



**Submission to
Statutory Review of the native vegetation provisions (Part
5A and Schedule 5A and Schedule 5B) of the *Local Land
Services Act 2013 (NSW)***

Discussion Paper, November 2022



WWF-Australia

31 January 2023

WWF-Australia welcomes the opportunity to provide a submission to the New South Wales Government **Statutory Review of the native vegetation provisions (Part 5A and Schedule 5A and Schedule 5B) of the *Local Land Services Act 2013* (Discussion Paper, November 2022)**.

WWF-Australia is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to 'stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature'. WWF-Australia has approximately 2.4 million financial and non-financial supporters.

[Regenerate Australia](#) is WWF-Australia's bold vision launched to respond to the catastrophic 2019/20 bushfires. It includes two programs relevant to the Consultation paper: [Towards Two Billion Trees](#) and [Koalas Forever](#).

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Recommendations

WWF's recommendations are summarised and reorganised below. Please refer to the submission for explanatory information regarding each of the individual recommendations.

WWF recommends:

1. **repeal of Part 5A and Schedules 5A and 5B of the LLS Act and Land Management (Native Vegetation) Code 2018, and replacement with a standalone native vegetation law and regulatory framework to:**
 - provide an effective basis for ending deforestation and supporting reforestation;
 - replace reliance upon self-assessment, provision of broad discretion for landholders, and very widely construed allowable activities;
 - significantly reduce the number of allowable activities and excluding their application to moderate- and high-risk ecosystems, such as aspects of mulga clearing, sustainable grazing, excessive or unwarranted clearing for farm infrastructure and excessive fire breaks.
 - repeal of the near blanket exemption for clearing re-growth vegetation cleared prior to 1990;
 - requiring native vegetation clearing on-ground expert ecological assessment;
 - replace the Native Vegetation Panel with an effective and active independent expert assessment process;
 - be consistent with the Australia's national obligations under the Kunming-Montreal Global Biodiversity Framework, Paris Agreement, Glasgow Climate Pact and Glasgow Leaders' Declaration on Forests and Land Use.
2. ***in the interim, substantially improving the existing regulatory framework* by**
 - finalising and releasing the **Native Vegetation Regulatory Map** to include all areas of high conservation value in Category 2 – Regulated Sensitive Land;
 - **simplifying land categories** to two, with Exempt Lands being a much smaller area than currently, and Regulated Lands covering most of the state and including vulnerable, high conservation value and high cultural value lands;
 - completion of **highly accurate vegetation mapping** statewide, with on-ground validation of model mapping, to reduce environmental risks associated with land clearing;
 - active imposition of **fines** that establish major financial disincentives to breaches, and **enforcing compliance** with land clearing laws through launching civil and criminal prosecutions, to reinstate confidence in compliance enforcement of native vegetation clearing in NSW;
 - commissioning a **comprehensive, independent expert review** of the effectiveness of the reforms to address aspects of reforms that are outside the scope of the current statutory review;
 - **prohibiting clearing of native vegetation** that have fallen below science-based ecological thresholds for maintaining ecosystem health, notably 30% of pre-1750 extent; and,
 - requiring clearing of native vegetation used by threatened species to be subject to **mandatory on-ground flora and fauna assessments** by independent ecologists, or prohibited.

This submission is structured in two parts. Part A provides responses to the **Discussion Questions** posed by the Discussion Paper, in the table below. Part B provides additional information relevant to the review. The individual recommendations, summarised and collated above, occur across Parts A and B.

A. WWF responses to Discussion Questions in the Discussion Paper

1. Is it clear how different land use zonings are defined and treated in the Land Management Framework? What, if any, changes are needed? Please give reasons for your answer.

WWF-Australia response: The stark inconsistency between lands that are clearly sensitive or vulnerable compared to lands mapped as Category 2 – Vulnerable or Sensitive Lands is confusing and undermines confidence in the reforms. Lands that clearly support high conservation values, based upon the NSW Government’s own data, which should have been added to Category 2 – Regulated Sensitive Lands have not been.

WWF-Australia recommends that the Native Vegetation Regulatory Map be finalised and released to include all areas of high conservation value in Category 2 – Regulated Sensitive Land.

Further, the statutory definition of regrowth vegetation cleared prior to 1 January 1990 as being exempt from clearing controls is not based on sound science and ignores the carbon storage potential of these lands. It ignores NSW Government data that shows such areas, particularly mature regrowth, can and does support threatened species and ecological communities.

WWF-Australia recommends repeal of the exemption for authorisation for clearing native vegetation mapped as having been cleared prior to 1 January 1990.

