

Submission on Native Veg.

**Information from Environmental Defenders Office**

**Have your say on the statutory review of NSW native vegetation clearing rules (Part 5A of the Local Land Services Act 2013)**

*It is 5 years since new laws for biodiversity conservation and native vegetation clearing were introduced in NSW. It is time to ask – are those laws working to protect biodiversity and appropriately regulate land clearing?*

*In the last 5 years we have seen a significant increase in rural land clearing since the rules were relaxed; species added to our threatened lists; impacts of drought, bushfire, floods; changes to climate policy; serious concerns raised around relaxed biodiversity offsetting rules; and ongoing koala policy debates. The NSW Audit Office, Natural Resources Commission and a parliamentary inquiry have all already raised serious concerns about the regulation of habitat clearing and the regulatory framework in NSW. This submission guide identifies how you can be involved in the review process and explains key issues with the land clearing laws that you can highlight in your submission.*

**Land Management (Native Vegetation) Code (Native Vegetation Code)**

**- 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 LLS to refuse certification and prevent unacceptable and cumulative impacts on threatened species.

The most recent figures (31 October 2022) indicate that total hectares approved for clearing under the Codes is more than 780,000 ha, 5 (but not all approved clearing has been carried out).

Purported environmental safeguards in the Native Vegetation Code are inadequate, meaning that the Native Vegetation Code does not adequately manage the environmental risk associated with substantial amounts of clearing undertaken with limited environmental assessment and oversight. –

The scope of category 2 sensitive land is too narrow: Code-based clearing cannot be undertaken on category 2 sensitive land.<sup>6</sup> 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. <sup>7</sup> Other categories of threatened ecological communities (e.g. vulnerable and endangered) may be able to be cleared under the Native Vegetation Code.

Set asides are arbitrary and have little ecological basis. The use of an arbitrary set ratio for determining set asides requirements under the Native Vegetation Code is not ecologically sound. The Native Vegetation Code does not specify that the vegetation to be set aside should be the same condition (or of ecological equivalence) and what condition the vegetation should be in.<sup>8</sup>

Protections for threatened species are not stringent enough: The Native Vegetation Code states that clearing is not authorised under the Code if the person who carries out the clearing harms an animal that is a threatened species, and that person knew that the clearing was likely to harm the animal.<sup>9</sup> Framed in this way, ignorance can provide an excuse; a person could claim they did not know clearing was likely to harm the animal. This safeguard could be strengthened by requiring that a landholder 'ought reasonably to know' that the clearing would harm a threatened animal species, such as the koala.

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.<sup>10</sup> 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.

## Summary

- Many threatened species and vulnerable ecosystems are at extreme risk due to the inadequate protections for native vegetation and threatened species habitats in NSW.
- The Discussion Paper released as part of the review of land clearing laws lacks any serious consideration of the disastrous impacts of vegetation loss on biodiversity.
- This omission is totally unacceptable given the extinction crisis facing NSW and the world, as evidenced by the recent international agreement to restore and protect a minimum of 30% of each nation by 2030.
- The introduction in 2016 of new, far weaker vegetation clearing laws by the NSW Government saw land clearance increase 13-fold, from an annual average rate of 2,703 ha per year under the old laws to an astonishing 37,754 ha under the new laws.
- The current law's self-assessable codes and biodiversity offsets have enabled this massive increase in large-scale clearing of vital habitats.
- The Natural Resources Commission has questioned the integrity of the regulatory system, noting that "compliance frameworks are inadequate." This echoes the shockingly negative assessment of the integrity of the biodiversity offset scheme by the NSW Auditor General.
- The current policy objectives don't offer adequate protection for native wildlife, including koalas. Part 5A facilitates the clearing of most koala habitat, contrary

to the NSW Koala Strategy which seeks to double koala numbers in NSW by 2050.

- A NSW Parliamentary Upper House inquiry (established in 2019) found the old land clearing rules played a vital role in koala habitat protection and that without effective intervention, NSW's most loved iconic species will become extinct in 2050.
- Land clearing laws require urgent reform to ensure: greater transparency over land clearing data; clear limits on clearing; mandatory assessments for clearing proposals; adequate mapping; monitoring of impacts on salinity, soil and water; and tougher penalties for compliance; and funding for adequate enforcement.
- Land clearing laws must be amended to protect native vegetation, native fauna, flora, ecosystems, water security, healthy soil, and natural landscapes.