

**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Local Land Services Amendment Bill 2016**

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public consultation draft

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**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Local Land Services Amendment Bill 2016**

No. , 2016

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**A Bill for**

An Act to repeal the *Native Vegetation Act 2003*; and to amend the *Local Land Services Act 2013* in relation to native vegetation land management in rural areas.

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Local Land Services Amendment Bill 2016 [NSW]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Local Land Services Amendment Act 2016*.

**2 Commencement**

This Act commences on the date on which the *Biodiversity Conservation Act 2016* commences.

**3 Repeal of Native Vegetation Act 2003 No 103 and regulation**

The *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2013* are repealed.

## Schedule 1 Amendment of Local Land Services Act 2013 No 51

### [1] Section 3 Objects of Act

Omit section 3 (e). Insert instead:

- (e) to ensure the proper management of natural resources consistent with the principles of ecologically sustainable development (described in section 6 (2) of the *Protection of the Environment Administration Act 1991*),

### [2] Section 14 Functions generally

Insert after section 14 (1) (d):

- (d1) to exercise functions in relation to native vegetation land management conferred on it by Part 5A and Schedule 5A,

### [3] Part 5A

Insert after Part 5:

## Part 5A Native vegetation land management

**Consultation note.** The Minister for Primary Industries has been allocated responsibility by the Premier under the *Constitution Act 1902* for the administration of the *Local Land Services Act 2013*. When this Part is enacted, the Minister for the Environment would be allocated responsibility by the Premier for the administration of Division 2 of this Part and joint responsibility with the Minister for Primary Industries for Division 1 of this Part.

### Division 1 Preliminary

#### 60A Rural areas of State to which Part applies

This Part applies to any area of the State, other than the following:

- (a) urban areas of the State to which *State Environmental Planning Policy (Protection of Trees in Urban Areas) 2016* applies,

**Consultation note.** The proposed SEPP will replace Standard Instrument LEP provisions relating to tree removal permits in urban council areas and in urban zones. It will define the urban area of the State and make provision for the removal of native and other declared species of trees or other vegetation under the authority of a permit granted by the local council or other nominated authority. If the removal is above the biodiversity offset scheme (or BAM) threshold, the SEPP will make provision for the removal under the authority of an approval of the Minister for Primary Industries of the kind provided under this Part for clearing in rural areas that is not Schedule 5A allowable or clearing authorised by a land management (native vegetation) code. The urban area of the State is proposed to be defined as follows:

**urban area** of the State, means the following:

- (a) land in the following local government areas:  
Ashfield, Auburn, Bankstown, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canterbury, Canada Bay, Fairfield, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland Shire, Sydney, The Hills Shire, Warringah, Waverley, Willoughby, Woollahra,
- (b) land within the following zones under an environmental planning instrument:  
Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential, Zone B1

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Local Land Services Amendment Bill 2016 [NSW]  
Schedule 1 Amendment of Local Land Services Act 2013 No 51

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Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone B8 Metropolitan Centre, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 Heavy Industrial, Zone IN4 Working Waterfront, Zone SP2 Infrastructure, Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environment Living or Zone W3 Working Waterways,

- (c) unzoned land or deferred planning land that is of a similar kind to land in any such zone and that will be included as urban land under transitional provisions in the proposed SEPP.

The proposed SEPP will also provide that development consent under the *Environmental Planning and Assessment Act 1979* is not required for removing non-declared species of trees or other vegetation in urban areas and deal with the clearing of non-native vegetation in non-urban areas.

The *Environmental Planning and Assessment Act 1979* and the *Biodiversity Conservation Act 2016* will deal with the clearing of native vegetation from any area for the purpose of carrying out development that requires development consent.

- (b) national park estate and other conservation areas, namely:
- (i) a wilderness area declared under the *Wilderness Act 1987*, or
  - (ii) land reserved under the *National Parks and Wildlife Act 1974* or acquired by the Minister for the Environment under Part 11 of that Act, or
  - (iii) land dedicated or set apart as a flora reserve under the *Forestry Act 2012* (or any Act repealed by that Act), or
  - (iv) land dedicated or reserved for a similar public purpose under the *Crown Lands Act 1989*, or
  - (v) land to which an interim protection order under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016* applies, or
  - (vi) land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies, or
  - (vii) a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*, or
- Note.** The savings and transitional provisions provide that former declared areas of critical habitat are deemed to be declared as areas of outstanding biodiversity conservation value.
- (viii) an area declared to be critical habitat under Division 3 of Part 7A of the *Fisheries Management Act 1994*, or
  - (ix) a declared World Heritage property within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
  - (x) Lord Howe Island,
- (c) State forestry land, namely:
- (i) land that is a State forest or timber reserve under the *Forestry Act 2012*, or
  - (ii) land acquired under Division 4 of Part 3 of the *Forestry Act 2012* for the purposes of a State forest (not being any such land acquired for the purposes of a timber plantation).

The regulations may amend this section for the purposes of adding or removing land to which this Part applies.

## 60B Meaning of “native vegetation”

- (1) For the purposes of this Part, *native vegetation* means any of the following types of plants native to New South Wales:
  - (a) trees (including any sapling or shrub or any scrub),
  - (b) understorey plants,
  - (c) groundcover (being any type of herbaceous vegetation),
  - (d) plants occurring in a wetland.
- (2) A plant is native to New South Wales if it was established in New South Wales before European settlement. The regulations may authorise conclusive presumptions to be made of the species of plants native to New South Wales by adopting any relevant classification in an official database of plants that is publicly accessible.
- (3) For the purposes of this Part, native vegetation extends to a plant that is dead or that is not native to New South Wales if:
  - (a) the plant is situated on land that is shown on the native vegetation regulatory map as category 2-vulnerable regulated land, and
  - (b) it would be native vegetation for the purposes of this Part if it were native to New South Wales.
- (4) For the purposes of this Part, native vegetation does not extend to marine vegetation (being mangroves, seagrasses or any other species of plant that at any time in its life cycle must inhabit water other than fresh water). A declaration under section 14.6 of the *Biodiversity Conservation Act 2016* that specified vegetation is or is not marine vegetation also has effect for the purposes of this Part.

## 60C Meaning of “clearing” native vegetation

For the purposes of this Part, *clearing* native vegetation means any one or more of the following:

- (a) cutting down, felling, uprooting, thinning or otherwise removing native vegetation,
- (b) killing, destroying, poisoning, ringbarking or burning native vegetation.

## 60D Other definitions

In this Part:

*category 1-exempt land* means areas of the State to which this Part applies designated as category 1-exempt land on the native vegetation regulatory map.

*category 2-regulated land* means areas of the State to which this Part applies designated as category 2-regulated land on the native vegetation regulatory map (including category 2-vulnerable regulated land that is so designated).

*Environment Agency Head* means the Chief Executive of the Office of Environment and Heritage.

*landholder* means a person who is the owner of land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

*landholding* includes several parcels of land (whether held under the same title, different titles or different kinds of titles) that:

- (a) are contiguous with one another or are separated from one another only by a road, river, creek or other watercourse, and

(b) constitute or are worked as a single property.

**land management (native vegetation) code** means a land management (native vegetation) code made under Division 5 and in force.

**Consultation note.** Each code is proposed to be cited as “Land Management [...insert subject matter of code] Code”.

**native vegetation regulatory map** means a native vegetation regulatory map prepared and published under Division 2.

**plant** means any plant, whether vascular or non-vascular, and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation.

**regulated rural area** means any area of the State to which this Part applies that is category 2-regulated land.

## Division 2 Native vegetation regulatory map

### 60E Purpose of native vegetation regulatory map

The purpose of the native vegetation regulatory map is to designate areas of the State to which this Part applies:

- (a) where the clearing of native vegetation is not regulated under this Part (**category 1-exempt land**), and
- (b) where the clearing of native vegetation is regulated under this Part (**category 2-regulated land**), and
- (c) where the clearing of native vegetation is regulated under this Part but (because of its vulnerability) is subject to additional restrictions and extended to the clearing of dead and non-native plants (**category 2-vulnerable regulated land**).

**Consultation note.** Category 2-vulnerable regulated land will cover the following:

- (a) protected riparian land (where only some of the authorised allowable activities apply),
- (b) steep or highly erodible land, including former areas mapped as State protected land, where more limited allowable activities apply and where the regulation of clearing extends to dead and non-native plants),
- (c) special category land mapped under clause 58 of the *Native Vegetation Regulation 2013* (where the regulation of clearing extends to dead and non-native plants and special provision is made for the clearing of lignum).

### 60F Responsibility for preparation and publication of maps

- (1) The Environment Agency Head is responsible for preparing and publishing native vegetation regulatory maps under this Part.
- (2) Native vegetation regulatory maps are to be prepared in relation to the areas of the State to which this Part applies.
- (3) A native vegetation regulatory map may designate:
  - (a) category 1-exempt land, and
  - (b) category 2-regulated land (including category 2-vulnerable regulated land), and
  - (c) any other sub-category prescribed by the regulations.
- (4) The Environment Agency Head is to publish information about the scientific method used to prepare a native vegetation regulatory map.
- (5) A native vegetation regulatory map is to be published on the NSW planning portal under the *Environmental Planning and Assessment Act 1979*.

