

Auditor-General's Report

Performance Audit

Department of Land and Water Conservation

Regulating the Clearing of Native Vegetation

State Library of New South Wales cataloguing-in publication data

New South Wales. Audit Office.

Performance audit report : Department of Land and Water Conservation : regulating the clearing of native vegetation / [The Audit Office of New South Wales]

0734721382

1. New South Wales. Dept. of Land and Water Conservation – Auditing. 2. Clearing of land – Law and legislation – New South Wales. 3. Plants, Protection of – Law and legislation – New South Wales. 4. Vegetation management – Law and legislation – New South Wales. 5. Plants, Protection of – New South Wales – Auditing. 6. Vegetation management – New South Wales – Auditing.
I. Title: Department of Land and Water Conservation : regulating the clearing of native vegetation.
II. Title: Regulating the clearing of native vegetation.

354.3243909944

346.944046953

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Foreword

Land clearing – particularly of native vegetation – is a worldwide concern.

It directly causes loss of wildlife habitat and is associated with loss of air and water quality, reduced biodiversity and land degradation through salinity. It is also claimed to contribute to global warming.

In the generations since European settlement, substantial areas of the continent – and the eastern States in particular - have been cleared to meet the needs of farming, grazing and settlement. Without this clearing, Australia would not be the developed economy it is, nor would we enjoy the standard of living we do.

But until relatively recent times, the negative consequences of this clearing were largely unrecognised. As the oldest, driest continent, Australia is particularly vulnerable to the impact of land clearing. And once land is cleared, reclamation and revegetation to a degree even approaching its native status is extremely difficult.

Over recent years, a number of governments in Australia have brought in new legislation in an attempt to regulate land clearing more stringently. Despite this, it is claimed that the rate of land clearing in Australia is now the fifth highest in the world. Most of this clearing is in Queensland and New South Wales.

This report reviews the progress made in New South Wales since the introduction of the *Native Vegetation Conservation Act 1997*. The audit focussed on how well the Department of Land and Water Conservation regulates land clearing and balances the competing demands.

This is the latest in a series of reports with an environmental focus. It reflects our continuing commitment to auditing government activities affecting the environment.

R J Sendt
Auditor-General
August 2002

Executive Summary

Executive Summary

The Audit The objective of the audit was to examine the regulation of land clearing of native vegetation in New South Wales by the Department of Land and Water Conservation (DLWC).

Legislation The *Native Vegetation Conservation Act 1997* (NVC Act) has governed the clearing of native vegetation in NSW since 1 January 1998. However, the conservation of native vegetation depends on the efforts of a number of government agencies and a range of community based committees and expert panels that report to the Minister. These processes have required considerable investment of time, effort and money by state government agencies, stakeholder groups and citizens.

Audit Opinion

Native vegetation is a complex and difficult area to regulate. There is an inherent tension between economic development and conservation.

The complexity is increased by the number of government agencies and community based committees involved. Accountability for achieving the objectives of the Act has not been assigned to any one body.

The NVC Act requires a native vegetation conservation strategy to be developed. Some four and a half years after the Act was introduced, the strategy has still not been announced.

In our opinion, the complexities and the lack of accountability have contributed to the present position, whereby a whole-of-government approach to the protection of native vegetation in NSW has not been developed.

There are currently no objectives or targets to measure progress in conserving native vegetation. Only one, of a possible twenty-two regional management plans, has been approved since the Act commenced.

There is also a lack of comprehensive information about the status of, and changes to, native vegetation across rural NSW.

DLWC does not have an adequate information system and operational capacity to efficiently and effectively regulate native vegetation in NSW.

In the circumstances the regulatory task of DLWC is more difficult.

In our opinion, DLWC needs to:

- **improve its information base on native vegetation in NSW**
- **more clearly define the resources it needs to meet its legal responsibilities in regulating land clearing**
- **target those areas of highest risk in terms of the conservation of native vegetation and the protection of threatened species**
- **consider self regulation for areas that are assessed as low risk by using an enforceable Code of Practice and arrangements for external audit.**

Audit Findings

Increasing Complexity

Regulating native vegetation clearing is increasingly complex. Reaching trade-offs between environmental, economic and social considerations is not easy, and it is largely unavoidable that some parties will be dissatisfied with the process and the outcomes.

Clarifying Accountability

Government agencies share accountability for the protection of native vegetation with community based committees that report directly to the Minister for Land and Water Conservation.

Although DLWC is regarded as the lead agency, this is not clear from the legislation. For example:

- a Council is to develop a *Native Vegetation Conservation Strategy* for NSW to guide the development of a regional planning framework for native vegetation in NSW
- the Environment Protection Authority is required to protect the environment (including native vegetation) and has significant strategic and monitoring responsibilities under the *Protection of the Environment Administration Act 1991*
- the National Parks and Wildlife Service is required to prepare a *Threat Abatement Plan* under the *Threatened Species Conservation Act 1995* outlining actions to eliminate or manage the clearing of native vegetation.

Developing a Strategic Approach

The NVC Act requires a *Native Vegetation Conservation Strategy* and regional vegetation management plans to be developed. The Act is silent on the results these processes are expected to produce.

Some four and a half years after the Act came into effect, a strategy, targets and management plans are yet to be finalised. This means:

- consents will have been issued for four to five years without the benefit of regional vegetation management plans
- many regional vegetation management plans will have been developed without the guidance of a NSW strategy or targets.

Under such circumstances there can be only limited assessment and consideration of socio-economic impacts. Additionally, the reforms may not adequately consider efficiency aspects and DLWC may not have the resources to implement them.

Information on Native Vegetation

DLWC does not have adequate information to effectively regulate the clearing of native vegetation in NSW. For example:

- there is no program in place to systematically monitor changes to native vegetation
- the DLWC Mapping Program will not offer a complete coverage of NSW for many years
- there is no formal risk assessment to serve as a basis for prioritising DLWC's monitoring and mapping efforts.

Under the circumstances it is not possible to effectively set priorities, assess progress in the achievement of objectives and report on accomplishments in a meaningful way.

Assessing Proposals for Clearing

There are several opportunities to improve the assessment of applications to clear land of native vegetation including:

- completing the recommended rewrite of the staff guidelines
- improving the timeliness of assessments
- applicants, rather than DLWC staff, could prepare the environmental assessment
- the assessment of socio-economic impacts and reconciliation of multiple objectives requires greater consideration.

There is also an opportunity to use self-assessment to allow the landholder greater flexibility. This should allow DLWC to reduce assessment costs but does create a risk to be managed.

Compliance and Enforcement

The likelihood of breaches of the NVC Act is high. The number of alleged breaches is steadily increasing. DLWC's compliance and enforcement efforts have been limited by:

- an Act that is difficult to enforce because of broadly worded exemptions
- a reactive approach (responding to allegations) rather than a pro-active approach (based on systematic monitoring or audit)
- an increasing quantum of regulation which is complex, costly and difficult to enforce.

Performance of the Regulatory System

DLWC has no system in place to monitor and report its performance in this area. There is no system of quality assurance or document control.

There is no program to systematically monitor and report the environmental and socio-economic results of the regulatory system.

Recommendations

It is recommended that the Government clarify accountability for outcomes in relation to native vegetation.

It is recommended that the Government and DLWC:

- Strategic Approach**
 - finalise a NSW strategy and targets for native vegetation, with due regard to socio-economic impacts
 - require that native vegetation management plans be finalised by the end of 2003
 - develop a schedule for periodic review and external audit, based on risk assessment
 - more clearly define DLWC's responsibilities, commitments and resource needs.
- Information on Native Vegetation**
 - immediately commence the systematic monitoring and mapping of areas most at risk
 - develop a program for the remaining areas of the State detailing the priorities, techniques, and frequency of monitoring to apply to each sub unit of area – based on risk, vegetation type, and cost effectiveness.
- Assessing Proposals for Clearing**
 - finalise the rewrite and reissue the staff guidelines, incorporating the State strategy, objects, targets and plans
 - restructure the guidelines such that assessments are prepared by the landholder, and the level of assessment required is consistent with the likely risk to native vegetation
 - consider introducing fees for the assessment of applications and opportunities to increase public involvement and participation
 - remove the potential for a conflict of interest when the Director-General of DLWC is involved in approving land clearing applications and exemptions relating to State Forests, which he also heads.
- Compliance and Enforcement**
 - establish a program to independently monitor and publicly report on compliance with the NVC Act, using a risk management approach
 - establish appropriate systems and resources, delegate some of these responsibilities to other regulatory agencies.
- Performance of the Regulatory System**
 - report annually on the performance of the regulatory system, including environmental and socio-economic impacts
 - establish a mechanism for periodic audit and reporting of the extent and condition of native vegetation in terms of measurable objectives or targets.

Response from the Department of Land and Water Conservation

General Comments

The Department of Land and Water Conservation (DLWC) appreciates the opportunity to provide a formal response to the performance audit report on regulating the clearing of native vegetation. Regulating clearing is particularly important in preserving soils, biodiversity and reducing salinity in the State. DLWC regulation of native vegetation has required the implementation of a variety of reforms, some of which are controversial and have led to detailed community debate about how native vegetation should be managed. I trust that this report will help to improve the transparency and public confidence in the operation of the Native Vegetation Conservation Act, 1997 (NVC Act) and assist the DLWC to further improve its performance.

