



Policy for resolving investigations under the now repealed *Native Vegetation Act 2003*

The Government has delivered major reforms designed to provide greater flexibility for landholders in managing native vegetation and to improve the conservation of biodiversity. These reforms, which commenced on 25 August 2017, include the introduction of the *Biodiversity Conservation Act 2016* (BC Act) and Part 5A of the *Local Land Services Act 2013*, incorporating the Land Management (Native Vegetation) Code (the Code), and the repeal of the *Native Vegetation Act 2003* (NV Act).

The Environment, Energy and Science Group (EES) of the Department of Planning, Industry and Environment (the Department) is responsible for compliance and enforcement action in relation to land management activity:

- if the land management activity was undertaken before 25 August 2017 (NV Act matters), under the now repealed NV Act
- if the land management activity was undertaken after 25 August 2017 (LLS Act matters, under the LLS Act.

On 27 June 2019, the NSW Audit Office published a report (*Managing Native Vegetation*) that highlighted some limitations with the approach that had been taken to compliance for NV Act matters. To address these limitations and take advantage of the realignment and integration of agencies within the Department of Planning, Industry and Environment, the Department has revised its policy in relation to the investigation and resolution of matters under the NV Act.

This statement sets out the revised policy in relation to NV Act matters. The objectives of the policy are to:

- provide for the timely resolution of outstanding compliance matters under the now repealed NV Act in a manner that delivers positive environmental outcomes
- ensure that the regulatory outcomes for such matters are consistent with the outcomes that would have been delivered had those matters been regulated under current laws (LLS Act and the Code)
- provide increased transparency, consistency and certainty for landholders.

No new investigations initiated after 31 August 2019

The Department has now completed its satellite analysis of changes in vegetation cover occurring prior to 25 August 2017. It is unlikely that the Department will identify any additional land management activity carried out prior to August 2017 which would require investigation under the NV Act. As a result, and to provide greater certainty to landholders, no new investigations of possible breaches of the NV Act will commence after 31 August 2019. Alleged matters currently under investigation, regardless of the stage they are at, will be progressed.

Delivering improved environmental outcomes through engagement with landholders

For outstanding NV Act matters, the Department will seek to secure improved environmental outcomes through an increased emphasis on engagement with landholders, with formal compliance and enforcement action used only as a last resort.

In summary

1. For each NV Act matter, the Government will undertake a Code Assessment of the relevant land management activity before commencing any compliance/enforcement action – i.e. an assessment of whether the land management activity would, if carried out in the same manner today, have been consistent with the Code.
2. No compliance action will be taken if the land management activity under investigation would, if taken today in the same manner, have been consistent with the Code.
3. If the land management activity under investigation would, if taken in the same manner today, have been consistent with the Code but only with the establishment of a set aside, the Department will seek to secure an equivalent conservation outcome (typically the conservation of an area of remnant vegetation) by agreement with the landholder through a Conservation Agreement or other mechanism.
4. If the land management activity under investigation, if taken in the same manner today, would not be in accordance with the Code (even with a set aside), the Department will seek to secure, by agreement with the landholder, a commitment to additional, more extensive actions which will deliver an outcome consistent with the intent of the Code.
5. Finally, if an agreement cannot be reached with the landholder which delivers an outcome consistent with that which would have been achieved under the Code – or if there are aggravating circumstances (e.g. the landholder has notable prior offences, the breach is extreme/egregious) – then traditional compliance tools (including prosecution) may be used in accordance with the Department's compliance guidelines and policies (including considering recommendations from advisory committees – see below).

Code Assessments will be undertaken jointly by EES and Local Land Services (who administer the Code). The Code Assessment will, to the extent practicable, identify:

- the extent to which the land management activity under investigation could have been carried out under the Code and any set aside requirement that would have been generated
- if some of the land management activity under investigation could not have been carried out under the Code, what additional, more extensive measures, if any, could now be taken to achieve an outcome consistent with the intent of the Code.

Code Assessments are then considered by the new Advisory Committees (see below).

Delivering outcomes through Conservation Agreements instead of Remediation Orders

The Department is committed to working with landholders to identify outcomes which reflect triple bottom line requirements, consistent with the provisions of the new Code. Where this is possible, formal compliance action, including the issuing of Remediation Orders, will not be required.

The Department's preference is to secure agreed environmental outcomes – e.g. conservation of remnant vegetation consistent with the set aside requirements that would have applied under the Code – through mechanisms such as a Conservation Agreement under the BC Act.

Conservation Agreements will be concise and outcome-focused. They will provide in perpetuity protection for vegetation on agreed areas, without preventing sustainable grazing or ongoing land management actions such as the control of invasive species.

In cases where it is not feasible to secure conservation of remnant vegetation on the relevant landholding, the Government may consider a mechanism involving payment into a fund to support the purchase or protection of remnant vegetation on another site.

A Remediation Order that requires the revegetation of cleared land will be considered only in exceptional circumstances and/or where it is not possible to reach agreement on the conservation of remnant vegetation under an instrument such as a Conservation Agreement.

Advisory Committees

Three new advisory committees will be established to help implement this policy and resolve NV Act matters. Incorporating advice from these committees will promote greater certainty, consistency and transparency in relation to both NV Act matters and LLS Act matters. The three committees are:

- the Native Vegetation Investigation Review Group
- the Compliance and Enforcement Panel
- the Assessment and Review Committee.

Each committee will have an independent chair, with members and expertise drawn from across the Department.

The **Native Vegetation Independent Review Group** (NVIRG) is a time-limited advisory committee that considers only NV Act matters. For each NV Act matter, it will consider the Code Assessment prepared by EES and LLS and advise on:

- whether the land management activity, if carried out in the same manner today, would have been consistent with the Code
- whether a set aside would have been required under the Code and, if so, the extent of the required set aside
- whether the land management activity exceeded what would have been permitted under the Code and, if so, whether there are additional, extensive actions that can be implemented to deliver an outcome consistent with the Code.

The NVIRG makes recommendations to the Assessment and Review Committee if a prosecution and/or major remedial action is required. Other recommendations are forwarded to the Compliance and Enforcement Panel.

The **Compliance and Enforcement Panel** (CEP) is an ongoing committee which will consider all LLS Act matters and those NV Act matters not referred directly to the ARC. The CEP will assess and review investigation findings, ensure the consistent application of relevant guidelines and policies and advise on the proposed compliance action for each case to:

- ensure consistent, transparent and proportionate decision-making is applied to compliance and enforcement outcomes
- refer appropriate LLS Act matters to the Assessment and Review Committee for consideration of significant remedial action or prosecution.

The **Assessment and Review Committee** (ARC) is an ongoing committee which will:

- review advice from the NVIRG and the CEP
- provide an independent, consistent recommendation for enforcement action to the delegate for prosecutions and significant remedial action.

Matters before the courts at the date of this policy

For NV Act matters that are, at the date of publication of this policy, before the courts, the Department will consider each matter on a case-by-case basis. Where feasible - taking into account the status of the case before the court and the merits of each case – the Government will seek to achieve a negotiated outcome consistent with this policy.

Review of compliance framework

The Department is committed to reviewing the overall framework for compliance in relation to native vegetation matters with a view to ongoing improvement of its compliance program.

Compliance framework

