Comments on Native vegetation provisions in Local Land Services Act for 5-year Statutory Review

1. **The Part 5 provisions are not consistent with the objectives.** The objective of the Part 5 provisions is "to ensure the proper management of natural resources…… in a way that is consistent with the principles of ecologically sustainable development". These principles are (Discussion paper, page 23) to:
    - avoid serious and irreversible damage to the environment;
    - maintain or enhance the environment for future generations;
    - conserve biological diversity and ecological integrity;
    - improve valuation of environmental assets and services.

    Two of the three mechanisms under the Part 5 provisions that allow clearing on Category 2 - Regulated land are inconsistent with the above principles for the following reasons.

    a. **'Allowable activities**' includes 'sustainable grazing'. This could be interpreted as the replacement of native grasslands, woodlands or forests with exotic pasture species. Other allowable activities such as fire breaks, gravel pits and rural infrastructure also can have very significant impacts on the environment through habitat and biodiversity loss, weed invasion, and fragmentation. All *these activities thus violate the first three of the above four principles.*
    b. **Clearing under the Land Management (Native Vegetation) Code** provides five pathways to clearing native vegetation, three of which *('pasture expansion', 'equity' and 'farm plan') are inconsistent with the* first three (in particular the third) of the four *principles of the objective*.

2. The set-aside provision under the Part 5 regulations does not achieve its objective. The requirement for set-asides does not satisfy the principles underlying the objective of the Part 5 provisions. This is because set-asides do not replace native vegetation that is lost to clearing: they simply reduce further clearing in the future. *Under the Part 5 provisions, there is always a net loss of native vegetation and biodiversity* when clearing is allowed, thus *contradicting their objective*.

3. The Part 5 provisions fail to protect the majority of extant native vegetation. Of the 84% of NSW land that is private rural land and therefore included under the Land Management Framework, 30% is Category 1 and therefore able to be cleared without permission and 63% is Category 2 - Regulated and able to be cleared using the mechanisms above. Thus, only 7% of rural land (the Vulnerable Regulated and Sensitive Regulated categories) is protected from native vegetation clearing. Since the other 93% contains large areas of native vegetation, even in Category 1, this means that *the LLS Act Part 5 provisions render vulnerable to clearing most of the extant native vegetation on rural land*.

4. The amount of clearing has doubled since the legislation was introduced. The satellite-based analysis shows that the pre-legislation (2009-2017) average clearing rate on rural land was 38,800 ha per year. This compares to post-legislation figures for 2018, 2019 and 202, respectively of 79,400, 85,300 and 68,300 ha/y, the average of which (77,700 ha/y) is *double the rate prior to introduction of the Part 5 LLS legislation.*

5. The amount of clearing for which permission has been granted under the Part 5 provisions is not consistent with the objectives. The total area for which permission has been given under Part 5A, Sections 60X and 60Y between 2017 and 2022 totals to almost *893,000 hectares*. This is almost equivalent to all the rural land in the largest LGA - the Snowy Monaro - outside the Western Division's arid and semi-arid 'rangelands'. *It cannot be claimed that this outcome meets the objective's principles* of sustainability, inter-generational environmental equity, conserving biodiversity and ecological integrity, and avoiding serious and irreversible damage to the environment.

6. The Native Vegetation Regulatory map required to implement the Part 5 provisions has not been delivered. Five years on from the implementation of the Part 5 amendments to the LLS Act, the native vegetation regulatory map required for implementing the legislation has still not been delivered. The specific failures are:

- The map's most important component for the purposes of implementing the regulations, namely, the Category 2 - Regulated layer, has been withheld from public view for more than 5 years, i.e., until October 2022.
- When it was finally provided in October 2022, it was only for 11 LGAs.
- While in this partially delivered state, the map has no regulatory effect (!).
- During this 'transitional' period, landholders are allowed to 'self-assess' the categorization of their land and hence whether they need to obtain permission to clear. Thus until the map is fully delivered, the landholder can ignore the legislation and clear land 'under the radar' and without consequence.
- The LGAs with the most vulnerable native vegetation with respect to land clearing pressure have not yet been included in the published map. These are the Snowy Monaro LGA which contains two Critically Endangered Ecological Communities - the Natural Temperate Grasslands of the South Eastern Highlands and the Monaro Tableland Snow Gum Woodland; and the LGAs of Bega, Eurobodalla and Shoalhaven which contain significant amounts of native forest and woodland areas on rural land. The 2020 woody satellite-based vegetation loss report shows that most of the clearing has been of non-woody vegetation, i.e., grasslands. Since most of the remaining native grasslands occur in the Snowy-Monaro LGA, the absence of this map has potentially enabled unauthorized clearing of previous native grasslands.

