



Department of Planning, Industry and Environment

Draft: Unsafe Plants in Non-rural Areas Code of Practice 2021

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Part 1 Introduction

1 Name of Code

This Code of Practice is the *Unsafe Plants in Non-rural Areas Code of Practice 2021*.

2 Commencement

This Code commences on the day that the Order making this Code is published on the NSW legislation website.

3 Application of Code

- (1) This Code is made under clause 2.9 of the *Biodiversity Conservation Regulation 2017*.
- (2) This Code is a code of practice relating to the picking of plants that are a risk to human life or property and authorises the carrying out of actions in accordance with the terms of this Code.
- (3) It is a defence to a prosecution for an offence under sections 2.2 or 2.4 of the BC Act if the person charged establishes that they have wholly complied with each condition of this Code.

4 Object of Code

The object of this Code is to authorise clearing that does not require authority under clause 8 of the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*. This includes the picking of plants that pose an unacceptable risk to human life or property.

5 Interpretation

- (1) Words and expressions defined in the Dictionary at the end of this Code have the meaning set out in the Dictionary.

Part 2 Authorisation of Plant works

6 Removal of vegetation that is a risk to human life or property

A person is authorised to pick a plant on land owned by that person if that plant is a threatened species, part of a Threatened Ecological Community, or is a protected plant, provided that:

- (1) the person has obtained prior confirmation in writing from the relevant local Council that it is satisfied the plant to be picked is an unacceptable risk to human life or property;
- (2) the authorised action is undertaken by an arborist (minimum qualification of Certificate III in Horticulture (Arboriculture));
- (3) any plant that is picked under this Code is replaced with a plant of the same species, to be planted in a suitable area on the land from which the plant was taken;
- (4) the person does not unlawfully harm a native animal when picking a plant in accordance with this Code; and
- (5) the person gives the relevant local Council at least 24 hours' notice in writing of their intention to carry out actions in accordance with this Code.

Dictionary

the Act means the Biodiversity Conservation Act 2016.

animal means any animal, whether vertebrate or invertebrate and in any stage of biological development, but does not include:

- (a) humans, or
- (b) fish within the meaning of the Fisheries Management Act 1994.

council has the same meaning as it has in the Local Government Act 1993.

habitat means: (a) an area periodically or occasionally occupied by a species or ecological community, and (b) the biotic and abiotic components of an area.

harm an animal includes kill, injure or capture the animal, and attempt to harm an animal includes hunting or pursuing, or using anything, for the purpose of harming the animal.

picking means to gather, take, cut, remove from the ground, destroy, poison, crush or injure the plant or any part of the plant.

plant means any plant, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation.

protected plant means a plant of a species listed or referred to in Schedule 5 of the Act.

threatened ecological community means a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2 of the Act.