



FACT SHEET FOR NATIVE VEGETATION ACT

The regulatory framework relating to the clearing of native vegetation in New South Wales has been dramatically changed by the *Native Vegetation Act 2003*. The Act is administered by the New South Wales Department of Environment Conservation, Climate Change and Water (“DECCW”), which maintains an active enforcement program before the Land and Environment Court. Persons who clear native vegetation in breach of the Act are subject to criminal prosecution and face the possibility of severe penalties.

The key provisions of the *Native Vegetation Act* are as follows:

- Native vegetation may not be cleared except in accordance with either a development consent or a “property vegetation plan” that has been approved by the DECCW.
- “Native vegetation” is defined to include species of trees, understory plants, herbaceous vegetation and wetland plants that existed in NSW prior to European settlement.
- “Clearing” means cutting down, felling, thinning and removing native vegetation.
- Any clearing of native vegetation that is not in accordance with a development approval or a property vegetation plan may attract a penalty of up to \$1.1 million.
- “Broadscale clearing”, involving the removal of any native vegetation other than regrowth is generally prohibited unless it can be demonstrated to the satisfaction of the DECCW that the clearing will improve or maintain environmental outcomes.
- The DECCW can a “stop work” order to require a person to refrain from breaching the Act, and can also issue a direction that remedial work be performed to repair or rehabilitate land that has been damaged caused by clearing. Contravention of either a stop work order or a direction for remedial work can attract a penalty of \$220,000 in the case of a corporation and \$110,000 in the case of an individual.

The Act permits the following activities to be carried out:

- Clearing for “routine agricultural maintenance activities” such as construction and maintenance of dams, permanent fences, buildings, windmills, bores, stockyards, and farm roads provided that those activities are carried out only to “the minimum extent necessary” as specified in clause 20 of the *Native Vegetation Regulation 2005*.
- Cultivation, grazing or rotational farming that was in existence when the Act came into force may be continued so long as it does not involve the clearing of any native vegetation other than re-growth.

Concordia Pacific

Level 8, 70 Castlereagh Street, Sydney NSW 2000
T: 02 9233 4914 M: 0434 006 948 E: conpacif@tpg.com.au
W: www.concordiapacific.com.au



Concordia Pacific
Environmental, Government and Town Planning Law

- Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation on the land.

Clearing land in breach of the *Native Vegetation Act* is a crime and can result in very heavy fines. The maximum penalty for an offence is now \$1.1 million. Some of the cases where the Land and Environment Court has imposed substantial penalties include:

- **Director-General of the Department of Environment and Climate Change v Hudson, (2009) NSWLEC 137:** The Defendant was fined \$400,000 for clearing 486 hectares of native vegetation, including coolibah, river cooba and bela trees, on a property west of Morree that was being operated as a sheep and cattle grazing station.
- **Director-General of the Department of Environment and Climate Change v John Rae, (2009) NSWLEC 137:** The Defendant was fined \$160,000 for using a bulldozer to clear Poplar box, Belah, Wild orange, and Black box trees from his farming property near Quambone.
- **Director-General of the Department of Environment and Climate Change v Colin Alfred Taylor, (2007) NSWLEC 530:** The Defendant received a penalty of \$20,000 for clearing about 30 hectares of native vegetation from his land near Frederickton, including Paperbark, Eucalypts and Casuarinas.

If you are prosecuted for an offence against the *Native Vegetation Act*, the matters that the Court may consider in determining how to deal with the case (including any penalty to be imposed) may include the following:

- The amount of land that was cleared;
- The type of native vegetation that was cleared;
- The harm to the environment;
- Whether the clearing was done for commercial gain or to increase the value of the land;
- Whether the clearing was done deliberately;
- The degree of cooperation with investigators;
- Whether any measures have been taken to restore the native vegetation;

Concordia Pacific has 30 years of experience in environmental law. If you have been charged with an offence against the *Native Vegetation Act*, we can appear for you in Court and can help you limit the consequences of any prosecution. Please contact us on **9233 4914** if you require our assistance.

Concordia Pacific

Level 8, 70 Castlereagh Street, Sydney NSW 2000
T: 02 9233 4914 M: 0434 006 948 E: conpacif@tpg.com.au
W: www.concordiapacific.com.au