Developing a Strategic Approach

The NSW native vegetation reform program is in the developmental stage, with statewide strategies and regional plans still being developed. A draft Native Vegetation Conservation Strategy has been prepared and exhibited for public comment by the Native Vegetation Advisory Council. The final strategy is currently being considered by Government. The strategy takes account of socio-economic impacts of vegetation reform and seeks to ameliorate these in its proposed actions.

A draft paper Interim Targets for Native Vegetation Restoration and Revegetation in NSW has also been prepared for public comment. It is currently with the NSW Government for consideration.

DLWC is aiming to complete a significant number of the Regional Vegetation Management Plans (RVMPs) in the near future. It is anticipated that the exhibition process for ten of the plans will be completed in September 2002. However, there are two committees that have met for the first time in early March 2002 and it will be some time before these committees will be ready to exhibit their plans.

DLWC has put in place a number of initiatives to improve the process of regional vegetation management planning, including enabling stepwise delivery of plans, allocating additional resources to committees, and assigning a senior member of DLWC as executive facilitator for each committee. In addition, regional vegetation committees have each been provided with up to \$20,000 to undertake socio-economic analysis as part of their plan preparation.

It is agreed that DLWC's responsibilities, commitments and resource needs should be more clearly defined and understood. DLWC will continue its efforts in these areas as part of the budget process.

**Information on
Native Vegetation**

DLWC is moving towards a more systematic approach to the monitoring of changes to native vegetation across NSW. Previously, monitoring of vegetation cover using satellite imagery has provided only a partial picture of change. It focussed only on native vegetation above 20% cover (the reports for 1995-1997 and 1997-2000 are on the DLWC website). Satellite imagery analysis below this level of vegetation cover was not reliable and new techniques to provide comprehensive monitoring needed to be developed.

DLWC is assisting the Native Vegetation Advisory Council to undertake an investigation into approaches to the systematic monitoring of native vegetation in NSW. A recent scientific workshop agreed on some broad proposals. These are shortly to be discussed at a further workshop of interest group representatives.

The development of a systematic monitoring program is advancing. The goal is a comprehensive program (including grasslands) that will monitor clearing, revegetation and regeneration. A combination of satellite imagery and sampling in highly cleared areas is proposed. It is anticipated that, following the Native Vegetation Advisory Council workshop of interest groups in August, a monitoring program that meets all needs and is not cost prohibitive will be implemented.

In addition, a program which will improve the digital vegetation extent layer for NSW is being considered. This program will allow measurement of broad scale changes to the status of vegetation at regional, bioregional and State scales.

It is very time consuming and expensive to achieve comprehensive mapping coverage of NSW. The NSW Government has allocated \$17 million to this process over the period 1999-2006 in order to derive an accurate and detailed map of the vegetation layer for NSW.

Priority for mapping efforts has been targeted to areas where regional vegetation committees are in operation, as they are currently the primary users of the information. Commitments have been made to meet the needs of the regional vegetation plans currently being developed. However, DLWC will consider using a risk assessment approach, as suggested in the Audit report, to the extension of the mapping program.

**Assessing Proposals
for Clearing**

DLWC is endeavouring to continuously improve its processes for assessing clearing applications. Recently, an external consultant was engaged to review DLWC's processes. DLWC is already implementing recommendations from this review. For example, as recommended by the review, proponents making large applications are required to collect all pertinent information as outlined in the Environmental Planning and Assessment Act Regulation 2000. This recommendation will also be implemented for medium-sized applications by the end of 2002.

The need for a more rigorous assessment of social and-economic impacts and a more active consideration of these assessments in balancing public interest issues is an important part of the current revisions to the assessment process. This work will be completed as part of a set of integrated procedures and assessment guidelines.

A further review will be undertaken after 12 months of operation, to ensure that any necessary procedural changes are incorporated. Any gaps in this approach will be picked up where necessary in supplementary regional guidelines specific to regional plans.

DLWC agrees that a user pays system of fees similar to other applications under the Environmental Planning and Assessment Act 1979 has benefits. The introduction of fees will be considered for 2003.

DLWC has in place procedures that prevent any conflict of interest concerning the dual role of the Director General for DLWC and State Forests. Conflict of interest is avoided through delegation of roles and responsibilities. For example, this occurs in the case of clearing assessments, where the determination of clearing approvals is delegated to Regional Directors or other staff.

In other cases, where both State Forests and DLWC have an interest in the issue, the role is filled by Deputy Director Generals, such as in the case of the Private Native Forestry Reference Group.

Compliance and Enforcement

DLWC has prepared its NVC Act Compliance Policy for public release and it will be available on the DLWC website. It is also expected that more information in relation to compliance activity will be progressively made available.

The fact that alleged NVC Act breaches are growing at 20% p.a. largely reflects the increasing level of awareness of the Act and its requirements, and hence increased reporting. While the reporting of alleged breaches is increasing, whether the actual number of breaches is increasing is unclear. DLWC already undertakes compliance activities focussed on identified hot-spots and is developing a risk management approach to managing the breaches. Issues such as scale of impact, proportion of a particular habitat remaining, and remediation options will frame the management of the risks associated with alleged breaches.

The Audit Report recommends delegation of some compliance and enforcement to other regulatory agencies. It should be noted that delegation of the consent, compliance and enforcement roles would require changes to the Act. DLWC is concerned that any delegation of function that DLWC is currently responsible for, could reduce the effectiveness and coordination benefits of having the one agency administer the regulation of the NVC Act. However, this matter will be examined.

Performance of the Regulatory System

DLWC has ongoing operational meetings and discussions regarding the effectiveness and appropriateness of different regulatory tools for addressing different situations. Adding further rigour to this process, as well as addressing quality assurance and document control matters, will be further considered by DLWC.

Developing reliable and accurate methods of reporting on socio-economic impacts or environmental impacts of regulations across NSW is an extremely complex task. Furthermore, while DLWC and the RVMCs undertake macro-level assessments of socio-economic impacts, it is inevitably the distributional aspects and the impacts on specific individuals that cause the greatest concern.

Concluding Remarks

DLWC welcomes the Audit Office findings and recommendations as a constructive contribution to DLWC's efforts to continuously improve its performance. DLWC has already taken on board some of these recommendations and is committed to continue using the report as a basis for further improvement.

(signed)

*Dr R P Smith
Director-General*

Dated: 8 August 2002

1. Regulatory Environment

1.1 Introduction

Loss of native vegetation can lead to salinity, erosion, weeds, degradation and the loss of habitat for native flora and fauna.

Private individuals and government agencies share responsibility for managing native vegetation. Freehold lands comprise around 40% of the State and contain some of its most extensively cleared lands, such as the wheat/sheep belt and the fertile coastal valleys. The remaining Crown land includes Western Lands Leases, national parks, state forests and stock routes.

Some areas of NSW, such as the western slopes, central plains and Riverina, have been significantly affected by the clearing of native vegetation. Appendix 3 to this report shows estimated areas of vegetation cleared by region in NSW.

Key Threatening Process

Native vegetation in NSW, and in other parts of Australia, is under pressure as the need for development continues.

In September 2001 the clearing of native vegetation was listed as a *Key Threatening Process* under the State's *Threatened Species Conservation Act 1995* as it:

- has resulted in widespread fragmentation of ecological communities
- disrupted ecological function by diminishing the viability of ecological communities
- caused loss of biodiversity and habitat destruction and led to serious land degradation issues such as erosion and salinity.

1.2 Native Vegetation Legislation

NVC Act

State Environmental Planning Policy (SEPP) No. 46– *Protection and Management of Native Vegetation*, introduced specific clearing controls in NSW in August 1995 under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The *Native Vegetation Conservation Act 1997* (NVC Act) placed these controls within the context of a regional planning framework. The Act:

- specifies that consent is required to clear native vegetation in a wide range of circumstances
- provides for regional vegetation management plans that can specify whether clearing of specific areas or vegetation types is permissible, with or without consent
- requires a *Native Vegetation Advisory Council* to develop a native vegetation conservation strategy, designed to achieve the objects of the Act, and to report annually to the Minister.

Objects

The objects of the NVC Act are:

- (a) to provide for the conservation and management of native vegetation on a regional basis
- (b) to encourage and promote native vegetation management in the social, economic and environmental interests of the State
- (c) to protect native vegetation of high conservation value
- (d) to improve the condition of existing native vegetation
- (e) to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation
- (f) **to prevent the inappropriate clearing of vegetation**
- (g) to promote the significance of native vegetation, in accordance with the principles of ecologically sustainable development.

Source: NVC Act sec 3

The NVC Act does not prevent clearing if it has been authorised under certain other legislation.

Exclusions from the operation of the NVC Act include areas covered by the *National Parks and Wildlife Act 1974* and the *Forestry Act 1916*, and land zoned residential, business or industrial.