This failure to produce the map in full has, thus, completely undermined the implementation of the Part 5 provisions in the amended legislation and produced outcomes that contradict its objective.

7. Inadequate provision of a public register of the level of notifications, certifications and areas set aside under the Code as required under Part 5. While the LLS Public Register public database for set-asides and certificates has been provided, the information it contains is minimal and poorly presented. *The database is not useful to members of the public* wishing to determine, for example, rates of clearing permissions given by vegetation class (e.g., woody and non-woody), land use type, LGA, and NVR land category). Also the number of permissions sought and refused is not provided.

8. Inadequate reporting on the estimated rates of actual clearing. The satellite-based analyses of actual (as opposed to permitted) clearing rates, and its summary report, are more informative than the notifications public register but still fail on two fronts, viz:

- The analysis fails to distinguish allowable from non-allowable clearing, instead referring to the latter as "unallocated" (i.e., land cleared that was not allowable plus that which did not need to be authorized). Doing so is technically possible. The failure to provide this information raises questions about the government's transparency in reporting on this activity.
- The first report on land clearing based on satellite imagery (the 2019 data) was not released until June 2021, more than 4 years after the legislation was introduced, and the datasets were not released via SEED until August 2022 (2017 data) and October 2022 (2018). The 2019-2022 data have not yet been released.

Thus, *the data on actual land clearing has remained hidden from public view for most of the 5 years since the legislation was applied* and released only weeks before the statutory review of the legislation being addressed here was opened for public comment. This lack of transparency echoes that claimed under point 7.

9. Failure to deliver the tool for grasslands assessment. The tool required for assessing the conservation value of native grasslands - the GGAM - and hence whether they are able to be cleared without permission under the Part 5 provisions has not yet been delivered. The description of the tool was publicly released in mid-2022 but it has not been deployed and no training courses have been delivered. Combined with the lack of a public and enforceable NVR, this has *effectively meant that clearing of native grasslands has been unregulated for the full 5-year period.*

10. Failure to effectively communicate the legislation to the landholder community. Confusion surrounding the legislation is, understandably, highly prevalent within the landholder community. The Factsheets that have been provided to explain the various components of the regulations (the Code, Equity, Part 5 of the Act) are fragmented and poorly communicate the whole framework. This contrasts with the Discussion paper behind this Statutory Review in which it was well explained. A *simplified Factsheet or brochure covering all aspects of the legislation in the one document*, would have been extremely useful to have from the outset. The *failure to provide this*, again, raises questions about transparency.

The above issue is different to that of the problem of *complexity of the legislation itself.* A great deal could be gained by simplifying it, for example, by removing the Category 1 land class and disbanding the 'allowable activities' pathway and replacing it with environmental assessments such as occurs on non-rural land.

The issue of native grasslands and how their categories interact with land class and the Code is a particularly good example of the (unnecessary) complexity of the legislation, and of the highly confusing written material provided for landholders.

11. Failure to implement the recommendations of independent reviews of the legislation's effectiveness in 2019. There appears to be no published record of the actions taken, and their timelines, to the 20 and 14 recommendations in the reviews by the NSW Audit Office and the NRC, respectively.

Overall

The allowances for clearing of native vegetation on 93% of the rural land as a result of provisions of the Act and the Code (Points 1 to 3), the large actual amount of current and future clearing since the legislation was introduced (Points 4 and 5), the more than 5-year delay in releasing the NVR map and hence ability to enact the legislation (Points 6), the failure to publish data on permissions and clearing in a timely and transparent manner (Points 7 and 8) and the poor communication to landholders on the legislation (Point 10) each constitute a failure of the legislation *per se* and/or the government's implementation of it. Combined, they represent a systematic failure to enact the amended legislation. The clearest evidence for this failure is the doubling of the rate of land clearing (77,000 ha/year) - most of it unauthorized - since the legislation was introduced, and the granting of permission for clearing in the future (893,000 ha over the past 5 years).

The government's dereliction in this matter is compounded by its apparent defiance of (by failing to act upon) two independent reviews of the legislation's effectiveness in 2019, its distinct lack of transparency in the regulatory process, its inadequate communication with landholders and its just-on-time provision of the few components that it did manage to deliver . Thus, it seems that, despite the liberal concessions given to landholders through the Part 5 amendments to the LLS Act, the current State government is not committed to enforcing even this watered-down version of the native vegetation legislation.

Australia has already lost 50% of its trees. Its landholders have had at least 150 years to clear their land to create viable production systems that suit the local environment and survive from generation to generation. Continuing along the pathway of enabled land clearing is neither sustainable or just.