



Submission: Proposed Biodiversity Conservation Changes in NSW

Introduction

This submission relates to changes proposed to biodiversity conservation laws in NSW. In particular it focuses on the proposed new legislation: The Biodiversity Conservation Bill 2016, the Local Land Services Amendment Bill 2016 and the related changes to the Environmental Planning and Assessment Act 1979. These changes require the repeal of the Native Vegetation Act 2003, the Threatened Species Conservation Act 1995, the Nature Conservation Trust Act 2001 and parts of the National Parks and Wildlife Act 1974.

This submission is tabled by the NSW Chapter of the Australian Association for Environmental Education (AAEE). This organisation represents the views of educators in schools, higher education, Local and State Government, business and the community who are concerned about sustainability.

AAEE has significant concerns about these proposed changes. When taken overall, they will threaten biodiversity across NSW rather than protecting it. Essentially any legislation that makes it 'easier' to clear land is to be avoided. As far as our core business is concerned, we can't have education about biodiversity without having biodiversity. In a perfect world where farmers have knowledge about the value of native vegetation and where developers and landowners care about the long-term condition of the land as much as they care about current income the legislation might achieve its desired outcomes. We don't live in this world. Given this it is highly likely that the proposed reforms will lead to large increases in land clearance, increased carbon emissions and more threats to endangered species.

In developing this submission AAEE is mindful that legislation needs to find a balance between what are often diverse views across the community. The more effectively it finds this balance, the greater the impact of the legislation. In this instance the balance needs to be found between a range of competing factors, all related to sustaining our community and our natural environment. Economic sustainability needs of farmers must be balanced with the sustainability needs of the community for fresh food and a rich and wondrous environment, and all of this must be in balance with maintaining flora and fauna biodiversity within the premier state.

About the Proposed Changes to the Law

Achieving sustainability in this triple bottom line sense is a challenging objective. There are very mixed views about how well this has been done to date since the time of white settlement.

It is our understanding that:

- Our efforts to date in maintaining environmental sustainability have been poor if we accept that over the last 200 years, over 100 plant and animal species have become extinct in NSW. Currently 989 species of plants and animals and 107 ecological communities are threatened with extinction. It is generally agreed that land-clearing is the main cause of flora and fauna species decline in NSW.

- Taken from another perspective there are many in the community who argue that agriculture, as it is impacted upon by the current legislation, is not sustainable either. Communities will be, and are being, affected because farms are forced to close down or be sold off. Some landholders take the view that they need to be free to totally control what occurs on their own properties, including broad acre tree felling.
- It is apparent that there has been very little attempt made during the drafting of the current Bills to draw people to less polarised positions and views. Whatever efforts were made, it is clear that they have been unsuccessful. We are now faced with a situation where people are either strongly for the changed legislation, strongly against the changed legislation, or totally apathetic. In other words with respect to this issue, people are grouped at one or other end of a spectrum or just not on the spectrum at all. This latter group are in the majority and this is of concern because of the likely volatility of the issue locally.
- There has been only a very limited attempt to review the situation from a triple bottom line perspective and find a way forward where environmental, economic and whole community sustainability is considered. It seems there has been no attempt to consider the situation from a future/inter-generational perspective.
- It is noted that current legislation is inadequate in that it does not include any mandating of education of the community about biodiversity. This omission is repeated in the current draft Bills.
- There has been no engagement with the whole NSW community in discussions about the issue. Any communication that has occurred has been driven from groups at one end of the spectrum or the other.

Into this volatile mix, the Government has proposed significant changes to the way that land is managed in NSW. They argue that the current legislation has not achieved sustainable outcomes or given farmers the rights to manage their own land.

The AAEENSW Position

AAEENSW has concerns about the legislation at three levels.

A. The current draft legislation is not supported by AAEENSW

There are significant aspects of the draft legislation that are not supported.

Taken at face value and assuming that increased levels of land clearing will occur than is currently the case, it would seem that the extent of broad acre land clearing will increase. This is at odds with Australia's recent commitment to the COP 21 Paris Agreement. It is also inconsistent with the Commonwealth Government's Direct Action focus. This seems to be a real anomaly.

It is noted that repeal of the Act was proposed by the recent Independent Biodiversity Legislation Review Panel. In their report they acknowledged that the proposed changes might lead to biodiversity loss. This is of concern to AAEE. Also it is noted that in the draft Bill much of the control shifts to the Department of Primary Industries and away from the Department of Planning and Environment. This contradicts the recommendations of the 2014 review.