1.3 Conserving Native Vegetation

National Framework

Important national agreements for the conservation of native vegetation in NSW are the:

- *National Framework for the Management and Monitoring of Australia's Native Vegetation* is an initiative of the Australian and New Zealand Environment and Conservation Council (ANZECC), which comprises all Commonwealth, State and Territory Environment Ministers
- *National Biodiversity Strategy*, prepared by ANZECC, which aims to protect biological diversity and the complementary *NSW Biodiversity Strategy*, which requires the completion of a *Native Vegetation Conservation Strategy* and the development and implementation of regional vegetation management plans
- *Natural Heritage Trust Partnership Agreement* between the Commonwealth and NSW governments, which provides financial assistance through the *Bushcare* program. This Agreement, signed on 31 October 1997, established a national goal 'to reverse the long-term decline in the quality and extent of Australia's native vegetation cover' by June 2001, commonly referred to as *No Net Loss*.

Incentives

Landholders have access to a range of financial incentives to encourage conservation of native vegetation. These include:

- short term agreements for specific projects, such as those available through Greening Australia and Landcare
- *DLWC Management Agreements* for the longer term protection of native vegetation
- *DLWC Property Agreements* that include financial incentives to re-vegetate areas with native vegetation and are recorded on the property title
- *NPWS Voluntary Conservation Agreements*, which are long term and recorded on the property title and provide property rate and tax relief in some areas
- tax offsets for the costs of approved land-care works, such as the new \$25 million environmental management system scheme
- tax deductibility of land donated to approved conservation organisations.

There is no provision for compensation in relation to land refused clearance approval, even though a refusal may limit the opportunity for economic development.

1.4 Regulation of Land Clearing

The Australian and New Zealand Environment and Conservation Council considered that a regulatory framework for the management and monitoring of native vegetation should contain:

- a requirement by a government agency or local authority to seek approval to clear (native vegetation)
- definitions of the type of land, vegetation, or clearing that requires approval, and identification of exemptions
- a process and criteria for assessing applications to clear
- provision for other vegetation management mechanisms such as regional planning, management agreements, and incentives
- provisions for offences and sanctions for activities in breach of the regulations
- links to the requirements of other legislation
- mechanisms for appeals, monitoring and compliance.

Source: ANZECC, *National Framework for the Management and Monitoring of Australia's Native Vegetation*, December 1999

DLWC

The Department of Land and Water Conservation (DLWC) is responsible for regulating the clearing of native vegetation in NSW.

DLWC's regulatory role includes:

- advice to landholders
- assessment of land clearing applications
- making recommendations on the issuing of approvals
- monitoring compliance with conditions that might be imposed on any consents issued
- investigations of alleged breaches of legislation, and any actions which flow from such alleged breaches
- any enforcement actions necessary to ensure compliance
- development of strategic and operational policies which relate to the way DLWC carries out its regulatory functions.

1.5 Framework for Regulation

DLWC's regulatory role must be exercised within a wider framework. The NVC Act requires that community-based committees develop the native vegetation strategy, policies and plans.

The Minister for Land and Water Conservation acts on the basis of advice from many stakeholders other than DLWC. These include:

- Native Vegetation Advisory Council
- Regional Vegetation Committees
- Community Reference Panel
- Independent Scientific Panel
- Catchment Management Boards
- Ministers, particularly the Minister for the Environment
- stakeholder interest groups
- other agencies.

Other Agencies

Other agencies with responsibilities in this area include:

- Environmental Protection Authority (EPA)
- National Parks and Wildlife Service (NPWS)
- State Forests of NSW
- NSW Agriculture
- Planning NSW
- Royal Botanic Gardens.

In particular:

- EPA is the primary NSW public sector organisation responsible for protecting the environment with significant strategic and monitoring responsibilities under the *Protection of the Environment Administration Act 1991*
- NPWS has responsibilities under the *Threatened Species Conservation Act 1995*, particularly as clearing of native vegetation has been listed as a *Key Threatening Process*
- NSW State Forests has responsibility for areas of native forest and hardwood and softwood plantations.

1.6 Conclusion

The NVC Act requires a partnership approach to conservation of native vegetation, based on regional planning, and a regulatory system applicable throughout the State.

Whilst this approach should achieve a greater degree of community support, the resulting regulatory environment for native vegetation is complex. Many parts are managed separately by government agencies, community based committees and expert panels reporting to a Minister.

DLWC is seen as the lead agency for native vegetation conservation and management in NSW through its responsibility for implementation of the Native Vegetation Conservation Act.

DLWC also provides guidance and support for regional vegetation committees as they develop regional vegetation management plans and has worked closely with other agencies on these committees to develop a whole of government approach.

Additionally, DLWC chairs the Native Vegetation Implementation Group to ensure that a whole-of-government approach to the implementation of the NVC Act is adopted generally and provides pivotal input and support to the Native Vegetation Advisory Council.

Although DLWC is taken to be the lead government agency, this is not clear from the legislation. For example:

- there is no reference in the NVC Act to DLWC having any role in relation to the development of the native vegetation strategy for NSW and related objectives or targets
- EPA is required to protect the environment and has significant strategic and monitoring responsibilities under the *Protection of the Environment Administration Act 1991*
- NPWS is required to prepare a Threat Abatement Plan under the *Threatened Species Conservation Act 1995* outlining actions to eliminate or manage the clearing of native vegetation.

No single government agency is authorised to lead a whole of government response to the problems affecting native vegetation, and no agency can be held accountable and answerable for the state of native vegetation in NSW.

2. Information on Native Vegetation

2.1 Introduction

In order to regulate the clearing of native vegetation, it is necessary to have information on the areas:

- that remain
- cleared
- approved for clearing.

Information on native vegetation is also required to assess the effectiveness of policy, legislation, plans and guidelines.

2.2 Mapping Native Vegetation

Comprehensive mapping of native vegetation is necessary to provide:

- detailed information on vegetation types, location and extent
- the reference base for monitoring changes in native vegetation
- support for effective planning and decision making by Regional Vegetation Committees, the Native Vegetation Advisory Council and DLWC.

Mapping Program In 1999 DLWC established a Native Vegetation Mapping Program.

Only a small part of the State has so far been adequately mapped. It is planned that 50% of the State will be mapped by 2006. The cost to completely map NSW is in the order of \$30 million.

Audit Observations

Despite a need for comprehensive mapping:

- the DLWC Mapping Program will not offer a complete coverage of NSW for many years
- Regional Vegetation Management Committees and others rely on maps that have been criticised as inadequate for their intended purpose.

An opportunity exists to give priority to high risk areas as each stage of the mapping is completed.

2.3 Monitoring Changes in Native Vegetation

There are a number of techniques available for monitoring changes in native vegetation. These include:

- *field sampling*, using hand held Global Positioning System equipment, which can detect all types of clearing (e.g. clearing, thinning) and all types of vegetation communities, including non-woody communities such as grasslands and shrublands
- *aerial photography* which can be used to report on clearing in a range of vegetation types from forests to grasslands and shrublands, but the technique is not considered to be reliable for grassland mapping
- *satellite data* which is available for the whole of NSW almost continuously. The costs are relatively low and a state-wide computer-based analysis can be carried out for any point in time. However, this analysis will not detect changes in native vegetation in the more open forests, isolated clumps of trees, grasslands and shrublands.

ERIC

DLWC contracted the Environmental Research and Information Consortium (ERIC) to monitor clearing using Landsat satellite technology.

The ERIC reports indicated that there had been a reduction in the rate of clearing of woody vegetation (defined as being at least 3 metres tall with a 20 per cent canopy cover).

Rates of Clearing of Woody Native Vegetation (hectares per year)	
1995-1997	1997-2000
32,800	14,028

Source: DLWC: *Rates of Clearing of Woody Native Vegetation 1997-2000*, p5

NPWS

In 2001 NPWS conducted a study of clearing in the NSW wheat belt. It used targeted aerial photography to add a higher degree of accuracy to satellite imagery. The study showed that the rate of clearing in the wheat belt areas was 10 times that revealed by satellite measurement alone.

DLWC Monitoring Proposal

DLWC has proposed establishing a system for monitoring changes in native vegetation, using a similar type of approach to that developed by NPWS.

**Audit
Observations**

A program to monitor changes in native vegetation is an essential part of any system to regulate the clearing of native vegetation.

The *ERIC* reports did not detect significant areas of clearing, as shown by the NPWS study, and cannot be relied upon to confirm any overall trend in land clearing.

In NSW there is currently no program in place to systematically monitor changes in native vegetation.

2.4 Monitoring Clearing Approvals

DLWC maintains a register of clearing approvals, in accordance with the requirements of the NVC Act. Approvals prior to this were issued under SEPP No. 46.

Annual clearing approvals have not decreased since the commencement of the NVC Act in 1998 as shown below.

Approved Clearing (ha)					
1996	1997	1998	1999	2000	2001
25,930	33,603	75,307	174,681	77,831	92,094

Source: DLWC (1998 and 1999 figures subject to validation)
Clearing 1996, 1997 under SEPP 46, 1998 onward under NVC Act

**Audit
Observations**

The above figures for approved clearing understate the area that has been cleared because the register does not include:

- clearing under exemption, for which there is no record
- illegal clearing, for which there is no record.

