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Supplementary submission to the Biodiversity Conservation Bill 2016, and the Local Land Services Amendment Bill 2016

As chair of the Clarence Environment Centre (CEC), South Grafton, I write this submission on behalf of the CEC's 84 members and the 101 landowners whose properties are registered with the Land for Wildlife program, delivered through the CEC. I also write, not on behalf of, but from the viewpoint of, a long-term member of the Clarence Valley branch of the Wildlife Information and Rescue Service. I also make comment from the experience of a childhood and youth spent in Kenya, East Africa, where 90 feet of topsoil was ideally suited to large, prosperous, export quality and quantity farming in all its forms, and from 40 years of experience managing land in the South Grafton area for both farming and conservation.

Our work at delivering the Land for Wildlife program to the Clarence Valley LGA, as well as over a decade of work at the CEC, which at times involves advising and supporting farmers with problems such as development proposals, revegetation issues, and concerning issues such as spray drift, has proven on a number of occasions that successful farming and land conservation are entirely compatible.

We applaud the selfless act of successful Grafton farmer, Glen Morris, who took time off this month to ride his horse across the Sydney Harbour Bridge to Parliament House to protest this new Bill, which is set to further downgrade our environmental laws and send further species to extinction. We also offer our deep sympthies to the family and friends of murdered environment compliance officer Glen Turner, for the poor timing of the release of this Bill, and who now must watch the further dismantling of the laws that provided Glen with his job, in favour of the minority group that aided his death.

Overview

Before Barry O'Farrell's era of NSW government (2011 -14), when concerns about climate change had brought a necessity for governments to set up active programs involving revegetation and protecting what little of NSW's native vegetation was left, NSW possessed one of the finest, science-based sets of environmental protection laws in the modern world. Australia's species extinction rate was a disgrace, and remains that today, but the regulatory laws had slowed land clearing and provided hope. The Native Vegetation Act had been developed in consultation with farmers and environmentalists, and was based on scientific evidence of effects by land clearing

on soils, salinity and ground water *(Note: none of which are considered by this Bill).* Even by that Act farmers were allowed free rein to clear regrowth (pre 1990 cleared land) and to carry out routine agricultural management activities (RAMAS), and $120m was also available through the Catchment Management Authority (CMA) to help them maintain areas of vegetation on their properties under property vegetation plans (PVPs). 1000 landowners took up the offer and land clearing slowed from c21,500ha to 11,000 ha annually for 10 years.

Then under O'Farrell funding was slashed from the environment dept, including the quite superior CMA. Staff, including scientists, were sacked, and the highly active environment portfolio was dismantled and bundled along with the National Parks & Wildlife Service into a small office under the Premier's watchful eye where it wouldn't hinder his personal agenda. Our natural environment, which had provided many hundreds of jobs and raked in hundreds of thousands of dollars through the tourist trade, began to suffer. The Environment Protection Authority became a justification authority for environmental harm, and a shortage of compliance checks meant many regulatory clauses were nothing more than words on a piece of paper. Vegetation clearing ramped up again, and species and biodiversity continued the downhill slide.

Summary

The NSW environmental protection laws were failing, not because they weren't sound, but because the environment department was under-staffed, under-funded and under-resourced. Meanwhile, despite having a NSW government on their side, farmers still clamour for more rights to clear what they traditionally see as 'their' land, down to the bone.

Mr Baird's proposed new reforms, purported to better help control land clearing and protect biodiversity, is on track to encourage irreversible environmental devastation. Its suite of complex codes and regulations, which few landowners will find the time to wade through and understand, are solely designed to enable more land clearing by a self-serving vocal minority who have traditionally never been easy to appease.

