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gloriosa*

# ***Australian Native Plants Society Canberra Region Inc***

P O Box 217 Civic Square ACT 2608  
ABN 17 717 346 075  
nativeplants-canberra.asn.au

## **SUBMISSION**

### ***NSW Biodiversity Conservation Bill 2016 and the NSW Local Land Services Amendment Bill 2016***

#### **1) The Australian Native Plants Society – Canberra Region (ANPS)**

The ANPS was established in 1962. ANPS is a non-profit, voluntary community organisation dedicated to the growing, conservation, preservation, promotion and appreciation of Australian native plants. ANPS has over 250 members, including many working in a professional capacity in many spheres related to native plants (e.g. ecology, botany, horticulture and entomology) as well as closely related scientific disciplines.

ANPS members regularly undertake field and camping trips into NSW to floristically rich areas. Ecosystems are not confined by State borders and ANPS members believe the nation's natural assets are owned by (and should be accessible to) all Australians. Our members have contributed to the knowledge of these areas by making publicly available lists of flora (and sometimes fauna) species that were observed during these trips. Our members have located new species and new records for plant species in some areas.

The ANPS constitution prominently advocates activity in conservation through the promotion of the conservation of Australian plants and their habitats, and observing and support for laws related to the preservation of Australian native plants.

#### **2) Documents reviewed**

Every attempt was made to review as many documents as possible, from public and private sources, within the time allocated for public consultation. The allocated time was inadequate due to the volume of documents available and the complicated way the legislation interacts with existing environmental legislation.

ANPS reviewed the *Legislative Review Panel Report* (LRPR 2014) (Ref 1), the draft *Biodiversity Conservation Bill 2016* (BCB 2016) (Ref 2) and parts of the *LLS Amendment Bill 2016* (LLSAB 2016) (Ref 3) in detail. The other documents that were read for information purposes are listed under references at the end of this submission.

ANPS believe the presentation in the LRPR 2014 provided some new thinking about ways of managing the conservation of native vegetation communities and threatened fauna/flora species,

though ANPS has serious concerns about the way the BCB 2016 and LLSAB 2016 have been prepared, and existing legislation repealed or amended, in response to that report.

ANPS recommends that:

***Recommendation 1:*** *these bills be withdrawn but, if these Bills are to be persevered with, that the public consultation period be extended to allow appropriate time for responses given the detailed changes to legislation and the pertinent number of documents available.*

### 3) Background & Concerns

#### 3.1 Background

ANPS is fully aware of the fact that NSW has one of the worst records for mammalian extinctions, and at the present time has some 1,000 listed threatened plant and animal species. Clearing of habitat is a (if not the) major cause of this situation. It should be more than obvious that the recent proposals for disposal of Crown Lands (such as travelling stock routes and road reserves, many of which hold high conservation values) together with the impacts of climate change (that are already affecting us); and now the detrimental changes under the draft BCB 2016, will further threaten our wildlife and their habitats (i.e. vegetation communities) and result in further degradation of our soils and water catchments. There is enough evidence of the benefits of ecosystem services to agriculture and human society in general. We need to conserve what we have left, utilise already alienated land to its sustainable maximum and then improve our natural world, rather than introduce weaker and much laxer clearing legislation with all the subsequent detrimental effects to the environment.

The need to reduce native vegetation clearance has been widely accepted around the world for a very long time. In the latter years of the 20<sup>th</sup> century and the early years of this century, Australia became internationally recognised for its introduction of legislative controls to manage land clearing and soil and water degradation by regulatory means.

At the Federal level the Howard Liberal government honoured an election policy pledge of “*no net loss of vegetation across Australia by 2000*”. The Liberal government and States signed bilateral agreements under the \$1.25 billion National Heritage Trust which recognised that in Australia:

- *much of our land has been over-cleared, resulting in erosion, vegetation loss and rising salinity;*
- *many of our rivers are affected by poor water quality;*
- *air pollution is increasing in our major cities;*
- *our coastline has been affected by sewage and stormwater pollution; and*
- *too many of our plants and animals are now threatened with extinction.*

The bilateral agreements included the requirement for States to reduce the rate of land-clearing to stop biodiversity loss and land and water degradation. The National Plan for Water Quality and Salinity signed by COAG in 2000 required the States to “*institute controls on land clearing by 2002*” to stop land and water degradation.