Additionally, in future the register will not include:

- clearing approved under the *Plantations and Reafforestation Act 1999*
- clearing authorised by self-assessment

The figures also overstate the area cleared because the register includes:

- the clearing of isolated trees, clumps of trees and sparse woodlands, where the clearing of a few trees may count as a whole hectare
- clearing approvals not actioned
- some areas that have been cleared more than once.

Additionally, the register does not include areas re-vegetated. The register has not been independently audited, although the (then) Minister announced in March 2001 that this would be done.

2.5 Conclusions

NSW does not have adequate information to:

- support and assess the effectiveness of efforts to protect native vegetation, including progress towards the national goal of *No Net Loss*
- enable the effective regulation of native vegetation.

In regard to regulation:

- there is currently no program in place to systematically monitor changes in native vegetation
- the DLWC Mapping Program will not offer a complete coverage of NSW for many years
- clearing statistics provide only limited information and do not include clearing under exemption, illegal clearing and areas re-vegetated for which there is no record
- there is no formal risk assessment to serve as a basis for closely targeting DLWC's monitoring and mapping efforts.

3. Developing a Strategic Approach

3.1 Introduction

The NVC Act provides for the development of native vegetation conservation strategies and regional vegetation management plans. The Act does not:

- prohibit the clearing of native vegetation, referring only to the prevention of *inappropriate clearing of native vegetation*, without defining the term *inappropriate*
- contain any specific objectives or targets for the retention of native vegetation.

3.2 Setting Objectives and Targets

Nationally Agreed Targets

In 1996 the Commonwealth and State Governments adopted the *National Strategy for the Conservation of Australia's Biological Diversity*. The strategy set an objective of arresting and reversing the decline in native vegetation.

In 2001 Commonwealth and State Ministers for the Environment agreed to establish threshold targets, below which no clearing of native vegetation would be permitted.

Objectives and Targets

In 2000 DLWC, with assistance from other key agencies including the CSIRO, recommended objectives and criteria for detailed target setting in NSW based on relevant scientific literature.

In 2001 DLWC prepared draft documents for public consultation and briefed the Native Vegetation Advisory Council.

Audit Observations

However, the objectives and criteria have not yet been released. Therefore there are currently no means to:

- specify the outcomes being sought for native vegetation
- provide a basis against which to effectively set priorities, assess progress in the achievement of goals and objectives and report on accomplishments in a meaningful way
- provide a basis for co-ordination of regional efforts to achieve *no net loss* in native vegetation.

In the absence of targets:

- clearing continues to be permitted in all regions
- some regions have proposed their own targets.

The setting of realistic objectives and targets is a necessary prerequisite in monitoring progress towards protecting and repairing native vegetation in NSW.

3.3 Allowing Offsets

Encouraging Positive Impacts

DLWC has also proposed a means by which the negative impacts of land clearing might be offset by separate actions that have positive impacts.

Offset actions include:

- improving the management of existing native vegetation, restoring or regenerating an area of degraded vegetation, or re-vegetating a previously cleared area
- allowing the impacts of native vegetation clearing on one property to be offset by action on another property and within a property.

It has been proposed that an offset policy would be based on a system of calculating credits and debits. The proponent undertaking the clearing would, for example, incur debits, expressed as some units of environmental value. To compensate for this, the proponent would need to obtain credits by undertaking an offset action.

Audit Observation

As yet, no decision has been taken to introduce an *offset* policy.

Such a scheme would require a high standard of monitoring, compliance and enforcement by DLWC.

3.4 Formulating a NSW Strategy

Native Vegetation Advisory Council

The Native Vegetation Advisory Council advises the Minister for Land and Water Conservation on native vegetation issues.

An important task of the Council is to develop a *Native Vegetation Conservation Strategy* for NSW to guide the development of a regional planning framework for native vegetation in NSW.

The Council issued a draft strategy for public comment by 31 March 2001.

The Council indicated that the final strategy would:

- reflect the responses received from the public and
- detail the implementation process including the responsible organisation, budgetary implications and timeframes.

Audit Observation

The *Native Vegetation Conservation Strategy* is a key requirement under the NVC Act and its release has been anticipated since 1998. A final strategy has not as yet been publicly released.

3.5 Regional Vegetation Management Plans

Another key component of the NVC Act is the preparation of regional vegetation Management Plans by Regional Vegetation Committees (being community-based committees including rural, conservation, and government interests of a region).

A Management Plan may identify areas where:

- native vegetation can be cleared without application
- an application to clear will be necessary.

and

- allow clearing exemptions to be developed according to regional requirements
- highlight areas where the condition of native vegetation should be improved
- recommend areas that should be revegetated.

It was expected that the Management Plans would be operational shortly after the Act came into effect. So far, only the *Mid Lachlan Regional Vegetation Management Plan* has been approved.

There are currently 22 designated regions in NSW with regional vegetation plans at different stages of preparation.

It now appears that more plans will be available for public exhibition in mid 2002, suggesting they may be finalised and approved by the Government in 2003.

Catchment Blueprints

In December 1999, the (then) Minister for Land and Water Conservation announced the establishment of 18 new Catchment Management Boards, drawn from representatives of the community, industry and government.

The Minister requested that each Board produce a draft Catchment Blueprint to 'drive' the regional vegetation management plans.

The Blueprints will contain catchment and management targets. Nineteen draft Blueprints have recently been on public exhibition. However, the Blueprints are not finalised.

***Audit
Observations***

Regional planning for vegetation retention is critical for the setting of conservation priorities on a region-by-region basis and for providing guidance to landholders.

Until planning is completed, regional conservation of native vegetation and assessments of clearing applications can only be undertaken on a case by case basis and in the absence of adequate information.

3.6 Threat Abatement Plan

The clearing of native vegetation was listed in 2001 as a key threatening process, following a determination made by the NSW Scientific Committee, in accordance with the provisions of the *Threatened Species Conservation Act 1995*.

The NPWS is required to prepare a Threat Abatement Plan for each key threatening process.

A threat abatement plan outlines actions to eliminate or manage the key threatening process across NSW. The plan identifies the agencies of government that will be responsible for carrying out those actions.

***Audit
Observation***

NPWS has yet to complete a Threat Abatement Plan and need not do so until 2004.

An earlier development of a Threat Abatement Plan may have contributed to the development of a strategic direction for native vegetation in NSW.

3.7 Conclusion

The NVC Act gives emphasis to the development of native vegetation conservation strategies and regional vegetation management plans.

The Act, however, provides little guidance in terms of the results these processes are expected to produce.

Some four and a half years after the Act came into effect, objectives, targets, strategies and plans, all of which are designed to protect and preserve native vegetation, are still to be finalised.

The delay in developing a strategic approach to native vegetation has the following implications:

- consents for land clearing are being issued without regional vegetation management plans in place
- policies, including a national commitment to *no net loss*, and concepts such as *inappropriate clearing*, have been interpreted and applied differently in different regions
- these differences are seen by landholders as unfair and lacking transparency
- many regional vegetation Management Plans have been developed without the guidance of Catchment Blue Prints, a strategic framework, objectives or targets
- there has been limited assessment of socio-economic impacts.

DLWC's native vegetation responsibilities need to be fully assessed in the light of increasing administrative complexity and reduced resources. This is recognised by DLWC management, but total staff levels have been progressively reduced in recent years, from over 3,500 in 1996-97 to around 2,300 in 2000-01. The reforms may not adequately consider efficiency aspects and DLWC may not have the resources to implement them.

4. Assessing Proposals for Clearing

4.1 Introduction

In general, clearing land of native vegetation may be carried out after an application has been made to, and assessed by, DLWC and development consent granted.

More specifically, land may be cleared in accordance with:

- an exemption from the need to obtain development consent
- a valid development consent
- a regional vegetation Management Plan
- a Code of Practice under the NVC Act.

Codes of Practice can be designed to regulate the clearing of native vegetation for specifically approved purposes.

Audit Observation

Codes of Practice have yet to be introduced. However, a *Woody Weeds* Code of Practice has been drafted for clearing landscapes likely to become dominated by dense regrowth of native shrubs and small trees.

4.2 Use of Exemptions

The NVC Act provides for a number of clearing exemptions, where landholders are able to carry out certain clearing activities without applying for a development consent.

An extensive list of exemptions includes:

- clearing of up to 2 hectares per year
- the cutting of up to 7 trees per year for on-farm use
- clearing for the construction of farm structures
- clearing for forestry
- clearing of regrowth of less than 10 years of age.

The *Plantations and Reafforestation Act 1999* provides for an exemption from the need for consent when clearing native vegetation to develop plantations. A code of practice has been issued and the Act came into effect in December 2001.

Review of Exemptions

In September 2000 the (then) Minister for Land and Water Conservation asked comprising peak stakeholder groups and key government agencies (termed a Community Reference Panel) to advise on measures to improve the system of exemptions.

The Community Reference Panel concluded that the current system of 34 exemptions is complex in practice. Ensuring compliance with exemptions has also proved difficult.

