

## **Submission re review of Part 5 of the Local Land Services (LLS) Act**

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### **LLS Discussion questions**

*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?*

*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?*

*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?*

The aim of the LLS Act was to make legislation easier to understand for landholders. Making the legislation easier to understand should not equate to making widespread clearing easier, which is the outcome under the auspices of the Act.

The Native Vegetation Regulatory Map was put together in haste and is still an incomplete, transitional map, with the scope for some of the categories being very limited and consequently not providing the necessary protection. Additionally, the map never sought to maintain habitat corridors across the landscape, just core habitat, which is well and good (if this is actually happening). But maintaining biodiversity relies on the ability of plants and animals to move across the landscape as necessary.

Habitat corridors need to be included in the map across the whole landscape.

It is fairly preposterous to expect landholders to self-assess using this map. The fact that the map is transitional and incomplete leaves it open to misguided decision-making and abuse.

To make correct decisions using a map requires a landholder to have a very good background in, and understanding of, the ecology of their land. How many landholders are going to have time to make sound, evidence-based decisions – as opposed to just determining where they want to clear and where a bit of land they don't want to clear might act as a set aside.

Under any circumstances, how many of these self-assessment decisions are then followed up/audited to see whether they do in fact fall within the correct category as shown on the map?

No broadacre clearing should be allowed purely through self-assessment.

*5. Do each of the approval pathways for native vegetation clearing provide landholders with adequate options while managing environmental risks?*

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

Given the increase in land clearing rates and the failure of the Native Vegetation Panel to operate as intended, it would appear that approval pathways for allowable activities provisions and the Code provide landholders with more than adequate options.

However, they certainly do not “help” manage environmental risks given the provisions are less rigorous in terms of environmental assessment requirements. And also, given that land clearing data show that since Part 5A of the LLS Act commenced there has been a significant increase in rates of native vegetation clearing for agriculture, it would therefore seem that activities that are deemed “allowable” are all too well understood and probably also often misused.

(Data show that land clearing rates for woody vegetation across NSW have increased from 8,500 ha in 2011 to 27,100 ha in 2017, 29,400 in 2018, 23,400 in 2019, and 13,000 in 2020. Additionally, in 2020, 46,100ha of non-woody vegetation was cleared for agriculture on rural land.)

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

Consequently – (see land clearing data above) – no other native vegetation clearing activities should be allowable. There is already a wide range of RAMAs available to landholders for clearing, and in fact the margin for allowable clearing along fencelines has just been further increased – (why this should be seen as necessary is at the very least questionable). Thus leaving open the potential for further areas of native vegetation to be removed along what is sometimes the only contiguous remnant.

A survey undertaken by the Central West CMA in the mid-to-late 2000s showed the level of fragmentation across the region was already profound (no doubt this situation would be mirrored across the whole of NSW).

The question really should be how can the number of “allowable” clearing activities be decreased, and how can the LLS Act better protect the landscape that landholders require to provide the environmental services for them to undertake agricultural and other activities.

*8. How effective are the requirements for establishing, managing, monitoring*

*and reporting for set asides?*

Obviously not very effective at all given the high rate of clearing. Furthermore the code does not specify that the vegetation to be set aside should be of the same condition (or of ecological equivalence), nor what condition the vegetation should be in.

Look no further for a response to this question than the NSW Natural Resources Commission, an independent body that was put in place to provide robust, evidence-based advice to help the NSW Government address issues using the latest science, research and best practice.

“The proposed ‘set aside’ areas and areas managed under conservation agreements that were supposed to offset cleared areas – (i.e. the government’s whole justification for relaxing rules and introducing self-assessable codes) – are woefully inadequate being 33,743 ha below the minimum required area.”

*11. How adequate are the penalties for offences for illegal clearing and breaches of set aside obligations?*

The Audit Office found that there are lengthy delays in assessing compliance because identifying breaches requires satellite imagery to be compared against clearing authorisations and exemptions to identify and investigate potentially unlawful clearing.

