



Compliance under the *Native Vegetation Act 2003*

The *Native Vegetation Act 2003* regulates the clearing of native vegetation on all land in NSW – except for excluded land listed in Schedule 1 of the Act.

The Act outlines what landowners can and cannot do in clearing native vegetation.

The purpose of the Act is to end broadscale clearing in NSW, unless the overall result of the clearing improves or maintains the environment.

Illegal clearing of native vegetation can cause salinity, erosion, soil degradation and poor water quality, and reduce biodiversity. It is in the interests of both landholders and the wider community to have a strict monitoring and compliance program in place to prevent and/or penalise breaches of the law. The Department of Natural Resources (DNR) fulfils this role in NSW. DNR has released its Compliance Policy which outlines in detail how it will deal with breaches.

How is the Act enforced?

Landholders who wish to clear native vegetation can now apply for a Property Vegetation Plan (PVP) or Development Consent (DC) from their local Catchment Management Authority (CMA). These outline the planned clearing of native vegetation on a property for up to 15 years. Staff from the CMAs can provide specific advice to landholders on their obligations under the Act.

Voluntary compliance with the legislation is promoted by both the CMAs and the Department, but DNR also has the responsibility to investigate reports of illegal clearing of native vegetation, and take appropriate action where necessary. Ignorance of the law is not an excuse for illegal clearing.

What are the penalties for illegal clearing?

There are a range of actions the Department of Natural Resources can take in response to alleged breaches of the *Native Vegetation Act 2003*, including advisory and warning letters, stop work orders, remediation directions, penalty notices and prosecution.

The courts can impose fines of up to \$1.1 million for unauthorised clearing of native vegetation. Fines also apply for offences such as failing to comply with a stop work order or remediation notice, obstructing authorised officers from lawfully inspecting an alleged breach, or providing false or misleading information in relation to an alleged breach.

Any compliance action taken by DNR is designed to match the severity of the offence. To protect the interest of the environment this often means the person responsible has to repair the damage caused by the clearing activity. This is usually an expensive process, and the cost is almost always fully borne by the offender.

What is DNR's approach to compliance?

The Department of Natural Resources carries out its compliance role by:

- undertaking community education and engagement to promote voluntary compliance
- monitoring natural resource activities across the State to identify potential breaches in a timely manner
- investigating alleged breaches
- taking appropriate action when a breach occurs. Where possible, emphasis will be placed on reducing the environmental damage caused by the clearing.

How are breaches of the Act identified?

DNR monitors compliance with native vegetation laws using the following approaches:

Detection

Aerial and ground surveillance and satellite images are used to monitor changes in land use and vegetation cover across NSW.

Benchmark data for the entire state can be used to cross-check alleged breaches of the Act.

Audit and review of approvals

Audits of property vegetation plans and consents are regularly conducted to check they are being implemented correctly.

Auditing also helps the Department and CMAs to continuously improve the quality and effectiveness of the PVP and DC consent system.

Reports of possible breaches

Reports of alleged breaches are received from many sources including members of the community, local councils, and other government bodies.

If you suspect someone is clearing illegally, you should advise your nearest DNR office.

How are alleged breaches investigated?

Once an alleged breach is reported or detected the Department conducts an initial assessment. This includes a review of existing PVPs and consents, any previous compliance investigations on the property, and an estimation of the likely environmental harm.

Once this process is completed, further investigation, including a site visit, may be necessary. During an investigation, compliance officers gather evidence of the alleged breach in order to establish whether an offence has occurred and the identity of the person(s) who may be responsible.

If it is determined that a breach has occurred an assessment is made on the significance of the breach (low, medium, high) by considering:

- the severity of the breach
- the equitable use of natural resources
- the degree of environmental harm
- the integrity of the consent and/or regulatory system, such as
 - avoiding a poor precedent being set; and
 - an unreasonable or extreme interpretation in relation to a condition of consent

- the public interest, for example:
 - if enforcement action would be perceived as counter-productive (for example, where consent for the activity would have been granted if an application had been made)
 - the need for either general or specific deterrence
- any aggravating factors, for example:
 - whether the individual is aware, or should be aware they are committing a breach, and continue regardless
 - whether the individual has a history of prior breaches
 - whether the breach is ongoing
- any mitigating factors, for example:
 - whether the individual had acted in accordance with DNR or CMA advice
 - whether the individual is willing to cooperate and the extent to which they have already done so.

The level of significance of the breach will be the primary factor in determining the appropriate compliance action to be taken.

The factors listed above are included in DNR's Compliance Policy, which is available from the website at www.naturalresources.nsw.gov.au

Ethical conduct

All DNR officers must comply with the Department's Code of Ethics and Conduct.

For more information

Contact the Department of Natural Resources or your local Catchment Management Authority.

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Note: This information does not constitute formal legal advice. Please seek advice from your local Catchment Management Authority before undertaking any clearing.

