

# Submission Guide

## Biodiversity Legislation - Regulations and Codes

# STAND UP FOR NATURE

The NSW Government has released the further details of its biodiversity conservation legislation which passed Parliament in November 2016. The Regulations and Codes which accompany the *Biodiversity Conservation Act 2016* and *Local Land Services Amendment ACT 2016* are on public consultation until June 21<sup>st</sup>, 2017.

### INTRODUCTION

The Codes and Regulations fill in some of the gaps in the legislation and set the final arrangements for what the legislation will mean for landholders and for nature. The consultation is an opportunity to improve the scheme and get better outcomes for bushland and wildlife across the state.

In summary, the new legislation, regulations and codes will establish four broad types of land:

1. Category 1 land: Land classified as agricultural where clearing of native vegetation can occur without approval
2. Category 2 land: Tree clearing is allowed under Codes, via landholder self-assessment;
3. Two sub-categories of Category 2 land: vulnerable and sensitive. Tree clearing may be allowed following assessment from Government and;
4. Areas where the new laws don't apply, such as National Parks, urban areas and Environment Zones. A new State Environment Planning Policy will detail how vegetation in urban areas and Environment Zones will be managed. Activities that need development consent will still be assessed under the planning system (EP&A Act 1979). Here, a new assessment and offsetting scheme will apply where there are substantial impacts on threatened species and their habitat.

The Government's information on the regulations and codes is available at: [www.landmanagement.nsw.gov.au](http://www.landmanagement.nsw.gov.au)

### Submissions will be accepted until 5pm on 21 June 2017

Lodge your submission online at: [www.landmanagement.nsw.gov.au/have-your-say/](http://www.landmanagement.nsw.gov.au/have-your-say/)

OR

Post your submission to: Land Management and Biodiversity Conservation Reforms, Office of Environment and Heritage, PO Box A290, Sydney South NSW 1232

Please also consider sending a copy of your submission to [Premier Berejilkian](#), [Environment Minister Gabrielle Upton](#), and your local MP.

The key issues you may wish to discuss in your submission are listed below, alongside a potential recommendation in *italics*.



You don't need to raise all of these issues in your submissions, simply choose those which relate to your concerns. For example, if you're particularly interested in urban impacts you may like to focus on 2, 7, 12, and 13, if you live in the bush 1,2,4 & 9 are particularly relevant; or if you're passionate about koalas then focusing on number 1, 3, and 14 may suit you.

Remember, it is better to personalise your submission – you are encouraged to use your own words as much as possible and include your own local experiences and own concerns.

## KEY ISSUES

### 1. BROADSCALE LAND CLEARING.

Habitat loss due to excessive tree clearing is a key threat to many plant and wildlife species, as well as a driver of climate change through the release of greenhouse gas emissions.

The equity code will enable broad scale tree clearing (up to 625ha in any three year period). Professor Hugh Possingham, who was a member of the Government's original review panel, stated that a return to broad-scale tree clearing was not an intended outcome of the review, and that the government is therefore not delivering on its commitments.

**RECOMMENDATION:** *The Equity and Farm Plan Codes should be removed and code-based clearing applied as the biodiversity panel originally intended – to small-scale everyday works such as clearing for fence lines.*

### 2. ENDANGERED ECOLOGICAL COMMUNITIES.

Vulnerable and Endangered Ecological Communities can be cleared under the Codes with very little or no oversight from ecologists or Government. This makes a mockery of listing them for protection in the first place, as allowing these special areas to be cleared with make their existence even more threatened.

**RECOMMENDATION:** *Vulnerable and Endangered ecological communities should be mapped as Category 2 – sensitive land and thus excluded from code-based clearing.*

### 3. KOALA HABITAT.

Under the proposals, 'core koala habitat' will be considered part of Category 2 – Sensitive land. The definition of 'core koala habitat' is that identified under SEPP 44. However, the definition of 'core' koala habitat is widely known to be inadequate as across the entire range of the koala, only five Local Government Areas have identified core koala habitat under SEPP 44. This means that the majority of core koala habitat on private remains formally unidentified and therefore unprotected.