WWF-Australia strongly supports provision of substantial additional funding to landholders who protect and regrow forests and woodland. This should come from public and private sector sources, including through carbon and nascent biodiversity markets, as they evolve and expand in scope. Such financing should occur in proportion to re-establishment of stronger regulatory frameworks, including a standalone native vegetation law. In relation to regrowth vegetation, a reasonably strong regulatory framework is required to increase protections for high conservation value regrowing forest and woodland to protect wildlife populations, abate and sequester carbon, and support rain production and water treatment. Substantial additional funding for private land conservation through the Biodiversity Conservation Trust is required in tandem with stronger legal protections for native vegetation.

2. How easy to understand are the land categories and the native vegetation clearing arrangements that apply under each category? What, if any, changes are needed?

WWF-Australia response: simplify land categories to two:

- **Category 1 – Exempt.** This category would be recast as applying only to genuinely low conservation value lands where biodiversity risks of land clearing are scientifically assessed by experts as being low. In contrast to the statutory definition of post 1990 regrowth in general being exempt from clearing control, a more narrowly described Exempt land category would exclude high conservation value regrowth, such as woody vegetation more than 15 years old

(as per the Vegetation Management Act (Qld) with expanded BCT and natural capital markets programs to provide financial incentives for affected landholders.

- **Category 2 – Regulated.** This land category would include all lands mapped or assessed as supporting vulnerable lands, high conservation values or high cultural values. Vulnerable lands would include the arid and semi-arid zones at risk from climate change, steep slopes >18 degrees, areas prone to soil salinity and soil erosion, acid-sulphate soils, and land subject to inundation. For HCV lands, this would include any areas needed to halt human-induced species extinctions, threatened species habitat, threatened ecological communities, and plant community types cleared to less than 30% pre-1750 extent. High Cultural Value areas could be defined as any area identified as important by First Nations or local communities, including through reference to spatial mapping of sacred sites and Dreamings and Native Title determinations. To support these changes, key terms would need to be defined statutorily, such as 'high conservation value', 'old growth', 'threatened species habitat', 'highly erodible land', 'environmentally sensitive', etc.

WWF recommends simplifying land categories to two, with Exempt Lands being a much smaller area than currently, and Regulated Lands covering most of the state and including vulnerable, high conservation value and high cultural value lands.

3. How useful is the Native Vegetation Regulatory Map as a tool for categorising private rural land? What, if any, other tools could help landholders make decisions about their land?

WWF-Australia response: The Native Vegetation Regulatory Map is ineffective at protecting high conservation value vegetation. The Map should be finalised and released, including all high conservation value ecosystems in Category 2 – Regulated Sensitive Lands.

4. How comfortable and capable are landholders in self-assessing their land according to the land categories? What, if any, improvements to the Transitional Arrangements should be made? Please give reasons for your answer.

WWF-Australia response: Expert plant species identification and conservation assessment, particularly of threatened species and ecological communities, is a skill set beyond many, arguably, most landholders. Expert flora and fauna assessments should instead be undertaken by accredited and trained vegetation and wildlife ecologists, whether staff of NSW agencies or external consultants, together with landholders who have the critical local knowledge about their property.

WWF-Australia recommends significantly reducing the scope for self-assessment by landholders when deciding to clear native vegetation and replacing this with a requirement for expert ecological assessment.

The Transitional arrangements have failed to protect biodiversity as the Map remains transitional, notwithstanding the NSW Government having access to significant spatial datasets (BioNet, SEED), thereby allowing high conservation value vegetation to be cleared.

5. Do each of the approval pathways for native vegetation clearing provide landholders with adequate options while managing environmental risks? Please give reasons and/or examples to support your answer.

WWF-Australia response: The approval pathways do not provide adequate guidance and regulation to avoid and minimise biodiversity risk. Most clearing occurs through allowable activity exemptions or under the Land Management (Native Vegetation) Code 2018, which provides mechanisms for implementing Part5A. The Invasive Native Species, Farm Plan and Equity

provisions of the Code do not in general manage environmental risks and have led directly to the spike in clearing.

A glaring omission in the Code is the absence of prohibitions on clearing habitat for threatened species and ecological communities. This contrasts with the responsibilities of the NSW Government to conserve biodiversity and reduce greenhouse gas emissions.

WWF-Australia recommends the Code be repealed and replaced with a strong regulatory framework not reliant upon self-assessment for high-risk clearing, near blanket exemptions for clearing regrowth cleared pre-1990, and allowable activities under Schedule 5A of the LLS Act that confer broad discretion upon landholders.

To illustrate the lax approach to self-assessment, the ‘minimum extent necessary’ threshold for native vegetation clearing as an allowable activity is poor statutory framing as it relies upon subjectivity, relies upon a term not included in the Definitions in the LLS Act, and disingenuously relies upon landholders seeking to minimise clearing when they may have a financial incentive to maximise clearing.