New management codes will allow farmers, who in the main will have little to no knowledge or understanding of the flora or fauna on their land, and care less, to undertake their own scientific assessments as to whether their land supports threatened species or not (biodiversity assessment methods - BAMs). They will be able to set aside areas of vegetation in exchange for clearing elsewhere under a BAM, which in some cases also appears to require no independent assessment of the value of the offset land, and no need even for the offset land to reflect the same floristic values of the land proposed to be cleared. In any case there will be no seen need for this, since offset areas are likely to be cleared at a later date, with another portion of land indicated by the landowner to take its place for another year or two... And so on, until, what is left?

There will also be no checks on compliance, to make sure the land is still vegetated, in the same condition, or improved. There are no restrictions on broadscale clearing. And the codes will enable more clearing for a larger range of 'farming' activities, even on highly degraded, unsuitable lands, without controls.

Furthermore credits proposed to be paid to farmers for stewardship of uncleared vegetation on their land, will depend only on funding availability (ergo, on political will). In no way is this a secure enough basis for this Bill in its current form to be approved

The CEC therefore finds the Biodiversity Conservation Bill and its accompanying

regulations to be cumbersome, unscientific, often unclear, biased towards a minority group, and in its current form set to fail in its proclaimed aims by facilitating a rampant and detrimental increase in land clearing that will have a serious impact on biodiversity, including irreversible harm (extinctions).

Consequently we suggest this Bill be withdrawn, and funding and jobs be restored to the Department of Environment, to an extent that allows the functionality of the current laws to be properly tested.

Note: The timing of the release of these new laws is also viewed as entirely inappropriate, given the irresponsible denunciation of NSW's current native vegetation laws by Federal Agriculture Minister Barnaby Joyce following the death of compliance and regulation officer Glen Turner at Croppa Creek, and the conviction of Ian Turnbull for Mr Turner's murder.

Ecologically sustainable development (ESD)

The purpose of this new 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

A definition of ESD comes under (6.2) Protection of the Environment Administration Act, where achieving ECD includes consideration of the Precautionary Principle.

The Precautionary Principal was first developed for the Australian Natural Heritage Charter, funded by the Australian Heritage Commission and published in association with the Australian Committee for the international Union for the Conservation of Nature (1996)

To précis its principals, these are :-

(a) ***The precautionary principle*** - ie if a proposal poses a possible risk of serious or irreversible environmental harm, then a lack of scientific evidence is no excuse for not taking measures to prevent that harm.

Nowhere in this new proposed Act are there any measures suggested to avoid the high likelihood of serious environmental harm by the weakening of current laws. Scientific evidence is in fact available through numerous studies demonstrating the already serious, and in many cases irrevocable environmental harm caused by clearing and agricultural activities,

(b) ***Inter-generational equity*** - in this case a current leading generation (Gen Jones / Gen X) should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations

This has already failed to be implemented for all too long. Successive generations from Gen Z forward will certainly not be thanking the present government and the minority group it now represents for their selfish disregard to escalating greenhouse gas emissions; the tenuous existence of many unique Australian wildlife species, including koalas; the rampant vandalism of once beautiful productive forests and landscapes by land clearing, and the drying and polluting of our network of fragile waterways through ignorance, lack of forethought and absence of monitored compliance. This is not an extreme view but already a reality, now likely to be exacerbated to tipping point by a further relaxing of environmental protection restrictions by this Bill.

(c) ***Conservation of biological diversity and ecological integrity*** –

This is definitely not being observed as a chief requirement by this Bill. Setting aside one portion

of vegetation and clearing another is not conserving biological diversity. Enabling clearing of 25 year regrowth vegetation, when studies show at least a 50 year period between ground disturbance and repair, and then with a different or simplified structure, is not conserving ecological integrity.

(d) ***Improved valuation and pricing of environmental resources*** –

There is no examples of this but biodiversity credits, biobanking. biocertification and offsets appear to fit the scenario, although none set a recognisable price on vegetated land.