The changes remove the principle that all land clearing must improve or maintain environmental outcomes. This establishes a dangerous situation for triple bottom line sustainability because it has significant impact on communities, on the economy beyond the farm gate, and on the environment.

The current legislation works within two other important principles. Like-for-like offsets and third party review. The proposed changes to the NSW Biodiversity Offsets Policy:

- do not mandate like-for-like requirement for any offsets. They allow for supplementary measures such as cash payments. This is of concern
- do not provide clear protection for environmentally sensitive areas. This is a strength within the current legislation and should be maintained.

The proposed changes make tree felling far less transparent and do not allow the same level of third-party review as is included in the current legislation. Major decisions will be made by Local Land Services staff. Provision for Local Government involvement is very limited, despite the fact that they are the closest form of Government to the community. Even the outsourcing of the administration of all private land conservation mechanisms, does not include local government at the table. This seems to be a major oversight. Also the draft legislation changes the role of the Department of Planning and the Environment, and its Minister in this process and this seems short sighted.

AAEE NSW expects that any change to the legislation will:

- Protect and enhance our pure water supplies, healthy soils, and productive farmlands
- Contributing to and maintaining the health, abundance and variety of our wildlife, both flora and fauna
- Rule out a return to broad-scale tree clearing in an unregulated manner
- Rule out clearing bushland critical as endangered wildlife habitat
- Minimise activity that has a negative impact on climate change and enhances direct action for climate. The new legislation should maximises carbon pollution capture and storage by native bushland
- Help farmers who protect wildlife, healthy soils and pure water supplies
- Rule out offset schemes that let property owns or developers destroy wildlife habitat in exchange for cash or dissimilar types of habitat.

The current draft Bills do not do this. We need strong, effective conservation laws that will stop the wave of extinctions occurring across our state, while at the same time optimising economic and community sustainability for landholders and their families.

B. Is the process that has been used for getting to the best legislation appropriate?

The AAEE NSW holds the view that Government needs to make greater effort in drafting the legislation, to bring people at both ends of the spectrum described above, more closely together. Legislation of this type, which has an impact on people locally, in their towns, farms, local streets and treasured community bushland, has the potential to keep dividing people from their neighbours and their local institutions for a long, long time. Eventually, this might need to be the case, but Government has the responsibility to try to minimise the risk by maximising engagement during the development stage. This has not occurred.

It is noted that over the past few years, there has been significant work undertaken by people working in the agriculture sector to improve biodiversity. The Landcare movement has achieved significant local support across NSW, with amazing affect. Similarly in urban communities the work of the Bushcare movement needs to be noted. It would seem that these groups have not been consulted effectively and that their views have not informed the changed legislation.

There has been little attempt at mediating the situation, and the process has been more politically driven from both ends of the spectrum rather than being fully and maturely discussed. Government has essentially taken a line and then 'consulted' and this is poor

practice. This will result in legislation that is flawed and causes problems locally for years to come.

In the best of all worlds, the NSW Government would withdraw the draft legislation and seek the engagement of all players to find better solutions, which would be more broadly agreed and worked up within a number of agreed key sustainability principles. Government would be a stakeholder in this process and the current draft legislation would remain on the table, but not as the start point. This process would not just be a consultation about the current draft material.

It would be best if this approach was time limited, for example it would need to occur within a six month period. At worst, through this process some modifications might be made to the draft Bills that make them more acceptable to more people. At best, some enduring ways forward for a mature community might be identified.

C. Assuming the legislation and its regulations are enacted, how will the community be engaged so that they fully understand it?

Notwithstanding B above, at some stage there will be a need to inform and engage the broader NSW community about the new legislation at the time that it becomes law, and immediately after that time. Across the NSW community, people don't know about what is being changed, what impacts the changes may have on their local environment and on biodiversity, and how they might be more involved in supporting biodiversity close to home. They need to.

Because AAEE is an organisation whose members are involved daily in the process of engaging people and educating them, it has strong views about the need for a clear process of education concerning all new legislation related to sustainability and the environment. Given the number of people in the community who are apathetic about this issue but whose lives may be impacted upon by the legislation, this process is important.

AAEE NSW would welcome being kept informed about how the NSW Government will roll-out detailed communication, education and training processes about the revised legislation. AAEE would be willing to play a role in this process and would be well placed to assist.



Sue Burton
Chair

Australian Association for Environmental Education, NSW Chapter .
22 June 2016