The Panel recommended improvements to the system of exemptions, including a proposal for the development of a single general exemption. It is expected that these changes will be made through Regulations under the NVC Act and gazetted by July 2002.

**Audit
Observations**

The mis-use of exemptions can result in *inappropriate* clearing in contravention of the objects of the NVC Act.

In the absence of any specific objectives and targets for native vegetation, the Panel's review may be premature. It may need to review again the system of exemptions when the Government adopts specific objectives and targets for native vegetation.

4.3 Assessment

Each year DLWC assesses around 500 applications to clear native vegetation.

In doing so, DLWC must consider the likely environmental, social, and economic impacts of each application.

Use of Guidelines

Guidelines to assist landholders in applying to clear land were first published in June 1998. Guidelines to assist staff in processing applications were published in June 1999.

In August 2000 a Government-appointed independent scientific panel reviewed the adequacy of the guidelines for staff and concluded that they needed a substantial rewrite.

**Audit
Observations**

DLWC has yet to complete its rewrite of the guidelines. Differing versions of a rewrite are being used across regions.

Time Taken

The time required to assess an application to clear native vegetation will depend on a number of factors including the:

- complexity of the assessment task
- level of resources allocated to the assessment task
- efficiency of the assessment process.

DLWC's *Customer Service Guarantee for clearing applications under the Native Vegetation Conservation Act 1997*, issued June 1998 promised no more than 40 days for large applications, 30 for medium, 15 for small and 5 days for Best Management Practice applications.

<i>Audit Observations</i>	Actual times for assessments average around 160 days, considerably exceeding the maximum described in the <i>Customer Service Guarantee</i> .
Recording and Tracking	DLWC has developed an electronic system known as <i>Vegnet</i> to record and track applications and assessments for land clearing.
<i>Audit Observations</i>	<p><i>Vegnet</i> has experienced a number of difficulties during its implementation.</p> <p>Currently all regions are recording applications on more than one system, with one region having three recording systems.</p> <p>DLWC has released a new version of <i>Vegnet</i> designed to resolve the difficulties associated with the former version.</p>
Responsibilities	<p>An application to clear land of native vegetation must be accompanied by information such as the reasons for clearing, method of clearing, vegetation present, land use history and proposed mitigation measures.</p> <p>In assessing the application, the DLWC assessment officer gathers relevant information including:</p> <ul style="list-style-type: none">▪ a description of the existing vegetation community including species present, complexity and growth forms▪ vegetation condition, biodiversity value and conservation value▪ presence of threatened species and habitats▪ presence of habitat for migratory species▪ potential problems relating to soil and geology.
<i>Audit Observations</i>	<p>The Guidelines issued to staff of DLWC require DLWC officers to:</p> <ul style="list-style-type: none">▪ prepare the environmental impact assessment on behalf of the applicant▪ assess their own work and consider whether to recommend consent. <p>The Guidelines do not:</p> <ul style="list-style-type: none">▪ provide applicants with an initial opportunity to modify their applications in light of environmental assessment▪ generally result in the applicant receiving a copy of the assessment – only notification of the final decision.

Socio-economic Impacts	<p>The assessments are required to also address socio-economic impacts of the application to clear land of native vegetation.</p> <p>For example, the direct costs of retaining native vegetation include foregone potential returns from productive agriculture and reduced employment opportunities. This may also have flow-on effects in other parts of a regional economy.</p>
Audit Observation	<p>Currently the assessments tend not to consider the socio-economic impact of land clearing in a substantive way but emphasise the ecological impact and in particular the protection of threatened species.</p>
Policy Framework	<p>In reaching a decision on an application, a DLWC officer would prudently take into account any existing policy framework for the clearing of land.</p> <p>However, as discussed earlier, the policy framework is not well defined.</p> <p>Even though, for example, NSW has been committed to the principle of <i>No Net Loss</i> since 1997, only some regions have attempted to apply the principle and usually only at the level of individual properties.</p>
Audit Observations	<p>The staff guidelines have been prepared in the absence of targets, benchmarks and policy frameworks.</p> <p>Additionally, the guidelines require no evidence of a longer term approach by way of a property plan - a mandatory requirement in the Queensland native vegetation management system.</p>
Fees	<p>Consent authorities generally charge fees to assist in cost recovery and to discourage applications that might be speculative or poorly prepared.</p> <p>Such a fee structure may be linked to agency performance, with refunds where time guarantees are exceeded.</p>
Audit Observation	<p>DLWC charges no fees to assess applications for the clearing of native vegetation. This differs from other consent authorities in NSW.</p>

4.4 Recommending Consent

A decision by DLWC to recommend consent involves the consideration of economic, environmental and social costs and benefits (short and long term).

The majority of clearing applications ultimately receive consent. The application may be approved as originally submitted, or may be required to be re-submitted in a form advised as necessary for a consent.

Results of Clearing Applications				
	1998	1999	2000	2001
Approved	83%	94%	88%	79%
Withdrawn	12%	3%	7%	11%
Rejected	2%	3%	1%	1%
Refused	3%	1%	4%	9%

Source: DLWC advice provided 24 April 2002

The consent will normally contain conditions that prescribe the manner in which clearing must be undertaken. The development consent may also contain conditions that some of the vegetation be retained.

Audit Observations

Reconciling multiple objectives can be difficult, and there is limited guidance to staff on how to address this tension. The staff guidelines do not generally distinguish environmental screening criteria that are likely to trigger a refusal, from tradeable benefits and costs. In particular, there is little guidance on ‘trading-off’ environmental impact for socio-economic gain.

There have been recommendations for the establishment of formal decision support tools. Such measures would likely be of considerable assistance.

Conflict of Interest

The Minister for Land and Water Conservation is the consent authority for the clearing of native vegetation. DLWC staff normally grant the approval under delegation.

The Director-General of DLWC is also the Managing Director of NSW State Forests, which has responsibility for areas of native forest and hardwood and softwood plantations of 3.2 million hectares, or about 4% of the State. Additionally, State Forests acquires freehold land for the purpose of plantation expansion and native forest logging.

Since the introduction of the NVC Act, DLWC has approved 96 applications involving NSW State Forests, amounting to 14,500 hectares.

**Audit
Observations**

There is the potential for a conflict of interest, including:

- when the Director-General of DLWC approves the clearing of land that is to be used to meet the commercial objectives of State Forests
- in relation to consideration of exemptions for private native forestry.

DLWC has taken steps to counter this:

- in the case of clearing assessments, where the determination of clearing approvals is delegated to Regional Directors or other staff
- in cases where both State Forests and DLWC have an interest in an issue, where the relevant role is fulfilled by the Deputy Director-Generals. This is the case with the Private Native Forestry Reference Group, which is chaired by one of the Deputy Director Generals.

In the opinion of the Audit Office, notwithstanding the above arrangements, there remains the potential for a conflict of interest when the Director-General of the Department of Land and Water Conservation is also the Managing Director of NSW State Forests.

4.5 Involving the Public

The NVC Act is closely linked to the *Environmental Planning and Assessment Act 1979* (EP&A Act). Development assessment and consent have the same meaning under both Acts.

One of the principal objects of the EP&A Act is *to increase opportunities for public involvement and participation in planning and assessment.*

Transparency is particularly necessary in a system:

- that requires assessors to exercise judgment in the assessment process
- where a development has the potential to significantly impact on people or the environment, or where the effect of a poor decision will lead to significant irreversible environmental impacts.

**Audit
Observations**

There is considerable public involvement and participation in the development of regional vegetation Management Plans.

But there is very little public participation and transparency in the assessment of applications to clear land of native vegetation. For example:

- internal staff guidelines for assessment are not made available to the public
- although determination notices and assessment summaries are provided to landholders, the detailed assessment reports are not made available
- there are no public hearings (such as by panels) for major proposals
- there are no inquiry mechanisms to resolve conflict and dispute
- there are limited mechanisms for appeal that are expensive and come at the end of the process
- there is no equivalent of a *Citizen's Charter* with the public's rights of involvement, participation and appeal.

4.6 Self-Assessment

The *Mid Lachlan Regional Vegetation Management Plan* has introduced the option of self assessment by the landholder for clearing of contiguous areas from 50 hectares up to 400 hectares.

Such a system avoids the need for a landholder to obtain a consent from DLWC provided the landholder agrees to follow certain guidelines set out in the Management Plan.

The option is available in areas considered by the Regional Vegetation Committee as less sensitive. These represent around three quarters of the total area covered by the *Mid Lachlan Regional Vegetation Management Plan*.

**Audit
Observations**

Self-assessment:

- allows the landholder greater flexibility than the alternative of submitting an application for clearing to DLWC.
- enables DLWC to reduce its overall costs of assessment
- could also enable DLWC to reduce its costs of monitoring and compliance when coupled with property agreements and best practice standards.

As self-assessment comes with a degree of risk, the (then) Minister indicated in August 2001 that DLWC would arrange for the process of self-assessment to be audited.

4.7 Conclusion

The staff guidelines have been prepared in the absence of State and Regional targets, benchmarks and policy frameworks. As these emerge, the guidelines will need to be reviewed and revised.

