



New South Wales

# Native Vegetation Amendment (Miscellaneous) Regulation 2008

under the

Native Vegetation Act 2003

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Native Vegetation Act 2003*.

PHILIP KOPERBERG, M.P.,  
Minister for Climate Change, Environment and Water

## Explanatory note

The object of this Regulation is to make further provision with respect to private native forestry property vegetation plans, the submission of draft property vegetation plans, routine agricultural management activities, minor variations of the *Private Native Forestry Code of Practice* and minor variations of the Assessment Methodology for broadscale clearing.

This Regulation is made under the *Native Vegetation Act 2003*, including sections 11, 15, 26 (2) (b), 28, 32 and 51 (the general regulation-making power).

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Clause 1 Native Vegetation Amendment (Miscellaneous) Regulation 2008

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### **Native Vegetation Amendment (Miscellaneous) Regulation 2008**

under the

Native Vegetation Act 2003

#### **1 Name of Regulation**

This Regulation is the *Native Vegetation Amendment (Miscellaneous) Regulation 2008*.

#### **2 Commencement**

This Regulation commences on 8 February 2008.

#### **3 Amendment of Native Vegetation Regulation 2005**

The *Native Vegetation Regulation 2005* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

**[1] Clause 12 Information about PVPs and development consents**

Omit clause 12 (1) (b). Insert instead:

- (b) a statement of the area (expressed in hectares) of land:
  - (i) in the case of a private native forestry PVP—to which the PVP applies, or
  - (ii) in any other case—that is authorised to be cleared by the development consent or PVP concerned, and

**[2] Clause 12 (6)**

Omit the subclause. Insert instead:

- (6) Subclauses (1) (c), (2) and (3) do not apply in relation to a private native forestry PVP.

**[3] Clause 12B**

Insert after clause 12A:

**12B Consent for submission of draft PVPs**

A forestry right within the meaning of section 87A of the *Conveyancing Act 1919* is prescribed as an interest in land for the purposes of section 26 (2) (b) of the Act.

**[4] Clause 18A Infrastructure works by councils**

Insert after clause 18A (1) (f):

- (g) outdoor playgrounds, playing fields, netball courts, tennis courts, volleyball courts, basketball courts, swimming pools, skateboard ramps or similar outdoor recreation areas or facilities, that are normally open to the public, including any buildings that are ancillary to any such area or facility.

**[5] Clauses 23A and 23B**

Omit clause 23A. Insert instead:

**23A Restrictions on RAMAs—land to which a private native forestry PVP applies (excluding critical environmental areas)**

- (1) This clause does not apply in respect of land within a critical environmental area.

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- (2) Despite any other provision of the Act or this Regulation, obtaining timber for use in the construction of rural infrastructure does not comprise a routine agricultural management activity on land to which a private native forestry PVP applies.
- (3) Without limiting subclause (2) but subject to subclauses (1) and (4), the activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act are limited, in the case of land to which a private native forestry PVP applies, to the construction, operation or maintenance of the following types of rural infrastructure only, and are further limited so as to permit clearing only within the distances or areas specified:
  - (a) permanent boundary fence—6 metres either side,
  - (b) permanent internal fence—6 metres total width of clearing,
  - (c) roads and track—in accordance with the PNF code of practice,
  - (d) pipeline—3 metres total width of clearing,
  - (e) ground tank—15 metres from outer edge of structure,
  - (f) pumps—3 metres from outer edge of structure,
  - (g) tanks—3 metres from outer edge of structure,
  - (h) water point—3 metres from outer edge of structure,
  - (i) dam—15 metres from outer edge of structure,
  - (j) bore—10 metres from outer edge of structure,
  - (k) stockyard—20 metres from outer edge of structure.
- (4) The Director-General may, by order in writing, on application by the landholder, increase a distance specified in this clause in its application to the land concerned, but only if the Director-General is satisfied that:
  - (a) the proposed increase is minor, and
  - (b) the proposed increase is for a legitimate purpose associated with the management of the land concerned, and
  - (c) the increase is necessary in the circumstances.
- (5) The Director-General is to make details of any order issued under subclause (4) publicly available on a register kept by the Director-General for the purpose and is to include in the register a statement of the reasons for the authorisation or increase concerned.

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- (6) The distances and areas provided for by this clause are maximum distances and areas and do not affect the operation of section 22 of the Act which provides that clearing for routine agricultural management activities is not authorised if it exceeds the minimum extent necessary for carrying out the activity.
  - (7) In this clause, *critical environmental area* has the same meaning as it has in clause 29C (5).

