

Native Vegetation Protection Bill (No. 2)

No.

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LEGISLATIVE COUNCIL

Read 1° 22 October 1991

(Brought from the Legislative Assembly)

(No. 2)

A BILL

for

An Act to protect native vegetation and for other purposes.

Native Vegetation Protection Act 1991

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

5 The purpose of this Act is to protect native vegetation by using the planning system.

2. Commencement

 This Act comes into operation on a day to be proclaimed.

3. Definitions

(1) In this Act—

10 “clearing” in relation to native vegetation means—

Section headings appear in bold italics and are not part of the Act (see **Interpretation of Legislation Act 1984**).

Native Vegetation Protection

- (a) lopping native vegetation; or
- (b) destroying native vegetation; or
- (c) removing native vegetation;

“**clearing controls**” means the provisions of Division 1 of Part 2 and Schedules 1, 2 and 3; 5

“**fauna**” has the same meaning as in section 3 (1) of the **Flora and Fauna Guarantee Act 1988**;

“**flora**” has the same meaning as in section 3 (1) of the **Flora and Fauna Guarantee Act 1988**;

“**fuel reduction burning**” means the reduction, by fire, 10
of the quantity of material that could fuel a fire;

“**ground fuel**” means vegetation or part of vegetation that, because it is close to the ground, may fuel an advancing fire;

“**groundwater recharge**” means the percolation of water 15
through the earth from its surface to the groundwater;

“**Land Protection Council**” means the Land Protection Council established under the **Vermin and Noxious Weeds Act 1958**; 20

“**native vegetation**” means vegetation indigenous to Victoria;

“**waterway**” has the same meaning as in the **Water Act 1989**.

- (2) Terms used in this Act and in the **Planning and Environment Act 1987** have the same meanings in this Act as they have in that Act. 25

4. Objectives

The following are the objectives of this Act—

- (a) to reverse the decline of native vegetation in 30
Victoria;

- (b) to protect and conserve native vegetation so as, in particular—
- (i) to protect the habitat of flora and fauna;
 - (ii) to help to protect ecological processes;
 - 5 (iii) to help to maintain the genetic diversity of flora and fauna and their potential for evolutionary development in the wild;
 - (iv) to lessen contributions to and adverse impact of the greenhouse effect;
 - 10 (v) to protect soil against erosion, salinisation and other forms of degradation;
 - (vi) to minimise adverse effects of groundwater recharge;
 - 15 (vii) to protect wetlands, waterways and water resources;
 - (viii) to preserve and enhance landscape quality;
 - (c) by protecting native vegetation, to promote the planned management and sustainable use of land.

PART 2 —CLEARING OF NATIVE VEGETATION

Division 1—Permits required for some clearing

5. *Objectives of this Act to be planning objectives*

The objectives of this Act are—

- (a) objectives of planning for the purposes of the **Planning and Environment Act 1987**; and
- 25 (b) objectives of each planning scheme.

6. *Permit required for certain clearing*

Subject to sections 7 and 8, a permit under the **Planning and Environment Act 1987** is required for the clearing of native vegetation taking place on or after the date of commencement of this Act.

7. *Permit not required in some cases*

- (1) A permit is not required to clear native vegetation in the cases set out in Schedule 1.

- (2) Clearing may fall within one or more of the cases set out in Schedule 1.
- (3) Each of the provisions in Schedule 1 is in addition to and does not take away from each of the other provisions in that Schedule. 5

8. Governor in Council may exempt from clearing controls

- (1) A permit is not required to clear native vegetation in an area which, under sub-section (2), is exempted by the Governor in Council from the clearing controls.
- (2) The Governor in Council may, by notice published in the Government Gazette, exempt the whole or part of a municipal district or a group of municipal districts from the clearing controls, if satisfied that, in the whole or part of that district or in that group, there is a planning scheme that imposes controls on the clearing of native vegetation— 10
 - (a) that give effect to the objectives of this Act; and
 - (b) that are an effective alternative to the provisions of this Division. 15

9. Management plans and works programs 20

- (1) An applicant for a permit to clear native vegetation may, if the applicant wishes to do so, submit with the application—
 - (a) a land management plan setting out—
 - (i) the way in which native vegetation in the area covered by the application is to be managed; and 25
 - (ii) any other land management strategies which the applicant intends to use in the area covered by the application; or 30
 - (b) a works program setting out the works to be undertaken in the area covered by the application.
- (2) A land management plan or works program may also relate to any area not covered by the permit application.