Vegetation destroyed by irresponsible or uncontrolled fires, for instance, is still seen as replaceable, so the landowner is unable to gain compensation even where the property is VCA or stewardship protected lands. This needs to change. One example is old growth trees, of critical importance to many threatened species, can be lost in their dozens in a fire and irreplaceable for over 100 years, yet they attract no compensation, or even penalties for their loss or the loss of the wildlife the land supported. A value on hollow habitat trees can be gauged by estimating a cost to build, erect and maintain a number of nest boxes of the required size variations and of durable, fire-resistant materials for 100 years, until naturally replaced.

There is no expectation of the present government taking anything of this nature on board. However incorporating set penalties for having lit an escaped fire could be a start to compensating a victim landowner for damage and subsequent income loss from a credit scheme, or preventing a fire from happening in the first place

By this Bill there is no consideration of loss of eco-amenities by clearing, and not even by a fire through a stewardship or VCA land.

To quash problems with having to focus entirely on the environment, Mr Baird now proposes to redefine ESD, and so the Australian Heritage Charter's Precautionary Principles, by adding social considerations to the definition.

This seems arrogant in the extreme. One questions if he is even entitled to do this.

The unfortunate point is that as soon as the human factor enters into any equation relating to environment protection, results rarely reap any favourable outcomes for the environment. As this Bill is an environment protection law, its goals immediately fall short of assisting any environmental benefits. Simply, people come first, so it isn't meant to. For this reason alone this Bill should be rejected and original laws remain in place, at least until a further, better educated and more sympathetic review.

LLS Amendment Bill - Part 5A Division 1 - 60A Rural areas of the state

This part provides lengthy definition of urban areas, which is confusing.

We are asked under this part to comment on tree removal in urban areas under SEPP *Protection of trees in Urban areas*, to be administered by local councils with intervention by the Minister for Primary Industries where biodiversity offsets apply

A decision of this nature is not seen as an appropriate role for a Minister for Primary Industries

It has to be known that many, many (most) native trees, particularly in regional urban areas, are utilised by native fauna of one form or another. In equally as many situations a single tree might be all that an animal, or a species has to depend on for survival. For example a single tree can provide a hollow for a glider; roosting pipes for small microbats, a traditional source of nectar for migratory birds in a fragmented landscape, or be an important component in a territorial

movement corridor for koalas. None on these can be offset, since any proposed offset tree is already there, performing the same tasks.

Very often a tree can be safely lopped, for the same cost as felling and removal, so preserving its values while also delivering potential further hollows where boughs have been removed. We suggest this alternative should be a consideration, above tree removal.

Also there are a number of urban koala populations in rural areas. Forest red gums (*Eucalyptus tereticornis*) are a valuable (possibly crucial) food source for koalas. This tree species in particular needs urgent protection by a State-wide tree preservation order

Biodiversity Stewardship Agreements (Part 5, Div 2 - p 27)

Payments to landholders to conserve portions of bushland on their properties has long been supported by the CEC. Indeed we have embraced this as a suitable alternative in certain situations to the dole, pension, or other taxpayer-funded handouts for landowners due some government financial support, though possibly not fully deserving or in need of it.

However, 5.5(3) indicates that no agreement may be entered into between the landowner and the Environment Minister without prior consultation with the Ministers for Planning and for Industry, Resources and Energy. We suggest that where a proposed stewardship property lies within or partly within a mapped regional corridor, this requirement for intervention by other ministers might be withdrawn, to encourage more landowners to join the program with as little government intervention as possible.

Clause 5.8 (2.b – p28) suggests that a landowner seeking to enter into a stewardship agreement with the government will have to pay an application processing fee. Any call for a landowner to pay money to the government for something that person does not have to do, will automatically discourage many people from going beyond the enquiry stage. This point needs to be reassessed.

Also, importantly, while this is a potentially good program, long overdue, it apparently is again set to be reliant only on funding availability, or political will. This will afford no long-term secure environmental outcomes in all cases. Hence, again, this Part will in many cases fail to meet the conditions of ecologically sustainable development.

