

# SUBMISSION GUIDE

**BIODIVERSITY CONSERVATION BILL 2016**  
**LOCAL LAND SERVICES AMENDMENT BILL 2016**

**STAND UP**  
**FOR NATURE**

**AFTER MONTHS OF SPECULATION, THE BAIRD GOVERNMENT HAS RELEASED DRAFT LAWS THAT WILL WEAKEN PROTECTIONS FOR OUR UNIQUE WILDLIFE AND BUSHLAND. IF PASSED, THE NEW LAWS WILL SPELL DISASTER FOR NATURE BY ENABLING THE RETURN OF BROAD-SCALE LAND CLEARING AND HABITAT DESTRUCTION ACROSS THE STATE.**

The NSW Government is seeking public comment on its proposed new *Biodiversity Conservation Bill 2016* and *Local Land Services Amendment Bill 2016*, which will replace the *Native Vegetation Act* and *Threatened Species Conservation Act*. **The new laws are on public exhibition until 28 June.**

Find out more about the proposed changes at [www.standupfornature.org.au/](http://www.standupfornature.org.au/)

Unless Premier Baird changes course, his new laws will:

- Add extinction pressures to our state's 1000 threatened animal and plant species;
- Threaten our clean, reliable water supplies;
- Remove important protections against erosion and salinity;
- Put landmark trees and bushland in our towns and suburbs at risk; and
- Release millions of tonnes of carbon pollution into our atmosphere.

**Now is your chance to stand up in defence of our important and essential conservation and biodiversity laws.**

Submissions will be accepted until **5pm on Tuesday 28 June 2016**

- Lodge your submission **online** at: [www.landmanagement.nsw.gov.au/have-your-say/](http://www.landmanagement.nsw.gov.au/have-your-say/)
- **Post** your submission to: Biodiversity Reforms - Have Your Say, PO Box A290 , Sydney South , NSW 1232

Please also consider sending a copy of your submission to [Premier Baird](#), [Environment Minister Mark Speakman](#), and [your local MP](#).

**This guide is intended to assist our members and supporters to make a submission on the *Biodiversity Conservation Bill 2016* and *Local Land Services Amendment Bill 2016*. It includes:**

1. **Part 1 - Template submission** (we've started a draft submission for you)
2. **Part 2 - Key Issues for Biodiversity Conservation Legislation:** A summary of the key issues (to assist people to include more detail in their submission)
3. **Part 3 - Additional Resources:** Links to Fact Sheets and Background Information, to help people understand the key issues

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.



## PART 1: TEMPLATE SUBMISSION (simple template letter)

Biodiversity Reforms - Have Your Say  
PO Box A290  
Sydney South  
NSW 1232

### Submission on proposed changes to NSW biodiversity and conservation laws

Dear Sir/Madam,

I am writing to make a submission on the Government's Draft *Biodiversity Conservation Bill 2016* and Draft *Local Land Services Amendment Bill 2016*, currently on public exhibition.

I oppose the NSW Government's proposed new land clearing laws, and support stronger protection for bushland and wildlife. I am concerned that the proposed changes will increase land clearing and carbon pollution, push wildlife closer to the brink of extinction and undermine the sustainability of our farmland.

I am particularly concerned with proposed changes that will:

- Repeal the *Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995* - these are important laws that have led to a significant decrease in land clearing and habitat loss;
- Remove the requirement to 'maintain or improve biodiversity values', leading to a decline in environmental outcomes, soil health, water quality and salinity;
- Limit important safeguards, such as 'red flag' areas for environmentally sensitive areas;
- Expand the use of 'self-assessable' codes, allowing landholders to clear trees with little oversight;
- Reduce the role of the Environment Minister in important biodiversity decisions, with the primary regulatory role for land clearing sitting with the Local Land Services and Minister for Primary Industries
- Increase the scope for Ministerial discretion, including in relation to the application of offsets;
- Increase the use of biodiversity offsets, with variations to 'like for like' offsetting and allowing proponents to clear trees in exchange for paying money into a fund;
- Drive regional climate change and increase greenhouse gas emissions from the land use sector;
- Rely on Government funding to achieve biodiversity gains, while reducing environmental protections in law.

