 9, 19.

<sup>40</sup> *Native Vegetation Act 2003* (NSW), s. 20; *Native Vegetation Regulation 2013* (NSW), cl. 62.

<sup>41</sup> *Native Vegetation Act 2003* (NSW), s. 22.

<sup>42</sup> *Native Vegetation Act 2003* (NSW), s. 11; *Native Vegetation Regulation 2013* (NSW), Part 6.

<sup>43</sup> *Native Vegetation Regulation 2013* (NSW), cl. 27, 28.

<sup>44</sup> Under the *Native Vegetation Regulation 2013* (NSW), cl. 32, clearing for the purposes of developing telecommunication infrastructure is not limited to Crown lands.

activities taking place within certain buffer distances, depending on the location of the activity within the State.<sup>45</sup>

- The removal of noxious weeds under the *Noxious Weeds Act 1993*. Certain native species can be declared to be feral species, in which case removal will constitute a routine agricultural management activity.<sup>46</sup>
- The control of noxious animals under the *Rural Lands Protection Act 1998*.
- The collection of firewood (except for commercial purposes).
- The harvesting or other clearing of native vegetation planted for commercial purposes.
- The lopping of native vegetation for stock fodder.
- Traditional Aboriginal cultural activities.
- The maintenance of public utilities (such as those associated with the transmission of electricity, the supply of water, gas and electronic communication).
- Any activity necessary to remove or reduce an imminent risk of serious personal injury or damage to property.

### ***Continuation of existing farming activities is permitted***

Farming activities such as cultivation, grazing or rotational farming practices, which were being carried out as at 1 December 2005 are permitted without development consent or a property vegetation plan, but not if it involves the clearing of:<sup>47</sup>

- Remnant native vegetation (i.e. vegetation which has not been cleared since 1 January 1983 in the Western Division and 1990 on other land),<sup>48</sup> and
- Vegetation in the Western Division, or vegetation that is river red gum, belah or white cypress pine more than 3 metres high.<sup>49</sup>

### ***Sustainable grazing is permitted***

Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation is permitted without development consent or a property vegetation plan.<sup>50</sup>

### ***Clearing authorised by self-assessable codes of practice permitted***

Certain types of clearing activities are permitted under [self-assessable codes of practice](#).<sup>51</sup> To date, three self-assessable codes have been made:

<sup>45</sup> *Native Vegetation Regulation 2013* (NSW), cl. 27.

<sup>46</sup> *Native Vegetation Regulation 2013* (NSW), cl. 37.

<sup>47</sup> *Native Vegetation Act 2003* (NSW), s. 23.

<sup>48</sup> *Native Vegetation Act 2003*, s. 9.

<sup>49</sup> *Native Vegetation Act 2003* (NSW), s. 9.

<sup>50</sup> *Native Vegetation Act 2003* (NSW), s. 24.

- clearing of paddock trees in a cultivation area;
- thinning of native vegetation; and
- clearing of invasive native species.

These self-assessable codes provide practical instructions on what vegetation can and cannot be cleared. They include guidelines about the size and location of vegetation and proximity to other vegetation or landforms such as rivers or wetlands, the maximum number of plants that can be cleared, and the density of vegetation after clearing.

Under the self-assessable codes, landholders can undertake these clearing activities without obtaining a PVP or development consent. However, even though consent is not required, landholders still need to notify their LLS office before carrying out any clearing activities under the self-assessable codes.<sup>52</sup>

### ***Clearing authorised by the 10/50 Vegetation Clearing Code of Practice is permitted***

The Rural Fires Act permits some clearing activities for bushfire hazard reduction purposes. The [10/50 Vegetation Clearing Code of Practice](#)<sup>53</sup> allows landholders living in [designated areas](#)<sup>54</sup> to clear vegetation on their property without the need for approval. Specifically, landholders within a designated area can:

- Clear trees on their property within 10 metres of a home, without seeking approval; and
- Clear underlying vegetation such as shrubs (but not trees) on their property within 50 metres of a home, without seeking approval.