## **60G Category 1-exempt land mapping**

- (1) Land is to be designated as category 1-exempt land if the Environment Agency Head reasonably believes that:
  - (a) the land was cleared of native vegetation as at 1 January 1990, or
  - (b) the land was lawfully cleared of native vegetation between 1 January 1990 and the commencement of this Part.
- (2) Land is to be designated as category 1-exempt land if the Environment Agency Head reasonably believes that:
  - (a) the land contains low conservation value grasslands, or
  - (b) the land was identified as regrowth in a property vegetation plan referred to in section 9 (2) (b) of the *Native Vegetation Act 2003*, or
  - (c) the land is of a kind prescribed by the regulations as category 1-exempt land.
- (3) Land is to be designated as category 1-exempt land if the land has been biodiversity certified under Part 8 of the *Biodiversity Conservation Act 2016* or under any Act replaced by that Act (or that had the benefit of any such biodiversity certification by the operation of an environmental planning instrument).
- (4) However, land described in subsection (1) or (2) is not to be designated as category 1-exempt land if section 60H (2) requires the land to be designated as category 2-regulated land.

## **60H Category 2-regulated land mapping**

- (1) Land is to be designated as category 2-regulated land if the Environment Agency Head reasonably believes that:
  - (a) the land was not cleared of native vegetation as at 1 January 1990, or
  - (b) the land was unlawfully cleared of native vegetation between 1 January 1990 and the commencement of this Part.
- (2) Land is to be designated as category 2-regulated land if the Environment Agency Head reasonably believes that:
  - (a) the land contains native vegetation that was regrown or preserved with the assistance of public funds (other than funds for forestry purposes), or
  - (b) the land is eligible for designation as category 2-vulnerable regulated land, or
  - (c) the land is subject to a private land conservation agreement under the *Biodiversity Conservation Act 2016*, or
  - (d) the land is subject to be set aside under a requirement made in accordance with a land management (native vegetation) code under this Part, or
  - (e) the land contains high conservation value grasslands, or
  - (f) the land is or was subject to remedial action to restore or protect the biodiversity values of the land under the *Native Vegetation Act 2003* or, after the repeal of that Act, under this Part or the *Biodiversity Conservation Act 2016*, or
  - (g) the land is subject to a conservation measure that was the basis for other land being biodiversity certified under Part 8 of the *Biodiversity Conservation Act 2016* or under any Act replaced by that Act, or



- (h) the land is an offset under a property vegetation plan under the *Native Vegetation Act 2003* or is a set aside under a Ministerial order under Division 3 of Part 6 of the *Native Vegetation Regulation 2013*, or
  - (i) the land is land to which *State Environmental Planning Policy No 26—Littoral Rainforests* applies (not being land described in clause 4 (1) (b) of that Policy), or
  - (j) the land is land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies, or
  - (k) the land is identified as core koala habitat in a plan of management made under *State Environmental Planning Policy No 44—Koala Habitat Protection*, or
  - (l) the land is a declared Ramsar wetland within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or
  - (m) the land has been mapped by the Environment Agency Head as land containing critically endangered plants under the *Biodiversity Conservation Act 2016*, or
  - (n) the land has been mapped by the Environment Agency Head as land containing a critically endangered ecological community under the *Biodiversity Conservation Act 2016*, or
  - (o) the land has been mapped by the Secretary of the Department of Primary Industries as land containing mangroves or coastal saltmarshes, or
  - (p) the land is of a kind prescribed by the regulations as category 2-regulated land.
- (3) However, land described in subsection (1) is not to be designated as category 2-regulated land if section 60G (2) or (3) requires the land to be designated as category 1-exempt land.

**60I Matters relating to determination of mapped category of land**

- (1) This section makes provision relating to the mapping of land under this Division as category 1-exempt land or category 2-regulated land.
- (2) Native vegetation that comprises grasslands or other non-woody vegetation is taken to be cleared if the native vegetation was significantly disturbed or modified.
- (3) Determinations may be made by the Environment Agency Head that land was unlawfully cleared of native vegetation only if compliance or enforcement action was taken in relation to the clearing of a kind prescribed by regulations.
- (4) Determinations may be made by the Environment Agency Head that land was cleared of native vegetation on 1 January 1990 or between that date and the commencement of this Part only on the basis of the best available aerial photographs or satellite imagery.
- (5) Determinations made by the Environment Agency Head as to whether land was or was not unlawfully cleared of native vegetation does not affect any decision made with respect to compliance or enforcement action taken under this or any other Act in relation to the clearing.

## 60J Re-categorisation of mapped land

- (1) Re-categorisation of land is the preparation and publication of a native vegetation regulatory map in accordance with this Part for any of the following purposes:
  - (a) the designation of land that is designated on a published map as one category to another category,
  - (b) the designation of land that is not designated as any category on a published map as land of a particular category,
  - (c) the removal of the designation of land on a published map.
- (2) The Environment Agency Head is to keep the categorisation of land under review and undertake an annual review of published maps.
- (3) The Environment Agency Head may re-categorise land if:
  - (a) there is an error in a published map, or
  - (b) the Agency Head obtains new or improved information about historical vegetation cover or land use for a particular landholding, or
  - (c) the status of the land changes so that:
    - (i) the land becomes (or ceases to be) an area that is excluded from the operation of this Part, or
    - (ii) the land is required to be designated as land of a different category, or
  - (d) in the case of category 2-regulated land that the landholder applies to be re-categorised as category 1-exempt land—the Environment Agency Head reasonably believes that the land has been lawfully cleared after the commencement of this Part in accordance with a property vegetation plan under the *Native Vegetation Act 2003* that remains in force, with an approval of Local Land Services under Division 6 or with a development consent under the *Environmental Planning and Assessment Act 1979* or an approval under Part 5.1 of that Act, or
  - (e) in the case of category 2-regulated land that the landholder applies to be re-categorised as category 1-exempt land—the Environment Agency Head reasonably believes that rotational farming practices were in place on 1 January 1990 (and on an ongoing basis for some period between 1 January 1970 and 1 January 1990), and the land is not required to be categorised as category 2-regulated land because of the operation of section 60H (2), or
  - (f) in the case of category 2-regulated land that the landholder applies to be re-categorised as category 1-exempt land—the Environment Agency Head reasonably believes that rotational farming practices were in place on 1 January 1990 and on an ongoing basis during the period between 1 January 1970 and 1 January 1990 even though no clearing for those practices occurred during that period (if Local Land Services certifies the practices were in place before 1 January 1970 and continued until 1 January 1990), and the land is not required to be categorised as category 2-regulated land because of the operation of section 60H (2), or
  - (g) the land is subject to a successful internal review or appeal of an existing categorisation or of a re-categorisation (and the re-categorisation gives effect to the decision on the review or appeal), or
  - (h) the land is authorised to be re-categorised by a native vegetation clearing code, or

- (i) the land is authorised to be re-categorised by the regulations.
- (4) Land that is category 2-regulated land cannot be re-categorised as category 1-exempt land because of:
  - (a) any clearing activity authorised under this Part, or
  - (b) any authorised clearing activity referred to in section 60N (Clearing authorised under other legislation etc),unless the re-categorisation is authorised by this Part, a land management (native vegetation) code or the regulations.
- (5) The Environment Agency Head is required to consult the landholder concerned before any land is re-categorised and give the landholder at least 30 days to make submissions to that Agency Head about the proposed re-categorisation, unless the re-categorisation has been requested by the landholder.
- (6) The Environment Agency Head, when making a determination that grasslands or other non-woody vegetation was significantly disturbed or modified on 1 January 1990 or between that date and the commencement of this Part for the purposes of a re-categorisation of the land, is to take into account any evidence provided by the landholder.
- (7) The regulations may make provision for or with respect to authorising or preventing the clearing of native vegetation during the process of re-categorisation of land or pending the publication of new maps to give effect to a re-categorisation decision.
- (8) In this section, *rotational farming practices* means rotational farming practices as defined by the regulations.

**60K Internal review of categorisation decisions**

- (1) The relevant landholder may request an internal review of a decision relating to the categorisation or re-categorisation of land on a native vegetation regulatory map.
- (2) The grounds on which a request for an internal review may be made are the same grounds on which the Environment Agency Head may re-categorise the land.
- (3) The grounds on which a request for an internal review may be made extend to a categorisation based on whether or not clearing was lawful, unless the categorisation was based on a determination of the matter made by a court.
- (4) The Environment Agency Head is to determine a request for an internal review or arrange for an official who was not responsible for the original decision to conduct the review and determine the request.
- (5) The regulations may make provision for or with respect to internal reviews, including the following:
  - (a) the form of requests for internal review,
  - (b) the information to be provided about the land concerned and associated land,
  - (c) the fee payable for dealing with a request for internal review,
  - (d) notification of and consultation with affected persons or bodies.

## **60L Appeal against re-categorisation decisions**

- (1) The relevant landholder may appeal to the Land and Environment Court against a decision relating to the re-categorisation of land on a native vegetation regulatory map.
- (2) An appeal is to be made within the time and in the manner prescribed by the rules of the Court.
- (3) The lodging of an appeal does not, except to the extent the Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.