10. Notice of application

In addition to any other notice required to be given under section 52 (1) of the **Planning and Environment Act 1987**, the responsible authority must, in accordance with section 52 of that Act, give to the Director-General of Conservation and Environment notice of an application for a permit to clear native vegetation if—

(a) the application is not of a kind listed in column 1 of Schedule 2; and

(b) any of the land to be cleared is within a habitat of a taxon or community of flora or fauna determined, under section 20 of the **Flora and Fauna Guarantee Act 1988**, to be critical to the survival of that taxon or community.

11. Referral of permit applications

A permit application of a kind listed in Column 1 of Schedule 2 must be referred under the **Planning and Environment Act 1987** to the person or authority listed opposite in Column 2, and that person or authority is a referral authority under that Act, for that application in addition to any other referral authority.

12. Matters to be taken into account in making certain decisions

(1) The responsible authority must consider the matters listed in sub-section (2) before deciding—

(a) whether or not to grant any permit applied for under the **Planning and Environment Act 1987**; or

(b) what conditions are to be included in a permit granted under that Act.

(2) Those matters are—

(a) the extent and character of native vegetation in the area covered by the proposal;

(b) the effect of the proposal on native vegetation;

(c) whether native vegetation in the area covered by the proposal should be protected, replanted or allowed to regenerate;

- (d) whether native vegetation can be protected by design or siting of works;
- (e) in the case of a subdivision, whether native vegetation can be protected by altering the proposed number of lots. 5
- (3) For the purposes of this section a proposal includes any works or development which are likely to be carried out if the proposal in the application is approved.
- (4) This section does not apply to a proposal if the area of land to which the proposal relates and of adjoining land 10 in the same ownership is less than 0.4 hectares.

13. *Decision on permit applications*

Without limiting section 12, before deciding whether or not to grant a permit to clear native vegetation the responsible authority must consider the matters listed in Schedule 3. 15

Division 2—Status of clearing controls

14. *Implementation through the planning system*

Each planning scheme has effect as if it included the clearing controls. 20

15. *Application of Planning and Environment Act*

- (1) Part 2 (except sections 13 to 16) and Part 3 of the **Planning and Environment Act 1987** do not apply to the clearing controls.
- (2) The rest of the **Planning and Environment Act 1987** 25 applies to the clearing controls.
- (3) The Minister administering the **Planning and Environment Act 1987** and the responsible authority for each planning scheme must keep an up to date copy of the clearing controls available at their respective offices 30 during office hours, for any person to inspect free of charge.

16. Clearing controls can only be amended by Act

The clearing controls can only be amended by an Act.

17. What if the clearing controls conflict with the planning system?

- 5 (1) This Act does not prevent the inclusion in a planning scheme of provisions prohibiting or regulating the clearing of native vegetation.
- (2) If those provisions exist or are included in a planning scheme, both they and the clearing controls must be
10 complied with.
- (3) If there is an inconsistency between the clearing controls and any provision of a planning scheme, the clearing controls prevail.
- (4) A provision of a planning scheme must not be taken to
15 be inconsistent with the clearing controls only because it regulates or prohibits the clearing of native vegetation in a case listed in Schedule 1.
- (5) This section applies despite anything to the contrary in the **Planning and Environment Act 1987**.