There are a few restrictions on clearing under the 10/50 Code, such as if a property is on a slope, or there are items of Aboriginal or cultural significance in the area. Under the 10/50 Code, landholders **are not** required to consider threatened species or ecological communities that would otherwise be protected under NSW laws.<sup>55</sup> However, federal laws still apply to activities undertaken under the 10/50 Code, and the 10/50 Code does not provide a landholder with an approval under the EPBC Act.

There are some restrictions on the clearing methods that can be used. For example, the use of graders, ploughs and dozers to clear land under the 10/50 Code is not permitted.<sup>56</sup>

### ***Clearing authorised by other legislation is permitted***

Clearing can be authorised under other legislation, including:<sup>57</sup>

<sup>51</sup> *Native Vegetation Act 2003* (NSW), Part 6 Division 3; See:

<http://www.environment.nsw.gov.au/vegetation/selfassess.htm>.

<sup>52</sup> *Native Vegetation Regulation 2013* (NSW), cl. 43:

<http://www.environment.nsw.gov.au/vegetation/selfassess.htm>.

<sup>53</sup> <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing>

<sup>54</sup> See: <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing/tool>

<sup>55</sup> *Rural Fires Act 1997* (NSW), s 100C.

<sup>56</sup> [10/50 Vegetation Clearing Code of Practice](#), cl. 7.5: <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing>

- Clearing authorised under the *State Emergency and Rescue Management Act 1989*;
- Clearing carried out under a property management plan or licence under the *Threatened Species Conservation Act 1995*;
- Clearing authorised by a development consent under the EP&A Act, if the development is 'designated development';
- Clearing carried out by a government authority or under an approval granted under Part 5 of the EP&A Act;
- Clearing authorised under the *Mining Act 1992*;
- Clearing authorised under the *Petroleum (Onshore) Act 1991*;
- Clearing for plantations operations under the *Plantations and Reafforestation Act 1999*; and
- Clearing under the *Water Act 1912* or the *Water Management Act 2000*.

Clearing for certain dwellings which have already been granted development consent under the EP&A Act do not also need development consent under the NV Act.<sup>58</sup>

### **Land clearing and threatened species**

Land clearing which is carried out in accordance with a development consent issued under the NV Act or under a property vegetation plan will not breach the *Threatened Species Conservation Act 1995*.

### ***Clearing permitted by a Native Vegetation Act exemption will not breach TSC Act***

If a person is carrying out clearing which falls within one of the exemptions under the NV Act then this will be a defence to any threatened species offence, such as damaging the habitat of a threatened species or picking a threatened plant.

For example, clearing non-protected regrowth, continuing an existing farming activity or engaging in sustainable grazing will be a defence.<sup>59</sup>

This defence does not apply if the clearing takes place in an urban area.<sup>60</sup> However, clearing undertaken in designated areas (including urban areas) under the 10/50 Code is not subject to laws that would otherwise protect threatened species or ecological communities.<sup>61</sup>

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<sup>57</sup> *Native Vegetation Act 2003* (NSW), s. 25 for a full list of legislative exclusions.

<sup>58</sup> *Native Vegetation Regulation 2013* (NSW), cl. 49.

<sup>59</sup> *National Parks and Wildlife Act 1974* (NSW), s. 118G(1).

<sup>60</sup> *National Parks and Wildlife Act 1974* (NSW), s. 118G(4).

<sup>61</sup> *Rural Fires Act 1997* (NSW), s 100C.

### ***Development consents do not need a species impact statement***

The usual process in NSW is that development applications for developments which are likely to have a significant effect on a threatened species need to be accompanied by a species impact statement. See our [Fact Sheets on DAs and consents](#) for more information.

However, development applications for clearing under the NV Act do not need to have a species impact statement. This is because the Environment Minister has granted biodiversity certification on the NV Act, the effect of which is to deem all development applications under the NV Act not to have a significant impact on threatened species.<sup>62</sup>

### ***Clearing under property vegetation plans will not breach TSC Act***

Similarly, a person who clears native vegetation in accordance with a property vegetation plan does not need a licence to take or pick threatened species and will not commit an offence under the TSC Act, because of the effect of biodiversity certification on the NV Act.