## **Division 3 Regulation of clearing of native vegetation in regulated rural areas**

### **60M Unauthorised clearing of native vegetation in regulated rural area—offence**

- (1) A person who clears native vegetation in a regulated rural area is guilty of an offence unless the person establishes any of the following defences:
  - (a) that the clearing is for an allowable activity authorised under Division 4 and Schedule 5A,
  - (b) that the clearing is authorised by a land management (native vegetation) code under Division 5,
  - (c) that the clearing is authorised by an approval of the Minister for Primary Industries under Division 6,
  - (d) that the clearing is authorised under section 60N (Clearing authorised under other legislation etc).

Maximum penalty:

- (a) for an offence that was committed intentionally and that caused or was likely to cause significant harm to the environment:
    - (i) in the case of a corporation—\$5 million, or
    - (ii) in the case of an individual—\$1 million, or
  - (b) for any other offence:
    - (i) in the case of a corporation—\$2 million, or
    - (ii) in the case of an individual—\$500,000.
- (2) The higher maximum penalty under this section does not apply unless:
    - (a) the prosecution establishes (to the criminal standard of proof) that the offence was committed intentionally and caused or was likely to cause significant harm to the environment, and
    - (b) the court attendance notice or application commencing the proceedings alleged that those factors applied to the commission of the offence.
  - (3) For the purposes of this section, clearing of native vegetation is not authorised under this Part unless the terms and conditions of any applicable certificate or approval issued or granted for the clearing are complied with.
  - (4) This section does not operate to preclude the commission of an offence under the *Environmental Planning and Assessment Act 1979* or the *Biodiversity Conservation Act 2016* in relation to the clearing of native vegetation.

**60N Clearing authorised under other legislation etc**

For the purposes of this Part, the clearing of native vegetation in a regulated rural area is authorised under other legislation in any of the following cases:

(a) **Planning approval**

The clearing was authorised by and done in accordance with:

- (i) a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or
- (ii) a State significant infrastructure approval under Part 5.1 of that Act, or
- (iii) a transitional Part 3A project approval under Schedule 6A to that Act.

**Note.** A planning approval may authorise clearing as part of or ancillary to the carrying out of other development, but except in limited cases does not authorise only clearing of native vegetation.

(b) **Other planning authorisation**

The clearing was:

- (i) a part of or ancillary to the carrying out of exempt development within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (ii) an activity carried out by a determining authority within the meaning of Part 5 of that Act after compliance with that Part, or
- (iii) authorised by and done in accordance with an approval of a determining authority within the meaning of Part 5 of that Act granted after compliance with that Part.

(c) **Biodiversity conservation authorisation**

The clearing was authorised by and done in accordance with a biodiversity conservation licence under the *Biodiversity Conservation Act 2016* or was authorised by a regulation made under section 2.9 of that Act (including under a code of practice adopted by any such regulation).

(d) **Rural fires authorisation**

The clearing was:

- (i) an emergency fire fighting act or emergency bush fire hazard reduction work within the meaning of *Rural Fires Act 1997*, or
- (ii) bush fire hazard reduction work to which section 100C (4) of the *Rural Fires Act 1997* applies or vegetation clearing work under section 100R of that Act.

(e) **Electricity network operator bush fire risk mitigation direction**

The clearing was required to be carried out to give effect to a direction of a network operator under Division 2A of Part 5 of the *Electricity Supply Act 1995*.

(f) **State emergency authorisation**

The clearing was authorised to be done by or under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property.

(g) **Biosecurity authorisation**

The clearing was an authorised action for the purposes of section 386 of the *Biosecurity Act 2015*.

(h) **Plantation operations authorisation**

The clearing was the carrying out of a plantation operation on an authorised plantation in accordance with the *Plantations and Reafforestation Act 1999*, the conditions of the authorisation and the provisions of the Plantations and Reafforestation Code applying to the plantation.

(i) **Forestry operations authorisation**

The clearing was:

- (i) the carrying out of a forestry operation to which an integrated forestry operations approval under Part 5B of the *Forestry Act 2012* applies, being a forestry operation that is carried out in accordance with the approval, or
- (ii) the carrying out of private native forestry in an area under and in accordance with the Private Native Forestry Code under the *Native Vegetation Regulation 2013*, as in force before the repeal of that Regulation by this Act, or
- (iii) exempt farm forestry within the meaning of section 6 of the *Plantations and Reafforestation Act 1999*.

(j) **Water management authorisation**

The clearing was authorised by and done in accordance with a licence, permit, approval or other authority under the *Water Management Act 2000*.

(k) **Mining/petroleum authorisation**

The clearing was authorised by and done in accordance with a lease, licence other authority under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

(l) **Fisheries management authorisation**

The clearing was authorised by and done in accordance with a licence under Division 6 of Part 7A of the *Fisheries Management Act 1994* or was authorised to be done under Division 3 or 4 of Part 7 of that Act.

(m) **Survey work**

The clearing was required to be carried out for the purposes of a survey under the *Surveying and Spatial Information Act 2002* and was carried out by or under the direction of a surveyor.

(n) **Private land conservation agreement**

The clearing was authorised by, and done in accordance with, a private land conservation agreement under the *Biodiversity Conservation Act 2016*.

(o) **Biodiversity conservation licence**

The clearing was authorised by, and done in accordance with, a biodiversity conservation licence under the *Biodiversity Conservation Act 2016*.

(p) **Other legislative authorisation**

The clearing was authorised by or under any other Act that has effect despite this Part.

**Consultation note.** Savings and transitional provisions will preserve anything authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species*

*Conservation Act 1995* when the plan was approved (including clearing under private land conservation agreements under the repealed legislation).

**60O Limitation on planning instruments requiring consent for clearing only**

An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* (other than a State environmental planning policy or so much of a local environmental plan that adopts a mandatory provision of a standard instrument under that Act) may not be made to require development consent only for the clearing of native vegetation in an area of the State to which this Part applies. Any such requirement in an environmental planning instrument has no effect.

**Division 4 Allowable activities clearing of native vegetation**

**60P Allowable activities clearing—Schedule 5A**

- (1) Schedule 5A sets out the clearing of native vegetation in regulated rural areas for allowable activities that is authorised without any approval or other authority under this Part for the clearing.
- (2) Schedule 5A does not permit clearing or any other activity:
  - (a) without an approval or other authority required by or under another Act or another Part of this Act, or
  - (b) in contravention of any provision of or made under another Act or another Part of this Act.

**60Q Amendment of Schedule 5A**

The regulations may amend Schedule 5A.

**Division 5 Clearing native vegetation under land management (native vegetation) code**

**60R Authorised clearing by landholders under codes**

- (1) The clearing of native vegetation in a regulated rural area is authorised without any approval or other authority under this Part if it is clearing carried out by or on behalf of the landholder in accordance with a land management (native vegetation) code and this Division.
- (2) Clearing of native vegetation authorised by Division 4 and Schedule 5A is not subject to a land management (native vegetation) code despite anything to the contrary in the code.
- (3) A land management (native vegetation) code does not permit clearing or any other activity:
  - (a) without an approval or other authority required by or under another Act or another Part of this Act, or
  - (b) in contravention of any provision of or made under another Act or another Part of this Act.

**60S Responsibility for preparation and publication of codes**

- (1) The Minister for Primary Industries is responsible for preparing and publishing land management (native vegetation) codes under this Division.
- (2) The Minister for Primary Industries may make a land management (native vegetation) code only with the concurrence of the Minister for the Environment.

- (3) When preparing or giving concurrence to a land management (native vegetation) code, the Minister for Primary Industries or the Minister for the Environment (as the case requires) is to have regard to the principles of ecologically sustainable development (described in section 6 (2) of the *Protection of the Environment Administration Act 1991*).

**Note.** Those principles require economic, social and environmental considerations to be effectively integrated in decision-making processes.

- (4) The public consultation requirements of Division 1 of Part 9 of the *Biodiversity Conservation Act 2016* relating to public consultation documents apply to a land management (native vegetation) code as if it were a public consultation document under that Division.
- (5) A land management (native vegetation) code is to be published on the NSW legislation website.

## **60T Amendment or repeal of codes**

- (1) A land management (native vegetation) code may be amended or repealed in the same way as a code may be made.
- (2) However, a land management (native vegetation) code may be amended without public consultation or the concurrence of the Minister for the Environment if the Minister for Primary Industries is satisfied the amendment merely corrects an error or makes a minor change to the code.

## **60U Content of codes**

- (1) A land management (native vegetation) code may make provision for or with respect to authorising the clearing of native vegetation on category 2-regulated land.
- (2) A code may, in connection with any clearing authorised by the code:
- (a) set out the circumstances in which a set aside area for native vegetation is required in connection with any such clearing, and
  - (b) provide for the re-vegetation, weed control and other land management actions on category 1-exempt land or other land to establish or maintain a set aside area or to protect areas that may be impacted by any such clearing, and
  - (c) authorise the re-categorisation of land in connection with any such clearing.
- (3) A code may (without limitation) make provision for or with respect to the following:
- (a) the clearing of native vegetation in particular regions or other areas,
  - (b) the clearing of native vegetation in connection with particular activities,
  - (c) the clearing of particular kinds of native vegetation,
  - (d) when clearing of native vegetation may or may not be carried out,
  - (e) the manner in which clearing of native vegetation is to be carried out,
  - (f) the giving of notice to Local Land Services and others before or after the clearing of native vegetation is carried out,
  - (g) voluntary or mandatory certificates from Local Land Services confirming that the clearing may lawfully be carried out and certificates from Local Land Services authorising minor variations of the code (including the duration of any such certificates),
  - (h) the keeping of records relating to the clearing of native vegetation,



- (i) the conservation of biodiversity,
- (j) any other matter prescribed by the regulations.