I am also concerned that the Government has provided little explanation of how the new laws will be monitored in order to determine changes in land clearing rates and whether biodiversity values are enhanced. It is also unclear which agencies will be responsible for enforcing the new law.

I call on the Government to withdraw the Draft Bills, and commit to laws which will genuinely improve outcomes for nature.

Yours sincerely,

## PART 2: KEY ISSUES FOR BIODIVERSITY CONSERVATION LEGISLATION

### 1. REPEAL OF IMPORTANT BIODIVERSITY AND LAND CLEARING LAWS

**Issue:** *The NSW Government will repeal the Native Vegetation Act 2003, Threatened Species Conservation Act 1995, Nature Conservation Trust Act 2001 and sections of the National Parks and Wildlife Act 1974 and replace them with a new Biodiversity Conservation Bill and Local Land Services Amendment Bill.*

**Suggested talking points:**

- I do not support the new *Biodiversity Conservation Bill* and *Local Land Services Amendment Bill* as they do not provide the same protections as the *Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995*
- The *Native Vegetation Act* is one of the state's more significant conservation laws because it protects bushland and wildlife habitat across most of NSW
- The *Native Vegetation Act* in particular has led to over 1000 property vegetation plans being established, resulting in over 4 million hectares of native vegetation on farmland under improved management
- WWF has estimated that under the *Native Vegetation Act* land clearing has declined by about 40% and 116,000 native mammals have avoided death due to agricultural clearing each year
- The *NSW State of the Environment Report 2015* identified the *Native Vegetation Act 2003* as a key piece of legislation protecting soils and facilitating sustainable land management
- Land clearing laws should be strengthened not weakened

### 2. REMOVE THE REQUIREMENT TO 'IMPROVE OR MAINTAIN BIODIVERSITY VALUES'

**Issue:** *The legislative requirement to 'improve or maintain biodiversity values' will be repealed, and there will be no clear legislative standard introduced in its place. The 'improve or maintain' requirement is a key feature of the Native Vegetation Act 2003 and Biodiversity Certification under the Threatened Species Conservation Act 1995.*

**Suggested talking points:**

- I do not support the repeal of the legislative requirement to 'improve or maintain biodiversity values'
- The NSW Government must provide a clear objective for biodiversity conservation in NSW (e.g. 'improve or maintain', 'enhance', 'no net loss')
- The Independent Panel did not recommend the complete removal of 'improve or maintain' biodiversity from NSW biodiversity and conservation laws

### 3. LIMITS IMPORTANT SAFEGUARDS, LIKE NO-GO ZONES OR 'RED FLAG' AREAS

**Issue:** *The proposed new laws do not provide any absolute protection for environmentally sensitive areas such as no-go zones, or red flags. While it is intended that the Biodiversity Assessment Method will trigger a 'red flag' for 'serious and irreversible impacts on biodiversity values', information on what constitutes 'serious and irreversible impacts' is currently missing from the draft BAM. Further, the application of the 'serious and irreversible impacts' red flag is discretionary for major projects.*

