

# **Nature Conservation (Native Vegetation Protection) Amendment Bill 2004**

Presented to the ACT Legislative Assembly on 30 June 2004

## **EXPLANATORY STATEMENT**

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## Overview

Currently there is no general prohibition on the clearing of native vegetation in the ACT. Restrictions on vegetation clearing only apply to large trees in the urban area, native trees on leased and unleased land (where a permit is required), endangered communities and areas supporting endangered species (in certain circumstances), vegetation immediately adjoining a watercourse, and vegetation on steep slopes where clearing is likely to cause serious erosion. Under existing law, native vegetation other than trees is particularly poorly protected.

This Bill is designed to protect patches of vegetation supporting species native to the ACT - but not patches dominated by species that are native elsewhere in Australia but introduced to the ACT. It only applies to patches of vegetation larger than 0.2 ha.

This Bill establishes a goal of no net loss of vegetation in the ACT. The goal is implemented through a new set of offences for unapproved clearing. The goal is also implemented through new obligations placed on people who wish to clear native vegetation to revegetate another cleared area, or rehabilitate a currently degraded area of native vegetation. The goal is that over the longer term the area of native habitat in the ACT is not reduced as a result of the approved clearing.

Under this Bill, approval to clear native vegetation will only be granted if the Conservator has approved a Vegetation Management Plan that sets out the scope of the intended clearing and undertakings to revegetate or rehabilitate alternative areas. This can include undertakings for ongoing care of the revegetated or rehabilitated lands. A Vegetation Management Plan can run for up to 30 years, and will bind subsequent owners of the land for as long as it operates.

A failure to meet undertakings in a Vegetation Management Plan incurs a penalty. In addition, a court can order payment of the costs of the Government doing the promised work. Payment of costs can be ordered either before or after the Government undertakes the work that the landholder failed to perform.

Under this Bill, the Conservator of Flora and Fauna has the responsibility for approving or refusing to approve clearing. The Conservator will only be able to approve a vegetation management plan involving clearing if the balance between clearing and revegetation or rehabilitation has neutral or positive outcome for native vegetation cover in the ACT.

The Bill complements the Tree Protection regime applying to urban areas. This Bill also applies to urban areas, but only to patches of native vegetation of at least 0.2 hectares and groups of trees, not to individual trees as the Tree Protection regime does. It does not apply to vegetation in conservation reserves. The recent Environment Legislation Amendment Act 2004 introduced a new regime governing land clearing in reserves.

# Provisions of the Nature Conservation (Native Vegetation Protection) Amendment Bill 2004

## Formal Clauses

### Clause 1

Names the Act.

### Clause 2

States that the Act will commence on the day after notification, except the provisions amending uncommenced sections introduced in the *Environment Legislation Amendment Bill 2004*, which commence on the date the uncommenced provisions commence.

### Clause 3

States that this Act amends the existing Nature Conservation Act 1980 (NCA).

## Substantive Clauses

### Clause 4

Inserts a new clause 43A into the NCA that allows for removal of dead wood for use as firewood in accordance with Regulations. Removal of dead wood from native trees is otherwise prohibited under this Act - except firewood collection by rural leaseholders for personal use - as dead wood is incorporated into the definition of native vegetation.

### Clause 5

Creates a new **Part 5A** in the NCA to govern clearing of native vegetation outside reserved areas. The recent Environment Legislation Amendment Act introduced a new penalty regime in Part 8 of the NCA (Division 8.1) relating to clearing inside reserved areas like National Parks. This Act creates a new regime for vegetation outside reserved areas (i.e. leasehold and unleased lands). The sections in this new Part are outlined below.

## **Division 5A.1 - Objects and definitions**

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|--------------|---|
| <b>45AAA</b> | Sets out the objects of Part 5A, including conservation of native vegetation, specifically by reducing the incidence of clearing, and by requiring revegetation or rehabilitation of degraded vegetation to compensate for any vegetation lost through land clearing. |
| <b>45AAB</b> | States that this part does not apply to vegetation in reserves. Part 8 of the existing Act deals with reserves.   |
| <b>45AAC</b> | Defines the meaning "clearing" for the purpose of this Part, and defines "native vegetation".   |

“Clearing” includes killing, felling, thinning, burning, and removal - but does not include lopping, so trimming vegetation near power lines does not breach these provisions. That may, however, still breach Tree Protection laws if done in the urban area.

“Native vegetation” that cannot be cleared is a patch of vegetation of at least 0.2 hectares in size:

- where at least 50% of vegetation in the patch is local native (“indigenous”) species, and at least 10% of the total ground area is covered by living or dead native vegetation; or
- that supports at least three local native trees of at least 10m height.

**45AAD** Defines “clearing causing serious harm” as clearing of an endangered community or clearing of an area greater than 2 ha.

**45AAE** Defines “clearing causing material harm” as clearing of an area greater than 0.2 ha but less than 2 ha.

## **Division 5A.2 - Offences and penalties for Part 5A**

**45AAF** Imposes a maximum penalty of 1000 units (\$100,000) for clearing of vegetation outside a reserved area that satisfies the definition of “causing serious harm” as defined in s. 45AAD.

**45AAG** Imposes a maximum penalty of 500 units (\$50,000) for clearing of vegetation outside a reserved area that satisfies the definition of “causing material harm” as defined in s. 45AAE.

**45AAH** Imposes a maximum penalty of 100 units (\$10,000) if a landholder contravenes a requirement in a vegetation management plan.