**60V Notice to Local Land Services of clearing**

- (1) The landholder must give, or cause to be given, to Local Land Services notice of the clearing of native vegetation under the authority conferred by a land management (native vegetation) code unless the code exempts the landholder from giving notice of clearing of that kind or unless the landholder has obtained a mandatory code compliant certificate from Land Local Services before carrying out the clearing.

Maximum penalty:

- (a) in the case of a corporation—\$110,000, or
- (b) in the case of an individual—\$22,000.

**Consultation note.** A failure to give notice is proposed to be prescribed as a penalty notice offence carrying a fine prescribed by the regulations.

- (2) The notice is to be given within the time (whether before or after the clearing), and in the form and manner, specified in the land management (native vegetation) code.

**60W Certification by Local Land Services prior to clearing—general**

- (1) Local Land Services may, on the application of a landholder, issue the following certificates:
  - (a) a certificate confirming that proposed clearing of native vegetation, by or on behalf of the landholder, of the kind set out in the certificate is compliant with the requirements of a specified land management (native vegetation) code (a ***voluntary code compliant certificate***),
  - (b) a certificate for the clearing of native vegetation of the kind set out in the certificate that is required under a land management (native vegetation) code before the clearing is carried out under the code (a ***mandatory code compliant certificate***),
  - (c) a certificate that authorises minor variations of a land management (native vegetation) code in its application to the landholding concerned of the kind set out in the certificate (an ***authorised code variation certificate***).
- (2) A certificate under this section may adopt relevant terms for the certificate that are prescribed by the regulations or the land management (native vegetation) code.
- (3) Local Land Services may vary the terms of a certificate under this section by notice in writing to the landholder.
- (4) Local Land Services may revoke a certificate under this section by notice in writing to the landholder.
- (5) A certificate under this section remains in force for the period specified in the certificate unless sooner revoked by Local Land Services or surrendered by the landholder. The relevant land management (native vegetation) code may limit the maximum period that may be so specified in the certificate.
- (6) A certificate under this section continues to have effect in relation to any clearing of native vegetation that was carried out before the certificate expired or was revoked or surrendered.

- (7) A certificate under this section continues to have effect in relation to the completion of the clearing of native vegetation that is carried out after the certificate expires if the clearing authorised by the certificate had been substantially carried out before the expiry of the certificate.
- (8) If the relevant land management (native vegetation) code is amended or repealed after a certificate is issued under this section, the continued clearing of native vegetation in compliance with the certificate is clearing authorised by a land management (native vegetation) code.
- (9) A certificate under this section applies to the clearing of native vegetation by or on behalf of the landholder to whom it was issued and by or on behalf of any other person who becomes a landholder of the land concerned after the certificate was issued.
- (10) A landholder is not entitled to any compensation because a certificate issued under this section is revoked or its terms are varied.
- (11) The regulations may make provision for or with respect to certificates under this section, including for or with respect to the following:
  - (a) the making of applications for certificates (including information to be provided by the landholder),  
**Note.** See section 22 of this Act with respect to fees payable in relation to the issue of certificates.
  - (b) the issue of certificates by authorised persons or bodies on behalf of Local Land Services,
  - (c) the terms and form of certificates.
- (12) To avoid doubt, Local Land Services is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when issuing or varying a certificate under this section.

## **60X Voluntary and mandatory code compliant certificates**

- (1) Local Land Services is to issue a voluntary code compliant certificate or a mandatory code compliant certificate for which a landholder has applied if satisfied that the proposed clearing will be clearing carried out in accordance with this Division, and is to refuse to issue that certificate if not so satisfied.
- (2) The clearing of native vegetation by or on behalf of a landholder in accordance with a voluntary code compliant certificate or a mandatory code compliant certificate is conclusively presumed to be clearing carried out in accordance with this Division.
- (3) However, any such clearing is not clearing carried out in accordance with this Division if the information provided in the application for the certificate (or pursuant to a request by Local Land Services to determine the application) was false or misleading in a material particular.
- (4) This section does not apply to any contravention of section 60Z (Provisions relating to set aside areas).

## **60Y Authorised code variation certificates**

- (1) Local Land Services is to issue an authorised code variation certificate for which a landholder has applied if satisfied that:
  - (a) the proposed variation is for a legitimate purpose associated with the management of the land concerned, and
  - (b) the variation is reasonable in the circumstances, and

- (c) the environmental impact of the variation would only be minor, and is to refuse to issue that certificate if not so satisfied.
- (2) The clearing of native vegetation by or on behalf of a landholder in accordance with a land management (native vegetation) code, as varied by an authorised code variation certificate, is clearing carried out in accordance with this Division.
- (3) However, any such clearing is not clearing carried out in accordance with this Division to the extent it relies on a variation authorised by the certificate if the information provided in the application for the certificate (or pursuant to a request by Local Land Services to determine the application) was false or misleading in a material particular.

## **60Z Provisions relating to set aside areas**

- (1) This section applies where a land management (native vegetation) code requires a set aside area for native vegetation on part of a landholding and clearing of native vegetation on any other part of the landholding is carried out in reliance on the authority conferred by the code. This section does not apply if the clearing of the native vegetation on a set aside area is carried out in accordance with an approval under Division 6. This section applies despite any authorisation to clear native vegetation for an allowable activity under Division 4 and Schedule 5A.
- (2) The land management (native vegetation) code is to contain the requirements for set aside areas under the terms of a mandatory code compliant certificate, including the characteristics of areas suitable to be set aside, the size of the area to be set aside, any re-vegetation or other management actions required or prohibited in the set aside area, when the area is to be set aside and the registration of the set aside area on the title to the land concerned.
- (3) A set aside area cannot be an area:
  - (a) that is covered by a private land conservation agreement under the *Biodiversity Conservation Act 2016*, or
  - (b) that is set aside from clearing for biodiversity purposes because of another agreement or statutory obligation that is in force (other than under a law of the Commonwealth that relates to the same impacts arising from the same activity), or
  - (c) that is of a kind that the regulations exclude from being a set aside area.
- (4) The landholder of any land containing a set aside area (including any future landholder of the area) has the following obligations:
  - (a) the landholder is required to comply with the obligations of the relevant land management (native vegetation) code (and the necessary mandatory code compliant certificate) with respect to establishing the set aside area within 12 months after the commencement of the clearing giving rise to the requirement to set aside the area or within such other period as is provided in the code,  
**Consultation note.** If a code is amended to change the period within which a set aside area is to be established, the code amendment will provide that the change will not affect the establishment of a set aside area under a mandatory code compliant certificate that has already been issued.
  - (b) the landholder must not clear native vegetation on the set aside area (other than in the course of land management activities authorised or required by that code or certificate),

- (c) the landholder must carry out such land management activities as are required by that code or certificate to protect the biodiversity values of the set aside area or other part of the landholding concerned.
- (5) A landholder who contravenes an obligation of the landholder under subsection (4) is guilty of an offence unless the person became the landholder after the land concerned became a set aside area and did not have notice of the fact that it was a set aside area under this section.
- Maximum penalty:
- (a) in the case of a corporation—\$1,650,000, or
- (b) in the case of an individual—\$330,000.
- (6) The regulations may make provision for the registration of set aside areas on the title to the land concerned.

**Consultation note.** It is proposed that Local Land Services will notify the councils of local government areas containing set aside areas of the location of any such area and the obligations of landholders relating to the set aside area. An amendment to the regulations relating to section 149 certificates under the *Environmental Planning and Assessment Act 1979* will require councils, when issuing those certificates, to provide information about set aside areas notified to them by Local Land Services.

## **Division 6 Approval for clearing native vegetation not otherwise authorised**

### **60AA Interpretation**

In this Division, the following words and expressions have the same meaning as in the *Biodiversity Conservation Act 2016*:

*biodiversity development assessment report*—see section 6.12.

*biodiversity values*—see section 1.5.

*species*—see section 1.6.

### **60BB Obtaining approval for clearing of native vegetation**

- (1) An application may be made to the Minister for Primary Industries by or on behalf of the landholder for approval to clear native vegetation on land in any area of the State to which this Part applies.
- (2) The Minister for Primary Industries may, in accordance with this Division, grant an approval to clear the native vegetation under this Division or refuse the application.
- (3) An approval for the clearing of native vegetation on any land may only be granted under this Division if the land comprises or includes category 2-regulated land. Any such approval may be granted even if part of the clearing is otherwise authorised under this Part or under section 60N (Clearing authorised under other legislation etc).
- (4) An approval may only be granted under this Division if the land is being cleared for a purpose specified in the application for approval and:
- (a) the land can be used for that purpose without development consent or State significant infrastructure approval under the *Environmental Planning and Assessment Act 1979*, and
- (b) the clearing of the land is not part of an activity that is carried out by, or that requires the approval of, a determining authority within the meaning of Part 5 of that Act.