Failure to complete state-wide high-resolution plant community type mapping hinders the ability of landholders, regulators and community environmental organisations from accurately assessing and monitoring the impacts of native vegetation management at property scale. Highly accurate vegetation mapping that uses 3-D aerial photographic interpretation to build upon model mapping, which has been undertaken by NSW agencies using satellite imagery and pattern recognition, with extensive on-ground validation to address mapping anomalies, would reduce environmental risks from clearing as well as support development of carbon and biodiversity markets.

WWF-Australia recommends completion of highly accurate vegetation mapping state-wide, with on-ground validation of model mapping, to reduce environmental risks associated with land clearing.

6. Is it clear what native vegetation clearing activities are “allowable” i.e. don’t need notification or approval?

WWF-Australia response: With respect, this is the wrong question. The problem is not that it is unclear what activities are allowable under Schedule 5A of the LLS Act, but that the scope of allowable activities is too broad, subjective and open to abuse. The list of allowable activities able to be undertaken based upon landholder self-assessment should be much shorter and apply primarily to low-risk and activities essential for agricultural maintenance and safety.

WWF-Australia recommends significantly reducing the number of allowable activities and excluding their application to high-risk ecosystems.

7. What, if any, other native vegetation clearing activities should be “allowable?” How could the requirements for allowable activities be improved?

WWF-Australia response: The list of allowable activities is excessive, and a key driver of the increase in native vegetation clearing since 2017. Some allowable activities can lead to native vegetation in high conservation value ecosystems that create biodiversity risks, through conferring largely unfettered discretion upon landholders and being open to interpretation in favour of clearing.

WWF-Australia recommends moderate- to high-risk allowable activities be removed or the discretion afforded to landholders is greatly reduced, such as mulga clearing, sustainable grazing, unwarranted clearing for farm infrastructure and excessive fire breaks.

8. How effective are the requirements for establishing, managing, monitoring and reporting for set asides? Please give reasons for your answer.

WWF-Australia response: the NSW Audit Office and NRC both identified failings in monitoring, reporting, management and compliance enforcement regarding set asides.

9. What are the barriers to using the Native Vegetation Panel approval pathway and how could this pathway be improved?

WWF-Australia response: The Native Vegetation Panel appears to have nearly zero effect on native vegetation clearing, apparently having made only one determination.

WWF-Australia recommends replacing the Native Vegetation Panel with an effective and active independent expert process. This should occur in tangent with greatly reducing self-assessment by landholders with the requirement to seek approvals to clear through detailed on-ground ecological assessments.

10. Is the public register for reporting on native vegetation certificates and notifications accessible, and is the information useful and easy to understand? What if any improvements to reporting should be made? Please give reasons for your answer.

No response

11. How adequate are the penalties for offences for illegal clearing and breaches of set aside obligations? Please give reasons and/or examples for your answer.

WWF-Australia response: woody vegetation clearing reports produced through the SLATS program identified unallocated clearing, that could include illegal clearing, constituted 74-76% of woody vegetation clearing from 2018-2020. It is unclear what – if any – penalties have been imposed or prosecutions undertaken since commencement of Part 5A of the LLS Act. It is apparent, however, that LLS actively seeks to avoid imposing fines on landholders for illegal native vegetation clearing.¹

WWF recommends that the NSW government should actively impose fines that establish major financial disincentives to breaches, and enforce compliance with land clearing laws through launching civil and criminal prosecutions, to reinstate confidence in compliance enforcement of native vegetation clearing in NSW.

12. To what extent does the public have confidence in compliance and enforcement of native vegetation regulation? How could public confidence be improved?

WWF-Australia response: see response above.

13. Overall, how relevant are Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act in achieving the social, economic and environmental interests of the State? The

¹ Ellis, M, 16 February 2022, *How to avoid fines for native vegetation clearing*, Local Land Services, available at <https://www.lls.nsw.gov.au/regions/murray/articles,-plans-and-publications/small-farms-feb-2022/how-to-avoid-fines-for-native-vegetation-clearing>

other questions in this Discussion Paper consider the individual provisions of the Local Land Services Act in more detail and may provide you extra context when answering this question.

WWF-Australia response: Part 5A and Schedules 5A and 5B of the LLS Act have failed to achieve strong environmental outcomes regarding native vegetation clearing in NSW. This conclusion is supported by the significant increase in land clearing since commencement of the new regulatory framework in 2017, independent expert reports provided by the Audit Office of New South Wales and the Natural Resources Commission, ongoing threatened species listings in which habitat loss and degradation is a threatening process, and continued significant land clearing emissions.

WWF recommends the NSW Government repeal Part 5A and Schedules 5A and 5B of the LLS Act and establish a standalone native vegetation law that provides an effective framework for ending deforestation.

14. What if any other issues should be considered as part of the statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act? Please give reasons why they should be considered in your answer.