NSW itself was a world leader in environmental regulation with forward-thinking laws on protecting threatened species and controlling vegetation clearing. The *Native Vegetation Act 2003*, which was supported by scientists, farmers and the conservation movement, was implemented by the NSW government in 2005. The widespread community recognition of the critical need to protect wildlife and habitats, soil quality and water catchments and limit greenhouse emissions were the main drivers of the introduction of such advanced forward-thinking legislative changes by Federal and State governments.

It goes without saying that the recent “relaxing” of land clearing controls in Queensland dramatically increased land clearing (ABC News website Jun 2015). The proposed draft Bills, when enacted in NSW, will also result in extensive and unnecessary land clearing and the obvious flow-on impacts to flora, fauna and ecological communities. It will also detrimentally affect Australia’s 2020 emissions reduction target.

### 3.2 Concerns

The following concerns are not in any priority order.

#### 3.2.1 Objective of the BCB 2016 & LLSAB 2016

The process under the current environmental legislative Acts (which are to be repealed in full or part) is regulatory – basically meaning that a variety of aspects of development proposals are formally assessed prior to any work being undertaken. Development proposals which will (or have the potential to) impact detrimentally on significant environmental issues and Matters of National Environmental Significance (MNES) are approved with conditions or refused approval. Non-approval of a development can be challenged through the legal system. Under the new legislation provision is made for ongoing habitat loss through a dubious offset scheme and “set-asides”, and there appears to be little consideration of any indirect impacts of a development (e.g. pest introduction, climate change) which have been considerations over recent decades. While the current legislation may not be perfect, it was not adequately resourced, and it would have been better to strengthen and appropriately resource the existing legislation than replace it.

ANPS is concerned that the primary objective of the draft Bills is to introduce significant changes to the current (and appropriate) regulatory legal protections for the environment mentioned above, primarily through relaxed vegetation clearance controls. This amounts to a return to broad scale native vegetation clearance. ANPS cannot see how “*conserving biological diversity and ecological integrity at bioregional and State scales*” (BCB 2016) can be achieved under the proposed legislation. The current legal protections for native vegetation are to be replaced with vegetation clearance in significant areas of “exempt” and other lands in NSW. The exempt lands are now subject to a land manager self-assessment process and a very dubious biodiversity offsets system is introduced, which will defeat the very purpose of vegetation retention, rehabilitation and the conservation of threatened communities and species.

ANPS is concerned the removal of the objectives in Sect 3 of the *Threatened Species Conservation Act 1995*, as well as that conservation significant “endangered populations” are not recognised in the BCB 2016.

ANPS is very surprised and saddened that the objectives of the draft bills do not address - in any way that could be described as appropriate - the issue of climate change and the potential consequences that relaxed vegetation clearing controls may have on Australia’s commitment to greenhouse targets under this crucial challenge facing mankind.

ANPS recommends that:

**Recommendation 2:** *if changes or amendment of legislation is actually needed, the NSW government completes the task within existing legislation.*

**Recommendation 3:** *the objectives in Sect 3 of the Threatened Species Act 1995 be incorporated into the new BCB 2016 if it is to be enacted.*

**Recommendation 4:** *the NSW Government examine and publicly report on the potential clearing that will be done and how it impacts on Australia's international carbon commitments.*

### **3.2.2) Contradiction of Bills with other laws and restorative environmental practices and activities**

The draft Bills are in direct contradiction to previous legislative controls and community attitudes. It will counteract current Federal government as well as community contributions to environmental conservation over the past three decades. Over that time, Federal, State and Local governments in NSW have sought, supported and sometimes directed considerable environmental improvements through numerous and varied community-based organisations (as an example. Landcare, Parkcare, Rivercare, Catchment Management, Frogwatch, Greencorps, Conservation volunteers etc.). The proposed *BCB 2016* will basically approve archaic land management activities that are in direct contradiction with government legislation, policies, long-established on-ground programs and community contributions to improve our environmental situation through voluntary abatement activities.