20 **18. Matters considered under this Act are additional to those under planning system**

The requirements in the clearing controls to consider matters before making certain decisions are additional to matters required to be considered in making those
25 decisions under the **Planning and Environment Act 1987** or any planning scheme.

19. Relationship between this Act and Flora and Fauna Guarantee Act 1988

- 30 (1) If there is an inconsistency between the clearing controls and—
- (a) an interim conservation order under the **Flora and Fauna Guarantee Act 1988**; or
- (b) an order under section 61 of that Act; or

(c) a notice under section 36 of that Act—
that order or notice prevails.

- (2) Without limiting sections 38 and 51 (1) of the **Flora and Fauna Guarantee Act 1988**, those provisions apply to a permit to clear native vegetation required by the clearing controls. 5

PART 3—ROLE OF THE LAND PROTECTION COUNCIL

20. *Additional functions of Council*

- (1) The functions of the Land Protection Council include the following— 10
- (a) to make to the Minister any reports or recommendations that it considers necessary to promote the objectives of this Act;
 - (b) to monitor and report to the Minister on the current distribution, extent and condition of native vegetation in Victoria; 15
 - (c) to monitor and report to the Minister on the operation and effectiveness of the clearing controls;
 - (d) to promote the planned and effective management of native vegetation and its re-establishment on cleared land. 20
- (2) The Land Protection Council's functions under this section are in addition to any of its other functions.

21. *Matters to be included in Annual Report*

In its Annual Report under the **Vermin and Noxious Weeds Act 1958** the Land Protection Council must include the following— 25

- (a) a review of its operations under this Part during the period to which the report relates;
- (b) the following information, in summary form, about applications for permits to clear native vegetation referred to a referral authority listed in Schedule 2— 30
 - (i) the area covered by the applications;

- (ii) the purposes for which the land is to be cleared;
- (iii) the number of applications approved;
- (iv) the number of applications approved subject to conditions;
- 5 (v) the number of applications refused;
- (vi) for applications that are granted, the area of native vegetation to be cleared;
- 10 (vii) for applications that are granted, the area (if any) of native vegetation required by the permits to be protected, and the area of any land required by the permits to be used for the replanting or regeneration of native vegetation;
- 15 (c) for applications for permits to clear native vegetation that are not referred to a referral authority listed in Schedule 2, a summary of the information about each application received by the Land Protection Council from the municipal council.

20 **22. *Municipal council to give information from planning register***

25 Not later than 31 July in each year, each municipal council must give the Land Protection Council a copy of the information in the register it keeps under section 49 of the **Planning and Environment Act 1987** concerning applications for permits to clear native vegetation, made during the 12 months ended on the previous 30 June.

SCHEDULE 1

CLEARING FOR WHICH PERMIT NOT REQUIRED

1. *How much vegetation can be cleared*

A provision of clauses 5, 6, 7, 8 (1) (a), (d), (2), (3), 10, 11, 14, 15, 16 (1), 18 (3) and 19 (1) or (3) that allows clearing to the extent necessary for a particular use or purpose only allows the clearing of as little native vegetation as is reasonable to enable that use or to achieve that purpose.

2. Cases where planning scheme not binding

Clearing of native vegetation by a Minister, government department, public authority or municipal council if, under section 16 of the **Planning and Environment Act 1987**, the Governor in Council has directed that all the provisions of a planning scheme are not binding on that Minister, department, authority or council.

3. Small landholdings

Clearing of native vegetation if the area of the land to be cleared and of adjoining land in the same ownership is less than 0.4 hectares.

4. Dead vegetation

Clearing of native vegetation that is dead.

5. Emergency works

- (1) Clearing of native vegetation to the extent necessary to avoid imminent risk of personal injury or damage to property.
- (2) Clearing of native vegetation to the extent necessary to enable a Minister, government department, public authority or municipal council to carry out works in an emergency.

6. Utility services

Clearing of native vegetation to the extent necessary to maintain the following utility services—

- (a) electricity supply;
- (b) gas supply;
- (c) water supply;
- (d) sewerage;
- (e) drainage;
- (f) electronic communications.