#### **Suggested talking points:**

- The NSW Government must provide absolute protections for areas of high conservation value. These areas must be off limits to land clearing and development, and subsequently eligible for protection in the NSW Reserve System, or funded management under a relevant conservation agreement.
- While the draft *Biodiversity Conservation Bill 2016* does make provision for the Environment Minister to declare 'Areas of Outstanding Biodiversity Conservation Value', it is unclear how these provisions will operate in practice and whether they will be used more widely than the current 'critical habitat provisions' in the *Threatened Species Conservation Act*, which to date have only been used to declare four areas of NSW as critical habitat.
- Important information on what constitutes 'serious and irreversible impacts on biodiversity values' is missing from *Biodiversity Conservation Bill 2016*, *Local Land Services Amendment Bill (2016)* and the *Draft Biodiversity Assessment Method (Appendix 4)*. The Government should provide further information on its intention, and undertake further consultation, before any reforms can proceed.
- I am concerned that there is discretion for a consent authority in determining whether there are serious and irreversible impacts on biodiversity values. There should be clear, objective criteria for determining whether there are serious and irreversible impacts on biodiversity values. These important decisions may also need specific input or oversight from the Office of Environment and Heritage.
- The application of the 'serious and irreversible impacts' trigger must be mandatory for State significant development (SSD) and State significant infrastructure (SSI). That is, similar to non-major projects, the Minister for Planning must refuse to grant consent for SSD and SSI if there are serious and irreversible impacts on biodiversity values' (*Biodiversity Conservation Bill 2016*, clause 7.17).

### 4. EXPANDS THE USE OF 'SELF-ASSESSABLE' CODES

**Issue:** *The proposed new laws will dramatically increase the scope of 'code-based' land clearing, including new codes for farm efficiency and equity.*

#### **Suggested talking points:**

- I am concerned that expanding land clearing codes in NSW will lead to similar increases in land clearing as we have seen in Queensland under the Neumann Government. The proposed new Codes for NSW are strikingly similar to those implemented in Queensland, including a new code for farm efficiency. Further, it is proposed to introduce a new 'equity code' in NSW under which up to 500ha can be cleared every three years. This code does not exist in Queensland.

- Even though there will be some oversight by the LLS, the LLS will not have the ability to refuse code-based clearing
- Clearing under codes will accelerate key threatening processes such as ‘clearing of native vegetation’, ‘loss of hollow bearing trees’ and ‘loss of dead wood and dead trees’
- Clearing of Endangered Ecological Communities (EECs) or threatened species habitat should not be permitted under self-assessable codes
- I am concerned that the proposed rules around ‘set aside areas’ are inadequate. For example, set asides simply need to meet ratio thresholds and need not be of equivalent quality to the area being cleared. Further, the draft Codes will allow rehabilitation or revegetation to be used as set asides even though it may take decades for these set- asides to be ecologically equivalent to the vegetation being cleared.
- If set-asides are to be used, they must meet robust, scientific requirements that enhance biodiversity values. The Codes must not result in the perverse outcome of Category 2 land being converted to Category 1 land by code-based clearing. That is, the Codes should not allow Category 2 land that is cleared under the Cropping Efficiency and System Efficiency codes to be remapped to Category 1 land. This essentially means that rather than being protected, category 2 land can simply be converted to Category 1 if cleared in accordance with the Codes.
- Creation or improvement of cores and corridors should not be used to allow clearing of remnant vegetation under the ‘Farm Planning Code’ - it make take decades (if ever) for replanted vegetation to be ecologically equivalent to cleared vegetation
- Land within 50km of the coast should not be cleared under the ‘System Efficiency’ or ‘Equity’ codes regardless of current land use. This would allow clearing of vegetation (including EECs) on coastal land, eroding environmental values and the subsequent subdivision and development of coastal agricultural land for other uses.

## **5. REDUCES THE ROLE OF THE ENVIRONMENT MINISTER AND CREATES SIGNIFICANT MINISTERIAL DISCRETION**

**Issue:** *Currently, the Minister for the Environment has carriage of the Native Vegetation Act, including the approval of land clearing application, although in a number of the Minister’s functions, including the assessment and approval of Property Vegetation Plans, have been delegated to the Local Land Service. Under the new regime, it is proposed that land clearing applications will be dealt by the Minister for Primary Industries under the Local Land Services Act and the LLS will have an increased role in overseeing certain land clearing activities. Further, there will be significant Ministerial discretion in applying the new laws*

### Suggested talking points:

- Important decisions on biodiversity should be made or overseen by the Minister for the Environment
- Ministerial discretion should be limited. For example, the outcomes of the Biodiversity Assessment Method must be applied. There should be no Ministerial discretion to ‘discount’ required biodiversity offsetting credits (*Biodiversity Conservation Bill 2016*, clauses 7.15 and 7.16) or approve major projects or Biodiversity Certificates if there are ‘serious or irreversible impacts on biodiversity.’

