

FACT SHEET 1: Changes to code-based land clearing

INTRODUCTION

This Fact sheet explains the changes to code-based land clearing under the Local Land Services Amendment Bill 2016

The NSW Government is proposing significant changes to land clearing rules under proposed changes to biodiversity and land clearing laws. These changes will allow for a broader range of activities to be carried out under land clearing codes. The exact wording of the codes is not yet available.

The increase in the number of codes, and the type of clearing permitted by those codes, closely reflects the approach taken to vegetation management by

the Newman Government in Queensland, although NSW proposes two additional codes that Queensland does not possess (Table 1).

Under the new regime, land clearing in areas marked as ‘Regulated Land (Yellow - Category 2)’ on a new Native Vegetation Regulatory Map can be undertaken as ‘code-based’ if it meets the requirements of new land clearing codes. The clearing will require either notification or certification with the Local Land Services (LLS), however the LLS cannot reject clearing applications that are consistent with Codes. Certification and notification therefore will not act to avoid clearing, rather simply provide mechanisms to monitor how much clearing is occurring.

Table 1: A comparison of clearing codes in Queensland (introduced by the Newman government) and in NSW (as proposed by the current Baird government)

	NSW	Queensland
Efficiency codes	<ol style="list-style-type: none"> 1. Clearing of paddock trees, islands and peninsulas; 2. Clearing woody vegetation to promote groundcover; 3. Clearing of any vegetation for efficiency 	Clearing of islands / straightening of irregular shapes
Equity code	Greater of: 25% of maximum permitted clearing under the code up to a maximum of 500ha; or 100ha Requires various set-asides.	Does not exist
Farm plan code	Clearing up to 25% of unencumbered vegetation. Requires revegetation as set-aside.	Does not exist
Encroaching native vegetation	Invasive native species: 900ha in every 1000ha can be cleared	Managing encroachment: no limit specified
Fodder harvesting	Western areas: 50% of total area in 10 year period	Western areas: 50% of total area in 10 year period
Thinning	Single category: clear to 75% benchmark density in all zones bar coastal	Five categories: clear to a variable retention density per ha in all bioregions
Farm infrastructure	Allowable activity (i.e. not code based)	Code-based Clearing for safety, fire management, fences, roads and tracks

Land management codes can be made by the Minister for Primary Industries with the concurrence of the Minister for the Environment, but the Minister for Primary Industries can amend

codes without the concurrence of the Minister for the Environment for errors and minor changes. The LLS Amendment Bill does make provision for public consultation on the draft Codes (cl. 60S(4)).

Table 2. Outline of new approval requirements for Category 2 (Yellow) Land

Type of activity	What rules will apply?	Decision maker
Allowable activities	Clearing activities that may be carried out for the purposes of routine land management and management of infrastructure that will not require a formal approval or notification to Local Land Services (similar to current Routine Agricultural Management Activities (RAMAs))	n/a
Code based activities	<p>Four types of codes will be made by the Minister for Primary Industries (with the agreement of the Environment Minister):</p> <ol style="list-style-type: none"> Management codes Codes for thinning vegetation, managing invasive native species (INS), harvesting vegetation for stock fodder and controlling lignum in an irrigation district. Efficiency codes Three codes to permit more efficient grazing, cropping and farm systems. Landholders can clear vegetation, including endangered ecological communities (EECs) under two of the three codes that impedes productivity of the existing farm. Set asides and an EEC loading apply in two cases. Equity code Properties with a higher proportion of remnant native vegetation are afforded greater flexibility. Clearing using this code requires the creation of permanent set aside areas elsewhere on the property, but set-asides can include management of existing vegetation which will result in net loss Farm planning code Allows a landholder to clear the regulated vegetation on their property in exchange for establishing a similar sized permanent set aside area to undertake strategic revegetation that maximises biodiversity 'as far as practicable'. 	<p>Level 1 Code – notification to LLS</p> <p>Level 2 Code – certification by LLS</p>
Approval	<p>Any clearing that cannot be undertaken as an allowable activity or under a code will require approval.</p> <p>The Biodiversity Assessment Methodology will apply.</p>	Minister for Primary Industries

OVERARCHING CONCERNS LAND MANAGEMENT CODES

Making of codes

- Land management codes will be made by the Minister for Primary Industries with the concurrence of the Minister for the Environment. The codes will be administered by the Local Land Services.
- Given the potential impacts of land clearing activities on biodiversity, soil, water quality and salinity, the Minister for the Environment must have a greater role in overseeing land clearing activities, including in relation to regulation and enforcement.

Lack of protection for endangered ecological communities

- Clearing of endangered ecological communities (EECs) is allowed under land management codes.
- There are 'set aside' requirements if EECs are to be cleared, and an additional 50% loading applies if thresholds of EEC clearing is undertaken (4 ha in the Western Zone, 3 ha in the Central Zone, 2 ha in the Tablelands Zone and 1 ha in the Coastal Zone).
- Ultimately however, the codes allow for the clearing of EECs, without a proper assessment of impacts.
- Given their important conservation values, EECs should be protected from clearing; especially self-assessed 'code-based' clearing.

Key Threatening Processes

- Clearing of paddock trees, islands and peninsulas of native vegetation will be expanded under the new codes
- Code-based clearing will therefore directly exacerbate the Key Threatening Processes 'clearing of native vegetation', 'loss of hollow-bearing trees' and the 'removal of dead wood and trees'.