WWF-Australia response: see information below, which provides additional response and contextual information.

B. Additional information relevant to the review

1. Terms of Reference overly narrow, comprehensive review still required

The terms of reference for the review are overly narrow. The review fails to comprehensively evaluate the effectiveness of the native vegetation management aspects of the Land Management and Biodiversity Conservation reforms. This is very disappointing. It relates to the provisions found in Part 5A and Schedules 5A and 5B of the LLS Act, but expressly omits the broader scope and outcomes of the NSW Government's Land Management and Biodiversity Conservation Reforms, the *Land Management (Native Vegetation) Code 2018* (the Code) and the *Local Land Services Regulation 2014*.

Critically, the clearing threshold trigger of 20,000 hectares of notifications and applications for certification within a six-month period is not explicitly included in the review. This policy decision was not made public at the time of passage of Part 5A of the LLS Act yet was apparently chosen to permit a doubling of land clearing.² The NRC concluded it to be inappropriate due to lacking a credible basis in clearing data and unreflective of environmental risk.

WWF-Australia recommends that the NSW government should undertake a comprehensive, independent, expert review of the effectiveness of the reforms to address aspects of reforms that are outside the scope of the current statutory review.

² See Natural Resources Commission report, page 21-22.

2. Native vegetation regulation is effectively non-existent in NSW

The regulatory framework established by the LLS Act is very weak. The regulatory framework has failed to effectively manage native vegetation which directly led to major increases in woody vegetation clearing from 2017-19. This is despite NSW having previously had strong regulatory frameworks for native vegetation, including SEPP 46 – Protection and Management of Native Vegetation,³ the *Native Vegetation Conservation Act*⁴ and *Native Vegetation Act*,⁵ and clearing of native vegetation being listed as a key threatening process.⁶

The NSW Audit Office,⁷ NSW Natural Resources Commission and two relevant NSW Parliament Inquiries into Koala Populations and Habitat in NSW⁸ and the Integrity of the NSW Biodiversity Offsets Scheme,⁹ identified major failings in the management of native vegetation. As a first step, the statutory review should implement the various recommendations in those reports.

Native vegetation regulation is based upon a highly-permissive regulatory approach under Part 5A of the LLS Act to managing native vegetation that has led to a major increase in land clearing. The approach relies upon:

- a policy intent to allow landholders to clear native vegetation with little regulatory oversight;
- a weak and permissive Land Management (Native Vegetation) Code under which most clearing has occurred;
- very broad exemptions for allowable activities;
- failing to finalise the Native Vegetation Regulatory Map which has had the effect of allowing vegetation clearing in areas of land that should have been mapped as Category 2 - Regulated Sensitive Land;
- self-assessment for undertaking clearing in high biodiversity value vegetation by landholders who are not required to have expertise in vegetation ecology and conservation;

³ NSW Parliament, 1995, STATE ENVIRONMENTAL PLANNING POLICY No. 46— PROTECTION AND MANAGEMENT OF NATIVE VEGETATION (repealed), available for viewing at <https://legislation.nsw.gov.au/view/pdf/asmade/epi-1995-337>

⁴ NSW Parliament, 1997, *Native Vegetation Conservation Act* (repealed), available for viewing at [https://legislation.nsw.gov.au/view/html/inforce/current/act-1997-133#:~:text=This%20Act%20is%20the%20Native%20Vegetation%20Conservation%20Act%201997.&text=This%20Act%20commences%20on%20a,to%20be%20appointed%20by%20proclamation.&text=\(f\)%20to%20prevent%20the%20inappropriate,principles%20of%20ecologically%20sustainable%20development](https://legislation.nsw.gov.au/view/html/inforce/current/act-1997-133#:~:text=This%20Act%20is%20the%20Native%20Vegetation%20Conservation%20Act%201997.&text=This%20Act%20commences%20on%20a,to%20be%20appointed%20by%20proclamation.&text=(f)%20to%20prevent%20the%20inappropriate,principles%20of%20ecologically%20sustainable%20development).

⁵ NSW Parliament, 2003, *Native Vegetation Act* (repealed), available for viewing at <https://legislation.nsw.gov.au/view/html/inforce/current/act-2003-103>

⁶ NSW Threatened Species Scientific Committee, 21 September 2001, *Clearing of Native Vegetation – Key Threatening Process listing*, available for viewing at <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/2000-2003/clearing-of-native-vegetation-key-threatening-process-listing>

⁷ Audit Office of NSW, 27 June 2019, *Managing Native Vegetation*, NSW Government, Sydney, available for viewing at https://www.audit.nsw.gov.au/sites/default/files/pdf-downloads/Final%20report_Managing%20native%20vegetation_WEB%20version.pdf

