KEY CONCERNS

I strongly object to the Biodiversity law ‘reforms’ package, including the proposed Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016. The NSW Government must withdraw these proposals and commit to strengthening laws that conserve the environment as well as providing additional resources for their implementation.

- The Native Vegetation Act 2003 Must be Retained

The NSW Government has not made the case for abolishing the Native Vegetation Act 2003.

The Native Vegetation Act 2003 was introduced to stop widespread land clearing that had led to 61% of the original native vegetation of NSW being cleared, thinned or significantly disturbed since 1788, much of it in the last fifty years. The World Wildlife Fund has estimated the Act resulted in an 88-fold reduction in areas approved for clearing, a 20% decline in actual clearing of remnant bushland and a 14% drop in native mammal deaths.

This approach completely ignores the huge reduction in broad-scale clearing as a result of strong laws (despite inadequate resourcing for their enforcement). Moreover, there are a multitude of government policies that have resulted in major biodiversity losses, for example, mining approvals that clear swathes of forest and animal habitat.

- Self-assessable codes and Broadscale Clearing

There is no doubt that the proposed changes to land management, especially the self-assessable codes, will lead to increased land clearing and biodiversity loss. The introduction of self-assessable codes under the Native Vegetation Regulation 2013 has led to increased clearing. Many of the codes of practice proposed require just notification to the Local Land Services with no commitment to monitor compliance of the code.

For example, recent figures show that the rate of paddock tree clearing under the self-assessable ‘Clearing of paddock trees in a cultivation area’ had increased 140% under the Native Vegetation Regulation 2013 with absolutely no compliance checking. With a further expansion of the self-assessable codes, rates of tree clearing will be further exacerbated.
With the repeal of the Native Vegetation Act 2003, there will no longer be any legislative commitment to preventing broadscale clearing and protections for native vegetation of high conservation value will be lost. Removal of the ‘maintain-or-improve’ test means that there will be no mechanism to ensure no-net-loss of vegetation at a local scale.

The loss of the ‘improve or maintain environmental outcomes’ standard will damage the environment immensely. It is this standard that has been responsible for the massive reduction in clearing, especially broadscale clearing, in NSW. There will be no legislated principles to retain native vegetation on land covered by the Draft Local Land Services Amendment Bill 2016.

Under the proposed Native Vegetation Regulatory Map, large parts of the state will be declared as ‘Category 1’, that is, land exempt from any land clearing regulations. Even in ‘Category 2’ land, there are no ‘off limits’ areas and Endangered Ecological Communities can still be cleared if there is a ‘set aside’ area provided, however they are not even required to be the same quality as the area being cleared. This will lead to a net loss of biodiversity. In fact, under these laws, there is no part of private land where clearing is prohibited. Owners will be able to just apply to their Local Land Services (LLS) and satisfy flawed biodiversity offset requirements to proceed with clearing.

Endangered Ecological Communities are not protected from clearing. All that is required is that a ‘set-aside’ area is preserved with a 50% ‘loading’.

In addition, regulated land that is successfully cleared under the proposed Land Management Framework will then be recategorised as Category 1 (unregulated). This will mean the amount of land that can be cleared without any government oversight will increase markedly over time.

There is no ban on broadscale clearing in these codes or in the allowable activities. For example, clearing of up to a maximum width of 40 metres of vegetation for linear infrastructure such as roads and fences, as well as around fixed point infrastructure such as a shed or dam is listed as an ‘allowable activity’ which requires not even notification to the Local Land Services. Whilst some clearing around infrastructure may be required, forty metres is not justifiable.

- **Biodiversity Offsets lead to less biodiversity**

The proposed package expands the already flawed biodiversity offsetting system in NSW. Biodiversity offsets manifestly result in a net loss of biodiversity value. For example, even if an equivalent area of endangered ecological communities is located and preserved as an offset, it is at the expense of the original area which is destroyed.
The effectiveness of offsetting biodiversity loss as a policy for ecological restoration is not supported by evidence. There are numerous technical limitations to offsetting including poor measurability, uncertainty about recreating biodiversity which has been lost and time lags. It is not possible to assure that biodiversity in two locations is the same or equivalent in quality. Biodiversity offsets that involve rehabilitation or new planting are not established before the clearing occurs. In fact, it could take hundreds of years before an offset replaces a destroyed ecosystem, if ever, and often enforcement and monitoring of offsets is inadequate.

Market-based processes and trading mechanisms such as offsets and bio-banking that trade-off high conservation areas for development only result in biodiversity losses. Conservation of biodiversity must be underpinned by the principles of Ecologically Sustainable Development, including the precautionary principle. This is the only way of ensuring that further irreplaceable biodiversity is not lost.