The Natural Resources Commission advised that, as a priority, the NSW Government should develop processes to report up-to-date data on unexplained clearing every six months and also review the drivers behind high rates of unexplained clearing and implement measures to address any issues.

Relying on satellite imagery should not be the only form of auditing. On-ground auditing needs to take place and should be part of the LLS offices’ remit, considering it is the LLS Act.

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

It is doubtful the general public can have any confidence in the process, when the NSW 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.

Obviously – as stated above – increased and ongoing on-ground auditing and reporting needs to take place.

How can public confidence fail to be anything but eroded when the Natural

Resources Commission have stated that: Clearing rates have increased almost 13-fold – from an annual average rate of 2,703 ha a year under the old laws to 37,745 ha under the new laws;

Biodiversity in 9 out of 11 regions is now at risk; and

Unexplained clearing has increased, this last leading the Commission to conclude: “compliance frameworks are inadequate and high rates of clearing pose a major risk”.

Improved reporting of the rate of clearing and set asides, which also indicates the quality of what was taken and what has been offset, in State, Regional and local State of the Environment Reports, would be a start in making the process less opaque.

*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?*

This LLS Act only targets economic and maybe some social interests (particularly in the agricultural industry). It in no way adheres to Ecologically Sustainable Development outcomes, to which all governments are supposed to comply. It certainly does not protect the environment.

The NSW Senate enquiry recommended that the NSW Government amend the Local Land Services Act 2013 to reinstate legal thresholds so that its application improves or maintains environmental outcomes and protects native vegetation of high conservation value.

It should also be noted that more progressive farmers don't rely on more clearing to increase yield but look to do things smarter. To help achieve this more funding (as opposed to less over the years) into research and development is needed.

*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?*

The questions listed in the discussion paper are very narrow. They do not seek to address the wider issue of how the LLS Act impacts on the overall biodiversity of the State, or ask how it aligns with the objectives of the Biodiversity Conservation (BC) Act. Below are listed some of these objectives from the BC Act, which are in stark contrast to the outcomes being experienced across the landscape through the LLS Act.

The purpose of this Act is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development (described in section 6(2) of the [Protection of the Environment Administration Act 1991](#)), and in particular—

(a) to conserve biodiversity at bioregional and State scales, and

- (b) to maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations, and
- (c) to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation, and
- (d) to support biodiversity conservation in the context of a changing climate, and
- (e) to support collating and sharing data, and monitoring and reporting on the status of biodiversity and the effectiveness of conservation actions, and
- (f) to assess the extinction risk of species and ecological communities, and identify key threatening processes, through an independent and rigorous scientific process, and
- (g) to regulate human interactions with wildlife by applying a risk-based approach, and
- (h) to support conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature, and
- (i) to support and guide prioritised and strategic investment in biodiversity conservation, and
- (j) to encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity, and
- (k) to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity, and
- (l) to establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values...

Furthermore, how does the LLS Act in any way assist the newly signed Declaration on Forests and Land Use, to which Australia is a signatory? This includes a commitment to work collectively to 'halt and reverse forest loss and land degradation by 2030'. Further detail of the type of legislation required in Australia to give effect to this commitment is needed, but consideration of this should constitute a large part of the review, as the current policy objectives of the LLS Act in no way align with this commitment.

It should also be noted that the majority of funding for the LLS organisation is given with the aim of improving the environment, whereas this part of the Act is clearly working against these outcomes. That is, one hand is clearly taking away more than the other can ever hope to protect or reinstate.

It would be good to audit the positive natural resource works undertaken by LLS offices, with the natural resource losses incurred under the auspices of Part 5 of the Act. It would be unlikely to paint a very positive picture.

The LLS Act needs to be completely overhauled to take into account the dire state of the environment of today (as opposed to what was happening in 2013 – which even then wasn't great) and be made to more closely mirror the objectives of the Biodiversity Conservation Act.

The key objective should be the protection of flora and fauna to ensure that no more species are pushed to the edge of extinction and are properly protected, and that the environmental services on which society and the economy rely are maintained.