7. Roads, railways and other places

- (1) Clearing of native vegetation to the extent necessary to maintain the existing use of—
 - (a) land that is part of the carriageway, verges or batters of a road; or
 - (b) land that is part of the formation of a railway line; or
 - (c) landing places for aircraft; or
 - (d) gravel pits; or
 - (e) land which is used for public purposes and which is Crown land or land owned by a public authority or municipal council.
- (2) Sub-clause (1) only permits the clearing of—
 - (a) seedlings less than 10 years old; or
 - (b) regrowth less than 10 years old.
- (3) For the purposes of sub-clause (1), an existing use is one that existed immediately before the date of clearing.

8. Fire

- (1) Clearing of native vegetation—
 - (a) to the extent necessary for fire fighting; or
 - (b) caused by fuel reduction burning; or
 - (c) that is ground fuel and is within 30 metres of a building; or
 - (d) to the extent necessary to make a fire break of up to 6 metres wide.
- (2) Clearing of native vegetation to the extent necessary to comply with a direction under section 65 of the **Forests Act 1958** or section 41 of the **Country Fire Authority Act 1958**.
- (3) Clearing of native vegetation to the extent necessary to carry out works or to take action or comply with a direction under section 694 or 695 of the **Local Government Act 1958**.
- (4) Clearing of native vegetation in accordance with a Code of Practice for the maintenance of electric lines under regulations made under section 65 of the **State Electricity Commission Act 1958**.

9. Planted vegetation

Clearing of native vegetation—

- (a) planted for harvesting; or
- (b) planted for landscape or recreational purposes; or
- (c) planted for land management purposes.

10. Timber production

- (1) The clearing of native vegetation on land to be used for plantations for timber production if—
 - (a) the land is or has been used for—
 - (i) plantations for timber production; or
 - (ii) cultivation or pasture; and
 - (b) the vegetation cleared—
 - (i) is seedlings less than 10 years old or regrowth less than 10 years old; or
 - (ii) is cleared in accordance with an authority under sub-clause (2) and clearing begins within 12 months after that authority is given.
- (2) For the purposes of sub-clause (1) (b) (ii) the Director-General of Conservation and Environment may, in his or her absolute discretion, by instrument authorise the clearing of native vegetation that is 10 years old or more if he or she considers that—
 - (a) the vegetation is regrowth following clearing and is significantly different from the vegetation originally cleared, either in species composition or structure; and
 - (b) there is no significant reason to conserve the vegetation.

11. *Vegetation for domestic use*

Clearing of native vegetation to the extent necessary and reasonable for use for domestic purposes by the owner or occupier of the land cleared.

12. *Authorised timber harvesting*

Clearing of native vegetation in accordance with a lease, licence, permit or other authority under the **Forests Act 1958**.

13. *Mineral exploration*

Clearing of native vegetation on land covered by an exploration licence under the **Mineral Resources Development Act 1990**, to the extent necessary to carry out any of the activities mentioned in section 43 (3) (a) to (e) of that Act, if the chief administrator within the meaning of that Act has, under section 43 (3) of that Act, notified the holder of the licence that those activities may be carried out.

14. *Extractive industry*

Clearing of native vegetation to the extent necessary to carry on an extractive industry under a licence, permit or other authority in force under the **Extractive Industries Act 1966** or a permit in force under the **Planning and Environment Act 1987** at the date of commencement of this Act.

15. *Surveying*

Clearing of native vegetation to the extent necessary to enable a person in the course of the practise of surveying, to establish sight-lines if clearing is done using hand held tools only.

16. *Farming*

- (1) Clearing of native vegetation to the extent necessary to construct, operate and maintain fixed farm structures, farm access ways and farm dams.
- (2) In sub-clause (1) “farm dams” do not include dams on waterways.
- (3) Clearing of native vegetation on land to maintain or re-establish the land for cultivation or pasture if the only native vegetation cleared is—
 - (a) seedlings less than 10 years old; or
 - (b) re-growth less than 10 years old.
- (4) Clearing of native vegetation in accordance with a condition on land use imposed under section 23 (4) of the **Soil Conservation and Land Utilization Act 1958**.

