

About NSW Farmers

The NSW Farmers' Association (NSWFA) is Australia's largest state farming organisation (SFO) representing the interests of its farmer members. Our purpose is to build a profitable and sustainable New South Wales farming sector through promoting productivity, risk management and business continuity in individual farm enterprises.

Agriculture is a significant contributor to the NSW economy. Despite facing prolonged drought, bushfires and COVID-19 over late 2019 and early 2020, the industry reached an estimated \$12.2 billion in output over the year. Agricultural exports also accounted for 10 percent of the state's total exports during this time.

NSW is the most productive state, adding around a fifth on average to national agricultural output. The state industry has set the goal of reaching \$30 billion in output by 2030, which would make NSW a key contributor to the national target of \$100 billion by 2030.

Our state's diverse geography and climatic conditions mean a wide variety of crops and livestock can be cultivated here. Unlike most other SFOs, we represent the interests of farmers from a broad range of commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and chickens and private native forestry.

Our advocacy extends to the environment, biosecurity, water, economics, trade and rural and regional affairs. We also have an eye on the future; we are advocates for innovation in agriculture, striving to give our members access to the latest and best innovation in research, development and extension. Our industrial relations section provides highly specialised advice on labour and workplace matters.

Our grassroots structure means members are the final arbiters of the policy we advocate on. Our regional network connects members to Macquarie Street, while Annual Conference and elected forums such as Executive Council enable members to lobby for the issues that matter to them and their community. Our issue- and commodity-specific Advisory Committees are elected by members to provide specialist, practical advice to decision makers on issues affecting the sector. We are proudly apolitical – we put our members' needs first.

In addition, NSW Farmers has partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are a proud founding member of the National Farmers' Federation.

Our organisation was invited to participate with the Department of Primary Industries and the then Minister for Primary Industries in 2016 in the formation of the amendments to the Local Land Services Act that are the basis for this review. The context of those changes was important as rural NSW had been subjected to a dysfunctional regulatory agenda for over 20 years, holding back investment in agriculture, the use of technological advances and leaving some regional areas without avenues to utilize their private land. All this without any compensation for their loss.

Overview of the reform objectives and performance.

The reforms to the LLS Act were to enable improved use of land for agriculture, and in recognition of the removal of the unworkable 'improve or maintain' site scale requirement, that landowners would have a role in assisting in building regional biodiversity. To achieve landowner contribution, the benefits and incentives of new land management options is a key component, and the creation of the Biodiversity Conservation Act (BCA) was to be the tool to enable and protect the gains in regional environmental contributions.

A review of these objectives should recognise the importance of continuing to focus on building a critical mass of participation from landowners through use of the Land Management Code (LMC). While other parts of the five year review address the relevance and performance of the BCA, the intersection of agencies in delivering the reforms should be considered along with their individual performance. There are areas of opportunity for agencies to refocus on the goals of the reforms and the mode in which they were directed to achieve them.

LLS has the key role in rebuilding landowner faith in Government regulation of native vegetation through the advice and approval processes delegated to the agency. This role includes the provision of timely advice, approval processes and evaluation and analysis of the LMC performance to provide advice to Government on improvement and development of the reforms. The LLS service offering has severely eroded, leading to approval times quoted as up to 3 years, and six month waiting times for appointments to discuss a landowners' options for use of Codes. Land Management staff are greatly reduced, and this is leading to a lack of engagement. It is not the product, but the availability of the process, and the return of funding to rebuild the advice and approvals team, and the scientific analysis capability of LLS, is a critical requirement to engage and incentivise more landowners in code use and leading subsequent environmental gains.

The LLS Act additions and the formation of the BCA were to be an 'integrated set of reforms', where the funding directed to the BCA for conservation and threatened species is to be available to landowners to build regional environmental assets and preserve species. The review could focus on improving the interaction of the agencies in delivering a service to landowners that better communicates the benefits of the new land management options, and harnessing the local knowledge of landowners in creating conservation and improvement of native vegetation.

To achieve these aims as stated above, NSW Farmers would like the following suggestions considered as being a constructive way forward to build engagement in the reforms. These improvements would continue to embed the ideals of productivity and environmental gains as mutually compatible, and not competing interests. These suggestions are to reinforce the goals of the reforms, bearing in mind that both the changing relationship to landowner engagement with the environment agencies, and the management and adaptation needed for environmental improvement should be measured over a 20 to 30 year period, and not be quantified in this 5 year timeframe.