**RECOMMENDATION:** *Code-based clearing should not be permitted within the range of the koala. Koala habitat should be determined by the review of SEPP 44 and local government mapping of core koala habitat in koala plans of management.*

### 4. TRAVELLING STOCK ROUTES.

Under the proposals, Travelling Stock Routes (TSRs) are not off limits to code-based clearing. Although some TSRs are leased by landholders, TSRs remain public property. They contain some of the most valuable habitat remaining in heavily cleared landscapes, and are of critical importance to many species—including the nationally threatened Superb Parrot and Regent Honeyeater.

**RECOMMENDATION:** *Travelling Stock Routes must excluded from code-based clearing.*

### 5. ADDITIONAL BIODIVERSITY VALUES – SOIL, WATER, SALINITY AND CARBON.

The new laws do not include a mechanism to assess and avoid the negative impacts of clearing on additional biodiversity values including soils, water, salinity and carbon stores. This puts the future of our farmland at risk, and ignores the contribution to climate change caused by tree clearing.

**RECOMMENDATION:** *The regulations must prescribe these additional biodiversity values and a method to assess and protect these additional values drawing on the existing Environmental Outcomes Assessment Methodology (EOAM). A scientific process must be developed to assess the carbon impacts of clearing. Serious and irreversible impacts on these values should be prescribed and prevented.*

## **6. AREAS OF OUTSTANDING BIODIVERSITY VALUE.**

The inclusion of 'Areas of Outstanding Biodiversity Values' is welcome in the regulations, however the application of such values remains unclear and unsatisfactory. The criteria for listing Areas of Outstanding Biodiversity Value are adequate as proposed via the Sensitive Biodiversity Values Map, however it is not clear as to whether third parties (i.e. community members, or not-for-profit environment organisations) will be able to nominate them.

**RECOMMENDATION:** *Areas of Outstanding Biodiversity Value must be excluded from code-based clearing as proposed. Areas under consideration as AOBVs should be protected from clearing. Any person should be able to nominate an AOBV, consistent with the ability of third parties to nominate threatened species and ecological communities.*

## **7. BIODIVERSITY OFFSETS.**

Protection of the environment under the new laws relies too heavily on a flawed offsets scheme that fails to meet best practice standards for biodiversity offsetting. The use of offsets will result in the degradation of nature in exchange for cash payments, and other unsatisfactory outcomes. The current use of offsets as included in the proposals will reduce environmental outcomes.

**RECOMMENDATION:** *Offsets must be underpinned by the maintain or improve principle; be genuine like-for-like to the level of plant community or fauna species; occur within the same sub-bioregion; contain red-flag species and ecosystems that are off-limits to clearing. Offsetting requirements should not be subject to 'discounts' at decision-makers' discretion and payments in lieu of genuine offsets must be ruled out.*

## **8. BIODIVERSITY CONSERVATION FUND.**

We do not yet know how the Biodiversity Conservation Fund will be spent as the Biodiversity Conservation Investment Strategy has not been released. Until we see the strategy, it is unjustifiable for the new legislation to take effect. Otherwise valuable biodiversity areas may be cleared before the Fund can implement conservation agreements with landowners.

**RECOMMENDATION:** *The new laws should not come into force until the community has had an opportunity to input in to the Biodiversity Conservation Strategy, and the Strategy is ready to be implemented. The Fund should receive additional budget allocations, not divert money from the Climate Change Fund.*

## **9. SENSITIVE LAND.**

Strongly support excluding sensitive environmental values from clearing Codes via comprehensive mapping. However the categories of sensitive land are not yet sufficient as important biodiversity values are excluded.

**RECOMMENDATION:** *In addition to the definition proposed in the regulations, the Category 2 - Sensitive Land category must be broadened to include the following:*

- *Core and potential koala habitat, that must be mapped in a statutory plan prior to the laws being implemented;*
- *Known high conservation grassland;*
- *Matters of National Environmental Significance, including nationally listed threatened species and;*
- *The coastal zone.*

## **10. CLEARING ON STEEP LAND**

Land over 18 degrees is currently mapped as Category 2 – vulnerable land. This means that certain codes, such as the equity code and farm plan code cannot be applied, which is welcome as this reduces the risk of erosion.

