

Variations within the Native Vegetation Regulation 2005

Under the Native Vegetation Act 2003 (NV Act) native vegetation cannot be cleared except in accordance with either a development consent granted in accordance with the NV Act or a property vegetation plan (PVP). Development consents and PVPs that propose broadscale clearing cannot be approved unless the proposed clearing will improve or maintain environmental outcomes.

The Native Vegetation Regulation 2005 (NV Regulation) provides that the Environmental Outcomes Assessment Methodology (EOAM) is the tool that Catchment Management Authorities (CMAs) generally use to determine whether proposed broadscale clearing will improve or maintain environmental outcomes.

Is the EOAM the only method available to assess broadscale clearing proposals?

There are alternative methods for assessing broadscale clearing proposals, however these methods can only be used in certain circumstances. These alternative methods are:

1. Minor variation of the EOAM (clause 27 NV Regulation);
2. Use of more appropriate local data in the EOAM (clause 2.4.3 EOAM); and
3. Special provision for long term environmental benefits, 'clause 28 policies' (clause 28 NV Regulation).

In addition to these three variations, a landholder can apply to the Minister to increase a buffer distance specified for a routine agricultural management activity (RAMA) that involves the construction, operation and/or maintenance of rural infrastructure.

Landholders can also vary the regrowth date through a continuing use PVP (see clauses 9 and 10 of the NV Regulation).

Several of these variations require assessment by an **accredited expert**. For more information on accredited experts see the end of this information sheet.

1. Minor variation of the EOAM

A determination made in accordance with the EOAM that a clearing proposal will not improve or maintain environmental outcomes can be reversed by an accredited expert only if:

- > the accredited expert is of the opinion that strictly following the EOAM is unreasonable and unnecessary in the particular case; and
- > the accredited expert is of the opinion that a minor variation to the EOAM would result in a determination that the proposed clearing will improve or maintain environmental outcomes.

A minor variation can only be made to the following aspects of the EOAM if an accredited expert is also of the opinion that the proposed clearing will have additional conservation benefits on a landscape scale:

- > classification of the condition of vegetation;
- > classification of the vegetation type or landscape type as over cleared; or
- > the assessment of regional value of vegetation.

Note: This Information Sheet does not apply to assessments of clearing for the purposes of Private Native Forestry.

A minor variation **cannot** be made if it changes any of the following aspects of the EOAM:

- > riparian buffer distances or associated offset requirements;
- > classification of vegetation as likely habitat for threatened species; or
- > classification of plant species as a threatened species or components of an endangered ecological community.

What is the process for using minor variation of the EOAM to assess clearing proposals?

When certifying that proposed clearing will improve or maintain environmental outcomes (or, where appropriate, determining that proposed clearing will have additional conservation benefits on a landscape scale) the accredited expert must:

- > Provide reasons for their opinions; and
- > Comply with any assessment protocols approved by the Minister for Climate Change and the Environment. Any protocols concerned with threatened fish and marine vegetation and aquatic biodiversity must also be approved by the Minister for Primary Industries.

There are currently two such assessment protocols. The first is 'Assessment protocol for where a minor variation is made to the EOAM to reclassify the condition of native vegetation'. The second is 'Assessment protocol for where a minor variation is made to the EOAM to reclassify the percent cleared threshold for a Mitchell landscape or vegetation type or to vary the regional value of vegetation'. These protocols are publicly available on the DECC website at: www.environment.nsw.gov.au/vegetation/eoam.htm. Any new protocols made are required to be added to the DECC website.

Where can I find reasons for a decision to approve a broadscale clearing proposal on the basis of minor variation of the EOAM?

Reasons for a decision of a CMA to approve a proposed clearing on the basis of an accredited expert's assessment and certification that the proposed clearing will improve or maintain environmental outcomes are published on the internet within 10 business days of the decision. The CMA also makes publicly available the reports of the expert assessment. The CMA's reasons and the accredited expert reports are published on the public register at www.environment.nsw.gov.au/vegetation/publicregister.htm.

Case study 1

The EOAM requires vegetation cover to be assessed within circles of certain sizes surrounding the proposal. A proposal located in the Murray CMA initially received a 'red light' (refusal). The accredited expert made a minor variation to the EOAM to remove the requirement to assess the proposal within all except the largest size circle (1,000 ha). The variation was minor because it was to a small part of the biodiversity assessment methodology used to assess Landscape value. In this case, the accredited expert was of the opinion that:

'The minor variation would result in a determination that the proposed clearing would improve or maintain environmental outcomes because the relevant Mitchell Landscape and vegetation types were not overcleared, the native vegetation cover in the 1,000 ha circle remained in the same cover category with the proposed clearing, the ratio of area between the proposed clearing and the proposed offset was greater than 1:4, the loss of cover in the smaller circles was very small in comparison with the overall vegetation cover remaining, the remnant vegetation cover would remain intact, and improved livestock grazing management and replanting within the offset site would counterbalance the loss of native vegetation cover in the smaller circles; and hence strictly following the EOAM was unreasonable and unnecessary.'

2. Use of more appropriate local data in the EOAM

An EOAM assessment using the approved databases that indicates the proposal does not improve or maintain environmental outcomes, may have a different result when more appropriate local data is used.

The EOAM allows more appropriate local data to be used in relation to certain aspects of the assessment, including:

- > vegetation benchmarks,
- > whether threatened animal species are likely to occur on the land in that vegetation type or habitat feature in the sub-region, or
- > the estimated percentage increase in threatened species population that can be expected in response to a proposed management action, as measured by either an increase in the number of individuals, or habitat amount or key habitat feature.