While the *BCB 2016* incorporates the Scientific Committee, listing of threatened species/ecological communities and threatening processes, the *LLSB 2016* will increase the already known threats to threatened species through the self-assessment land clearing that is proposed. The relevant threatening processes that will be increased are clearing of native vegetation, loss of hollow-bearing trees and removal of dead wood/trees. The Bills are contradictory to already listed and established threatening processes.

As an example of the above threatening processes being ignored, it is of great concern to ANPS that farming “convenience” and “efficiency” appears to permit the clearance, without approval, of isolated paddock trees. The importance (and absolute necessity) of maintaining the crucial “island movement corridors” and the habitat these trees provide has been a common community direction for decades. Paddock tree clearance alone will be the final curtain for unimaginable numbers of trees of high-rating cultural, societal, heritage and environmental values over vast areas of NSW. The importance of “paddock trees” was recognised by State & Federal governments through major education and practical projects, and NSW (and other jurisdictions) listing “*Loss of hollow bearing trees*” as a key threatening process.

A major concern is that many aspects of the proposed legislation conflicts with the Federal EPBC Act 1999.

ANPS recommends that:

**Recommendation 5:** *if these Bills proceed to the next stage, they are thoroughly reviewed to ensure they are consistent in all respects with existing Federal and State laws.*

### **3.2.3) Data & mapping**

The *BCB 2016* does not provide any environmental baseline data, targets/objectives, measures or monitoring for its prime purpose - slowing the removal of native vegetation - which will show if the Bill is enacted. This is despite the *LRPR 2014* drawing attention to the need for high-quality environmental data, monitoring and reporting. It basically permits broadscale clearing with little evidence of effective control on private vegetation clearance, and no regulatory requirement for formal assessment of impacts on threatened species and communities, soil, or water salinity & quality). The Bills as they currently stand do not seem to have effective controls on clearing of native vegetation on private landholdings (apart from protections for special areas, species, or

ecological communities), and will result in significant clearing increases and detrimental impacts on biodiversity in NSW.

Vegetation mapping in NSW has improved greatly over recent years but is not currently at a stage where it can be relied upon for accuracy. Our greatest concerns are for significant remnant vegetation and what are currently called ‘critical habitats’ that may remain in areas which are to be exempted from clearing controls. The current level of mapping quality is such that these sites (e.g. ephemeral wetlands and especially smaller patches of native temperate grassland) may not be recorded and they will be “legally” destroyed. It may be that these individual sites will be crucial to future rehabilitation of connectivity corridors developed through what may be otherwise irreversibly retrievable and extensive areas of NSW. ANPS has great concerns for areas of remnant native temperate grasslands which are currently poorly mapped and what the proposed on-farm “management” actions on moderate value native grasslands might involve (e.g. fertiliser use).

Over many decades, flora and fauna studies have been conducted in local council areas in NSW. These reports give a more detailed insight to the vegetation, habitat quality, presence of native species and the suitability of habitat for threatened species on smaller areas of land within a large shire landscape. These studies, if used properly, should have contributed to the vegetation mapping process. Resources should be provided to local governments to add this data to the NSW mapping process.

If reliance is given to the currently available but inaccurate vegetation maps, it is more than certain that very important areas of significant native vegetation will be lost forever.

ANPS recommends that:

***Recommendation 6:*** *if the current Bills are to be enacted, then current assessment practices under the NVA 2003 should be continued until the NSW Scientific Committee resolves publicly that the data collected and the standard of vegetation mapping is such that the new Bills could be enacted.*

### **3.2.4) Repeal of Native Vegetation Act 2003**

Unlike the BCB 2016, the NVA 2003 was clear and had definite rules and prohibitions about native vegetation clearance. Part 3 Div. 1 of the NVA 2003 does not permit broadscale clearing unless it improves or maintains environment outcomes. Native vegetation could not be cleared on private land, unless approved by the Minister through development consent or a property vegetation plan (PVP). Farmers were still permitted to clear for ‘routine’ agricultural activities.