- (5) In determining an application for approval under this Division, the Minister for Primary Industries is to take into consideration the environmental, social and economic impacts of the proposed clearing (in accordance with the principles of ecologically sustainable development) having regard to the purpose for which the land is to be used after it is cleared. In relation to the environmental impacts, the Minister is to take into consideration the following:
- (a) the likely impact of the proposed clearing on biodiversity values as set out in a biodiversity development assessment report that has been submitted by the applicant for the approval in accordance with section 60CC,
  - (b) whether the clearing of the native vegetation is likely to cause or increase soil erosion, salination, acidification, land slip, flooding, pollution or other adverse land or water impacts,
  - (c) any future clearing of native vegetation on the land that has been duly authorised or notified but not yet carried out.
- (6) The Minister for Primary Industries must refuse to grant approval under this Division if the Minister is of the opinion that the proposed clearing of native vegetation is likely to have serious and irreversible impacts on biodiversity values. ***Serious and irreversible impacts on biodiversity values*** means serious and irreversible impacts on biodiversity values referred to in the regulations made under section 6.5 of the *Biodiversity Conservation Act 2016* that would remain after the measures proposed to be taken to avoid or minimise the impact of the proposed clearing on biodiversity values.
- (7) An approval under this Division may be granted subject to such conditions relating to the clearing as are specified in the approval (including in relation to any matter referred to in subsection (5)). However, an approval cannot be granted subject to conditions relating to the use of the land after it has been cleared.

**Note.** The *Environmental Planning and Assessment Act 1979* deals with land use.

**60CC Biodiversity development assessment report and retirement of biodiversity credits**

- (1) An approval may only be granted under this Division if a biodiversity development assessment report in respect of the proposed clearing has been obtained by the applicant for that approval and provided to the Minister for Primary Industries.
- (2) The Minister for Primary Industries is to provide the Environment Agency Head with a copy of any biodiversity development assessment report that is submitted to the Minister in connection with an application for approval.
- Consultation note.** It is proposed that the Environment Agency Head will use the information in those reports for the purpose of administering the scheme of accreditation of biodiversity assessors and for updating databases in the biodiversity assessment method.
- (3) If the Minister for Primary Industries decides to grant approval, the conditions of the approval must require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of the number and class set out in the report (subject to subsection (4)). The residual impact is the impact after the measures that are required to be carried out by the terms or conditions of the approval to avoid or minimise the impact on biodiversity values of the proposed clearing (being measures on which the report was based).

**Note.** Division 6 of Part 6 of the *Biodiversity Conservation Act 2016* enables a person who is required under this section to retire biodiversity credits to make a payment

instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payments calculator.

- (4) The Minister for Primary Industries may reduce the biodiversity credits that would otherwise be required to be retired if the Minister determines that the reduction is justified having regard to the environmental, social and economic impacts of the proposed clearing and the agricultural purpose for which the land is to be used after it is cleared. The Minister must give reasons for a decision to reduce the biodiversity credits.
- (5) The conditions of an approval under this Division may provide for a deferred credit retirement arrangement under section 6.28 of the *Biodiversity Conservation Act 2016*.
- (6) An approval under this Division does not authorise the clearing of native vegetation until any obligation under the approval to retire biodiversity credits has been complied with or, if a credit retirement arrangement is made, until any precondition to the clearing under the arrangement has been complied with.
- (7) For the purposes of this Division, the impact on biodiversity values of proposed clearing includes the impact of clearing or retaining dead vegetation on the land concerned, and accordingly the measures required to be carried out by the terms or conditions of an approval may include the retention of dead vegetation.
- (8) This section does not operate to limit the measures that the Minister for Primary Industries may require to avoid or minimise the impacts of proposed clearing or the power of the Minister to refuse to grant approval because of those impacts.

**60DD Regulations and application of planning approval provisions to approvals under this Division**

- (1) The regulations may make provision for or with respect to applications for approvals under this Division and to approvals granted under this Division.
- (2) In particular, the regulations may apply provisions (with or without modification) of the *Environmental Planning and Assessment Act 1979* relating to applications for development consent or to development consent to applications for approvals or to approvals under this Division.

**Consultation note.** The regulations will apply provisions such as the variation of applications, the lapsing of approvals after 5 years if clearing has not commenced within that period and the provision of general information about proposed clearing to adjacent landholders and to the public.

**60EE Modification of approvals under this Division**

- (1) An application may be made to the Minister for Primary Industries for the modification of an approval granted under this Division to clear native vegetation on any land. The application may be made by or behalf of the landholder concerned.
- (2) A further biodiversity development assessment report is to be provided to the Minister for Primary Industries in connection with the application unless the Minister for Primary Industries determines that the application will not increase the impact on biodiversity values.
- (3) The biodiversity development assessment report is to be made in relation to the clearing as proposed to be modified, but is to take into account any measures to avoid, minimise or offset the impacts of the proposed clearing to

which the modification relates that have already been taken in connection with the approval before its modification.

- (4) The Minister for Primary Industries may:
- (a) grant the application and modify the approval granted under this Division accordingly, or
  - (b) refuse the application.

The Minister for Primary Industries may vary the terms of the modification sought by the applicant.

- (5) The regulations may make further provision with respect to applications for the modification of approvals under this Division (including exemptions to the application of this section).

#### **60FF Appeal against approval decisions**

- (1) A landholder may appeal to the Land and Environment Court against a decision to refuse an application by the landholder for approval under this Division or for the modification of any such approval or against a decision to impose a condition of any such approval.
- (2) An appeal is to be made within the time and in the manner prescribed by the rules of the Court.

#### **60GG Miscellaneous provisions relating to approvals**

- (1) An approval under this Division applies to the clearing of native vegetation by or on behalf of the landholder to whom it was granted and by or on behalf of any other person who becomes a landholder of the land concerned after the approval was granted.
- (2) If an application for approval (or for the modification of an approval) under this Division is refused by the Minister for Primary Industries, the applicant is to be given the reasons for the decision.
- (3) To avoid doubt, the Minister for Primary Industries is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting or modifying an approval under this Division.

#### **60HH SEPP may apply approvals under this Division to the clearing of native vegetation on urban land**

A State environmental planning policy under the *Environmental Planning and Assessment Act 1979* may apply the provisions of this Division relating to the grant of approvals to clear native vegetation in an area of the State to which this Part applies to any urban area of the State that is not an area of the State to which this Part applies.

**Consultation note.** The proposed SEPP referred to in section 60A (a) is intended to apply the approval process under this Division to the removal of trees or other vegetation in urban areas that is above the biodiversity offset scheme (or BAM) threshold. In that case, the provisions of this Division will be modified so as to omit the requirement that the removal of the trees or other vegetation is for an agricultural purpose that does not require development consent, so as to provide additional matters for consideration by the Minister and to make other consequential changes.

## **Division 7 Native vegetation compliance provisions**

### **60II Definition of “native vegetation offence”**

In this Division, *native vegetation offence* means an offence against this Part or the regulations under this Part.

### **60JJ Exercise of stop work and remediation powers under Biodiversity Conservation Act 2016 for the purposes of the management of native vegetation**

- (1) The powers of the Environment Agency Head under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016* in relation to stop work orders or remediation orders may be exercised by Local Land Services for the purposes of the management of native vegetation under this Part. Local Land Services is subject to any direction of the Minister for Primary Industries relating to the exercise of those powers.
- (2) For that purpose:
  - (a) the provisions of Part 11 of that Act in relation to stop work orders or remediation orders apply to the exercise of those powers by Local Land Services, and
  - (b) a reference in those provisions to the Environment Agency Head is to be construed as a reference to Local Land Services, and
  - (c) a reference in those provisions to a contravention of, or compliance with, that Act is to be construed as a reference to a contravention of, or compliance with, this Part.
- (3) This section does not affect the exercise of powers under the *Biodiversity Conservation Act 2016*, the *Environmental Planning and Assessment Act 1979* or any other Act in relation to purposes for which powers may be exercised under this section.

### **60KK Liability of directors etc for native vegetation offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is any of the following native vegetation offences that is committed by a corporation:
  - (a) an offence under section 60M (Unauthorised clearing of native vegetation in regulated rural area—offence),
  - (b) an offence of contravening a stop work order or remediation order under a provision applied by section 60JJ.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and



- (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of an offence against this section.
- (4) An offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

*director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

*reasonable steps*, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**60LL Liability of directors etc for native vegetation offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a *corporate offence* is a native vegetation offence that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 60KK.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and

- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
  - (i) aids, abets, counsels or procures the commission of the corporate offence, or
  - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
  - (iii) conspires with others to effect the commission of the corporate offence, or
  - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of an offence against this section.
- (4) An offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

#### **60MM Proceedings for native vegetation offences**

- (1) Proceedings for a native vegetation offence may be dealt with summarily before the Local Court or before the Land and Environment Court in its summary jurisdiction.
- (2) If proceedings for a native vegetation offence are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of this Act, \$110,000 (including within that maximum amount any daily penalty or any additional penalty for each animal or plant affected by the offence) or the maximum monetary penalty provided for the offence, whichever is the lesser.
- (3) This section applies in relation to a native vegetation offence to the exclusion of section 187.