**45AAI** If someone fails to do work they were obliged to do under a vegetation management plan, the Territory can either do the work themselves then require reimbursed of the costs, or demand the money up front to cover the cost of the revegetation or rehabilitation work.

## **Division 5A.3 - When clearing is permitted**

**45AAJ** States that clearing is permitted in certain circumstances.

**45AAK** This section is designed to allow rural leaseholders to continue their existing agricultural practices, such as sustainable grazing of native

pasture, continuation of rotational farming practices, and other routine agricultural management.

Permits the clearing of native vegetation for routine agricultural management, unless the clearing is more extensive than is necessary for carrying out the activity, or is done in preparation for a work where the necessary statutory approval hasn't been granted.

**45AAL** Permits clearing of vegetation that poses an imminent risk of serious harm to a person or property.

**45AAM** Permits necessary clearing:

- in accordance with a Vegetation Management Plan approved by the Conservator of Flora and Fauna under this Act (and as outlined below in Part X).
- in accordance with a licence for scientific research
- authorised under the *Emergencies Act 2004*
- under s. 13 of the *Roads and Public Places Act* (trees overhanging public places)
- under the *Surveyors Act 2001*
- under the *Utilities Act 2000*.

## **Division 5A.4 - Process to obtain clearing approval for a development**

**45AAN** Defines "development" and "Land Act"

**45AAO** States that the approval of the Conservator of Flora and Fauna must be obtained before an approval is granted for a development application that involves the clearing of native vegetation.

**45AAP** The Conservator's approval is required for the clearing of 0.2 hectares or more of native vegetation.

**45AAQ** The Conservator may approve or refuse clearing of native vegetation. An approval to remove vegetation may be subject to conditions, and must include compliance with an approved vegetation management plan.

In making a decision, the Conservator must consider the extent of harm that the clearing will cause, whether there are ways of minimising or avoiding the loss of native vegetation, and whether any measures a landholder has undertaken to make will fully offset any harm caused by the clearing.

## **Division 5A.5 - Vegetation Management Plans**

- 45AAR** A person who wishes to clear native vegetation may submit a draft Vegetation Management Plan (VMP) to the Conservator for approval under this Part, provided the plan is approved by all landholders. Regulations can specify detail of the content of VMPs.
- 45AAS** Sets out the principles that the Conservator must apply when deciding whether to approve a VMP. It includes use of best available scientific information, and that there must not be any net loss of vegetation in the ACT.
- 45AAT** The Conservator must consult the Flora and Fauna Committee and consider their advice before approving a VMP.
- 45AAU** VMPs must include
- details of the intended clearing;
  - proposals relating to continuation of existing agricultural practices;
  - any plans for revegetation of cleared land, and/or rehabilitation of degraded native vegetation to compensate for vegetation lost, including on land other than the land to be cleared;
  - anything else prescribed in the regulations.
- 45AAV** A VMP is a notifiable instrument and the Conservator must publish a public notice about the approval of a VMP within 3 days of its approval.
- 45AAW** A VMP has effect for the period stated in the plan, with a maximum period of 30 years. It can be varied with the consent of the Conservator, or terminated in accordance with the Regulations.
- 45AAX** VMPs run with the land and are registered under the Land Titles Act, so they bind subsequent landholders. Regulations may provide for reviews after 10 years.
- 45AAY** A VMP can be enforced by the Conservator in the Supreme Court.

## **Division 5A.6 - AAT review of decisions**

- 45AAZ** A decision by the Conservator to approve or refuse to approve a VMP, or to vary a VMP, is a reviewable decision in the AAT.
- 45AAZA** The Conservator must endeavour to give notice to all affected parties if a decision is being reviewed.
- 45AAZB** All people have standing to ask for review of a reviewable decision.

## Clause 6

Adds the words “native vegetation (to which part 5A applies)” to section 47 of the NCA so it is clear that the Conservator has the power to give directions relating to Vegetation Management Plans.

## Clause 7

Consequential amendment to omit section 60B of the NCA that contained a definition of clearing that has now been rolled into the dictionary of the NCA.

## Clause 8

Inserts a new heading for the section defining “damage”.

## Clause 9

Consequential amendment to omit section 60L of the NCA that contained a definition of “cause” that has now been rolled into the dictionary of the NCA.

## Clause 10

Inserts a number of new definitions into the dictionary of the NCA, including the two different definitions of “clearing” for the different parts of the Act. The definition of “clearing” is very broad for reserved areas, as passed by the Assembly in the Environment Legislation Amendment Act 2004, but is given a narrower definition in relation to areas outside conservation reserves. A list of the activities within the definition of “routine agricultural management activities” is also set out here.

## Clause 11

States that the *Land (Planning and Environment) Act 1991* is also amended by this bill.

## Clause 12

Inserts a new section in the *Land (Planning and Environment) Act 1991* dealing with subdivision of land supporting native vegetation. It prohibits the grant of a lease covering less than 0.2 hectares unless an approved vegetation management plan exists for any large patches of native vegetation that the lease boundary runs through. This is to prevent a landholder of land supporting a large area of native vegetation from subdividing it into pieces so small that they escape the application of this Act.

## Clause 13

Places an obligation on ACTPLA to give the Conservator a copy of each development application to which Part 5A of the NCA applies.

## Clause 14

Inserts a new note into section 230 of the *Land (Planning and Environment) Act 1991* to alert decision makers that a development involving the clearing of 0.2 hectares or more of native vegetation cannot be approved without the approval of the Conservator.