

How does the Native Vegetation Act 2003 interact with other legislation?

Legislation other than the *Native Vegetation Act 2003* (NV Act) may affect the clearing of native vegetation. When approval is required under other legislation, the NV Act interacts with that legislation in one of the following ways:

> **Excluded activities**

Section 25 of the NV Act lists clearing that is authorised under other legislation. Once clearing is authorised under an Act listed in section 25 it does not require approval under the NV Act (see info sheet 6).

> **Permitted activities**

The Act allows for a range of activities to take place without the need for clearing approval (see info sheet 6 and 7). However, this does not remove the need to get any other approvals that may apply to the land or activity.

> **Clearing requiring approval**

Clearing requiring approval under the Act may also require approval under other legislation. All relevant approvals need to be obtained before the native vegetation can be legally cleared.

In addition certain land is excluded from the NV Act (see info sheet 4).

Listed below is some of the legislation you may need to consider when clearing native vegetation.

Environmental Planning and Assessment Act 1979

The NV Act does not override any requirement to obtain consent from a local council where a Local Environment Plan (LEP) requires approval for the

clearing of native vegetation. Council controls apply in addition to the requirements of the Act. However, once a Property Vegetation Plan (PVP) is approved or Development Consent is granted under the NV Act, any subsequent change to an environmental planning instrument cannot prohibit, restrict or otherwise affect the approved PVP or Development Consent.

Where council has granted Development Consent under its LEP and clearing is required to undertake the activity then approval may also be required under the NV Act.

The exception to this is that clearing for the construction of a single dwelling that has Development Consent from council is deemed also to have approval under the NV Act. This deemed clearing approval extends only to those activities that are subject of the council development consent for that single dwelling which might include for example, road access and the installation of power lines. The NV Act requires that such clearing be to the minimum extent necessary.

Where land is rezoned so that it is subsequently excluded from the NV Act, any agreed PVP, including approved clearing, offsets and management actions that applied to that land continue to be binding on future owners.

You should contact your local council or Catchment Management Authority (CMA) for further advice.

Western Lands Act 1901

Ninety five percent of the Western Division is Crown land held under Western Lands Lease or various other Crown tenures. Administration of these lands is the responsibility of the Western Lands Commissioner, based with the Far West Region of the Department of Natural Resources.

When a leaseholder wishes to clear native vegetation and cultivate land to grow crops on a Western Lands grazing lease, a Cultivation Consent is needed under the *Western Lands Act 1901*. This applies irrespective of whether clearing is approved under the NV Act or does not need that approval. Where a PVP or Development Consent under the NV Act provides for subsequent cultivation of land in the Western Division, dual approval is required. The lessee is responsible for obtaining cultivation consent from the Department.

Until 31 December 2007, any clearing of native vegetation (other than trees) that is authorised under an existing Cultivation Consent is exempt from the requirement to obtain clearing approval under the NV Act. This exemption ceases to apply if the land becomes subject to a PVP.

The 'woody weeds' exemption under the *Native Vegetation Conservation Act 1997* no longer applies. A PVP or development consent under the NV Act is required for all clearing of invasive native scrub that is not regrowth (ie regrown since 1 Jan 1983 in Western Division or 1 Jan 1990 elsewhere following legal clearing).

Protection of the Environment Operations Act 1997

You may require a licence under the *Protection of the Environment Operations Act 1997* for certain types of clearing that involve burning. You may also require a licence under the *Protection of the Environment Operations Act 1997* if there is a risk of contamination of any waterway with sediment or herbicide during clearing. You should contact your local council in the first instance or the Department of Environment and Conservation before work commences, to determine your responsibilities.

Rural Fires Act 1997

You may require a permit under the *Rural Fires Act 1997* for certain types of clearing that involve burning. You should contact the NSW Rural Fire Service or your local council fire officer before work commences to determine your responsibilities under this Act.

National Parks and Wildlife Act 1974

Under Section 90 of the *National Parks and Wildlife Act 1974* it is an offence to knowingly damage or destroy Aboriginal archaeological relics without prior consent from the Department of Environment and Conservation. Should any Aboriginal archaeological site be discovered during clearing, work should cease immediately. You should contact your nearest office of the Department of Environment and Conservation for advice.

Threatened Species Conservation Act 1995

A separate licence under the *Threatened Species Conservation Act 1995* is not required for clearing approved as part of a PVP or Development Consent under the NV Act. In most situations permitted activities (including Routine Agricultural Management Activities) can also be undertaken without requiring a threatened species approval. As some permitted activities do require consideration of threatened species you should contact your local CMA for advice.

Environment Protection and Biodiversity Conservation Act 1999

An approval under the NV Act does not remove the obligation of landholders to obtain approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, where necessary. Actions that are likely to have a significant impact on a matter of national environmental significance, such as World or National Heritage Areas, Ramsar wetlands, nationally listed threatened species and ecological communities, and migratory species, need to be referred to the Commonwealth Department of the Environment and Heritage to determine if an approval is required. Your local CMA or council can provide advice on this matter.

For more information:

Contact your local CMA, or you may also:

Visit: www.nativevegetation.nsw.gov.au **Email:** info@nativevegetation.nsw.gov.au **Freecall:** 1800 237 012

Note: This information does not constitute legal advice. Please seek specific advice from your local CMA before undertaking any clearing.