## 6. INCREASES THE RELIANCE ON OFFSETTING AND DISCARDS IMPORTANT OFFSETTING RULES

*Issue: The Government plans to expand the use of biodiversity offsetting through a new Biodiversity Assessment Method, and weaken biodiversity offsetting rules for all types of development. The Draft Biodiversity Assessment Method carries over many of the criticised elements of the NSW Biodiversity Offsets Policy for Major Projects and contains key flaws that the government has chosen to ignore.*

### Suggested talking points:

**Biodiversity offsetting is complex:** Scientific research shows that biodiversity offsetting schemes are inherently difficult, with complex issues such as biodiversity equivalence, time lags for restoration and market dynamics providing significant challenges for the design of offsetting mechanisms. As the use of offsets continues to expand it needs to follow strict rules to deal with these limits and uncertainties. These include clear objectives, like-for-like offsetting rules, recognition that some things can’t be offset (red flags), and clear processes for transparency, monitoring, enforcement and reporting.

- **There is no clear objective to protect biodiversity or achieve net positive outcomes:** The *Draft Biodiversity Assessment Method* does not include a clear objective to protect biodiversity or achieve net positive outcomes. Currently, both the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act (1995)* are underpinned by an objective to ‘maintain or improve biodiversity’. This objective is not carried over, nor is there an equivalent or replacement standard, in the *Biodiversity Conservation Bill 2016* or *Draft Biodiversity Assessment Methodology*.
- **Limits on biodiversity offsetting (‘red flag’ areas) in the *Draft Biodiversity Assessment Method* are limited and uncertain:** The new biodiversity conservation package proposes a ‘red flag’ where there are ‘*serious and irreversible impacts on biodiversity values*’ however the criteria for defining serious and irreversible impacts have not yet been developed and in the case of major projects or biodiversity certification, can be ignored.
- **The *Draft Biodiversity Assessment Method* allows for variations to ‘like for like’ offsetting:** This fundamentally departs from the principle that offsets should be targeted towards the conservation values being lost.
- **The *Draft Biodiversity Assessment Method* allows the use of supplementary measures (now called ‘biodiversity conservation actions’) in place of genuine offsets:** Supplementary measures are not genuine offsets, and they fail to meet best practice offsetting principles, including that offsets be ‘like for like’. Further, the rules for the use of ‘biodiversity conservation actions’ are still under development, and not available for public comment as part of the *Draft Biodiversity Assessment Method*.

- **The *Draft Biodiversity Assessment Method* allows mine site rehabilitation to be attributed as biodiversity offset credits:** The use of mine site rehabilitation towards the calculation of biodiversity offset credits is controversial and unproven. Numerous critics have raised concerns about the ability to effectively restore degraded land, and whether mine site rehabilitation was ‘additional’ to the obligations of mining companies.
- **The *Draft Biodiversity Assessment Method* allows proponents to pay money into an Offsets Fund prior to adequate offsets being identified:** Proponents can discharge offsets requirements simply by paying money into a fund rather than requiring offsets to be identified and secured before development proceeds.
- **The *Biodiversity Conservation Bill 2016* and *Local Land Services Amendment Bill 2016* allow for discounting of biodiversity credits:** Provisions that provide significant discretion to decision makers to discount or alter biodiversity offset credit requirements should be removed from the *Local Land Services Amendment Bill 2016* and *Biodiversity Conservation Bill 2016*.
- **The *Biodiversity Conservation Bill 2016* does not protect offsets sites in perpetuity:** There are provisions that allow the Minister to vary offset agreements (e.g. clause 5.11 and clause 5.16).
- **It is unlikely that the NSW policy as proposed will meet federal standards:** For example, the NSW policy allows expanded use of indirect offsets and supplementary measures, while the Australian Government’s Offsets Policy under the *Environmental Protection and Biodiversity Conservation Act 1999* puts a 10% cap on the use of supplementary measures.