#### **60NN Authority to take proceedings for native vegetation offences**

- (1) Any legal proceedings for a native vegetation offence may only be taken by a police officer, a relevant regulatory officer or by a person duly authorised by a relevant regulatory officer in that behalf, either generally or in any particular case.

- (2) In any proceedings referred to in this section the production of an authority purporting to be signed by a relevant regulatory officer is evidence of the authority without proof of the signature of the relevant regulatory officer.
- (3) In this section:  
**relevant regulatory officer** means:
- (a) the Chair of the Board of Chairs of Local Land Services, or
  - (b) the Secretary of the Department of Primary Industries, or
  - (c) any other public official prescribed by the regulations.

**6000 Time within which proceedings may be commenced for native vegetation offences**

- (1) Proceedings for a native vegetation offence may be commenced not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for a native vegetation offence may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any relevant authorised officer is the date specified in the court attendance notice or application, unless the contrary is established.
- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (5) This section applies in relation to any such offence to the exclusion of section 188.
- (6) In this section:  
**authorised officer** means an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the offence concerned.  
**evidence** of an offence means evidence of any act or omission constituting the offence.  
**relevant authorised officer** means:
- (a) in relation to proceedings for an offence instituted by or with the consent of the Chair of the Board of Chairs of Local Land Services—any authorised officer who is an employee of the Local Land Services Staff Agency, or
  - (b) in relation to proceedings for an offence instituted by or with the consent of the Secretary of the Department of Primary Industries—any authorised officer who is an employee of that Department, or
  - (c) in relation to proceedings for an offence instituted by any other person—any authorised officer.

**60PP Court ancillary order power in relation to offences under Biodiversity Conservation Act 2016 may be exercised in relation to native vegetation offences**

- (1) The power of the Land and Environment Court to make an order under Division 3 of Part 13 (Ancillary court orders) of the *Biodiversity Conservation Act 2016* may be exercised in connection with native vegetation offences.
- (2) For that purpose:
  - (a) the provisions of Division 3 of Part 13 of that Act apply to the exercise of those powers by the Court, and
  - (b) a reference in those provisions to the Environment Agency Head is to be construed as a reference to Local Land Services, and
  - (c) a reference in those provisions to an offence against that Act or the regulations under that Act is to be construed as a reference to a native vegetation offence.

**60QQ Exercise of enforceable undertaking powers under Biodiversity Conservation Act 2016 for the purposes of the management of native vegetation**

- (1) The powers of the Environment Agency Head under Division 4 of Part 13 (Enforceable undertakings) of the *Biodiversity Conservation Act 2016* may be exercised by Local Land Services for the purposes of the management of native vegetation under this Part. Local Land Services is subject to any direction of the Minister for Primary Industries relating to the exercise of those powers.
- (2) For that purpose:
  - (a) the provisions of Division 4 of Part 13 of that Act apply to the exercise of those powers by Local Land Services, and
  - (b) a reference in those provisions to the Environment Agency Head is to be construed as a reference to Local Land Services, and
  - (c) a reference in those provisions to a contravention of, or compliance with, that Act is to be construed as a reference to a contravention of, or compliance with, this Part.
- (3) This section does not affect the exercise of powers under the *Biodiversity Conservation Act 2016*, the *Environmental Planning and Assessment Act 1979* or any other Act in relation to purposes for which powers may be exercised under this section.

**60RR Remedy or restraint of breaches of native vegetation provisions**

- (1) In this section:  
*breach* includes a threatened or apprehended breach.
- (2) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Part or the regulations under this Part.
- (3) Any such proceedings may be brought whether or not proceedings have been instituted for a native vegetation offence.
- (4) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (5) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or

unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

- (6) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (7) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- (8) Without limiting the powers of the Court under this section, an order under this section may suspend any approval, certificate or other authority under this Part.

## **60SS Compliance arrangements between Local Land Services and Environment Agency Head**

- (1) Local Land Services and the Environment Agency Head may enter into arrangements in connection with the exercise of their relevant compliance functions (including as to the respective matters for which they will exercise those functions).
- (2) An arrangement under this section does not affect the validity of the exercise of any relevant compliance function.
- (3) In this section, *relevant compliance function* means a function exercisable by Local Land Services under this Division or Part 11 and a function exercisable by the Environment Agency Head under Part 11, 12 or 13 of the *Biodiversity Conservation Act 2016*.

**Consultation note.** The investigative powers contained in Part 11 of this Act may be supplemented in relation to the management of native vegetation by investigative powers under Part 12 of the *Biodiversity Conservation Bill 2016*.

## **60TT Evidentiary provision**

In any criminal or civil proceedings under this Part, the landholder of any land on which native or other vegetation is cleared is taken to have carried out the clearing unless it is established that:

- (a) the clearing was carried out by another person, and
- (b) the landholder did not cause or permit the other person to carry out the clearing.

This section does not prevent proceedings being taken against the person who actually carried out the clearing.

**Consultation note.** A number of additional evidentiary and ancillary offence-related provisions are to be included similar to those applying under the *Biodiversity Conservation Bill 2016*.

## **Division 8 Miscellaneous**

### **60UU Local Land Services to report on rates of allowable clearing**

- (1) Local Land Services is to publicly report on an annual basis on its estimate of the overall rate of clearing of native vegetation in regulated rural areas:
  - (a) as a result of clearing for allowable activities under Division 4 and Schedule 5A, and
  - (b) as a result of clearing authorised by a land management (native vegetation) code under Division 5.

**Consultation note.** Estimates are to be determined from satellite imagery to take account of clearing for allowable activities that is not notified.

- (2) Local Land Services may include that report in its annual report under the *Annual Reports (Statutory Bodies) Act 1984*.

**60VV Local Land Services to maintain public information registers in relation to native vegetation management**

- (1) Local Land Services is to maintain and make publicly available registers of the following (*public information registers*):
- (a) aggregate information about notices given under section 60V (Notice to Local Land Services of clearing),
  - (b) aggregate information about certificates under section 60W (Certification by Local Land Services prior to clearing—general),
  - (c) aggregate information about certificates under Schedule 5A to which section 60W applies,
  - (d) approvals (and any modification of approvals) granted by Local Land Services under Division 6,
  - (e) applications for approval (or for modifications of approvals) that have been refused and the reasons for the refusal.

Aggregate information about notices or certificates is to be compiled on a regional basis and is not to identify the particular landholder who gave the notice or to whom the certificate was issued (or the address of the landholding concerned).

- (2) Public information registers are to be made available on or from a government website maintained by Local Land Services.
- (3) Where a public information register contains only aggregate information in relation to notices or certificates, Local Land Services is required to make arrangements with other public authorities to enable them to obtain access to individual notices or certificates for the purposes of exercising their functions.
- (4) The regulations may make further provision for or with respect to public information registers (including the information required to be included in, or excluded from, the registers and the correction of the registers).

**60WW Regulations: Part 5A**

- (1) Regulations made under Divisions 1, 2 and 4 are to be made on the joint recommendation of the Minister for Primary Industries and the Minister for the Environment.
- (2) In addition to any other regulations specifically authorised by this Part, the regulations may make provision for or with respect to the clearing of native vegetation authorised by or under this Part.

**Note.** Section 206 authorises the creation of offences in relation to any such provisions of the regulations not exceeding \$11,000.

**[4] Schedule 5A**

Insert after Schedule 5:

**Schedule 5A Allowable activities clearing of native vegetation**

(Section 60P)

**Part 1 Preliminary**

**1 Application**

- (1) This Schedule sets out the clearing of native vegetation for allowable activities that is authorised without any other approval under Part 5A of this Act in a regulated rural area (that is, an area of the State to which that Part applies that is category 2-regulated land on the native vegetation regulatory map).
- (2) Section 60N sets out other clearing that is authorised by legislative and other provisions.

**Note.** Section 60P of this Act provides that this Schedule does not authorise clearing or other activities without obtaining any authority required by or under, or in contravention of, other Acts (including provisions of this Act other than Part 5A).

**2 Only landholders authorised to clear**

- (1) Clearing of native vegetation authorised by this Schedule to be carried out on a landholding may only be carried out by or on behalf of the landholder (unless this Schedule provides to the contrary).
- (2) If this Schedule authorises the clearing of native vegetation by an infrastructure owner or other person who is not the landholder, this Schedule does not authorise the entry onto land to carry out the clearing.

**3 The allowable activity zones**

The allowable activity zones for the purposes of this Schedule are as follows:

**(a) Coastal Zone**

The local government areas of Ballina, Bega Valley, Bellingen, Byron, Clarence Valley (to the east of the line that follows Summerland Way from the north, then Armidale Road until its intersection with Orara Way, then Orara Way), Coffs Harbour, Eurobodalla, Gosford, Great Lakes, Greater Taree, Kempsey, Kiama, Lake Macquarie, Lismore, Maitland, Nambucca, Port Macquarie-Hastings, Port Stephens, Richmond Valley, Shellharbour, Shoalhaven, Tweed, Wollongong and Wyong.