Lack of protection for threatened species habitat

- Clearing of threatened species habitat under the codes will be permitted if the threatened species present are not 'site managed' species in the NSW 'Saving our Species' program. This means that 55% of all threatened species in NSW will be at risk of having habitat cleared under the codes.
- Codes will permit clearing of Koala habitat if it is not designated 'core' Koala habitat.

Set-aside rules

- Land management codes may require set aside areas to be created to offset the impacts of clearing, however 'set-aside' rules are not as stringent as best practice offsetting requirements.
- In particular, set-asides need not be of equivalent quality to the area being cleared and may include rehabilitation/revegetation of Category 1 land (i.e. revegetation and rehabilitation can be used as a substitute for remnant vegetation). This violates the principle of 'no net loss'.
- Set-asides also suffer from time-lags: that is to say the replacement of larger trees (such as paddock trees) with smaller ones will not provide similar habitat for many years. For example, tree hollows may take decades to form.

Scale of Clearing and Cumulative Impacts

- While the exact content of the Codes is not yet available, information currently on exhibition suggests that the scale of clearing allowed under the codes is significant. For example, 75% of the benchmark density for the highest density formation can be cleared for thinning

purposes, 90% of invasive native species in a 1000 hectare area can be cleared, up to 50% of the total area of mulga and its variants on any landholding within any 10 year period for the purpose of stock fodder, up to 500 ha of vegetation can be cleared under the equity code.

- There are insufficient safeguards in the codes to prevent multiple applications of the codes and substantial incremental clearing. For example, under the equity code, up to 500ha of native vegetation can be cleared in any three-year period.
- There are also insufficient mechanisms in place to monitor and limit the wide-spread application of the codes across the landscape.

Application of the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*

- There is discrepancy between the proposed codes and protections under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*
- There may be circumstances where NSW codes allow for the clearing of native vegetation that is listed as an endangered ecological community under Federal laws.
- This is particularly likely in the wheat-sheep belt where many remnant woodland patches are ecological communities of national environmental significance, but clearing could occur for a range of species or ecological communities.
- This may put NSW landholders at risk if they are unaware of Commonwealth laws, and the need to obtain Commonwealth approval prior to clearing.

SPECIFIC COMMENTS ON THE PROPOSED NEW CODES

The material released for public comment indicates there will be four types of land management codes: Management Codes, Efficiency Codes, Equity Codes and Farm Planning Codes. These are outline in more detail below.

Management Codes

Key features:

- Codes for thinning vegetation, managing invasive native species (INS), harvesting vegetation for stock fodder and controlling lignum in an irrigation district.

Key concerns:

- These codes, as they currently exist in the *Native Vegetation Regulation* have already weakened protection for native vegetation and provided increased flexibility for clearing.

Efficiency Codes

Key features:

- Codes which allow removal of vegetation to allow more 'efficient' grazing, cropping and farm systems.

Key concerns:

- These codes facilitate the removal of paddock trees and clumps of vegetation.
- The 'Cropping Efficiency Code' allows Category 2 land that is wholly or mostly surrounded by Category 1 land to be cleared. This means that Category 2 land wholly or mostly surrounded by Category 1 land is effectively unprotected. It's really *de facto* Category 1 land.
- The 'Grazing Efficiency Code' allows trees and clumps of vegetation to be if they are surrounded by grazing land. It also allows

clearing of 'treatment areas' which can total 30% of properties more than 100 hectares in size.

- Category 2 land that is cleared under the Cropping Efficiency and System Efficiency codes is remapped to Category 1 land. Category 2 land can therefore be converted to Category 1 land by code-based clearing; severely compromising the integrity of the Native Vegetation Regulation Map.
- The 'System Efficiency Code' allows 'clearing to enable more efficient farm management'. This includes EECs. The only restrictions to where this code can be used are that it cannot be applied to small holdings or to properties within 50km of the coast unless LLS is satisfied that the primary use of the land is agriculture. However, land use may change in the future and once cleared there would be fewer hurdles to subdividing and developing the land.

Equity Code

Key features:

- Properties with a higher proportion of remnant native vegetation are afforded greater flexibility. Clearing using this code is 'balanced' by the creation of permanent set aside areas elsewhere on the property.

Key concerns:

- Allows code-based clearing where other codes would not apply.
- Allows code-based clearing of EECs.
- Allows the greater of '25% of the maximum permitted under the code up to a maximum of 500 hectares' OR 100 hectares. This means a landholder can clear at least 100 hectares every three years.

- Cannot be applied to properties within 50km of the coast unless LLS is satisfied that the primary use of the land is agriculture. However, land use may change in the future and once cleared there would be fewer hurdles to subdividing and developing the land.

Farm Planning Code

Key features:

- Allows a landholder to clear the regulated vegetation on their property in exchange for establishing permanent set aside areas to undertake strategic revegetation that maximises biodiversity.

Key concerns:

- Cores and corridors can be created or improved by simply restoring vegetation. 'Redistribution' (i.e. clearing) of native vegetation is not required.
- Revegetation need not be of equivalent standard to the vegetation being lost. It only needs to be of equal or better standard for the *region*. Vegetation lost might be some of the highest standard, highest conservation value in the region and thus impossible to replicate.
- It may take decades (if ever) for revegetation to be of equivalent quality (e.g. hollow bearing) to the vegetation being lost under this code
- Category 2 land cleared under this code is converted to Category land; severely compromising the integrity of the Native Vegetation Regulation Map.

Prepared by the Nature Conservation Council of NSW, National Parks Association and Total Environment Centre.

For more information please visit our website at <http://www.StandUpForNature.org.au>