17. *Grazing*

- (1) Clearing of native vegetation caused by the grazing of stock—
 - (a) on land that is not Crown land; or

- (b) on Crown land, in accordance with a lease, licence, permit or other authority authorising grazing; or
 - (c) on a road to which the public have access and which is ordinarily used by vehicles; or
 - (d) on unoccupied Crown land adjoining a road referred to in paragraph (c).
- (2) Sub-clause (1) (c) and (d) do not apply to clearing of native vegetation caused by the grazing of stock held in an area that is wholly or partly enclosed (whether by a fence or otherwise).

18. Clearing of specific vegetation

- (1) Clearing of native vegetation—
- (a) which is bracken (*Pteridium esculentum*); or
 - (b) which is burgan (*Kunzea ericoides*, previously known as *Leptospermum phylicoides*); or
 - (c) which is manuka (*Leptospermum scoparium*); or
 - (d) which is a noxious weed within the meaning of the **Vermin and Noxious Weeds Act 1958**.
- (2) Native vegetation under sub-clause (1) (b) or (c) only falls within sub-clause (1) if it is on land—
- (a) outside the metropolitan region within the meaning of the **Planning and Environment Act 1987**; and
 - (b) more than 30 metres from a waterway; and
 - (c) being maintained or re-established for cultivation or pasture; and
 - (d) with a slope of not more than 20 per cent.
- (3) Clearing of native vegetation to the extent necessary to destroy vermin within the meaning of the **Vermin and Noxious Weeds Act 1958** or their breeding places or resting places, if the area of any native vegetation cleared on land and on adjoining land in the same ownership is not greater than 10 hectares.

19. Buildings

- (1) Clearing of native vegetation to the extent necessary to construct, use or maintain—
- (a) a dwelling; or
 - (b) areas that are associated with a dwelling and located on the same property as the dwelling, and for use for domestic purposes or utility services; or
 - (c) access ways associated with the dwelling; or
 - (d) areas for recreational use that are associated with a dwelling and are located on the same property as the dwelling, if the area cleared is less than 0.2 hectares.
- (2) Clearing of native vegetation within 10 metres of a building, whether a dwelling or not.
- (3) Clearing of native vegetation to the extent necessary to construct, use or maintain—
- (a) a building other than a dwelling; or
 - (b) access ways associated with a building other than a dwelling; or

- (c) utility services associated with a building other than a dwelling and located on the same property as the building.

20. Existing permits

Clearing of native vegetation authorised by and in accordance with a permit in force under the **Planning and Environment Act 1987** at the date of clearing and—

- (a) issued before the commencement of this Act; or
 (b) issued on or after that commencement, if the application for the permit was granted before that commencement.

SCHEDULE 2

REFERRAL AUTHORITIES

Part 1—Authorities

Kind of application	Referral Authority
1. Application for a permit to clear native vegetation if the referral area is 10 hectares or more	Director-General of Conservation and Environment
2. Application for a permit to clear native vegetation if a works program is submitted with the application	Director-General of Conservation and Environment
3. Application for a permit to clear native vegetation if a land management plan is submitted with the application	Director-General of Conservation and Environment, Director-General of Agriculture.

Part 2—How to Calculate the Referral Area

The referral area for the purposes of Part 1 is calculated by adding together the following areas—

- (a) the area of native vegetation which is to be cleared and is covered by the application for the permit;
- (b) any area that is part of land that adjoins the area in paragraph (a) and is the subject of a concurrent application, or an application approved before the date of the present application, if the land is owned by the present applicant and the concurrent or previous application is for a permit to clear native vegetation;
- (c) any area that is part of land that adjoins the area in paragraph (a) and is the subject of a concurrent application or an application approved before the date of the present application, if—
- (i) 2 years before the date of the present application the land described in this paragraph and each area in paragraph (a) and (b) were in the same ownership, even though the land is not now in the same ownership; and
 - (ii) the concurrent or previous application is for a permit to clear native vegetation.