Suggested improvements in reform implementation and function

The Native Vegetation Map

Current status

- The stated goals for a change from the transitional arrangements to implementation of the regulated and unregulated layers are 'sufficient accuracy and landowner trust'. This has not been achieved.
- There is no evidence to display a need for the map layers to prevent misinterpretation of land status.
- LLS are using the mapping layers as advisory to their and the landowners' knowledge to assist in accuracy of decisions.
- It is not acceptable to give regulatory force to an instrument that is known to be inaccurate, and the onus for challenge to be on the landowner.

The solution

- The regulated and unregulated land layers require on the ground assessment for accuracy of species and viability and site definition. The Environment and Heritage Group (EHG) do not have the ability or relationship to work with landowners on site, so this ability to accurately define vegetation or resolve past treatments is lost.
- Moving the mapping function to LLS would enable on the ground assessment, using the layers as advisory, and being constantly updated in accuracy to assist landowners in future decisions.

Biodiversity Conservation Trust (BCT)

Current status

- The BCT is working independently of LLS application of the LMC; this was not the original intent.
- This division of responsibilities requires landowners to make separate contact with the different agencies when they are making land management decisions.
- The BCT offerings of conservation agreements do not meet expectations of most landowners.
- The goal of the reforms was to engage landowners with productivity gains while delivering environmental benefits through appropriate set aside location and management. This is undermined by LLS and BCT working to different goals with different staff.
- EHG looking at cumulative outcomes of clearing: but not the cumulative outcomes of conservation, including other natural capital and carbon sequestration agreements.

The solution

- The current offerings of the BCT are transaction oriented, and do not look to maximise regional opportunities. Of particular concern is the evolution of the BCT reporting to EHG and not as originally intended in being a separate body. This is further exacerbating the lack of co-ordination between the LLS land management team, and BCT staff in achieving conservation agreements when landowners are undertaking land management activities.
- The offerings of the BCT in conservation options are also intended to be identified when Code use is being approved, as this is the stage where landowners and skilled staff can best balance the gains from LMC use and the contribution to local or regional environmental plans. This is not occurring, as the BCT do not integrate with the LLS team, and opportunity is lost.
- Of considerable concern is the EHG consideration of cumulative impact of vegetation loss in an area, and the lack of a constructive direction of staff in the BCT to address this. This focus on site scale loss, also does not seek to balance the carbon sequestration and other remnant vegetation and natural capital schemes that result in a loss of productive land to conservation schemes.
- NSW Farmers supports a simpler and more effective method of increasing engagement with landowners: A 'one shopfront' approach by the NSW Government on land management and biodiversity conservation matters, and with the established landowner relationships LLS has with farmers, that agency would be well placed to fulfill this role.

Land Management Codes

Current status

- The application of the Code is reliant on the premise it will deliver a productivity gain to the landowner, and that, with advice from LLS, that is achieved with the best available outcome for site scale environmental outcomes.
- The implementation to meet those goals was to be reduction of unnecessary government approvals and a focus on outcomes. This is because the previous attempts at regulation have been proven to not work.
- Currently the engagement level with landowners is below expectations as staffing in LLS cannot provide timely advise and approvals.
- Until that is resolved, the environmental and productivity benefits and further development in those areas cannot be achieved.
- The underuse of the equity code in underdeveloped regions indicates the shortcoming in set aside options when looking at larger scale.

The solution

- It is critical that engagement is renewed with landowners and LLS and that staffing levels are raised, and aligned with the aim of creating a service that incentivises landowners to engage in the productivity gains and environmental programs. As noted previously the critical mass of involvement will lead to environmental contributions.
- The evaluation of code use is difficult with the reduced engagement. Gains are achieved in productivity when codes are used, and the concerns that equity code use would lead to widespread clearing were unfounded and proven so.

- The monitoring and evaluation of set aside results in partnership with landowners should be a priority to further examine and develop active and adaptive management and maximise trends to environmental improvements.

Allowable Activities

Current status

- While it is mentioned in unallocated clearing reports, removal of vegetation on farm that is permitted under this area is low value and low risk to environmental loss.
- As the aim is to permit normal operations, it is not used to develop areas for productivity, but to allow for efficiency.
- Flexibility in allowable activities to minimum standard necessary is functional and necessary in management of vegetation in rural settings

Changes

- NSW Farmers suggests that consideration in the review is given to the inclusion of clearing of Invasive native species and regrowth as being included in the Allowable Activities. These areas of management fit the efficiency criteria and enhance rather than devalue local environmental values.