⁸ Portfolio Committee No. 7 - Planning and Environment, June 2020, *Koala Populations and Habitat in New South Wales*, Report 3, NSW Parliament, Macquarie Street, Sydney, 150pp, see particularly Recommendations 33-35, available for download at [Koala populations and habitat in New South Wales - Report 3.pdf \(nsw.gov.au\)](https://www.nsw.gov.au/koala-populations-and-habitat-in-new-south-wales-report-3.pdf)

⁹ New South Wales Parliament Legislative Council (2022), Portfolio Committee No. 7 - *Integrity of the NSW Biodiversity Offsets Scheme*. Report no. 16 November 2022

- relies upon landholders with clear conflicts of interest deciding whether they can clear native vegetation;
- preferencing agricultural production and farm productivity over ecological outcomes across many millions of hectares of the state, such as
 - allowing paddock trees - including old-growth trees with hollows – to be bulldozed or chopped down,¹⁰
 - clearing of up to 90% of a 1000-hectare area of native species defined as moderately invasive,¹¹
 - thinning of vegetation in a wide range of vegetation formations to expand pasture that are part of a vulnerable ecological community or an endangered ecological community,¹²
- an ineffective and permissive Native Vegetation Panel which appears to have made only one determination¹³ which approved clearing of the federally endangered ecological community *Poplar Box-Yellow Box-Western grey Box grassy woodland on cracking clay soils mainly in the Liverpool Plains, Brigalow Belt South Bioregion*,¹⁴ which is known koala habitat and for which no species credits were required to be retired;
- lack of reporting, monitoring and transparency regarding biodiversity impacts associated with vegetation clearing, and effectiveness of offsets and set-asides; and,
- poor standards of accountability to the public.

3. Reforms have led to a spike in land clearing and increased risk to biodiversity

Clearing of woody vegetation increased significantly after the commencement of Part 5A of the LLS Act. The Reforms have failed to achieve the balance between land management and biodiversity conservation outcomes that the NSW Government committed to in 2016 when it repealed the *Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995*.

Based woody vegetation (SLATS) reporting by the NSW Government, almost 80,000 hectares of woody vegetation was bulldozed in the three years following commencement of Part 5A of the LLS Act. At an average of 26,633 hectares per annum (total 79,900 hectares over three years),¹⁵ this represents a two-and-a-half fold increase in average rates of woody vegetation loss for the preceding eight years (2009-2016 inclusive: average clearing of 10,475 hectares per annum).¹⁶

¹⁰ Land Management (Native Vegetation) Code 2018, Part 5 Equity *Division 1 Removing native vegetation from paddock tree areas*.

¹¹ Land Management (Native Vegetation) Code 2018, Part 2 Invasive Native Species, *Division 2 Moderate impact clearing of invasive native species*

¹² Land Management (Native Vegetation) Code 2018, Part 3 Pasture Expansion *Division 2 Uniform thinning of woody native vegetation (certification)*

¹³ Local land Services, Native Vegetation Panel, *Public Register*, determination of 21 February 2021 available for viewing at <https://www.nvp.nsw.gov.au/applications/public-register>

¹⁴ Office of Environment and Heritage, *Poplar Box Grassy Woodland on Alluvial Plains – profile*, NSW Government, with Commonwealth status of 'Endangered', available for viewing at

<https://www.environment.nsw.gov.au/threatenedspeciesapp/profile.aspx?id=20373>

¹⁵ The area of woody vegetation loss for agriculture in 2020 (13,000 hectares) was excluded from this simple analysis due to it being an anomaly caused by the end of the drought, the 2019/20 bushfires, then following extreme flooding in parts of the state, and the commencement of Covid-19 pandemic.

¹⁶ Local land Services, 2021, *Results woody vegetation change state-wide landcover and tree study 2020*, see Agriculture data on 'Tab 1 Rates of woody vegetation loss annualised by landcover class for (a) SPOT and Sentinel 2, and (b) Landsat

The NSW Audit Office's *Managing Native Vegetation* report concluded

"The clearing of native vegetation on rural land is not effectively regulated and managed because the processes in place to support the regulatory framework are weak. There is no evidence-based assurance that clearing of native vegetation is being carried out in accordance with approvals. Responses to incidents of unlawful clearing are slow, with few tangible outcomes. Enforcement action is rarely taken against landholders who unlawfully clear native vegetation. There are processes in place for approving land clearing but there is limited follow-up to ensure approvals are complied with."¹⁷

The NSW State of Environment 2021 report found a similar spike in land clearing in the years leading up to and following commencement of Part 5A and the broader reforms:

"[P]ermanent clearing of native woody vegetation in NSW has increased about three-fold since 2015 and stands at an average of 35,000 ha cleared each year. Permanent clearing of non-woody vegetation, such as native shrubs and ground covers, occurs at an even higher rate."¹⁸ and