Biodiversity offsets (Div 4 – 7.13 - p 63)

One base formula for attaining ESD is requiring landholders to set aside vegetation to offset land they want to clear. This section also deals with the biodiversity Stewardship plan and trading of biodiversity credits. Requirements and methods set down for 'transfer' and 'retirement' of credits are unclear and need further definition. It is suspected that few of the target farmers will fully understand these long-winded clauses, and will be discouraged to enter into agreements.

Even so, simplistically it takes no genius to recognise that clearing one portion of vegetation and setting aside another already present to replace it, adds up to a net loss of vegetation. It also seems that land to be set aside does not always need to possess similar floristic values to that being cleared (Consultation note p43), Worse, a landowner *developer etc (*not included in submission) can pay (bribe?) the government to facilitate clearing, even of threatened species habitat, without any checks or balances.

Depending on the quality and extent of vegetation to be cleared, with self-assessment by the landowner and no controls such as independent impact assessments, then clearing will continue to be responsible for further fauna and flora and ecological community extinctions.

An offset scheme will be in contravention of the main aim of the new Biodiversity Conservation Act, if passed. This whole Part in our view needs to be re-assessed in consultation with farmers and environmentalists, and if possible including the EDO, to make sure it is intelligible, workable, and attractive

5.18 - prospecting and mining on biodiversity stewarsdship sites (p34)

While we recognise that all underground minerals in Australia belong to the Australian government, other countries see no need to enforce this requirement on their landholding residents. There should be no allowance in New South Wales for mining on any land legally protected by title.

Destruction of family lifestyle, hopes, dreams and plans is just that - destruction. Where money is not a problem - which we suggest is in a majority where comfort levels are attained - there can be no reparation. Lives are destroyed by this invasive industry, both mental and also physical in a number of cases. The social health and well-being of families needs to be preserved and advanced at all costs, because only that will sustain the economy. Ordinary families keep all small businesses in business, large supermarkets stocked with food, car yards with a good turnover of vehicles, large household retail stores turning over billions of dollars in profits. Destroying a family may not seem much of a loss to a government, but destroy several, or hundreds across NSW, and the effects have a ripple effect felt far and wide, starting in the health sector in rural communities.

Privately managed biodiversity stewardship sites will take up only a very small percentage of land. They need to be left alone. Both Federal and NSW governments need to address and make some changes to this contentious issue. Under smart, forward-thinking, understanding leadership this would be done

60G - Category 1 - Exempt land mapping

It seems apparent that sustainable <u>human</u> development is the plan, by the term of the Mapping Method Statement, page 2 – *"The land management and conservation reforms reflect the importance of effective land management to improve biodiversity conservation while supporting sustainable development.*"

If sustainable development truly does apply to natural environmental values (ie regeneration / revegetation / biodiversity improvement) then mapping only needs to be referred to the NPWS' mapped corridors in the first instance, plus some planned natural regeneration to patch up any fragmentation areas since the corridors were identified. It does not need to be done again.

Category 1, Exempt land - refers to any trees and undergrowth regrown since 1 Jan 1990, and so will be able to be cleared without approvals under this legislation.

By this clause, quarter of a century old trees can be destroyed willy-nilly and without question.

The fixed and repetitive 1990 date has long been controversial, and is long overdue for an update. It was initially set in place in legislation in some hopeful expectation that landowners would recognise the significant age of some trees on their land and be compelled to love them enough not to destroy them. This of course is a ridiculous concept, but one which new legislation now has an opportunity to address and rectify.

With critical hollows - vital for the survival of the majority of Australia's unique fauna - not appearing in trees under 100 years old, a quarter of the way there is a very significant time.

