

The Australian Conservation Foundation (ACF) Northern Beaches Community is part of a network of independently organised, volunteer-run groups within the ACF.

Changes made to the LLS Act in Part 5 “to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistent with principles of ecologically sustainable development’ have failed to prevent large scale land-clearing with less evidence-based (more self-assessment) and poorly detailed information on the public register.

Policy objectives should be more ambitious to reflect the current environmental context in NSW

- The 2021 NSW State of the Environment report confirms that the number of species at risk of extinction and permanent clearing of native woody vegetation continue to rise.
- Severe drought, catastrophic fires and unprecedented floods are impacting the NSW landscape in a way previously not seen.

A review in March 2020 by the Natural Resources Commission found that: “clearing rates have increased almost 13-fold – from an annual average rate of 2,703ha a year under the old laws to 37,745ha under the new laws; biodiversity in 9 out of 11 regions is now at risk; compliance frameworks are inadequate and high rates of clearing pose a major risk”.

The NSW Koala Strategy aims to double koala numbers in NSW by 2050, yet Part 5 of the LLS Act facilitates the clearing of koala habitat with minimal safeguards for ‘core koala habitat’. A more appropriate policy objective for the LLS Act would be to reduce land clearing and commit to improved biodiversity outcomes in line with federal intentions to incorporate Regional Forest agreements within the EPBC Act in 2023 and global objectives to halt and reverse forest loss and land degradation by 2030.

A recent NSW Upper House report on 2016 land clearing reforms found that “frameworks regulating clearing on private land play a vital role in koala habitat protection and therefore in preventing the extinction of the koala in NSW.... (they) must be strengthened .... without effective intervention, koalas could go extinct in NSW by 2050”. It concerns us that the Discussion Paper states an aim “to provide greater flexibility and decision-making autonomy... (allowing) landholders to carry out routine, agricultural land management activities that are a low risk of impacting biodiversity, without needing to notify or obtain approval from Local Land Services.

Since the repeal of the *Native Vegetation Act* in 2017, the clearing of koala habitat has almost tripled (Report by WWF and Nature Conservation Council, “Bulldozing of bushland nearly triples around Moree and Collarenebri”, 2018). This has been a result of the new land clearing laws providing farmers with greater flexibility to clear land under self-assessable codes

The previous *Native Vegetation Act* provided greater protection to native flora and fauna, and resulted in a greater number of convictions for illegal land clearing. For example, the landholders of Beefwood farm were fined \$157,500 in the Land and Environment Court for illegal land clearing between 2011 and 2012 (Landholder and his company fined \$157,500 for

illegal clearing - NSW Environment and Heritage). In 2019 the NSW government granted amnesty to farmers who were previously fined for illegal land clearing in the NSW Land and Environment Court. This was on the basis that legal reforms introduced in 2017 were more lenient for clearing farm land and would apply retrospectively.

After the legal reforms in 2017, farmers have been found to be clearing even larger amounts of new land and expanding their business operations (Stripped bare: The Guardian 2019). The new land clearing codes provide farmers with very broad discretion to clear large amounts of land without the need for approval. Furthermore, the incomplete vegetation maps make it unclear which areas are protected from clearing. This illustrates how the relaxed new laws are encouraging farmers to expand their operations and increase land clearing of previously protected areas

The Audit Office agrees that 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”. It appears that ignorance could currently provide an excuse that there was no knowledge that clearing was likely to harm a species, an area in urgent need of strengthening.

The Natural Resources Commission agrees that the roles and responsibilities for monitoring and enforcing the Native Vegetation Regulatory (NVR) Code should be reviewed. The NVR Code is an inappropriate regulatory tool for managing impacts on biodiversity. It permits broadscale clearing without any robust environmental assessment or approval requirements. Threatened ecological communities may be able to be cleared under the Code.

We have a fundamental opposition to off-setting but this code does not even specify that the vegetation to be set aside should be of ecological equivalence or what condition the vegetation should be in. There is currently no cap on clearing since the 3 year period has expired needing immediate action.

The Discussion Paper states: “where seeking to clear in areas where map categories have not been published, a landholder can currently self-assess the categorisation of their land (without having to notify Local Land Services about their self-assessment). It is unacceptable that the NVR Map still has not been finalised. LSL is required to maintain and publish on its website a Public Register of notifications and certificates of clearing under the Code and the Department of Planning and Environment reports annually on vegetation loss on rural land regulated under LSL Act. However, we are unable to find the extent or condition of native vegetation on private land that incorporates vegetation loss and regeneration. Additional biodiversity-related values such as soil quality, salinity, and water quality need to be included. Furthermore, there appear to be inadequate penalties for illegal clearing or breaches of off-setting obligations, undermining the public’s and ACF’s confidence in compliance and enforcement of clearance.

A key reason for the dramatic rise in land clearing is the introduction of self-assessable codes that allow broadscale clearing to occur. The assessable code allows clearing of habitat for threatened species, including the koala. The NSW Office of Environment and Heritage had previously noted that the new clearing code would result in “removing key habitat for threatened species, including koala habitat (less than 1% of identified koala habitat in NSW is protected from clearing under the Code)” and “increasing vulnerability of threatened ecological communities” A solution would be to have koala habitat listed as a sensitive area that is exempt from code based clearing.

The self assessable clearing code must not allow clearing in any environmentally sensitive areas.

The Code should exclude

- all endangered ecological communities, not just critically endangered ones
- the entire coastal zone (not just coastal wetlands and littoral rainforests areas)
- all small holdings and travelling stock reserves for landscape connectivity
- koala habitat not yet mapped in the Koala Plan of Management.

We also recommend strict limits to the amount of clearing that can be carried out under the Invasive Native Species (INS) Code to a minimum extent necessary for avoiding degradation of threatened communities and never for change of land use (e.g. from grazing to cropping). We call on the NSW Government to adopt all of the recommendations made by the Natural Resources Commission in its 2019 Report on Land Management and amend the LLS Act 2013 to reinstate legal thresholds for environmental outcomes and protection of native vegetation with high conservation value and implement a strict regulatory framework for non-compliance.