There are a number of opportunities to improve the current assessment process. For example:

- completing the recommended rewrite of the staff guidelines
- improving the timeliness of assessments
- applicants, rather than DLWC staff, could be required to prepare the environmental assessment
- the consideration of socio-economic impacts and reconciliation of multiple objectives requires greater consideration
- introducing fees for the assessment of applications
- the public could be given the opportunity of further involvement and participation.

Consideration needs to be given to adopting the self-assessment process to give greater flexibility to the landholder. Such an approach would allow DLWC to reduce its overall costs of assessment. The risks of a self assessment process would need to be managed.

5. Compliance and Enforcement

5.1 Introduction

People may not comply with the law unless there are clear consequences for non-compliance.

Likelihood of Breaches

The likelihood of breaches of the NVC Act is high because:

- an individual's private financial interests will not generally coincide with the public's conservation interests
- the very large number of individual properties and the remoteness of much native vegetation mitigate against detection of breaches of the Act
- the time required to obtain a consent from DLWC may extend to over a year
- regional vegetation Management Plans are introducing self assessment to landholders with no established assessment skills and limited extension officer support
- industry associations, some of whom are lobbying for the Act to be repealed, provide little or no pressure to their members to comply with the Act.

The greater the risks of non-compliance, the more important it is to ensure that there is an effective monitoring and enforcement process in place. A competent process will include:

- creating requirements that are enforceable
- monitoring compliance
- responding to alleged breaches
- promoting compliance in the regulated community.

5.2 Enforceable Requirements

Requirements

Requirements that are enforceable include:

- possession of a valid development consent
- adherence to conditions attached to consent
- valid and applicable exemptions or exclusion
- valid and adequate self-assessments (where permitted)
- adherence to property agreements
- adherence to regional vegetation management plans
- adherence to codes of practice.

A landholder, accused of clearing land without a valid consent, may mount a defence based on one or more of the exemptions or exclusions available under the NVC Act.

Audit Observations

The definition of land clearing in the Act is very broad.

The broadly worded exemptions in the Act have made the task of compliance and enforcement by DLWC more difficult. It can be very difficult to prove, after the event, that none of the many exemptions applied to an area of cleared land. The exemptions are under review.

Also DLWC is not notified of land cleared under exemption.

In undertaking monitoring activities DLWC is not aware of what exemptions (if any) a landholder would rely on to support clearing of land. DLWC is therefore not in a position to oversight the extent of land being cleared under the exemption provisions of the Act.

5.3 Monitoring Compliance

Monitoring is essential to:

- detect and correct violations
- provide evidence to support enforcement actions
- evaluate program progress by establishing compliance status.

Monitoring may involve:

- property inspections conducted by DLWC
- document searches
- compliance monitoring from the air through interpretation of satellite images and aerial photographs.

**Audit
Observations**

DLWC has conducted few formal compliance audits and little systematic compliance monitoring:

- properties may be checked when a major clearing application is lodged
- the Far West Region checks Crown Land when a lease is being transferred.

DLWC has advised that:

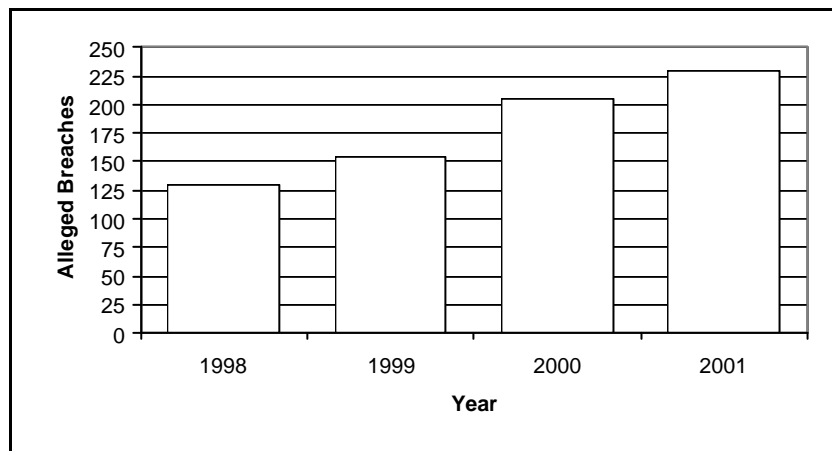
- a formal compliance audit was conducted in the Central West Region in 1999. The audit found that two thirds of landholders did not comply with one or more of the conditions of approval, or had cleared after requests for approval had been refused
- compliance plans are being developed at a regional level to improve the monitoring of compliance
- its compliance officer is to target those areas where native vegetation is at greatest risk
- a database to link all of the alleged breaches in the regions is being developed
- a compliance management ‘module’ is also being developed.

5.4 Responding to Alleged Breaches

Most of DLWC’s compliance and enforcement work arises from:

- complaints from the public
- reports from DLWC and other public servants.

As indicated by the following exhibit the number of alleged breaches reported to DLWC each year has increased steadily to more than 200 a year.



An investigation of an alleged breach of the NVC Act may involve:

- checking DLWC records for applications, consents, previous compliance investigations and any other documentation relating to the land
- collating a range of material, including recent and historical aerial photographs, satellite images, maps and previous reports
- collecting physical evidence of the clearing activity through a site inspection
- interviewing persons involved in the alleged breach.

Several alternatives are available to DLWC in pursuing compliance, depending on the degree of harm to the vegetation, whether it is likely the offence will be repeated, and prospects of a conviction:

- warning letter
- remediation agreement
- stop work order
- direction for remedial work
- Court order to remedy or restrain a breach of the Act
- Court action to enforce a property agreement
- prosecution.

The following table shows how often DLWC uses each alternative.

Results of Alleged Breach Investigations 1 January 1998 to 30 April 2002		
Actions	Number	%
No Further Action	499	71
Warning Letter	147	21
Remediation Agreement	23	3
Stop Work Order	10	1
Direction For Remedial Work	16	2
Property Agreement	3	1
Prosecution Commenced	7	1
Total	705	100
(still under investigation)	105	

Source: DLWC Briefing Notes 24 May 2002

***Audit
Observations***

Most matters resulted in no further action being taken because the clearing was considered to be within the exemptions permitted or because it was judged the alleged breach was relatively minor and other matters had a higher priority.

If a matter was pursued, a warning letter was usually issued, simply advising the landholder that a breach is believed to have occurred and reminding them of the need to obtain consent.

Time to Respond

The time taken to investigate and finalise action on an alleged breach varies depending on the complexity of the matter and type of compliance action. Times taken to deal with alleged breaches ranged from a few months to almost two years in some regions.

A prosecution for an alleged breach in the Land and Environment Court must be commenced within two years of the alleged offence.

***Audit
Observations***

DLWC prepares a report on the status of prosecutions and pending court action.

There is no report, however, by which management monitors and controls the time taken to respond to alleged breaches of the NVC Act, some of which appear lengthy. This gives rise to a risk that compliance efforts have been compromised.

DLWC needs to report publicly on its compliance monitoring activities and responses to alleged breaches.

**Promoting
Compliance with
the Law**

DLWC promotes the need for compliance by:

- publications explaining the clearing application and assessment process
- promoting awareness of the need for compliance when responding to enquiries.

DLWC has advised that it plans to release a document that focuses on the need for compliance, indicating:

- the offences and penalties under the NVC Act
- the methods to identify breaches of the Act and to generally administer compliance
- the grounds on which a decision will be made to begin compliance action
- the range of options available to administer compliance with the NVC Act, and the factors it will consider.

5.5 Conclusion

The likelihood of breaches of the NVC Act is high. The number of alleged breaches is steadily increasing.

DLWC's compliance and enforcement efforts have been characterised by:

- a reactive approach (responding to allegations) rather than a pro-active approach (based on systematic monitoring or audit)
- lengthy response times and minimal use of enforcement provisions
- an increasing amount of regulation which is complex, costly and difficult to enforce
- an Act that is difficult to enforce because of broadly worded exemptions
- a lack of information on the use of exemptions.

In particular, DLWC needs to improve compliance monitoring and reporting.

6. Performance of the Regulatory System

6.1 Introduction

Assessing performance is a critical element of any management system. It provides feedback to enable improvement, and enhances accountability, which may also improve performance.

The performance of the regulatory system may be expressed in a number of ways including:

- costs incurred
- time taken for assessment and compliance activities
- quality assurance and effectiveness in terms of preventing inappropriate clearing of native vegetation.

Ultimately the effectiveness of the system is reflected in its impact on native vegetation in NSW.

6.2 Costs Incurred

Both the assessment process and the compliance process impose significant direct costs.

The costs of the assessment process include:

- investigations and interpreting the process
- documentation and preparation of the assessment
- adherence to conditions attached to the approval.

The costs of the compliance process similarly include:

- investigations and interpreting the process
- monitoring approvals and conditions
- enforcement.

In order to effectively control such costs, each activity needs to be costed and the costs need to be monitored. Activity costs provide a basis for overall performance assessment and can also be used to identify the need for improvement.