Any date set by new legislation should not be fixed. It should be required to consider species, including recolonising fauna, on a case-by-case basis, and should be automatically moved forward every 10 years at least. We urge the bringing forward of the starting date under this new legislation to 2001 at the earliest. Otherwise the Act, if approved, will yet again fail to meet its main aim by this clause

60I.4 - The Environment Agency Head will be responsible for determining which land was cleared at 1 Jan 1990 based on best available aerial photographs or satellite imagery. In order to do this accurately, assessments will also need to be made of the condition of land before 1990

With satellite imagery relatively still virtually in its infancy in 1990, aerial photographs and old topographic maps presumably will be the best method of assessing cleared land up to this time. Where evidence is lacking, findings could be guesswork, or misleading at best. Topographic maps and aerial photographs dated even in the early 2000s may show tracts of land virtually devoid of vegetation other than a ground cover and dotting of isolated shrubs or trees. But across many areas of NSW infertile soils means seedling regrowth is exceptionally slow other than a pioneering ground cover by a single species present at the time of clearing.

Thus, land seemingly cleared in 1990 or 2000 could well have been regenerating since its clearing 30 or 40 years earlier before reliable satellite imagery was available. We wonder how much time will in fact be spent on determining correct time-frames for regrowth areas, and what actions may be taken where old-regrowth is cleared by mistake, or deliberately by the landowner, as will frequently be the case.

60M - Unauthorised clearing of native vegetation in regulated rural area

The Biodiversity Conservation Bill in the way of the Native Vegetation Act, includes fire as a defined method of clearing. Thus, unauthorised burning is currently, and still will be an offence.

Given the Bill's strong focus on biodiversity conservation by offsets and landowner stewardship incentives, there is an evident need for an inclusion in this part of penalties for a fire lit by another person, that subsequently burns and destroys the biodiversity assets of conservation land.

60W - Certification by Local Land Services prior to clearing

In an extension of 60M above, an application for a licence to clear vegetation under this part needs also to apply to any landowner proposing to carry out burning on their land.

In light of our now 8 month long summers and tinder dry winters, in which traditionally there is always a chance of a high wind the next day, applications for a licence (or permit) to conduct burning needs to be extended to an all-year-round requirement.

Furthermore, if the government is serious about land and biodiversity conservation by this Bill, then any person applying for a license or permit to burn-off, should also mandatorily be in possession of a current public liability insurance cover, to protect him or herself against loss of another person's property, including material losses, biodiversity loss by destruction of old-growth trees, destruction of hand-planting and revegetation efforts, and possible loss of life, with set penalties scaled accordingly

Assisting farmers - why should we continue with this?

The pictures below tell the story. This land, pictured at Manilla, NSW, has been abused for far

too long for it to be any good use for farming of any type well into the future.

Although a large portion of Australia's ancient skeletal soils have been used for agriculture for 200 years, it took the early settlers only a very short time to identify and clear those tracts that were the most suitable for agriculture. In a brief 100 years after European arrivals, 98.5% of NSW was impacted by settlement and land use practices in one form or another, and 20 years later half of the state's trees were ring-barked or partially cleared. At that time 95% of the NSW central division was under sheep or wheat (P Reed, *A historical perspective on conserving what...? The basis for nature conservation reserves in New South Wales 1969 - 1989*).

Since many of the first settlers in NSW came from a background of fairly savvy farming stock who knew something about cropping and wool growing in their motherland, it should have been obvious to later folk moving out of the cities in search of land that any natural bushland left uncleared was that way simply because it is unsuitable for farming.

An early insight into Australian farming practices and its effect on native vegetation came from S Dixon through his observations as a grazier for over 30 years *(Effects of settlement and pastoral occupation in Australia upon the indigenous vegetation. 1982)*. Dixon recognised the potential for seedling regeneration from stores still left in the soils once cattle were removed, but noted that many plants did not come back, or returned with a different structure.