The Draft Biodiversity Assessment Method is based on the NSW Biodiversity Offsets Policy for Major Projects. This policy and the principle represent the lowest standard for biodiversity offsetting. For example, instead of finding offset sites that match the ones that will be destroyed, the so-called ‘like for like’ principle, proponents can just find broadly similar areas or undertake ‘conservation actions’, which is defined as measures that are ‘known to improve biodiversity values’. This is very vague.

For the first time, proponents can now satisfy offsetting obligations in their consent conditions by paying into a new Biodiversity Conservation Fund (managed by the Biodiversity Conservation Trust). This places the onus of locating equivalent offsets on the Biodiversity Conservation Trust, a public organisation. Even if the trust is unable to locate an equivalent offset, clearing can take place regardless, resulting in biodiversity loss. In short, even if an area cannot be offset, it can still be destroyed simply by paying into a fund.

It is also unacceptable that the approval authority for activities will have the power to discount the offset requirements if they think the development or clearing has social, environmental or economic benefits. The fact is that any social or economic value of a project cannot undo potential biodiversity losses that may happen as a result of that project.

- The Two Proposed Laws are Contradictory

The Biodiversity Conservation Bill 2016 and the Draft Local Land Services Amendment Bill 2016 are contradictory to each other. The Biodiversity Conservation Bill carries over many provisions from the Threatened Species Conservation Act 1995 that are focused on protecting threatened
species, whilst the Local Land Services Bill will no doubt increase those threats, leading to increased extinctions. For example, the Biodiversity Conservation Bill lists “loss of hollow bearing trees” as a key threatening process, while at the same time, the Local Land Services Bill allows clearing of paddock trees without approval.

- **No Plan to Monitor Compliance, Reduced Role of Environment Minister and Department**

Whilst the Environment Minister currently administers the Native Vegetation Act 2003 and issues regulations, the Minister for Primary Industries will be allocated primary responsibility for the Local Land Services Amendment Bill with just joint responsibility for native vegetation management for the Minister for the Environment.

Whilst there is very little detail of how compliance will be managed, it appears that it will rely almost entirely on self-assessment. The Office of Environment and Heritage’s role will be limited to producing mapping, which deprives rural land holders of their expertise on the ground.

It is very unlikely that the NSW Government will be able to detect instances of misuse of the self-assessable codes, such as clearing of paddock trees, by satellite alone. The reality is that the new laws will legitimise and legalise increased land clearing, but abuse of those codes will not be detected.

Local Land Services, which will administer the self-assessable codes, has no remit for environmental protection and has a focus on improving primary production and management of natural resources. There is a real risk that the objectives of production will override that of environmental conservation.

- **Any positive environmental gains are budgetary, not legislated**

Any financial investment in land conservation, private or public is welcome, this should however be invested to assist landowners not only maintain, but improve the biodiversity value of their land. The funding provided for with the proposed package, though, is linked to the biodiversity
offsets program, which merely legitimises a net loss of biodiversity. The financial assistance announced by the NSW Government, which is one of the few positives announced in this package, is not legislated and can be cancelled by the NSW Government at any time. It is noted that a similar funding announcement was made at the enactment of the Native Vegetation Act 2003, which petered out over time. There is no guarantee this funding will continue.

The amount of funding announced is also not enough to compensate for the amount of clearing that will occur as a result of the provisions within the Draft Local Land Services Amendment Bill 2016, especially the expansion of self-assessable codes.

- **Climate Change Will Worsen as a Result of these Proposals**

When the Queensland Government severely undermined native vegetation rules, there was a resulting doubling of land clearing, the removal of almost 300,000 hectares of bushland (20 times the size of the Royal National Park in Sydney) and the resulting release of 35 million tonnes of carbon dioxide, further exacerbating climate change. This essentially cancelled out eighty percent of the greenhouse gas abatements recently purchased by the Federal Government at a cost of $557 million.

Native vegetation is a carbon sink which allows us to meet our international obligations. Passing these proposed laws make a mockery of any NSW Government initiative to combat climate change.

In addition, there clearly is a social and societal benefit in maintaining ecosystem services and environmental preservation. These laws facilitate environmental destruction and land clearing which is against the social interest.

In conclusion, the proposed biodiversity and land clearing laws will lead to more land clearing, less habitat for animals and exacerbate climate change. I urge the NSW Government to withdraw these bills and instead focus on improving and strengthening protection of the environment.