The *Native Vegetation Regulation of 2013* loosened the ‘routine’ exemptions to clear native vegetation, without obtaining a PVP. In 2014 it got worse, with farmers permitted to self-assess the removal of native vegetation (e.g. paddock trees, thinning of native vegetation, and clearing ‘invasive’ native species).

There is no doubt that, despite what a minority may have seen as a hindrance, vegetation protection generally improved under the NV Act 2003, despite the LRPR 2014 stating that the NVA 2003 was process-driven, over-regulatory, and stopped farmers from going about their legitimate business. The LRPR 2013 (p.2) noted conflicting accounts of whether or not the NVA 2003 had stopped land clearing, then uses the NSW EPA account that it’s ‘stabilised’ at about 23,000 hectares/pa. The NVA 2003 reduced clearing from about 90,000 ha per annum to less than 20,000 ha per annum. The BCB 2016 will increase the rate of clearing at a time when a percentage (possibly hundreds of thousands of hectares) of already cleared land is not being particularly well-used or sustainably managed, and cultural change is slow among some farmers.

ANPS is deeply concerned about the quite foreseeable detrimental impacts of the *BCB 2016* and the *LLSAB 2016* will have on land clearing (i.e. habitat) and vegetation (and therefore our fauna) communities.

ANPS recommends that:

**Recommendation 7:** *the NVA 2003 be retained and reviewed in its own right, allowing an appropriate amount of time for public consultation.*

### **3.2.5) Legal Challenges and Appeals**

The Bills remove almost any possibility of community/public legal challenges to any proposal, thus leaving illegal protest activity as the only option to protect the natural assets that belong to all Australians. This denial of appeal is contrary to every Australian democratic process we have known and are accustomed to, and is totally unacceptable. Every Australian retains the right to defend our publicly owned natural assets - it should not be left to the discretion of either the Minister for the Environment or the Premier to make such important decisions (Sect 5.17). ANPS understands that the Independent Commission Against Corruption (ICAC) has criticised the proposed Ministerial powers and the potential for government agencies being involved in offset investment schemes (Sect 6.6).

The right of community/public appeal becomes even more important given the draft Bills provide an appeal process for landholders who may undertake illegal clearing or who are refused what they see as their right to destroy natural assets without due assessment (Sect 2.16 & 8.23).

ANPS recommends that:

**Recommendation 8:** *the legislation builds-in the ability and appropriate time periods for community comment and consultation, and the potential for legal challenge.*

### **3.2.6) Covenanted Lands**

A rising number of freehold landholders in Australia are contributing to biodiversity conservation by protecting important areas through covenants placed on their land. This is being done to protect in perpetuity the natural values of the land that they have conserved and improved during their time as the land manager. There are also an increasing number of bequests donating freehold titles to various community-driven conservation organisations. These are usually covenanted and often sold on to sympathetic new private owners. The beauty of the covenant system is that it is currently a means of private individuals or NGO's protecting biodiversity for the benefit of future Australians, and the new landowner then purchases the land with full knowledge of the conditions applicable to the land and the requirements of future land management.

The new Bills appear to support a major change to the covenant system (Sect 10.8 & 10.9), permitting covenants being converted after the death of the owner or sale of the land to use as offset areas. Such land must not be misused by contradiction of the original intent of the covenant (i.e. a generous bonus to environmental conservation).

It is also not acceptable that properties effectively donated to the Nature Conservation Trust with conditions can be stripped of those conditions at the whim of a government department/agency (Sect. 5.23).

