

[REDACTED]

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Sent: Sunday, 22 January 2023 2:09 PM
To: LLS Policy Mailbox
Subject: Submission: The future of land-clearing in NSW

Submission by Beryn Jewson of [REDACTED] NSW

The 2017 NSW legal framework for regulating land clearing **does not** slow down, arrest or reverse the long-term decline of biodiversity. **It does not** help to maintain a healthy and resilient environment consistent with the principles of ecologically sustainable development.

The NSW Audit Office, the Natural Resources Commission and the official vegetation clearing figures published by the NSW Government all confirm a regulatory failure to achieve environmental outcomes and effectively administer the law. While the law has certainly reduced regulatory requirements on landholders, the balance has tipped significantly against ecologically sustainable development, with the laws resulting in a return to broadscale land clearing in NSW.

The Native Vegetation Code is an inappropriate regulatory tool for managing impacts on biodiversity in rural areas. It permits broadscale clearing without any robust environmental assessment or approval requirements (although notification or certification may be required). There is limited ability for Local Land Services (LLS) to refuse certification and prevent unacceptable and cumulative impacts on threatened species.

The scope of category 2 sensitive land is too narrow. Code-based clearing cannot be undertaken on category 2 sensitive land. While this provides some protection for environmentally sensitive areas, the scope of category 2 sensitive land is limited. For example, currently only 'core koala habitat' is categorised as category 2 sensitive land. In practice, 'core koala habitat' is limited in scope; any other koala habitat outside of this definition may be able to be cleared under the Native Vegetation Code.

Only critically endangered ecological communities are off-limits to code-based clearing. Other categories of threatened ecological communities (e.g. vulnerable and endangered) may be able to be cleared under the Native Vegetation Code. I, as an Australian who cares about our flora and fauna, cannot accept this.

Maximum clearing caps have expired. The Native Vegetation Code includes maximum limits on the amount of clearing that can be undertaken under Part 5 – Equity Code in the initial three-year period immediately following publication of the Code. This was included as a safeguard to prevent excessive clearing. However, the cap on maximum clearing was not revised once the initial three-year period expired, meaning there is currently no cap on clearing under the equity code. How can this be anything but unacceptable?

The Natural Resources Commission has recommended that the roles and responsibilities for monitoring and enforcing the Code needs to be reviewed, that monitoring of compliance with certifications and notifications to clear under the Code need to be strengthened, and that greater transparency is needed.

The Audit Office reported that clearing of vegetation on rural land is not effectively regulated and managed because the processes in place to support the regulatory framework are weak and there is no evidence-based assurance that clearing of native vegetation is being carried out in accordance with approvals.

Land clearing data shows that since Part 5A of the LLS Act commenced a significant increase in rates of native vegetation clearing for agriculture. This significant increase in land clearing rates triggered the government's own internal review process in October 2018, yet policy settings remain largely unchanged.

The replacement of the NV Act with Part 5A of the LLS Act removed the objective of preventing broadscale land-clearing and the requirement to ensure clearing 'improves or maintains environmental outcomes' – either at the site scale or at the landscape scale. The replacement land management framework established by Part 5A of the LLS Act introduces a system that is less stringent (allowing increased clearing), less evidence-based (with more reliance on self-assessment) and less accountable (with less detailed information available on public registers).

The 2021 NSW State of the Environment Report has confirmed that the number of species considered at risk of extinction continues to rise and permanent 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.

Current policy objectives do not align with other NSW government policies. For example, the NSW Koala Strategy aims to double koala numbers in NSW by 2050,²⁶ yet Part 5A continues to facilitate the clearing of koala habitat (despite some safeguards for 'core koala habitat').

Current policy objectives of the LLS Act are also not ambitious enough to align with broader, global objectives to reduce halt and reverse forest loss and land degradation by 2030 (Glasgow Leaders' Declaration on Forests and Land Use) or reverse biodiversity loss by 2030 (Leaders Pledge for Nature).

The Audit Office 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.

A review of the Framework, conducted in early 2019 by the Natural Resources Commission (NRC Report), but not publicly released until late March 2020, found that:

Unexplained clearing has increased, with the NRC concluding "compliance frameworks are inadequate and high rates of clearing pose a major risk".

A NSW Parliamentary Upper House inquiry into koala populations and habitat in NSW inquired into, amongst other things, the impacts on koalas and koala habitat from the 2016 land management reforms. The Committee's report found that it is clear 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 and must be strengthened. The Committee found that without effective intervention, koalas could become extinct in NSW by 2050.

The NSW Audit Office, the Natural Resources Commission and the official vegetation clearing figures published by the NSW Government all confirm a regulatory failure to achieve environmental outcomes and effectively administer native vegetation law. While the law has certainly reduced regulatory requirements on landholders, the balance has tipped significantly against ecologically sustainable development, with the laws resulting in a return to broadscale land clearing in NSW.