### ***What is biodiversity certification?***

Under the TSC Act, the Environment Minister may confer biodiversity certification on the NV Act and Regulations.<sup>63</sup> The effect of certification is to exempt developments covered by laws from the need to comply with the TSC Act.<sup>64</sup>

The Environment Minister issued an order conferring biodiversity certification on the NV Act and Regulations, taking effect from 1 December 2005.<sup>65</sup>

### ***Enforcement of the Native Vegetation Act***

Development consents and PVPs issued under the NV Act are legally enforceable.<sup>66</sup>

### ***Powers of entry, inspection, to obtain information***

An authorised officer has the power to enter somebody's land for the purpose of determining whether there is, or has been, a breach of the Act, but only if:<sup>67</sup>

- The landholder consents, or
- The Chief Executive of OEHL has authorised the entry.

The authorised officer must produce his or her identification card, if requested.<sup>68</sup>

<sup>62</sup> *Native Vegetation Act 2003* (NSW), s. 14(4); *Threatened Species Conservation Act 1995* (NSW), ss. 126E, 126I.

<sup>63</sup> *Threatened Species Conservation Act 1995* (NSW), s. 126C.

<sup>64</sup> *Threatened Species Conservation Act 1995* (NSW), s. 126G-M.

<sup>65</sup> See NSW Government Gazette No. 142, 25 November 2005, page 9809.

<sup>66</sup> *Native Vegetation Act 2003* (NSW), s. 33.

<sup>67</sup> *Native Vegetation Act 2003* (NSW), s. 35.

<sup>68</sup> *Native Vegetation Act 2003* (NSW), s. 34(4).

Once on the land, the officer may conduct investigations, take samples (e.g. of tree species), take photos and require a landholder to produce records or documents (e.g. contracts engaging bulldozers).<sup>69</sup>

It is an offence to obstruct (delay, threaten, hinder) an authorised officer or to refuse to comply with a requirement by an authorised officer. The maximum penalty for doing so is \$11,000.<sup>70</sup>

In order to determine whether the NV Act is being or has been breached, the Chief Executive of OEH may direct a notice to be served on a person requiring them to give information about a land clearing incident to an authorised officer (either orally, or by giving them documents).<sup>71</sup>

It is an offence not to comply with a notice without reasonable excuse. The maximum penalty is \$11,000.<sup>72</sup> A person is not excused from giving information, answering questions or producing documents on the grounds that they may incriminate themselves.<sup>73</sup>

### **Stop work orders**

The Chief Executive of the OEH may issue a stop work order if they think that a person is breaching, or is about to breach, the NV Act.<sup>74</sup> A stop work order takes effect immediately and may last for up to 2 years.<sup>75</sup>

The Chief Executive is not required to notify anybody before making an order.<sup>76</sup> A person who is unhappy with a stop work order may appeal to the Land and Environment Court within 30 days of the order being served.<sup>77</sup> An appeal does not suspend the order.<sup>78</sup>

It is an offence not to comply with a stop work order. The maximum penalty for a corporation is \$220,000, plus \$22,000 for each day that the offence continues; for an individual the maximum penalty is \$110,000, plus \$11,000 for each day that the offence continues.<sup>79</sup>

### **Directions for remedial work**

The OEH can direct a landholder to carry out remedial work by issuing a written notice to the landholder.<sup>80</sup> This remedial work might involve things such as repairing any damage caused by the clearing, rehabilitating and regenerating any land

<sup>69</sup> *Native Vegetation Act 2003* (NSW), s. 35(2).

<sup>70</sup> *Native Vegetation Act 2003* (NSW), s. 35(5).

<sup>71</sup> *Native Vegetation Act 2003* (NSW), s. 36.

<sup>72</sup> *Native Vegetation Act 2003* (NSW), s. 36(4).

<sup>73</sup> *Native Vegetation Act 2003* (NSW), s. 36(5).

<sup>74</sup> *Native Vegetation Act 2003* (NSW), s. 37.

<sup>75</sup> *Native Vegetation Act 2003* (NSW), s. 37(2), (4).

<sup>76</sup> *Native Vegetation Act 2003* (NSW), s. 40.