Allen, and Duyker (1983) first recorded the now known natural 'pioneering' attempts by some native species to quickly cover disturbed, exposed and degraded soil. Allen noted the rapid change from what pastoralists saw as grassy woodlands to areas with very little grass dominated by inedible 'woody weeds' (ie native local species) due to overstocking. Duyker noted that the regrowth was seen at the time as a problem, not an indicator of land trying to heal itself.

Pulser *et al* (1992-1993) studied the effect of this around the lower Snowy River area where regrowth of the pre-19th century large, well spaced white cypress pines had become 'locked' (presumably not happening) after a history of logging, grazing, burning, and activity by introduced rabbits.

There have been numerous other similar studies, with results all readily available to today's farmers via the internet. But aggressive clearing for farming, and demand for it, still goes on regardless, totally ignorant of the changing structure of the Australian landscape, selfishly heedless of the wildlife that once relied on the vegetation, and all supported by Liberal-National governments.

Today's situation

The fact that massive numbers of trees have already been pre-emptively cleared by farmers ahead of this new legislation is already serving to show concerned objectors to be right, and the government wrong. This should sound not just warning bells to Mr Baird, but veritable clarion alerts as to what he can expect once his weak new laws come into play.

What the current NSW government needs to concede is that in a number of cases, in unsuitable areas, the benefits of recent land-clearing has apparently been zero, or negative, or there would be no more call for it. It has negative benefits for both landowners paying the costs of clearing, and for taxpayers having to prop up the farmers at each drought and flood event, which are becoming more frequent. It is highly unlikely this situation will change with further clearing, now enabled by these new laws

The Independent Biodiversity Legislation Review Panel, in their report to the Baird government on these proposed legislative changes (Dec 2014), were clearly concerned about what the changes might mean to the natural environment. The panel admitted to attempting to portray a *"positive new approach to the very important goal of more effective conservation of the biodiversity of NSW... based on achievements and deficiencies of the past 40 to 50 years in NSW....*". They also clearly highlighted the point that *"Ultimately our* (NSW's) *goal must be to minimise future losses of native biodiversity..."* and made the strong point that a general delay between habitat degradation and species extinctions in no way provides the same security against biodiversity loss as maintaining habitats in good condition in the first place.

The panel was also evidently concerned about advising on legislation that had also to include human social and economic benefits (ie, economic growth), where Acts were already in place with the sole intention of protecting and maintaining NSW's fantastic flora and fauna values.

However the Panel collectively agreed that this might be achievable, even with loosened regulations, since nowhere on Earth have sound conservation outcomes been achieved by political will alone, but by an additional vital base of public education and incentives to encourage landowners to do it for themselves. These measures, they advised, should be incorporated into the new Act.

This has been attempted, but only with strong government involvement and some quite strict and

bossy regulations, which may or may not encourage landowners to do it for themselves

Of greater concern is that nowhere in this Bill is climate change given any consideration. As this serious threat for some unknown reason has always been embedded into the Environment portfolio, we strongly suggest this might be moved to the portfolio of the DPI minister, where for the sustainability of the human race at large, it more obviously belongs.

We thank you for the opportunity to make comment on this proposed new legislation

Yours sincerely

Patricia Edwards

Chair – The Clarence Environment Centre, Skinner Street, South Grafton

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Adjoiner:

In trying to work through the complicated and often conflicting legislation I know I have missed important points, and have possibly commented erroneously on others. For example I comment on Offsets (a well-used term before this Bill to indicate a portion of land set aside for protection in place of another proposed to be cleared). I should in fact have commented on 'Set aside' lands, referring to exactly this now explained, with a different name.

I've also dwelt on my personal issue with fire, which is entirely relevant to biodiversity, in hopes that someone might concede that it does belong in this new legislation, specifically where VCA and stewardship managed lands are destroyed by escaped fires lit by another person.

In any case I felt a responsibility to make some sort of substantial protest to this proposed weakening of laws that already haven't been working because of political interference, or at times lack of it, and I can only hope I have managed to make enough sound points for one or two to be given some attention. We live in hope

PGE