ANPS recommends that:

**Recommendation 9:** *the intent in which covenants are made should be paramount, and be designated in-perpetuity.*

### **3.2.7) Biodiversity Offsets**

The BCB 2016 states it will facilitate ecologically sustainable development through a range of ‘prioritised investments’ and ‘market-based conservation mechanisms’, and has a heavy reliance on offsets. Australia has moved to a biodiversity offsets system, despite the fact that there is now rising evidence that they don’t work as well for nature as they do for developers. The new Bills rely too heavily on convenient but barely proven mechanisms of biodiversity covenants, ‘markets’ and ‘offsets’.

The original enactment of environmental laws related to threatened species and land clearing was to protect remnants of over-cleared ecosystems and landscapes, which can be somewhat rehabilitated under site-dependant strategies. Based on experience, ANPS cannot accept that off-setting the destruction of functioning, high to moderate quality areas of threatened ecosystems for an equivalent area of lesser quality vegetation can in any way be regarded as satisfactory. Unfortunately the offset system generally has not (and is unlikely to) operate satisfactorily and fulfil their somewhat dubious function unless appropriately regulated. ANPS also cannot accept that the removal of any high quality native vegetation in return for offsets or set-asides of similar areas in any way helps the “no net loss” of vulnerable vegetation/communities, with set asides having the potential under the new codes to halve the area of native vegetation remaining in some areas.

Even worse, the draft Bills are proposing offset payments – in other words the simple handover of money to destroy irreplaceable vegetation communities/habitats. For offset payments to be realistic there has to be a reliable way of placing a monetary value on destruction of flora, fauna and habitats. We believe that will be very difficult to achieve and open to abuse. It is of no consolation that such payments will be (supposedly) hypothecated for biodiversity restoration somewhere else. In the view of ANPS, the potential for misuse of financial offsets is high and likely probable, and ANPS does not support such a proposal.

Under Sect 9.10, it appears that the Office of Environment & Heritage can withhold or restrict access to public registers holding information on offsets and areas of Outstanding Biodiversity Value. Sect 9.10 (3) then allows for a defence under prosecution if someone damages such an area because they did not know it was a declared area. This one section alone will lead to all sorts of legal challenges, unfortunately after the clearing occurs, and which cannot then be restored.

The Bill appears to be reliant on ‘offsetting’ biodiversity impacts by managing other areas for biodiversity rather than preventing any impacts on the original site, and adopts the standards contained in the problematic *NSW Biodiversity Offsets Policy for Major Projects* (Ref 3). The NVA *Biodiversity Assessment Methodology* (BAM) is therefore significantly weakened. As an example, direct ‘like-for-like’ offsetting requirements are not essential with the new policy being relaxed.

The option for financial settlement instead of an actual offset will result in a net loss of species and communities. It also appears that offset areas may be further offset later on. If this deficient Bill is enacted without amendment, ANPS would quite reasonably expect that any offsets created are real and in place, and will be appropriately managed in perpetuity.

ANPS recommends that:

#### ***Recommendation 10:***

- i) there is too much dependence on the use of offsets and set-asides and this should be minimised;*
- ii) there should be no offsets permitted for threatened vegetation communities (i.e. these communities should not be cleared);*

- iii) *offsets involving cash payments should not be permitted;*
- iv) *all information involving offset transactions should be publicly available.*

### **3.2.8) Funding decisions**

It has been stated that the various pieces of legislation to be withdrawn (*Vegetation Clearance Act 2003*; parts of *National Parks and Wildlife Act 1974*; *Nature Conservation Trust Act 2001*; *Threatened Species Conservation Act 1995*) were contentious and unsuccessful. ANPS notes a widespread view in the community that the so-called failure of the NVA 2003 was due to government neglect. It was resourced in the early years of operation, but these resources diminished over time resulting in backlogs of clearing applications. There were too few financial and human resources, and breaches of the NVA 2003 were never followed through as they should have been – hence it is easy to say it was not successful. The NVA 2003, including the scientific methodology incorporated within it, did reduce land clearing, but was able to approve clearing where the vegetation was regarded as not environmentally sensitive. This BCB 2016, if enacted, will be subject to the same short-term budgetary decisions and no more effective as a result.