<sup>77</sup> *Native Vegetation Act 2003* (NSW), s. 39; *Land and Environment Court Act 1979* (NSW), s. 17(g).

<sup>78</sup> *Native Vegetation Act 2003* (NSW), s. 39(2).

<sup>79</sup> *Native Vegetation Act 2003* (NSW), s. 37(5).

<sup>80</sup> *Native Vegetation Act 2003* (NSW), s. 38.

affected by the clearing, and working to ensure that specified land, rivers or lakes will not be damaged or detrimentally affected by the clearing.<sup>81</sup>

If clearing of native vegetation on any land has caused, or is likely to cause, soil erosion (including offsite soil erosion), land degradation, or siltation of any river or lake, or any adverse effect on the environment, the OEH can direct the landholder or the person having the control or management of the clearing to carry out remediation work in a specified manner and within a specified time.<sup>82</sup>

The OEH is not required to notify anybody before giving a direction.<sup>83</sup> A person who is unhappy with a remediation direction may appeal to the Land and Environment Court within 30 days of the direction being served.<sup>84</sup> An appeal does not suspend the direction.<sup>85</sup>

It is an offence not to comply with a remediation direction. The maximum penalty for a corporation is \$220,000, plus \$22,000 for each day that the offence continues. For an individual, it is \$110,000, plus \$11,000 for each day that the offence continues.<sup>86</sup>

If a landholder fails to comply with a remediation direction, the OEH can authorise someone else to do the work and charge the cost to the landholder.<sup>87</sup>

### **Civil proceedings**

Any person may bring proceedings in the Land and Environment Court to request an order to remedy or restrain a breach of the NV Act.<sup>88</sup>

In civil proceedings, the Court may make such orders as it thinks fit to remedy or restrain the contravention. An order may take the form of an injunction (e.g. to stop clearing), a declaration (e.g. that a development consent is invalid), or a remediation order.<sup>89</sup> See our [Fact Sheet on the Land and Environment Court](#) for more information.

### **Case Study: Court refuses development application and protects Blue Gum High Forest<sup>90</sup>**

The Land and Environment Court refused to grant development consent to a developer proposing to build a house on land containing remnant Blue Gum High Forest, which is identified as a critically endangered ecological community under NSW law, because the proposal would enable the removal of Blue Gums within 10m of the building envelope under the NSW Rural Fire Service's [10/50 Vegetation Clearing Code of Practice](#).

<sup>81</sup> *Native Vegetation Act 2003* (NSW), s. 38(2).

<sup>82</sup> *Native Vegetation Act 2003* (NSW), s. 38(1)(b).

<sup>83</sup> *Native Vegetation Act 2003* (NSW), s. 40.

<sup>84</sup> *Native Vegetation Act 2003* (NSW), s. 39; *Land and Environment Court Act 1979* (NSW), s. 17(g)..

<sup>85</sup> *Native Vegetation Act 2003* (NSW), s. 39(2).

<sup>86</sup> *Native Vegetation Act 2003* (NSW), s. 38(4).

<sup>87</sup> *Native Vegetation Act 2003* (NSW), s. 38(5), (6).

<sup>88</sup> *Native Vegetation Act 2003* (NSW), s. 41; *Land and Environment Court Act 1979* (NSW), s. 20(1)(de).

<sup>89</sup> *Native Vegetation Act 2003* (NSW), s. 41(5).

<sup>90</sup> [Johnson v Hornsby Shire Council \[2014\] NSWLEC 1215](#)

Hornsby Council had previously granted consent to the developer for subdivision of the site in 2010 on condition that the Blue Gums be retained, but refused this development application in 2014 for a number of reasons, including the fact that the removal of Blue Gums would be permitted under the 10/50 Code if the development was approved.

The developer subsequently appealed the Council's refusal. The Court dismissed this appeal and upheld the Council's refusal, finding that granting consent to the development would allow more than half of the remnant Blue Gum High Forest in an area designated to be a 'restricted development area' to be lawfully removed.