## 7. NO RECOGNITION OF CLIMATE IMPLICATIONS

*Issue: Emissions from the land sector are rising sharply in Australia, driven by the relaxation of land clearing laws in Queensland under the Newman government. This is despite the federal government making land sector projects the cornerstone of its Direct Action policy, and having spent \$1.2 billion on avoided clearing and revegetation. Historic land clearing has also had measurable effects on regional climate. Climate change is the biggest threat to both biodiversity and the agriculture sector, and ignoring it in the new legislation is foolhardy and demonstrates a lack of leadership.*

### Suggested talking points:

- **Climate change is real:** despite some still refusing to accept reality, Australia has already warmed by approximately 1°C and climate change is accelerating
- **Past clearing has been shown to have affected regional climate:** research shows that past clearing has decreased rainfall, increased temperatures, increased the duration of droughts and exacerbated El Niño events
- **Climate change is a threat to biodiversity and farmers:** Australia is vulnerable to more extremes, and therefore ignoring climate change is not good leadership as it will negatively impact both the environment and farmers

- **More clearing is the opposite of what we need:** rapid and extensive reforestation can help reverse regional climate change, but clearing will make things worse
- **Increasing clearing undermines policy:** The federal government has spent \$1.2 billion on purchasing emissions via avoided clearing and revegetation from the Emissions Reduction Fund (ERF). Relaxing land-clearing laws will mean this money is wasted
- **NSW has benefitted most from the ERF:** most contracts have been awarded in NSW, yet the NSW government is paying back Australian taxpayers by undermining their efforts
- **The land is a source of carbon:** The Wilderness Society reports that in Australia, emissions from the land sector are rising faster than all other sectors and will average 46 million tonnes per year between 2014 and 2020. We need land to act as a carbon sink
- **We have international obligations:** increasing emissions from clearing directly contradicts Australia's signing of the Paris agreement and makes us look hypocritical

## 8. CHANGES WILDLIFE LICENCING AND WILDLIFE REHABILITATION

*Issue: The Government is moving to a risk based approach for wildlife licencing. High-risk activities will continue to be regulated, however there will be a greater reliance on Codes of Practice and less licencing (it is estimated there will be 20,000 less licences). The Government plans to increase education on wildlife management. The Government is also looking at an accreditation scheme for wildlife carers and rehabilitation providers.*

### **Suggested talking points:**

- The proposal to remove approximately 20,000 licences in favour of a risk based approach to pet ownership of native animals is in direct contrast to the NSW Government's recent decision to strengthen regulations for companion animals by enhancing the ability to track and trace animals for the duration of their lives.
- Increased reliance on Codes of Practice may mean that there is less monitoring and record keeping. This may encourage illegal collection of native animals from the wild. Illegal collection may have impacts on biodiversity at the local scale, particularly in accessible locations close to population centres.
- The proposed change from a licensing system to an accreditation program suggests that there will be more self-assessed activities, and therefore less effort focused on compliance. Without a strong legal framework, it will be extremely challenging to ensure adequate standards of training and care, in a sector that is almost entirely voluntary. This has implications for public health (handling of venomous snakes, flying foxes and bats); animal welfare, and the management of wild populations (e.g. the release of diseased animals into unaffected areas, or maintaining genetic diversity).
- Fragmentation of the wildlife rehabilitation sector, though either new groups within existing jurisdictions, fragmentation of the jurisdiction of existing groups, or by allowing non-resident members to care for wildlife elsewhere, threaten the viability of the whole sector. The wildlife rehabilitation sector is directly accountable to the general public, donors and supporters, and there

is an expectation that it will consistently respond to calls for assistance in a reliable, appropriate and timely way.

- At this stage there is little information available about the new Codes of Practice or accreditation scheme for wildlife carers in the draft Bills or supporting material. The Government should engage closely with relevant stakeholders as it continues to develop this part of its reform package.