"Permanent clearing of woody vegetation [was] 35,000 ha each year on average from 2017 to 2019, compared to 13,000 ha on average each year from 2009 to 2015."¹⁹

The Natural Resources Commission stated in "independent, evidence-based advice" to Cabinet in July 2019 regarding the reforms that:

"In 2018/19, over 37,000 hectares were approved to be cleared (excluding clearing for invasive native species). This is around 13 times the annual average rate of approval pre-reform, which was approximately 2,700 hectares on average per year between 2006/07 and 2016/17."²⁰

The reports by the Audit Office of NSW and Natural Resources Commission provide a suite of highly critical findings that should guide the statutory review. Failures to implement all the recommendations has allowed the weak and ineffective regulatory framework under Part 5A of the LLS Act to continue.

analysis (hectares/year)' on downloadable spreadsheet, Available at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Native-vegetation/results-woody-vegetation-change-statewide-landcover-and-tree-study-2020.xlsx?la=en&hash=3ABF0AF453CB9CF071482933184B51E1AF6804E>

¹⁷ NSW Audit Office report *Managing Native Vegetation*, see page 2

¹⁸ NSW State of Environment, *Themes > Land*, NSW EPA, Sydney, available at [Themes | NSW State of the Environment](#)

¹⁹ NSW State of Environment, *Native Vegetation*, NSW EPA, Sydney, available at [Native Vegetation | NSW State of the Environment](#)

²⁰ Natural Resources Commission, July 2019, *Land management and biodiversity conservation reforms: Final advice on a response to the policy review point July 2019*, NSW Government, Sydney, see page 6.

Critically, an amended native vegetation regulatory framework should explicitly work to support attainment in the state of the Kunming-Montreal Global Biodiversity Framework (GBF).²¹ The GBF contains explicit goals and targets relating to protection and restoration of natural ecosystems, avoiding extinctions of known threatened species and protection of 30% of the land. Part 5A of the LLS Act and Schedule 5A and 5B do not provide an adequate regulatory framework for doing this.

WWF recommends drafting a new standalone native vegetation law to be consistent with the goals and targets of the Kunming-Montreal Global Biodiversity Framework.

Plant community types that have been extensively cleared should be protected from further clearing for all except the most critical needs. Ecological communities in the most agriculturally productive landscapes (particularly the sheep/wheatbelt, floodplains, fertile slopes and Tablelands) have been cleared below the 30% threshold identified by ecologists needed to maintain ecological integrity for ecosystems in general.

WWF recommends prohibiting clearing of native vegetation that have fallen below science-based ecological thresholds for maintaining ecosystem health, notably 30% of pre-1750 extent.

- 4. Increased woody vegetation clearing not offset by better private land conservation outcomes**

This impact has not been offset by the increased area of private land conservation achieved by the Biodiversity Conservation Trust, set asides and offsets.²² WWF-Australia supports the BCT's Conservation Management Program, but notes insufficient funding greatly hampers its ability to support landholders to voluntarily establish private protected areas that would collectively be equivalent to the area of clearing of high conservation value ecosystems.

- 5. Failure to finalise the Native Vegetation Regulatory Map**

Establishment of the Native Vegetation Regulatory Map (Map) is provided for in Part 5A of the LLS Act.²³ The draft Map remains substantially incomplete, with only 6% of the state covered.²⁴ Only 2% of the state is mapped as Category 2 – Regulated Sensitive Land and another 4% as Category 2 – Regulated Vulnerable Land.²⁵ These figures do not reflect the actual sensitivity or vulnerability of land in NSW, but rather the refusal of government to include the full suite of sensitive and vulnerable lands to the Map based upon expertise and existing authoritative spatial data.

The transitional Map²⁶ has not been completed five years after commencement of Part 5A of the

²¹ Convention on Biological Diversity, *COP15: Final Text of Kunming-Montreal Global Biodiversity Framework*, available for download at <https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222>

²² See Discussion Paper, p7.

²³ Native vegetation regulatory map, Division 2, Part 5A, *Local Land Services Act*.

²⁴ Local Land Services, *Draft Native Vegetation Regulatory map*, NSW Government, viewed 25 January 2023. Available for viewing at <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/native-vegetation-regulatory-map/draft-native-vegetation-regulatory-map>

²⁵ See Discussion Paper, page 12

²⁶ Local Land Services, *The transitional Native Vegetation Regulatory map*, NSW Government, viewed 25 January 2023, available for viewing at <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/native-vegetation-regulatory-map/transitional-native-vegetation-regulatory-map>

LLS Act. Very substantial areas of native vegetation that should have been mapped as Category 2 – Regulated Sensitive Land remain unmapped, and hence able to be cleared.