**RECOMMENDATION:** *Code-based clearing should not apply to steep or highly erodible land, including all land above 18 degrees.*

#### **11. WETLANDS AND STREAMS.**

There are insufficient protections of wetlands and streams. For example, Local Land Services (LLS) is given the discretion to ‘determine that a watercourse is not a stream’ if it does not have a defined channel with beds and banks. This means that many first order streams are likely to be unprotected, with knock-on effects for higher order streams. Some ephemeral wetlands in the Riverina form part of a Commonwealth-listed critically endangered ecological community yet will remain unprotected. We are concerned that ‘sustainable grazing’ practices, including oversowing and fertilisation of grasslands, is permitted even on Protected Riparian Land; wetlands such as these are inadequately protected.

**RECOMMENDATION:** *All riparian land should be protected and excluded from code-based clearing; first and second order streams that do not have an incised channel should be defined as streams and 100m buffers should be placed around wetlands. Oversowing and fertilisation of wetlands should not be permitted as this will lead to their degradation.*

#### **12. URBAN TREES AND BUSHLAND**

A Vegetation State Environmental Planning Policy (SEPP) will allow some clearing above certain thresholds that is not subject to a development assessment in urban regions and environment protection zoned areas across the state. It applies the weak offset rules which allow cash payments for clearing and do not insist on offsets being ‘like for like’. Given the severe scarcity of bushland in urban areas, it is inevitable there will be more losses of irreplaceable biodiversity. The latest version of the proposed ‘offsets calculator’ is weaker, and will not adequately factor in the scarcity of offsets in the urban environment.

**RECOMMENDATION:** *Easy loopholes in the offset rules must be removed and the rules amended to ensure maximum protection of native vegetation in urban and environment protection zoned areas. The Regulation should not permit developers to pay into the Biodiversity Conservation Fund until like-for-like offsets have been secured. A lack of like-for-like offsets should be an alert that the impact may be serious or irreversible.*

#### **13. SERIOUS AND IRREVERSIBLE IMPACTS AND DISCRETIONARY LANGUAGE**

The Act and Regulation set out requirements and principles to consider when land-clearing or development may have serious or irreversible impacts on biodiversity values. If such impacts will occur, local projects must be refused but it is concerning that major projects can still proceed if further protection measures are considered. However the definition as to what constitutes “serious and irreversible impacts” under the regulation is not adequate. There should be clear, objective criteria for determining whether there are serious and irreversible impacts on biodiversity values, and it should be clear that this refers to NSW rather than Australia.

**RECOMMENDATION:** *Regulations should clarify that serious and irreversible impacts must be determined objectively, refer to NSW and include, but not be limited to, any adverse effect on the following:*

- i. Critically endangered species and ecological communities (i.e. those at extreme risk of extinction);*
- ii. Areas of Outstanding Biodiversity Value;*
- iii. Wetlands that can be shown to meet the criteria of Nationally and Internationally Important Wetlands (i.e. Ramsar wetlands and/or those listed in Commonwealth Directory of Important Wetlands) and;*

*Any significant effect on the following (as determined by a species impact statement or equivalent BAM process):*

- iv. Endangered species and ecological communities, including Vulnerable species and ecological communities;*
- v. Salinity, erosion, soil quality, water quality and hydrological processes (building on the existing Environmental Outcomes Assessment Methodology) and*
- vi. Important rivers and biodiversity corridors.*

#### **14. TIMEFRAME.**

A key concern is that the proposed date for switching on the new Legislation in August 2017, before the scheme is ready. The new maps are the centrepiece of the legislation as they identify what category land falls in to. This mapping is not ready. In addition, key institutions are not yet established and rules are yet to be finalised. Rushing commencement puts koalas and other threatened species and their habitat at risk before it is accurately mapped.

**RECOMMENDATION:** *Defer commencement of the land-clearing reforms until the Regulatory Maps are fully finalised, landholders and stakeholders are fully consulted, staff are well-resourced and trained, and the Trust and private land conservation funding is up and running.*