[Read the judgment.](#)

### ***Criminal proceedings***

Any person may bring criminal proceedings for an offence under the NV Act, although in practice this will usually be done by the OEH or the EPA.<sup>91</sup> Criminal matters are heard in a Local Court or in the Land and Environment Court.<sup>92</sup>

Criminal proceedings must be commenced within 2 years of the date on which the offence is alleged to have been committed, or from the date that the alleged offence first came to the attention of an authorised officer.<sup>93</sup>

### ***Case Study: Illegal land clearing – offender fined \$400,000<sup>94</sup>***

The Director-General of the NSW Department of Environment and Climate Change brought proceedings against the defendant, John Ross Hudson, in the Land and Environment Court for breaches of the NV Act. Mr Hudson had cleared 486 hectares of Eucalyptus coolabah, Casuarina cristata and Acacia stenophylla in the Gwydir wetlands.

Mr Hudson was charged with two offences:

1. The clearing of 486 hectares of native vegetation without having development consent or a property vegetation plan authorising the clearing, and;
2. Failing to comply with a notice issued under the Act, requiring Mr Hudson to provide specified information/documents relating to the first offence to the Special Investigations Unit.

Mr Hudson was found guilty of both charges. The Court held that this case was in the 'upper range of seriousness' and after consideration of the maximum penalty of \$1.1 million, issued a fine of \$400,000 for the first offence.

After providing no excuse for failing to provide the information asked for in the notice, Mr Hudson was fined an additional \$8,000 for the second offence.

Mr Hudson was also ordered to pay the prosecutor's costs.

<sup>91</sup> *Native Vegetation Act 2003* (NSW), s. 41.

<sup>92</sup> *Native Vegetation Act 2003* (NSW), s. 42; *Land and Environment Court Act 1979* (NSW), s. 21(i).

<sup>93</sup> *Native Vegetation Act 2003* (NSW), s. 42(3), (4), (5).

<sup>94</sup> [Director-General of the Department of Environment and Climate Change v Hudson \[2009\] NSWLEC 4](#)

## Penalty notices

Minor breaches of the NV Act<sup>95</sup> can be enforced by an authorised officer issuing an offender with a penalty notice.<sup>96</sup>

## Glossary

### Key to terms used in this Fact Sheet

**10/50 Code** means the [10/50 Vegetation Clearing Code of Practice](#).

**Act** means [Native Vegetation Act 2003 \(NSW\)](#)

**EP&A Act** means the [Environmental Planning and Assessment Act 1979 \(NSW\)](#)

**Environment Minister** means the NSW Minister for the Environment

**EPBC Act** means the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#)

**LEC Act** means [Land and Environment Court Act 1979 \(NSW\)](#)

**LLS** means [Local Land Services](#)

**NV Act** means [Native Vegetation Act 2003 \(NSW\)](#)

**NV Regulation** means the [Native Vegetation Regulation 2013 \(NSW\)](#)

**OEH** means the NSW Office of Environment and Heritage

**PVP** means a property vegetation plan made under the [Native Vegetation Act 2003 \(NSW\)](#)

**Rural Fires Act** means the [Rural Fires Act 1997 \(NSW\)](#)

**Self-assessable codes** means the [self-assessable codes](#) for clearing of paddock trees in a cultivation area, thinning of native vegetation, and clearing of invasive native species.

**TSC Act** means the [Threatened Species Conservation Act 1995 \(NSW\)](#)

## Useful legal texts

- R Lyster, Z Lipman, N Franklin, G Wiffen and L Pearson, *Environmental and Planning Law in NSW* (3<sup>rd</sup> edition, Federation Press, 2012)
- The Environmental Law Handbook, Farrier & Stein, eds, 4<sup>th</sup> ed, Chapter 11 (Biodiversity Conservation), pp 412 – 419
- [Rural Landholders Guide to Environmental Law in NSW](#)
- G Bates, *Environmental Law in Australia* (8<sup>th</sup> edition, LexisNexis, 2013)

<sup>95</sup> Listed in Schedule 1 of the *Native Vegetation Regulation 2013 (NSW)*.

<sup>96</sup> *Native Vegetation Act 2003 (NSW)*, s. 43; *Native Vegetation Regulation 2013 (NSW)*, cl. 63, Sch 1.