The failure to comprehensively add all areas of high conservation value of the state as Category 2 – Regulated Sensitive land to the Map has led to loss and degradation of habitat for threatened species and threatened ecological communities. Landholders can, and do, therefore legally bulldoze large areas of high conservation value native vegetation on their properties.

The default categorisation of regrowth vegetation cleared pre-1990 as exempt land under s60H Division 2 removes regulatory oversight of clearing on large areas of native vegetation that could have high conservation values and which serve as important land carbon sinks. This exemption from authorisation for clearing should be repealed. This exemption starkly contrasts with the statutory object to ‘prevent broadscale clearing unless it improves or maintains environmental outcomes’ in the repealed *Native Vegetation Act*.²⁷ With the transitional Map failing to include large areas of high conservation value native vegetation which would have the effect of removing this exemption under s60H,²⁸ the capacity of the regulatory framework to conserve the habitat of threatened species and wildlife populations, and to increase abatement and sequestration of carbon in the landscape is greatly reduced. A topical illustration of the impact of this is the failure of the Map to give regulatory protection to habitat of the endangered koala population. Despite the federal uplisting of koalas occurring last February, koala habitat identified by the NSW Government’s Koala Habitat Information Base across the state has not been used to update and vastly expand lands mapped as ‘core koala habitat’ in Category 2 – Regulated Sensitive Lands. This is due to constraining adding mapped ‘core koala habitat’ to the requirement for such lands to be included in a Koala Plan of Management under an approved SEPP 44 Koala Habitat Protection.²⁹ The definition also fails to explicitly include important koala corridors used for dispersal, during the breeding season, to escape dogs, and to respond to changes in weather. While koalas are an exemplar of the failure of the LLS Act to protect endangered and vulnerable wildlife from native vegetation clearing, threatened species list contains many more.

WWF recommends requiring clearing of native vegetation used by threatened species to be subject to mandatory on-ground flora and fauna assessments by independent ecologists, or prohibited.

6. Inconsistent with climate action

The native vegetation provisions of the LLS Act are substantially inconsistent with global agreements and targets regarding the importance of protecting forests and other vegetation to sequester land carbon to support climate action.

²⁷ *Native Vegetation Act 2003* (NSW) (repealed), see Objects of Act section 3(b). Available for viewing at <https://legislation.nsw.gov.au/view/html/inforce/current/act-2003-103>

²⁸ Category 1 – exempt land mapping, Section 60H, Part 5A, *Local Land Services Act*, available for viewing at <https://legislation.nsw.gov.au/view/html/inforce/current/act-2013-051#sec.60H>

²⁹ Local Land Services, see ‘Criteria that apply to each category’ section of *The transitional Native Vegetation Regulatory map*, NSW Government, viewed 25 January 2023, available for viewing at <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/native-vegetation-regulatory-map/transitional-native-vegetation-regulatory-map>

Australia is signatory to the Paris Agreement, which commits Parties, including Australia, to

“Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”³⁰

The role of forests and other vegetation as natural climate solutions is explicitly recognised in the Glasgow Climate Pact, to which Australia is signatory, which

“Emphasizes the importance of **protecting, conserving and restoring nature** and ecosystems to achieve the Paris Agreement temperature goal, including through **forests** and other terrestrial and marine ecosystems acting as sinks and reservoirs of greenhouse gases and by protecting biodiversity, while ensuring social and environmental safeguards”³¹ (emphasis added).

Australia also committed to the Glasgow Leaders’ Declaration on Forests and Land Use which has a goal of

“working collectively to **halt and reverse forest loss and land degradation by 2030** while delivering sustainable development and promoting an inclusive rural transformation.”³² (emphasis added).

The role of managing forests and woodlands to abate and sequester land carbon is critical to reducing the state’s emissions. Yet none of the terms ‘carbon’, ‘climate’, ‘emissions’ and ‘greenhouse’ appear in the LLS Act. Such omission exemplifies why Part 5A of the LLS Act is not fit for purpose to support rapid decarbonisation.

The repeal of the *Native Vegetation Act 2003* (NSW) (s3), with its Object to ‘prevent broadscale clearing unless it improves or maintains environmental outcomes’, removed a relatively strong regulatory framework consistent with supporting ambitious action to manage land as a carbon sink.

WWF recommends a new standalone native vegetation law be established to rapidly decarbonise the land sector consistent with the Paris Agreement, Glasgow Climate Pact and Glasgow Leader’s Declaration on Forests and Land Use.