## 9. RELIES ON GOVERNMENT FUNDING TO ACHIEVE CONSERVATION GAINS

*Issue: A key premise of the Government's reform package is an increased investment in private land conservation. The Independent Panel admits that under recommended changes to biodiversity laws there could be some losses of biodiversity at a site scale and to counter this, the Government will need to increase public investment in biodiversity conservation on private land. The Government recently committed \$240 million over 5 years, and subsequent \$70 million per year towards private land conservation, as well as \$100 million towards the Saving Our Species program.*

### Suggested talking points:

- **We've been here before:** This is not the first time that Government has invested in private land conservation. When the Native Vegetation Act was introduced funding was provided for on-ground works to assist farmers to maintain or improve native vegetation for biodiversity, water quality, soil and salinity outcomes, yet when the money ran out, goodwill was lost. That will happen again, but this time there will be no law to stop land clearing.
- **Investment in private land conservation is a positive step:** Increased investment in private land conservation is welcomed as a way of supporting landholders who undertake conservation work on their land and contributing to biodiversity protection in NSW.
- **However, money can't compensate for poor laws:** Under the new regime conservation gains are not guaranteed in legislation, but are subject to change at the whim of Government funding.
- **Funding falls well short of what's needed:** The funding package of \$240m over five years for conservation on private land is not enough to bring properties with existing conservation agreements up to scratch, and expand the amount of private land conservation in any meaningful way.

## 10. DOES NOT PROVIDE ADEQUATE DETAIL IN RELATION TO MONITORING AND ENFORCEMENT

*Issue: The proposed changes are likely to have a significant impact on land clearing rates and biodiversity outcomes, yet the Government has been unable to state how much additional land clearing will occur under these new laws. The Government has also not determined which agencies will be responsible for the enforcement of the new laws.*

### Suggested talking points:

- I am concerned that the Government has provided little explanation of how the new laws will be monitored in order to determine changes in land clearing rates and whether biodiversity values are enhanced. There are also no clear objectives or targets against which the new laws can be monitored and measured.
- The Government must ensure that there is adequate resourcing of both the Local Land Services and Office of Environment and Heritage to effectively monitor and enforce the new laws.

## PART 3: ADDITIONAL INFORMATION AND RESOURCES

Further information including Fact Sheets and Background Information is available on our website:

[www.standupfornature.org.au/resources](http://www.standupfornature.org.au/resources)

### Fact sheets:

- Fact Sheet - Summary of Key Changes
- Fact Sheet - Land Clearing Codes
- Fact Sheet - Biodiversity Offsetting
- Fact Sheet - Impacts on Urban Bushland
- Fact Sheet - Land Clearing and Climate
- Fact Sheet - Paddock Trees
- EDO NSW - *Top 10 Concerns*

### Background information:

- Timeline of land clearing laws and the biodiversity laws review process
- Mike Baird's promises on the environment
- Biodiversity - Fast Facts
- Independent Panel's Report and Recommendations
- Conserving and Restoring Biodiversity in NSW - Submission to the Independent Biodiversity Legislation Review Panel - September 2014

### The government's public consultation:

- The government's website is called Sustain, Invest, Protect: A new approach to land management and conservation in NSW: <https://www.landmanagement.nsw.gov.au/>

### Reports:

- *Native wildlife at risk if NSW Native Vegetation Act is repealed* - WWF (2015)
- *Laws for the bush - Benefiting biodiversity and people* – TEC (2014)
- *NSW State of the Environment Report 2015*
- *Climate Changes and Australia's Tree Clearing Crisis* – The Wilderness Society (2016)

### FURTHER INFORMATION

#### To find out more, and to get involved in the campaign:

- Attend a community forum in your area: [www.standupfornature.org.au/events](http://www.standupfornature.org.au/events)
- For more information on policy content, contact Cerin Loane on [cloane@nature.org.au](mailto:cloane@nature.org.au)
- To get involved in the campaign contact: Corinne Fisher on [cfisher@tec.org.au](mailto:cfisher@tec.org.au)