Division 6

The current problems

- The BAM settings preclude agricultural development
- The cost of credit retirement to the BCT is excessive; upfront payment to BCT for on farm retirement of credits is prohibitive in cost, and set aside ratios, and rules for peer to peer retirement of credits are too restrictive to allow retirement of credit obligations.
- Consequently there has been one approval in 5yrs. An abject failure of Government policy that was predicted with (the then) OEH created the scheme governing Div 6.
- A dysfunction Division 6 unbalances the reforms in the delineation intended of a movement in risk from area based assessment of clearing options to ecological based; placing additional focus on the Equity code.

The Solution

- Undertake strategic land use mapping (EHG) in areas where Division 6 is needed for agricultural development where the equity code does not meet business needs.
- Review social opportunities in those areas to contribute to the knowledge of the Panel to assess discounting options for credit retirement and social funding benefits
- Empower the Native Vegetation Panel to create a sliding scale of funding obligations that create a balance of realistic productivity development opportunity on under-developed land, and an ability to direct landowner payment to regional environmental and social benefits.

The Threatened Species Scientific Committee (TSSC)

The current problem

- The TSSC, constituted and guided by the Biodiversity Conservation Act, are undermining the Land Management Code use, and consequently the goal of achieving productivity and environmental gains through code use.
- Decisions are subjectively made in reference to selective reports and do not define geographical delineations of the species location, or include guidance on viability thresholds.
- The broad ill-defined determinations create doubt in agencies, and landowners on what is current legal treatment of vegetation undermining confidence in Government.
- Without an obligation to refer to the Minister the declarations override and damage the current legislative settings and the goals of the reforms.

The solution

- The TSSC must have obligations in its determinations to accurately define the area of the declaration, and the constitution of a community to defining viability thresholds.
- As with all regulatory changes of significance, the TSSC should be required to consult with affected area landowners to determine the economic and social outcomes of declarations.
- A report of these findings should be submitted to the Minister for the Environment for an approval to make a determination whether the decision of the TSSC should stand, or be amended.
- The Minister for the Environment should also require concurrence from the Minister for Agriculture where the decision does or could directly impact on production by a landowner.

The Non Rural Veg SEPP

Current status

- This is punitive to agricultural operations when it applies due to Local Government decisions.
- It becomes cost prohibitive to develop or maintain operations.
- The cumulative effect requirement is being used to create an area assessment, including where codes are being authorised, that is not intended as a determinative factor in land use decisions.

The solution

- When a landowner is restricted in options of the use of the LMC by local zoning, the Native Vegetation Panel is to discount the credit retirement commensurate with the agricultural type and impact of the activity, as compared to a normal activity of that type.
- The SEPP should not apply where there is established agriculture.

Land Management Development

Current status

- EHG has not undertaken the strategic land use mapping or bio-certification projects outlined in the 2nd read speech of the then Minister for Primary Industries.
- The large area code was promised by Government however LLS did not pursue this.

Changes

- Along with the suggestions for Division 6, NSW Farmers suggests that the investigations are carried out as undertaken by the Government, as they will create information and possible

solutions to areas that are under-developed. These were suggested as the LMC is a lower impact solution to site scale development, and where a region is suitable, strategic land use mapping and bio-certification may be significant opportunities for gains in productivity, environmental conservation and social investment.

Compliance

Current status

- While this is not an item under the LLS Act it is directly relevant to the aims of the reforms in bringing together agriculture and the environmental areas in constructive ways.
- Natural Resource compliance is complex for landowners, combined with needing to consider responsibilities for four separate agencies (LLS, EHG, BCT, DPE) and also local government and Commonwealth EPBC Act.
- EHG only undertakes compliance in the BCA in an enforcement capacity only and does not exercise any educational or assistance role.
- Compliance by OEH/ EHG has over the years been delivered in an inconsistent manner, often delayed and inconsistent, and has resulted in increased distrust of the agencies' goals and desired outcomes.

Changes

- The LMC is constructed to move in a hierarchy of risk, and relies on knowledge of the Codes to allow for their most constructive use. There is a recognised benefit in self-regulation in natural resource management and to achieve this constructively informed education is a key requirement.
- NSW Farmers suggests that LLS are resourced to undertake:
 - Monitoring and evaluation of set aside compliance and the outcomes of adaptive management
 - Education on varying management of offsets
 - Educational obligation for LMC use
- In addition, to build a meaningful relationship leading to improved productivity and environmental outcomes, that EHG is removed from the compliance under the BCA and an implement a dedicated separate agency is responsible for LMC use and unallocated clearing.