Audit Observations

DLWC has no job costing system that would allow the monitoring of assessment and compliance costs. Cost recovery mechanisms, such as fees for processing land clearing application, are not used.

6.3 Time Taken

Time is an important measure of both the assessment process and the compliance and enforcement process.

Time schedules provide a basis for overall performance assessment and can also be used to identify improvements.

In the assessment process, the time taken to assess an application can impose significant direct costs on DLWC and indirect costs on the applicant, including the opportunity costs associated with a proposed project.

In the compliance and enforcement process, the time taken to investigate and prosecute a breach can impose significant direct costs on DLWC. It can also give rise to a risk of not obtaining reliable evidence.

***Audit
Observations***

DLWC reports assessment times internally, but does not report against realistic schedules or targets. The times shown in the *Customer Service Guarantee* are currently considered unachievable.

DLWC does not report the times involved in compliance activity and has set no schedules or targets for this.

6.4 Quality Assurance

Assurance as to the reliability of the regulatory system will depend on:

- the existence of appropriate policies and procedures (including administrative processes, technical assessment methods, resources, responsibilities, timing and priority)
- adequate controls and (up-to-date) documentation
- evidence that policies and procedures are being applied
- clear mechanisms for regional staff to negotiate solutions to issues and concerns prior to formal approvals
- evidence of periodic review to identify opportunities for improvement.

***Audit
Observations***

It was observed that:

- there is no system of quality assurance or document control for DLWC's regulatory processes that might achieve accreditation in accordance with *Environmental Management Systems ISO 14004*
- regions may make their own policies and procedural arrangements with little reference to head office or to each other with the risk of inconsistency of approach
- there are no arrangements for periodic audit or review of the DLWC's regulatory processes.

6.5 Effectiveness

The effectiveness of the assessment process could be examined in terms of:

- improved environmental outcomes
- level of administrative transparency.

The effectiveness of the compliance process might similarly be examined in terms of:

- activity levels, such as inspections and enforcement actions that contribute to deterrence
- results, such as improvement in environmental quality and rates of compliance.

Audit Observations

There is no system in place to monitor and report the performance of DLWC's regulatory processes.

The NVC Act requires the Native Vegetation Advisory Council (NVAC) to advise, monitor and report to the Minister on the status of native vegetation throughout the State. NVAC has not yet reported to the Minister. In any case, environmental outcomes cannot be readily assessed since there is no program to routinely and consistently monitor the extent and condition of vegetation at regional levels.

There is no system, such as the use of survey techniques, to determine landholder satisfaction levels, including whether the assessment system was sufficiently transparent.

6.6 Conclusion

DLWC has no system in place to monitor and report its performance of its regulatory processes. There is no system of quality assurance or document control.

There is no program to systematically monitor and report the environmental and socio-economic results of the regulatory system. The Native Vegetation Advisory Council has not yet reported to the Minister on the state of native vegetation in NSW.

Appendices

Appendix 1	Terms Used in this Report
ANZECC	Australia and New Zealand Environment and Conservation Council
Biodiversity	The variety of life forms, the different plants, animals and micro-organisms and the ecosystems they form.
Catchment	The land area drained by a river and its tributaries.
Clearing	The NVC Act broadly defines the clearing of native vegetation as any one or more of the following: cutting down, felling, thinning, logging or removing native vegetation; killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation; severing, topping or lopping branches, limbs, stems or trunks of native vegetation; substantially damaging or injuring native vegetation in any other way.
DLWC	Department of Land and Water Conservation
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
Key Threatening Process	A process that threatens, or potentially threatens, the survival or evolutionary development of a species, population or ecological community.
Native Vegetation	Plant species originating in Australia including trees, understorey plants, ground cover, plants occurring in a wetland.
NPWS	National Parks and Wildlife Service
NVC Act	<i>Native Vegetation Conservation Act 1997</i>
Recovery Plan	A document that identifies the actions to be taken to promote the recovery of a threatened species, population or ecological community.
RVMC	Regional Vegetation Management Committee
species	A group of organisms that are biologically capable of breeding with each other but not with members of other species.
target	Quantifiable level of performance to be achieved within a specified timeframe.
Threat Abatement Plan	A document under the <i>Threatened Species Conservation Act 1995</i> that identifies the actions to be taken to abate, ameliorate or eliminate the adverse effects of threatening processes on threatened species, populations, or ecological communities.

Appendix 2

About the Audit

Audit Objective

The objective of the audit has been to examine the management of the regulation of land clearing of native vegetation in New South Wales by the Department of Land and Water Conservation (DLWC).

Scope of the Audit

The audit has focused on DLWC's management of the regulation of land clearing of native vegetation. The Department of Land and Water Conservation (DLWC) manages the regulation of land clearing of native vegetation under the *Native Vegetation Conservation Act 1997*.

Land clearing that is excluded from the *Native Vegetation Conservation Act 1997* includes:

- land associated with residential development, State forests designated under the *Forestry Act 1916*, land reserved under the *National Parks and Wildlife Act 1974*, land that is 'critical habitat' under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*
- clearing authorised under the *Rural Fires Act 1997*, *Noxious Weeds Act 1993*, *National Parks and Wildlife Act 1974*, *Fisheries Management Act 1994*, *Threatened Species Conservation Act 1995*, *Mining Act 1992*, *Water Act 1912*, *Rivers and Foreshore Improvement Act 1948*
- clearing that is part of designated development under the *Environmental Planning and Assessment Act 1979*.

The audit has not:

- undertaken a review of the legislative or regulatory provisions of the *Native Vegetation Conservation Act 1997*, although it has examined implementation of the requirements of the Act
- reviewed the assessment of any approvals where the Department is not an approval authority
- reviewed the 'day to day' operations or decisions of Regional Vegetation Committees or Catchment Management Committees
- reviewed land clearing regulation in urban areas (which is generally the responsibility of DUAP and local councils)
- reviewed land conservation measures, such as community education and the use of financial incentives
- focused on DLWC's water reform activities, which are to an extent a subject in their own right and still being developed
- included any review of the decisions of the Minister.

Criteria	<p>The audit has had regard to better practice guidelines (such as issued by the Australian and New Zealand Environment and Conservation Council) and government guidelines (including elements of <i>Risk Management and Control</i> issued by the NSW Treasury).</p> <p>The audit has reviewed whether there are appropriate and adequate arrangements for the management of the regulation of land clearing of native vegetation including the existence, adequacy and implementation of:</p> <ul style="list-style-type: none">▪ a strategic approach to the assessment and approval of land clearing of native vegetation▪ policies, plans and procedures for the assessment and approval of land clearing of native vegetation▪ information systems to support the assessment and management process▪ avenues for stakeholder consultation, dispute resolution, appeal of decisions and related information for relevant parties▪ performance assessment and reporting▪ oversight and accountability arrangements.
Cost of the Audit	<p>The cost of the audit was \$189,000. This figure includes the estimated cost of printing the report (\$8,000) and travel and incidentals (\$3,700).</p>
Acknowledgments	<p>The Audit Office gratefully acknowledges the cooperation and assistance provided by representatives of the Department of Land and Water Conservation, other environmental regulatory agencies and central government agencies.</p> <p>The audit was also assisted by discussions with a number of external bodies including the NSW Farmers Association, Nature Conservation Council of NSW, World Wildlife Fund and the Local Government and Shires Association of NSW.</p>

Appendix 3 Estimated Historical Clearing of Native Vegetation in NSW

Region	Area in NSW (ha)	Cleared (%)	Major Threatening Processes
Australian Alps	468,300	3%	fire regime, climate change, tourism
Brigalow Belt South	5,243,600	61%	clearing, cropping, grazing, salinity
Broken Hill Complex	3,812,900	0%	total grazing pressure
Channel Country	1,428,900	0%	total grazing pressure
Cobar Peneplain	7,334,800	32%	total grazing pressure, clearing
Darling Riverine Plains	9,474,500	36%	clearing, water quality
Mulga Lands	6,577,900	1%	total grazing pressure, clearing
Murray Darling Depression	8,021,100	8%	total grazing pressure, clearing, stream regulation
Nandewar	2,099,200	66%	clearing, total grazing pressure, invasive weeds
New England Tableland	2,796,700	58%	clearing, invasive weeds, pasture improvement, firewood cutting, drainage of wetlands
NSW North Coast	5,767,800	38%	subdivision and urbanisation, weed invasion, water pollution and wetland drainage, fire, total grazing pressure, inappropriate logging
NSW South Western slopes	8,075,300	85%	clearing, firewood cutting, total grazing pressure, acid and salt
Riverina	6,891,966	31%	clearing, cropping, salinity, irrigated cropping and horticulture
Simpson-Strzelecki Dunefields	2,082,900	0%	total grazing pressure
South Eastern Corner	1,282,000	19%	total grazing pressure
South Eastern Highlands	5,066,700	58%	clearing, total grazing pressure, invasive weeds, pasture improvement, acidification, salinity, peat mining
Sydney Basin	3,694,100	33%	urbanisation and subdivision, pollution, fire, weeds, resource extraction
Total	80,116,666	35%	

Source: J Benson, Royal Botanic Gardens Sydney, *Setting the Scene – The Native Vegetation of NSW*, background paper No 1 for the Native Vegetation Advisory Council, 1999

Appendix 4

The Regulatory and Administrative Arrangements

The conservation of native vegetation in NSW is governed by disparate and diverse regulatory and administrative arrangements.