7. Regulatory framework not fit for purpose to support moves to deforestation-free supply chains

Major value chains and export markets are increasingly requiring supply chains to demonstrate soft commodities are free of forest risk. This is occurring independently of regulatory frameworks in agricultural producing and exporting countries such as Australia in response to global pressure from consumers and civil society groups, transformation of commodity and finance markets, and the worsening nature and climate crises. For example:

³⁰ United Nations, 2015, Paris Agreement, see Article 2.1.(a), available for viewing at https://unfccc.int/sites/default/files/english_paris_agreement.pdf

³¹ United Nations Framework Convention on Climate Change, FCCC/PA/CMA/2021/10/Add.1, *Glasgow Climate Pact*, available for viewing at https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf

³² UN Climate Change Conference UK 2021, 2 November 2021, *Glasgow Leaders’ Declaration on Forests and Land Use*, available for viewing at <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>

- Major retailers such as McDonalds^{33,34} and Woolworths^{35,36} have timebound commitments in the marketplace to remove deforestation from supply chains including beef;
- Various voluntary international processes exist to support corporations and governments end deforestation, forest degradation and conversion, such as the Glasgow Leaders' Declaration on Forests and Land Use,³⁷ New York Declaration on Forests,³⁸ Consumer Goods Forum,³⁹ Global Roundtable for Sustainable Beef,⁴⁰ Science Based Targets⁴¹ and Taskforce for Nature-related Financial Disclosure;⁴² and,
- the EU Deforestation Regulation establishes a due diligence framework for European importers to remove and reduce deforestation – both illegal and legal – used to produce soft commodities in exporting nations including Australia.^{43,44}

Part 5A of the LLS Act, the Code and Native Vegetation Regulatory Map do not well serve the interests of farmers and graziers, food manufacturers and retailers increasingly needing to demonstrate deforestation-free status through traceability mechanisms. The failure of the current

³³ McDonalds Corporation, 14 February 2017, *McDonald's Corporation Commitment on Forests*, available for download in "Commitment on Forests", note document commitment "... to eliminating deforestation from our global supply chains." Available for viewing at <https://corporate.mcdonalds.com/corpmcd/our-purpose-and-impact/our-planet/nature-forests-water.html#:~:text=McDonald's%20is%20a%20signatory%20to,part%20of%20the%20Cerrado%20Protocol>.

³⁴ Sabanal, Z, 27 October 2022, *McDonald's goes on-farm to bolster sustainability in beef supplier network*, Supply Chain Channel, available for viewing at <https://supplychainchannel.co/mcdonalds-goes-on-farm-to-bolster-sustainability-in-beef-supplier-network/>

³⁵ Woolworths Group, undated, *Innovating for a healthy Australia*, see objective to "Achieve net zero supply chain deforestation for our 'high-impact' commodities in our Own Brand products, such as palm oil, timber, pulp and paper, and packaging." Available for viewing at <http://crs.woolworthsgroup.com.au/page/planet>

³⁶ Global Roundtable for Sustainable Beef, 6 September 2022, *Woolworths Group joins leading sustainability body in the beef industry*, noting that Fiona Walmsley, General Manager, Climate and Environment at Woolworths Group stating Woolworths' "...ambition to lead the future of protein and achieve net-zero deforestation in our beef supply chains." Available for viewing at <https://grsbeef.org/2022/09/woolworths-group-joins-leading-sustainability-body-in-the-beef-industry/>

³⁷ UN Climate Change Conference UK 2021, 2 November 2021, *Glasgow Leaders' Declaration on Forests and Land Use*, available for viewing at <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>

³⁸ *New York Declaration on Forests*, available for viewing at <https://forestdeclaration.org/about/new-york-declaration-on-forests/>

³⁹ *Consumer Goods Forum*, see 'Forest Positive Coalition of Action', available at <https://www.theconsumergoodsforum.com/press-releases/the-consumer-goods-forum-advances-on-commitment-from-businesses-to-publicly-report-against-new-deforestation-performance-metrics/>

⁴⁰ *Global Roundtable for Sustainable Beef*, available at <https://grsbeef.org/>

⁴¹ *Science Based Targets*, see 'Forest, Land and Agriculture', available for viewing at <https://sciencebasedtargets.org/sectors/forest-land-and-agriculture>

⁴² *Taskforce on Nature-related Financial Disclosures*, available for viewing at <https://tnfd.global/>

⁴³ European Parliament, 13 September 2022, *Amendments adopted by the European Parliament on 13 September 2022 on the proposal for a regulation of the European Parliament and of the Council on making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010*, Strasbourg, Germany, available for viewing at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0311_EN.html

⁴⁴ European Parliament, 15 December 2022, *Minimising the risk of deforestation and forest degradation associated with products placed on the EU market - In "A European Green Deal"*, Strasbourg, Germany, available for viewing at <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-deforestation-and-forest-degradation-linked-to-products-placed-on-the-eu-market>

native vegetation regulatory regime to end deforestation, forest degradation and conversion of primary forest/woodland and mature regrowth means supply chains – including NSW farmers and graziers – must incur additional costs to validate d-free market claims.

Ends