**(b) Central Zone**

The local government areas (except any areas in the Western Zone) of Albury, Armidale Dumaresq, Balranald (except any area included in the Western Zone), Bathurst Regional, Berrigan, Bland, Blayney, Blue Mountains, Bogan (except any area included in the Western Zone), Bombala, Boorowa, Cabonne, Carathool, Cessnock, Clarence Valley (to the west of the line that follows Summerland Way from the north, then Armidale Road until its intersection with Orara Way, then Orara Way), Conargo, Coolamon, Cooma-Monaro, Coonamble, Cootamundra, Corowa, Cowra, Deniliquin, Dubbo, Dungog, Forbes, Gilgandra, Glen Innes Severn, Gloucester, Goulburn Mulwaree, Greater Hume, Griffith, Gundagai, Gunnedah, Guyra, Gwydir, Harden,

Hay, Inverell, Jerilderie, Junee, Kyogle, Lachlan, Leeton, Lithgow, Liverpool Plains, Lockhart, Mid-Western Regional, Moree Plains, Murray, Murrumbidgee, Muswellbrook, Narrabri, Narrandera, Narromine, Oberon, Orange, Palerang, Parkes, Queanbeyan, Singleton, Snowy River, Tamworth Regional, Temora, Tenterfield, Tumbarumba, Tumut, Upper Hunter, Upper Lachlan, Uralla, Urana, Wagga Wagga, Wakool, Walcha, Walgett, Warren, Warrumbungle, Weddin, Wellington, Wingecarribee, Wollondilly, Yass Valley and Young.

(c) **Western Zone**

The Western Division of the State (within the meaning of the *Crown Lands Act 1989*).

**4 Definition of “small holding”**

For the purposes of this Schedule, a *small holding* is a single landholding in the same ownership that has an area of less than:

- (a) in the case of the Western Zone—40 hectares, or
- (b) in any other case—10 hectares.

**5 Measurement of maximum distances for clearing**

- (1) For the purposes of this Schedule, the maximum distance of clearing of native vegetation comprises:
  - (a) in the case of linear infrastructure—the total width of clearing that is authorised for the infrastructure, or
  - (b) in the case of fixed point infrastructure—the maximum distance of clearing that is authorised measured from the perimeter of the infrastructure.
- (2) For fixed point infrastructure, clearing of native vegetation is authorised for the area occupied by the infrastructure in addition to the authorised maximum distance of clearing from the perimeter of the infrastructure.

**6 No stacking of maximum distances for clearing**

- (1) The maximum distances of clearing of native vegetation authorised by this Schedule in relation to linear or fixed point infrastructure are not cumulative.
- (2) Accordingly, if the maximum distance for an item of infrastructure overlaps with the maximum distance for another item of infrastructure on the land concerned, those distances are not to be combined to form a composite distance or area. For example, if a road is situated next to a pipeline, the maximum distance of clearing is not the sum of the maximum distance for the road and the maximum distance for the pipeline.

**7 Separate items of infrastructure in close proximity to be constructed so as to reduce overall distance of clearing**

- (1) This Schedule does not authorise clearing of native vegetation in relation to an item of infrastructure constructed by a landholder near another item of infrastructure on the same landholding for which clearing is authorised by this Schedule if:
  - (a) the item of infrastructure could have been constructed closer to the other item of infrastructure so as to reduce the overall distance of clearing for both items of infrastructure to the smallest overall distance, and
  - (b) the landholder does not provide a reasonable justification for the location of the item of infrastructure constructed by the landholder.



- (2) This clause applies only if the item of infrastructure was constructed after the commencement of Part 5A of this Act.

## **8 Clearing for maximum distance that straddles different holdings**

A maximum distance of clearing authorised by this Schedule in relation to an item of infrastructure on a landholding applies even if part of the clearing within that maximum distance is carried out on an adjoining landholding.

## **9 Local Land Services may increase maximum clearing distances**

- (1) Local Land Services may, on application by a landholder, issue a certificate that increases a maximum distance specified in this Schedule in its application to the land concerned.
- (2) Local Land Services is to issue that certificate if it is satisfied that:
- (a) the proposed increase is for a legitimate purpose associated with the management of the land concerned, and
  - (b) the increase is reasonable in the circumstances, and
  - (c) the environmental impact of the increase would only be minor, and is to refuse to issue that certificate if it is not so satisfied.
- (3) The maximum distance in its application to the land concerned is increased in accordance with that certificate while it remains in force.
- (4) Section 60W of this Act (Certification by Local Land Services prior to clearing—general) also applies to a certificate issued under this clause.

## **10 Exclusion of land subject to remediation direction, stop work order etc**

Despite anything to the contrary in this Schedule, clearing of native vegetation is not authorised on land that is subject to an order under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016*, including any such order under the applied provisions of Part 5A of this Act.

## **Part 2 Clearing for allowable activities—general**

**Note.** Part 4 of this Schedule sets out special provisions that apply to category 2-vulnerable regulated land.

### **11 Application**

This Part sets out the clearing of native vegetation that is generally authorised on land.

### **12 Imminent risk**

Clearing of native vegetation that is reasonably necessary to remove or reduce an imminent risk of serious personal injury or damage to property.

### **13 Construction timber**

- (1) Clearing of native vegetation on land to obtain timber for the purpose of, and used in, the construction, operation or maintenance of rural infrastructure on that land.
- (2) The clearing must not cause land degradation, including soil erosion, rising water tables, increase in salinity, mass movement by gravity of soil or rock, stream bank instability and any process that results in declining water quality.

- (3) The native vegetation must not comprise (or be likely to comprise):
  - (a) a threatened species or part of a threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or
  - (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.
- (4) The clearing of native vegetation to obtain timber for use in the construction, operation or maintenance of rural infrastructure is not authorised if timber suitable for the purpose could be obtained from any other clearing that is authorised under this Schedule or by a land management (native vegetation) code.

#### **14 Collection of firewood**

- (1) Clearing native vegetation on land for the purpose of obtaining firewood for use by the landholder on that land or on other land of the landholder.
- (2) Clearing for that purpose is not authorised if the firewood could be obtained from any other clearing authorised under this Schedule or by a land management (native vegetation) code.

#### **15 Exempt farm forestry**

Clearing of native vegetation that is exempt farm forestry within the meaning of section 6 of the *Plantations and Reafforestation Act 1999*.

#### **16 Planted native vegetation**

- (1) The clearing of native vegetation that has been planted.
- (2) Clearing for that purpose is not authorised if the native vegetation was planted with the assistance of funds granted for any purpose other than for forestry purposes.

#### **17 Traditional Aboriginal cultural activities**

Clearing native vegetation for a traditional Aboriginal cultural activity (other than a commercial cultural activity).

#### **18 Environmental protection works**

- (1) Clearing native vegetation for the purpose of environmental protection works.
- (2) *Environmental protection works* means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes re-vegetation or bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works (within the meaning of the *Coastal Protection Act 1979*).

#### **19 Public works**

- (1) Clearing native vegetation for the construction, operation or maintenance of infrastructure by a public or local authority in the exercise of its land management activities.
- (2) The native vegetation must not comprise (or be likely to comprise):
  - (a) a threatened species or part of a threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or

- (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.
- (3) For the purposes of this clause, **infrastructure** includes cemeteries.

## 20 Gravel pits

- (1) Clearing native vegetation for the construction, operation or maintenance of gravel pits.
- (2) The clearing of native vegetation for gravel pits is authorised only if:
  - (a) the clearing is carried out by or on behalf of a local council, and
  - (b) the clearing is, in the case of each gravel pit, limited to a single area of land of no more than:
    - (i) in relation to the construction, operation or maintenance of gravel pits in the Western Zone—5 hectares, and
    - (ii) in relation to the construction, operation or maintenance of gravel pits (other than in the Western Zone)—2 hectares, and
  - (c) the native vegetation must not comprise (or be likely to comprise):
    - (i) a threatened species or threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or
    - (ii) habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*, and
  - (d) the clearing is carried out in conjunction with a restoration program or other arrangements that will ensure the restoration of native vegetation on the cleared land of the same or a similar species as the native vegetation cleared and to the same or a similar extent as existed on the cleared land.

## 21 Telecommunications infrastructure

- (1) Clearing native vegetation for the construction, operation or maintenance of telecommunications infrastructure.
- (2) The clearing is authorised if carried out by or on behalf of the owner of the infrastructure (in addition to by or on behalf of the landholder).

## 22 Private power lines

Clearing native vegetation that is reasonably necessary for the construction, operation or maintenance of privately owned power lines on private land.

## 23 Electricity transmission infrastructure

- (1) Clearing native vegetation for the maintenance of public utilities associated with the transmission of electricity.
- (2) The maintenance of those public utilities includes the following activities but only when those activities are being undertaken by or at the written direction of the body in which the public utility concerned is vested or that has the responsibility for that public utility's safe operation:
  - (a) maintaining the necessary safety clearances under power lines (conductors and structures) and around communication sites associated with the supply of electricity,

- (b) minimising fuel loads under power lines to minimise the chance of smoke from a fire resulting in a line trip,
  - (c) maintaining existing access roads and tracks.
- (3) The maintenance of those public utilities does not include any of the following activities:
- (a) construction of new access roads or tracks,
  - (b) removal of low growing groundcover,
  - (c) maintaining safety clearances from power lines that exceed either of the following:
    - (i) the maximum distance set out in the following table:

<b>Nominal operating voltage of power line</b>	<b>Maximum clearing distance</b>
Not more than 11 kV	20 metres
Above 11 kV up to and including 33 kV	25 metres
Above 33 kV up to and including 66 kV	30 metres
Above 66 kV up to and including 132 kV	45 metres
Above 132 kV up to and including 330 kV	60 metres
Above 330 kV	70 metres

- (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

## **24 Sustainable grazing**

- (1) Clearing of native vegetation during the course of sustainable grazing.
- (2) Sustainable grazing is grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation. Management of grasslands includes (without limitation) the over-sowing or fertilisation of grasslands.