- the State Government is party to various national frameworks which govern native conservation
- the Minister for Land and Water Conservation receives advice from many stakeholders other than DLWC including committees, panels, boards, interest groups and other agencies
- DLWC is responsible for regulating the clearing of native vegetation in NSW
- the NVC Act requires a *Native Vegetation Advisory Council* to develop a native vegetation conservation which is to be submitted to the Minister
- the Act also requires the preparation of regional vegetation Management Plans by Regional Vegetation Committees. The Plans are approved by the Minister
- the objects of the Act are broad, for example ... *to prevent the inappropriate clearing of vegetation*, and therefore open to considerable interpretation and mis-interpretation
- in December 1999, the (then) Minister for Land and Water Conservation announced the establishment of 18 new Catchment Management Boards, drawn from representatives of the community, industry and government. Each Board was requested produce a draft Catchment Blueprint to 'drive' the regional vegetation management plans
- the EPA is required to protect the environment (which includes native vegetation) and has significant strategic and monitoring responsibilities under the *Protection of the Environment Administration Act 1991*
- NPWS has responsibilities under the *Threatened Species Conservation Act 1995*, particularly as clearing of native vegetation has been listed as a *Key Threatening Process*
- NSW State Forests has responsibility for areas of native forest and hardwood and softwood plantations
- landholders have access to a range of financial incentives from the Commonwealth Government and different state agencies to encourage conservation of native vegetation.

Performance Audits by the Audit Office of New South Wales

Performance Auditing

What are performance audits?

Performance audits are reviews designed to determine how efficiently and effectively an agency is carrying out its functions.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements relating to those functions.

Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

They seek to improve the efficiency and effectiveness of government agencies and ensure that the community receives value for money from government services.

Performance audits also assist the accountability process by holding agencies accountable for their performance.

What is the legislative basis for Performance Audits?

The legislative basis for performance audits is contained within the *Public Finance and Audit Act 1983, Division 2A*, (the Act) which differentiates such work from the Office's financial statements audit function.

Performance audits are not entitled to question the merits of policy objectives of the Government.

Who conducts performance audits?

Performance audits are conducted by specialist performance auditors who are drawn from a wide range of professional disciplines.

How do we choose our topics?

Topics for a performance audits are chosen from a variety of sources including:

- ❑ our own research on emerging issues
- ❑ suggestions from Parliamentarians, agency Chief Executive Officers (CEO) and members of the public
- ❑ complaints about waste of public money
- ❑ referrals from Parliament.

Each potential audit topic is considered and evaluated in terms of possible benefits including cost savings, impact and improvements in public administration.

The Audit Office has no jurisdiction over local government and cannot review issues relating to council activities.

If you wish to find out what performance audits are currently in progress just visit our website at www.audit@nsw.gov.au.

How do we conduct performance audits?

Performance audits are conducted in compliance with relevant Australian standards for performance auditing and our procedures are certified under international quality standard ISO 9001.

Our policy is to conduct these audits on a "no surprise" basis.

Operational managers, and where necessary executive officers, are informed of the progress with the audit on a continuous basis.

What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work an exit interview is held with agency management to discuss all significant matters arising out of the audit. The basis for the exit interview is generally a draft performance audit report.

The exit interview serves to ensure that facts presented in the report are accurate and that recommendations are appropriate. Following the exit interview, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of the draft report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope of an audit, performance audits can take from several months to a year to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our publications unit.

How do we measure an agency's performance?

During the planning stage of an audit the team develops the audit criteria. These are standards of performance against which an agency is assessed. Criteria may be based on government targets or benchmarks, comparative data, published guidelines, agencies corporate objectives or examples of best practice.

Performance audits look at:

- processes
- results
- costs
- due process and accountability.

Do we check to see if recommendations have been implemented?

Every few years we conduct a follow-up audit of past performance audit reports. These follow-up audits look at the extent to which recommendations have been implemented and whether problems have been addressed.

The Public Accounts Committee (PAC) may also conduct reviews or hold inquiries into matters raised in performance audit reports.

Agencies are also required to report actions taken against each recommendation in their annual report.

To assist agencies to monitor and report on the implementation of recommendations, the Audit Office has prepared a Guide for that purpose. The Guide, *Monitoring and Reporting on Performance Audits Recommendations*, is on the Internet at www.audit.nsw.gov.au/guides-bp/bpglist.htm

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts reviews of our operations every three years.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

For further information relating to performance auditing contact:

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Performance Audit Reports

No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
64*	Key Performance Indicators	<ul style="list-style-type: none"> ▪ <i>Government-wide Framework</i> ▪ <i>Defining and Measuring Performance (Better practice Principles)</i> ▪ <i>Legal Aid Commission Case Study</i> 	31 August 1999
65	Attorney General's Department	<i>Management of Court Waiting Times</i>	3 September 1999
66	Office of the Protective Commissioner Office of the Public Guardian	<i>Complaints and Review Processes</i>	28 September 1999
67	University of Western Sydney	<i>Administrative Arrangements</i>	17 November 1999
68	NSW Police Service	<i>Enforcement of Street Parking</i>	24 November 1999
69	Roads and Traffic Authority of NSW	<i>Planning for Road Maintenance</i>	1 December 1999
70	NSW Police Service	<i>Staff Rostering, Tasking and Allocation</i>	31 January 2000
71*	Academics' Paid Outside Work	<ul style="list-style-type: none"> ▪ <i>Administrative Procedures</i> ▪ <i>Protection of Intellectual Property</i> ▪ <i>Minimum Standard Checklists</i> ▪ <i>Better Practice Examples</i> 	7 February 2000
72	Hospital Emergency Departments	<i>Delivering Services to Patients</i>	15 March 2000
73	Department of Education and Training	<i>Using computers in schools for teaching and learning</i>	7 June 2000
74	Ageing and Disability Department	<i>Group Homes for people with disabilities in NSW</i>	27 June 2000
75	NSW Department of Transport	<i>Management of Road Passenger Transport Regulation</i>	6 September 2000
76	Judging Performance from Annual Reports	<i>Review of eight Agencies' Annual Reports</i>	29 November 2000
77*	Reporting Performance	<i>Better Practice Guide A guide to preparing performance information for annual reports</i>	29 November 2000
78	State Rail Authority (CityRail) State Transit Authority	<i>Fare Evasion on Public Transport</i>	6 December 2000
79	TAFE NSW	<i>Review of Administration</i>	6 February 2001
80	Ambulance Service of New South Wales	<i>Readiness to Respond</i>	7 March 2001
81	Department of Housing	<i>Maintenance of Public Housing</i>	11 April 2001
82	Environment Protection Authority	<i>Controlling and Reducing Pollution from Industry</i>	18 April 2001
83	Department of Corrective Services	<i>NSW Correctional Industries</i>	13 June 2001

No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
84	Follow-up of Performance Audits	<i>Police Response to Calls for Assistance The Levying and Collection of Land Tax Coordination of Bushfire Fighting Activities</i>	20 June 2001
85*	Internal Financial Reporting	<i>Internal Financial Reporting including a Better Practice Guide</i>	27 June 2001
86	Follow-up of Performance Audits	<i>The School Accountability and Improvement Model (May 1999) The Management of Court Waiting Times (September 1999)</i>	14 September 2001
87	E-government	<i>Use of the Internet and related technologies to improve public sector performance</i>	19 September 2001
88*	E-government	<i>e-ready, e-steady, e-government: e-government readiness assessment guide</i>	19 September 2001
89	Intellectual Property	<i>Management of Intellectual Property</i>	17 October 2001
90*	Better Practice Guide	<i>Management of Intellectual Property</i>	17 October 2001
91	University of New South Wales	<i>Educational Testing Centre</i>	21 November 2001
92	Department of Urban Affairs and Planning	<i>Environmental Impact Assessment of Major Projects</i>	28 November 2001
93	Department of Information Technology and Management	<i>Government Property Register</i>	31 January 2002
94	State Debt Recovery Office	<i>Collecting Outstanding Fines and Penalties</i>	17 April 2002
95	Roads and Traffic Authority	<i>Managing Environmental Issues</i>	29 April 2002
96	NSW Agriculture	<i>Managing Animal Disease Emergencies</i>	8 May 2002
97	State Transit Authority Department of Transport	<i>Bus Maintenance and Bus Contracts</i>	29 May 2002
98	Risk Management	<i>Managing Risk in the NSW Public Sector</i>	19 June 2002
99	E-government	<i>User-friendliness of Websites</i>	26 June 2002
100	NSW Police Department of Corrective Services	<i>Managing Sick Leave</i>	23 July 2002
101	Department of Land and Water Conservation	<i>Regulating the Clearing of Native Vegetation</i>	August 2002

* Better Practice Guides

Performance Audits on our website

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website www.audit.nsw.gov.au



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