SCHEDULE 3

MATTERS TO BE CONSIDERED WHEN DECIDING PERMIT APPLICATIONS

1. The objectives of this Act.
2. The preservation of the natural environment of the area concerned.
3. The impact of the proposal on the natural environment and landscape values.
4. The ways in which native vegetation in the area—
 - (a) assists the conservation of flora and fauna; and
 - (b) protects water quality; and
 - (c) provides shade and shelter; and
 - (d) prevents soil erosion, salinisation, soil acidity, waterlogging and other forms of soil degradation; and
 - (e) lessens adverse effects of groundwater recharge; and
 - (f) contributes to landscape quality.
5. The need to retain native vegetation in each of the following areas—
 - (a) where ground slopes are more than 20 per cent;
 - (b) within 30 metres of wetlands and waterways;
 - (c) where groundwater recharge may occur;
 - (d) places where clearing may contribute to erosion, seepage or landslip;
 - (e) places where the soil or sub-soil may become unstable if the land is cleared;
 - (f) catchments proclaimed under the **Soil Conservation and Land Utilisation Act 1958**;
 - (g) places where clearing may threaten the long-term preservation of recognised sites of scientific, nature conservation or cultural significance;
 - (h) places where there are rare taxa of flora and fauna;
 - (i) areas of native vegetation that link one flora or fauna habitat with another.
6. The conservation of native vegetation protected under the **Archaeological and Aboriginal Relics Preservation Act 1972** or the Commonwealth Act known as the **Aboriginal and Torres Strait Islander Heritage Protection Act 1984**.
7. If a land management plan or works program is submitted with the application, whether it is appropriate.
8. Whether the application shows that the applicant has made or intends to make provision to re-establish or encourage the regeneration of native vegetation, to balance the loss of qualities associated with the native vegetation proposed to be cleared.
9. Whether wetlands, waterways, road and property boundaries in the area covered by the application should be protected by maintaining or planting native vegetation.
10. The protection of native vegetation that is not to be cleared.
11. If the application concerns clearing for timber production—

SCHEDULE 3—*continued*

- (a) the need for timber production to occur in accordance with any relevant Code of Practice approved under section 55 of the **Conservation, Forests and Lands Act 1987**;
 - (b) the need for clearing to occur in accordance with a management plan, and for that plan to specify—
 - (i) measures for the regeneration of native vegetation;
 - (ii) standards for clearing operations;
 - (iii) any native vegetation to be protected;
 - (c) the need for clearing to occur in accordance with any relevant practice existing in the management of Crown land.
12. If the application concerns clearing for the establishment of plantations for timber production—
- (a) whether there is available to the applicant suitable cleared land on which the plantations could be established;
 - (b) the importance of plantations to the whole or any region of the State;
 - (c) the value of plantations in limiting any impact of the greenhouse effect and preventing land degradation, particularly where the amount or extent of clearing is minor and the extent of the proposed plantations is substantial;
 - (d) the value of remnant native vegetation in—
 - (i) flora and fauna conservation;
 - (ii) limiting land degradation;
 - (iii) maintaining landscape quality;
 - (e) the amount and type of clearing proposed and any likely long-term environmental consequences of the carrying out of the proposal.
13. The need to site buildings and works so as to minimise interference with native vegetation.
14. The need to minimise destruction of native vegetation through grazing of stock.
15. The need to include in a permit a condition requiring the retention, replanting or regeneration of an area of native vegetation so as to compensate for the native vegetation lost by clearing, if—
- (a) the applicant agrees; or
 - (b) the responsible authority considers that, unless that condition is included, the permit should not be granted.