## **25 Airstrips**

- (1) Clearing of native vegetation for the construction, operation or maintenance of an airstrip.
- (2) The clearing is limited to the minimum clearing required to meet civil aviation standards for airstrips.

## **26 Firebreaks**

Clearing of native vegetation for a firebreak in the Western Zone to a maximum distance of 100 metres where the native vegetation predominantly comprises mallee species.

### Part 3 Clearing for rural infrastructure

**Note.** Part 4 of this Schedule sets out special provisions that apply to category 2-vulnerable regulated land.

#### 27 Application

This Part sets out the clearing of native vegetation that is authorised on land for rural infrastructure to which this Part applies.

#### 28 Definition of “rural infrastructure”

- (1) For the purposes of this Schedule, *rural infrastructure* is, subject to the following, a building, structure or work on land that is used for the purposes of, or in connection with, an activity that is being carried out in a regulated rural area (being an activity that may be carried out without development consent or State significant infrastructure approval under the *Environmental Planning and Assessment Act 1979*).
- (2) In the Western and Central Zones (other than on small holdings), rural infrastructure includes (but is not limited to) the following:
  - (a) fences, roads, tracks, irrigation channels or pipelines, stock or domestic water supply pipelines, soil conservation earthworks, cut lines for stock movement, bore drains, drains to water storages, telephone lines or cables, power lines or cables or areas for movement of large machinery,
  - (b) shearing, machinery, grain, hay or similar sheds, stock handling facilities, dams, ground tanks, windmills, bores, pumps, tanks or water points.
- (3) In the Coastal Zone (other than on small holdings), rural infrastructure is limited to the following:
  - (a) permanent boundary fences, permanent internal fences, roads, tracks or pipelines,
  - (b) shearing or machinery sheds, tanks, dams, stockyards, bores, pumps, water points or windmills.
- (4) On small holdings in any Zone, rural infrastructure is limited to the following:
  - (a) permanent boundary fences, permanent internal fences, roads, tracks or pipelines,
  - (b) windmills, bores, stockyards, buildings other than habitable buildings, dams, pumps, tanks or water points.
- (5) Local Land Services may, on application by a landholder in the Coastal Zone or of a small holding, issue a certificate that rural infrastructure on the land concerned includes any additional infrastructure specified in the certificate. While the certificate remains in force, this Part has effect as if the additional infrastructure concerned was rural infrastructure in relation to the land concerned.
- (6) Local Land Services is to issue that certificate if it is satisfied that the additional infrastructure is required by the landholder for a genuine agricultural activity purpose, and is to refuse to issue that certificate if it is not so satisfied.
- (7) Section 60W of this Act (Certification by Local Land Services prior to clearing—general) also applies to a certificate issued under this clause.

**29 Clearing for construction, operation or maintenance of rural infrastructure allowable**

The clearing of native vegetation for the construction, operation or maintenance of rural infrastructure on land if:

- (a) the infrastructure is rural infrastructure in the relevant Zone or holding in which it is located, and
- (b) the clearing is the minimum extent necessary for the purposes of the rural infrastructure, and
- (c) the clearing does not exceed the maximum distance of clearing authorised by this Part in relation to the rural infrastructure.

**30 Maximum authorised clearing for rural infrastructure**

The maximum distance of clearing for rural infrastructure that is authorised by this Part is as follows:

- (a) in the Western Zone (except on small holdings and for temporary fences)—40 metres,
- (b) in the Central Zone (except on small holdings and for temporary fences)—30 metres,
- (c) in the Coastal Zone (except on small holdings and for temporary fences)—15 metres,
- (d) on a small holding or for temporary fences (in any Zone)—12 metres.

**31 Landholders of large holdings may be authorised to use allowable activities rules applicable to adjoining zones**

- (1) Local Land Services may, on application by a landholder, issue a certificate that the applicable maximum distances of authorised clearing under this Part for a landholding (other than a small holding) are the maximum distances for an adjoining allowable activity zone.
- (2) Local Land Services is to issue that certificate if it is satisfied that the landholding displays landscape characteristics consistent with the adjoining zone, and is to refuse to issue that certificate if it is not so satisfied.
- (3) While the certificate remains in force, this Part has effect as if the land concerned was situated in the adjoining zone.
- (4) Section 60W of this Act (Certification by Local Land Services prior to clearing—general) also applies to a certificate issued under this clause.

## **Part 4 Special provisions applying to category 2-vulnerable regulated land**

**32 Application**

This Part sets out the clearing of native vegetation (and of dead and non-native vegetation) that is authorised on category 2-vulnerable regulated land.

**33 Protected riparian land—special provisions relating to any clearing**

- (1) The clearing of native vegetation for allowable activities under the other Parts of this Schedule does not apply to the clearing of native vegetation on category 2-vulnerable regulated land that is shown on the native vegetation regulatory map as protected riparian land, and the clearing authorised by this clause applies instead.

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(2) **Imminent risk**

Clearing of native vegetation that is reasonably necessary to remove or reduce an imminent risk of serious personal injury or damage to property.

(3) **Environmental protection works**

Clearing native vegetation for the purpose of environmental protection works.

*Environmental protection works* means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes re-vegetation or bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works (within the meaning of the *Coastal Protection Act 1979*).

(4) **Electricity transmission infrastructure**

The clearing of native vegetation for the maintenance of public utilities associated with the transmission of electricity.

The maintenance of those public utilities includes the following activities, but only when those activities are being undertaken by or at the written direction of the body in which the public utility concerned is vested or that has the responsibility for that public utility's safe operation:

- (a) maintaining the necessary safety clearances under power lines (conductors and structures) and around communication sites associated with the supply of electricity,
- (b) minimising fuel loads under power lines to minimise the chance of smoke from a fire resulting in a line trip,
- (c) maintaining existing access roads and tracks.

The maintenance of those public utilities does not include any of the following activities:

- (a) construction of new access roads or tracks,
- (b) removal of low growing groundcover,
- (c) maintaining safety clearances from power lines that exceed either of the following:
  - (i) the maximum distance set out in the following table:

<b>Nominal operating voltage of power line</b>	<b>Maximum clearing distance</b>
Not more than 11 kV	20 metres
Above 11 kV up to and including 33 kV	25 metres
Above 33 kV up to and including 66 kV	30 metres
Above 66 kV up to and including 132 kV	45 metres
Above 132 kV up to and including 330 kV	60 metres
Above 330 kV	70 metres

- (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

(5) **Permanent boundary fence**

The clearing of native vegetation for the construction or maintenance of boundary fencing, with a maximum distance of clearing for the purposes of a boundary fence not exceeding 6 metres.

(6) **Permanent internal or temporary fence**

The clearing of native vegetation for the construction or maintenance of fencing (other than boundary fencing) to improve the management of the land, with a maximum distance of clearing for the purposes of a fence not exceeding 6 metres and only for fencing that is reasonably required to be constructed on the land.

(7) **Farm access track**

The clearing of native vegetation for the construction or maintenance of farm tracks, with a total width of clearing not exceeding 6 metres and only if:

- (a) the track is reasonably required to access sites within or on the other side of the land, and
- (b) the route of the track minimises the clearing that is required to be undertaken on the land.

**34 Steep or highly erodible land (including former mapped State protected land)—additional limitations on clearing native vegetation (including dead or non-native plants)**

- (1) This clause applies to category 2-vulnerable regulated land that is shown on the native vegetation regulatory map as steep or highly erodible land or that was, immediately before the repeal of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*, State protected land within the meaning of that clause.
- (2) Clearing of native vegetation (and dead or non-native plants) on land to which this clause applies is subject to the limitations on clearing that applied before the commencement of this Act under clause 4 of Schedule 3 to the *Native Vegetation Act 2003* in relation to State protected land.

**Consultation note.** The clause is intended to preserve the current authorities until a code or other provisions are developed to regulate the relevant clearing.

**[5] Section 69 Relationship to other Acts**

Omit “contrary to the *Native Vegetation Act 2003*”.

Insert instead “contrary to Part 5A or to the *Biodiversity Conservation Act 2016*”.

**[6] Section 211 Review of Act (other than native vegetation provisions)**

Insert after section 211 (4):

- (5) Part 5A and Schedule 5A are not required to be reviewed under this section.

**[7] Section 212**

Insert after section 211:

**212 Review of native vegetation provisions of this Act**

- (1) The Minister is to review Part 5A and Schedule 5A to determine whether the policy objectives of those provisions remain valid and whether the terms of those provisions remain appropriate for securing those objectives.



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- (2) The review is to be undertaken in conjunction with the review of the *Biodiversity Conservation Act 2016* that is undertaken under that Act by the Minister administering that Act.
- (3) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of Part 5A and Schedule 5A.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**[8] Dictionary**

Omit the definition of *threatened species*.