**23B Restrictions on RAMAs—land to which a private native forestry PVP applies (critical environmental areas only)**

- (1) This clause applies only in respect of land within a critical environmental area.
- (2) Despite any other provision of the Act or this Regulation, obtaining timber for use in the construction of rural infrastructure does not comprise a routine agricultural management activity on land to which a private native forestry PVP applies.
- (3) Without limiting subclause (2) but subject to subclauses (1) and (4), the activities that comprise a routine agricultural management activity under section 11 (1) (a) of the Act are limited, in the case of land to which a private native forestry PVP applies, to the operation or maintenance of the following types of rural infrastructure only, and are further limited so as to permit clearing only within the distances or areas specified:
  - (a) permanent boundary fence—6 metres either side,
  - (b) permanent internal fence—6 metres total width of clearing,
  - (c) roads and track—in accordance with the PNF code of practice,
  - (d) pipeline—3 metres total width of clearing,
  - (e) ground tank—15 metres from outer edge of structure,
  - (f) pumps—3 metres from outer edge of structure,
  - (g) tanks—3 metres from outer edge of structure,
  - (h) water point—3 metres from outer edge of structure,
  - (i) dam—15 metres from outer edge of structure,
  - (j) bore—10 metres from outer edge of structure,
  - (k) stockyard—20 metres from outer edge of structure.
- (4) The Director-General may, by order in writing, on application by the landholder, authorise the clearing of land for the construction of the types of rural infrastructure specified in subclause (3),

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within the areas or distances specified in subclause (3), but only if the Director-General is satisfied that:

- (a) the proposed clearing is minor, and
  - (b) the proposed clearing is for a legitimate purpose associated with the management of the land concerned, and
  - (c) the clearing is necessary in the circumstances.
- (5) The Director-General is to make details of any order issued under subclause (4) publicly available on a register kept by the Director-General for the purpose and is to include in the register a statement of the reasons for the authorisation or increase concerned.
- (6) The distances and areas provided for by this clause are maximum distances and areas and do not affect the operation of section 22 of the Act which provides that clearing for routine agricultural management activities is not authorised if it exceeds the minimum extent necessary for carrying out the activity.
- (7) In this clause, *critical environmental area* has the same meaning as it has in clause 29C (5).

#### [6] Clause 27 Special provisions for minor variation

Insert after clause 27 (2):

- (2A) However, a variation to the Assessment Methodology in relation to the following aspects of the Assessment Methodology is allowable if an accredited expert is also of the opinion that the proposed clearing will have additional conservation benefits on a landscape scale:
- (a) classification of the condition of vegetation,
  - (b) classification of the vegetation type or landscape type as overcleared,
  - (c) the assessment of the regional value of vegetation.

#### [7] Clause 27 (3A) and (3B)

Insert after clause 27 (3):

- (3A) In determining that the proposed clearing will have additional conservation benefits on a landscape scale, an accredited expert must:
- (a) provide reasons for the opinions of the accredited expert, and
  - (b) comply with any assessment protocols approved by the Minister for Climate Change, Environment and Water.

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- (3B) Any assessment protocol approved for the purposes of subclause (3) (b) or (3A) is to be published on the website of the Department of Environment and Climate Change.

**[8] Clause 27 (4)**

Insert in alphabetical order:

*minor variation*, in relation to the Assessment Methodology, includes, but is not limited to, a variation that involves or results in the reclassification of vegetation from “not of low condition” to “low condition” (as referred to in the Assessment Methodology).

**[9] Clause 29A PNF code of practice**

Omit “1 August 2007” from paragraph (b) of the definition of *PNF code of practice*.

Insert instead “8 February 2008”.

**[10] Clause 29C Special provisions for minor variation**

Omit clause 29C (1). Insert instead:

- (1) This clause only applies in relation to a private native forestry PVP that has been approved by the Minister if more than 10% of the area to which the PVP applies (excluding any critical environmental area) consists of areas that are restricted areas.

**[11] Clause 29C (2) (b1) and (b2)**

Insert after clause 29C (2) (b):

- (b1) the variation does not apply to an endangered ecological community or vulnerable ecological community within the meaning of the *Threatened Species Conservation Act 1995*, and
- (b2) the variation does not apply to canopy openings (as determined in accordance with the PNF code of practice), and

**[12] Clause 29C (5), definitions of “critical environmental area”, “net harvestable area” and “restricted area”**

Omit the definitions. Insert instead:

*critical environmental area*, in relation to a private native forestry PVP, means any of the following areas to which the PVP applies:

- (a) riparian exclusion zones,

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- (b) old growth forest,
- (c) rainforest,
- (d) steep land (that is, land with a slope greater than 30 degrees).

**restricted area**, in relation to a private native forestry PVP, means that part of any of the following types of areas to which the PVP applies (other than any critical environmental area) that is not permitted to be cleared, or in which clearing is restricted, under the PNF code of practice:

- (a) rocky outcrops and cliffs (as defined in the PNF code of practice),
- (b) areas of existing mass movement (as defined in the PNF code of practice),
- (c) exclusion zones (as set out in the listed ecological prescriptions in the appendix to each Part of the PNF code of practice),
- (d) riparian buffer zones (as set out in the relevant tables in the PNF code of practice),
- (e) caves, tunnels and disused mineshafts (excluding open pits less than 3 metres deep),
- (f) endangered ecological communities (as set out in Part 3 of Schedule 1 to the *Threatened Species Conservation Act 1995*),
- (g) vulnerable ecological communities (as set out in Part 2 of Schedule 2 to the *Threatened Species Conservation Act 1995*),
- (h) areas containing Aboriginal objects or Aboriginal places (within the meaning of the *National Parks and Wildlife Act 1974*),
- (i) areas containing items identified as heritage items in an environmental planning instrument.

BY AUTHORITY

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