More appropriate local data can be substituted where:

- > an accredited expert certifies that data is available that more accurately reflects local environmental conditions (compared to the data in the approved databases); and

- > the CMA Board or General Manager authorises the substitution of the approved data with data the accredited expert advises is more appropriate.

What is the process for using more appropriate local data in the EOAM to assess clearing proposals?

When certifying that data is available that more accurately reflects local environmental conditions (compared to the data in the approved databases), an accredited expert must:

- > provide reasons for their opinions; and
- > comply with any assessment protocols approved by the Minister for Climate Change and the Environment and the Minister for Primary Industries.

There are currently no assessment protocols required for this purpose.

Where can I find reports of the use of more appropriate local data in the EOAM?

Reasons for a decision of a CMA to approve a proposed clearing on the basis of the use of more appropriate local data are published on the internet within 10 business days of the decision. The CMA also makes publicly available the expert assessment and data relevant to the proposal. This information is published on the public register at www.environment.nsw.gov.au/vegetation/publicregister.htm. In addition, the CMA makes a record of the variations made to the data together with a record of the results of the initial assessment and the assessment using the varied data and retains these records for the duration of the PVP.

Case study 2

A proposal to clear areas of low condition chenopod shrubland and low- and not-low condition belah-rosewood in the Lower Murray-Darling CMA area was red lighted based upon the foraging habitat for the regent parrot. More appropriate local data (whether threatened animal species are likely to occur on the land in that vegetation type or habitat feature) was used to determine that the proposal would not impact upon the foraging habitat of the regent parrot. An accredited expert certified that data was available, from websites and published surveys and reports, that more accurately reflects local environmental conditions (compared to the data in the approved databases). This data showed that vegetation on the land does not provide foraging habitat for the regent parrot mainly due to the condition of the vegetation, lack of proximity to mallee and lack of good corridors of over-storey native vegetation. The CMA authorised the substitution of the approved data with the more appropriate data certified by the accredited expert.

3. Special provision for long term environmental benefits 'clause 28 policies'

Proposed clearing may be exempt from the requirement for EOAM assessment if the CMA is satisfied that:

- > the clearing is minor clearing, and
- > on the basis of a clause 28 policy, the clearing is likely to improve condition or prevent long term degradation of the native vegetation on the land; and
- > the long-term environmental benefits to native vegetation on the land outweigh short-term environmental impacts of the clearing; and
- > native vegetation will be restored and maintained on the land.

The 'clause 28 policy' is a policy the Minister may approve that sets out the circumstances in which minor clearing of native vegetation on land is likely to improve the condition or prevent long term degradation of the native vegetation on the land.

What is the process for adopting a clause 28 policy?

Before adopting a clause 28 policy the Minister must:

- > place a draft policy on public exhibition and invite public submissions; and
- > consider any public submissions made.

What is the process for using special provisions for long term environmental benefits to assess clearing proposals?

Clearing assessed in accordance with the special provisions for long term environmental benefits still requires a PVP. The difference is that it is assessed in accordance with the clause 28 policy (and the other factors the CMA must be satisfied of) rather than the EOAM.

Where can I find clause 28 policies?

Clause 28 policies are publicly available. As these policies are specific to CMA regions you should contact your local CMA for information on any clause 28 policies they may have.

Case study 3

A policy to allow for the rehabilitation of native groundcover with techniques requiring minor clearing and minimal short-term impact was developed by the Western CMA. Groundcover rehabilitation

techniques sometimes require minor clearing of native vegetation to allow more abundant or varied native vegetation to reseed in disturbed soil. Techniques used include contour furrowing, water-ponding and disc or tyne pitting. Appropriate grazing management is applied. The overall result is improved condition of native vegetation and prevention of long term degradation of native vegetation on the land. The long term environmental benefits outweigh the short term impacts of the clearing.

Varying buffer distances for routine agricultural management activities that involve the construction, operation and/or maintenance of rural infrastructure

A landholder can apply to have the maximum buffer distances for routine agricultural management activities that involved the construction, operation and/or maintenance of rural infrastructure increased. The CMA may approve the increase if it is:

- > minor
- > for a legitimate land management purpose, and
- > necessary in the circumstances

What is the process for increasing buffer distances?

On application by a landholder, the CMA may increase buffer distances specified in clause 20 of the NV Regulation, but only if satisfied that it is in accordance with the provisions above.

If a buffer distance is increased, that increase only applies to the land described in the application by the landholder.

Where can I find information about buffer distances that have been increased?

The details of the increase in buffer distances are published on the public register at www.environment.nsw.gov.au/vegetation/publicregister.htm.

Case study 4

The total width of clearing allowed for a road or track within the Namoi CMA area was increased from 6m to 12m for the realignment and upgrade of an access road on a steep slope for articulated heavy vehicles.

Who is an accredited expert?

An accredited expert is a person accredited by the Minister under clause 27 of the NV Regulation and clause 2.4.3 of the EOAM. Generally, an accredited expert will be a CMA officer.

To gain this accreditation, candidates must demonstrate a thorough knowledge of environmental factors including salinity, soils, water quality, threatened species, threatened fish and marine vegetation.

Contact your local CMA to find an accredited expert for your area.

More information

For further information contact your local CMA, or you may also:

Visit: www.environment.nsw.gov.au/vegetation/nvmanagement.htm **Email:** info@environment.nsw.gov.au
Freecall: 131 555

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

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