

# Briefing Note: Biodiversity Legislation Review

Prepared by WWF – Australia, Nature Conservation Council of NSW, Total Environment Centre, National Parks Association of NSW, The Wilderness Society, Colong Foundation for Wilderness, Humane Society International and the Australian Conservation Foundation.

## 1. REVIEW PROCESS

- In June 2014 the NSW Government commissioned an Independent Panel to conduct a review of the *Native Vegetation Act (2003) (NVA)*, *Threatened Species Conservation Act (1995) (TSC Act)*, *Nature Conservation Trust Act (2001) (NCT Act)* and parts of the *National Parks and Wildlife Act 1974 (NPWS Act)*.<sup>1</sup>
- The Government has **agreed to implement all 43 recommendations** of the Independent Panel and anticipates a draft exposure bill by November 2015. The new law will cover the entire state – urban, coastal and rural areas.
- The Government has committed to “enhance the State’s biodiversity for the benefit of current and future generations”<sup>2</sup>. To meet this commitment the Government must ensure that in implementing the Panel’s 43 recommendations its new laws include mechanisms to improve and enhance biodiversity in NSW and prevent a return to broadscale land clearing.

## 2. THE NEW SCHEME - PROTECTING NATIVE VEGETATION AND BIODIVERSITY IN NSW

### New legislation

- The Government will repeal the *Native Vegetation Act (2003) (NVA)*, *Threatened Species Conservation Act (1995) (TSC Act)*, *Nature Conservation Trust Act (2001) (NCT Act)* and parts of the *National Parks and Wildlife Act 1974 (NPWS Act)*.
- The Government will **introduce a new *Biodiversity Conservation Act* which will cover the entire state – urban, coastal and rural areas.**

### Repeal of the Native Vegetation Act

- The current *Native Vegetation Act 2003* was the direct result of a report from the Wentworth Group of Concerned Scientists (setting out broad principles) and extensive negotiation between farmers and environmentalists about mechanisms and important farm management issues
- Agreement was reached between stakeholders on key issues such as cost burdens, red light areas and regrowth vegetation (where clearing is not subject to consent). In addition a large fund of several hundred millions of dollars from NSW and the Commonwealth was provided to assist farmers in restoration activity.
- The *Native Vegetation Act 2003* has led to over 4 million hectares of native vegetation being protected on farmland or under improved management, with more than 950 property vegetation plans developed. Figures from the NSW Auditor General’s office, analysed by WWF-Australia found that 116,000 native mammals have avoided death due to agricultural clearing each year since the introduction of the NVA<sup>3</sup>.

<sup>1</sup> The Independent Panel released an Issues Paper in August 2014 and undertook stakeholder engagement and community consultation. The Panel delivered its final report and 43 recommendations to Government on 18 December 2014. On 26 March 2015 the Government announced it would implement all of the Panel’s 43 recommendations.

<sup>2</sup> NSW Farming: Investing Locally, Connecting Globally – Memorandum of Understanding. 25 March 2015

<sup>3</sup> WWF-Australia: Native wildlife at risk if NSW Native Vegetation Act is repealed, available at: [http://awsassets.wwf.org.au/downloads/fl017\\_native\\_wildlife\\_at\\_risk\\_9apr15.pdf](http://awsassets.wwf.org.au/downloads/fl017_native_wildlife_at_risk_9apr15.pdf)

## The New Scheme

- Land clearing will now require development consent under Part 4 the *Environmental Planning and Assessment Act* 1979. This will **apply uniformly across the State (including urban and coastal areas) and to all types of development (e.g. agricultural, major projects, urban development)**. This will mean there is an **increased role for local councils** (as consent authorities) for assessing and determining land clearing applications.
- Some agricultural land management activities will be **regulated by the Local Land Services** as either exempt or code based activities under the *Local Land Services Act* 2013. Some code based activities will require notification or certification.
- Consequently, **important areas of vegetation that were protected or off limits to clearing are now under threat with a comprehensive reopening of the system**. This particularly applies to areas along the coast and central west, with a wide range of threatened ecosystems, including small but important patches of vegetation.
- Existing processes for biodiversity assessment, biodiversity offsetting, biodiversity banking and bio-certification will be consolidated into **one single biodiversity assessment methodology** that will apply to all development under the EPA Act. The current offsetting rules predetermine the loss of biodiversity as they do not allow 'red light areas' where development should not occur, nor enforce a 'like for like' offset regime.
- The new law will cover urban and rural areas, but there is also **no clear guidance whether these weaker approaches will overrule current environment protection zonings, tree preservation orders or other such well-developed mechanisms**.
- The new scheme will be underpinned by **new vegetation mapping of the entire state** and classify all land into three different categories: Category 1 – low conservation value grasslands (no approval required); Category 2 – important vegetation (LLS Act or EPA Act applies); and Category 3 – protected areas (cannot be developed)

### 3. KEY ISSUES FOR NEW BIODIVERSITY CONSERVATION LAWS

**The following key issues are critical components of the reform process and essential for stopping a return to broadscale land clearing and continued decline in biodiversity:**

1. Legislate a clear commitment to improving outcomes for nature
2. Create a level playing field for all development
3. Ensure important habitat is off limits to development
4. Strengthen biodiversity offsetting rules
5. Invest in reliable and timely vegetation mapping
6. Close the loopholes that allow under-the-radar clearing
7. Ensure clear requirements for regional planning
8. Invest in private land conservation
9. Ensure there is rigorous monitoring, compliance and enforcement
10. Provide sufficient resources to do the job properly

For further information, see *New Deal for Nature* available at [www.nature.org.au/campaigns/nature-laws/](http://www.nature.org.au/campaigns/nature-laws/)

#### 4. THE NEED FOR STRONG BIODIVERSITY AND CONSERVATION LAWS

- Over the last 200 years NSW has experienced a marked decline in biodiversity with over 100 plant and animal species becoming extinct. Currently over **989 species of plants and animals, 49 populations and 107 ecological communities are threatened with extinction in NSW**. Between 2009 and 2012 an additional 35 species were listed as threatened.
- **Koalas are at risk of extinction in parts of NSW** unless there is a better commitment to maintaining their habitat. They are listed as vulnerable to extinction in NSW and Queensland because their populations have declined by 42 per cent in the past 20 years. The major cause of the koala's decline is land clearing.
- **Strong protections against land clearing also provide an abundance of other economic benefits**, including providing shelter for stock and crops from wind and weather; pest control and pollination; health and recreation benefits; climate moderation; and protection from erosion, waterlogging and salinity.
- **Our existing legislation has played a crucial role in the protection of biodiversity** by improving the knowledge about biodiversity; the independent listing of threatened species; creation of an objective test of environmental impacts and use of the 'maintain and improve' test.
- However the continuing loss of biodiversity demonstrates that much more needs to be done. **The review of biodiversity laws is timely because there is an urgent need to strengthen them.**

#### 5. WHAT CAN YOU DO?

**Speak up for strong biodiversity laws.** The current reform process is an opportunity to demonstrate leadership and take strong action to halt biodiversity decline in NSW – but we must get it right. The Environment Minister needs support to deliver robust and effective biodiversity conservation legislation for NSW.

#### 6. FURTHER INFORMATION

**Visit:** [www.nature.org.au/campaigns/nature-laws/](http://www.nature.org.au/campaigns/nature-laws/)

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