The ANPS supports the establishment of incentives or stewardship payments to land managers to conserve and protect environmental values, but such payments must be conditional and based on the individual management requirements of the site, and management actions must be monitored to ensure they are occurring. As mentioned above, ANPS is concerned that the lack of government funding brought about the demise of the legislation to be repealed, and there is no guarantee of longer-term funding for incentives payments in short term government cycles.

ANPS also considers that Local Land Services have a focus other than the conservation of threatened vegetation types and threatened species, which may well “colour” their decision-making process. LLS staff capacity will rely heavily on appropriate numbers of qualified scientists in the relevant disciplines to have the ability to conduct appropriate assessments on a site-by-site basis. The NSW NPWS (OEH) has the expertise to do so, or at least it did until it, too, was hit by major funding cuts. The funding for such staff is no different than that required under the NVA 2003, which was shamefully under-funded in the latter years of its operation. There is no guarantee that the same predicament may afflict the proposed new legislation - another reason to maintain and fund the existing legislation which we know worked when properly funded.

ANPS recommends that:

#### ***Recommendation 11:***

- i) stewardship/incentive payments are a viable means of conserving biodiversity;*
- ii) all stewardship/incentive agreements are appropriately monitored by a qualified agency (e.g. OEH);*
- iii) appropriate levels of funding be guaranteed to conduct the business of relevant agencies associated with any clearing legislation into the future.*

### **3.2.9) Assessment(s)**

The repeal of the NVA 2003 and initiation of the *LLSAB 2016* replaces the internationally applauded *Environmental Outcomes Assessment Methodology* (EOAM) of the NVA, with the proposed new Bills in some circumstances permitting self-assessment by landholders for land clearing. For this reason alone, ANPS believes the *LLSAB 2016* will almost certainly drive some threatened species closer to extinction, or to extinction itself.

The Legislation Review Panel made a clear recommendation, i.e. that land clearing involving a change of use should be assessed under planning laws. It appears that Local Land Services are to



assess land clearing proposals under the new Act. LLS currently do not have the resources or expertise to carry out these functions (see last para 3.2.8 above)

The ANPS supports the general direction of standardisation to a “single scientific method” to inform land-clearing decisions. However, every site is different, and different assessments may be required for different vegetation types. Any assessment methodologies used must be prepared by qualified ecologists and related scientific practitioners. There must also be the ability for accredited assessors to add any further information that may be applicable to the vegetation/habitat/species present and its suitability for threatened fauna species.

As the responsibilities for implementation of many spheres of Federal and State legislation lies with local government, the latter must be appropriately funded and monitored to ensure the local consent authority actually is carrying out its responsibilities. This is where community ability to comment is so critical. ANPS is aware of many poor decisions being made by local governments resulting in environmental damage due to clearing or destruction of protected flora because they took no heed of flora/fauna assessments, and more importantly did not take necessary compliance action when it was required, simply stating the costs of such actions were beyond Council resources, and despite the costs of compliance action being a State responsibility.

The proposal to exclude post-1990 revegetation is of concern. In some areas, it may well be that 20-odd year old vegetation may be the only habitat left for some species. Random clearing of revegetation may prove problematic for threatened species in some areas.

Any assessment involved in nominations/declarations of Areas of Outstanding Biodiversity Value (which appears to replace critical habitat), must be undertaken by qualified and relevant scientific advisors.

The ANPS believes the vegetation clearing “red light” system should be retained and observed by regulatory authorities.

ANPS recommends that:

***Recommendation 12:***

- i) site based assessment be incorporated to ensure no threatened species is present and that habitat suited to local threatened species is not removed;*
- ii) the assessment method under the NVA 2003 be retained for future land clearing proposals;*
- iii) OEH be involved with vetting land clearing proposals;*
- iv) proposed clearing of post-1990 revegetation be assessed due to its potential importance to threatened species in highly cleared landscapes;*
- v) the current “red light” system be retained.*

**3.2.10) Monitoring, reporting & compliance**

There does not appear to be any environmental baselines or targets, no threatened species assessment, no reviews on soil and water impacts (salinity, sedimentation), no “maintain and improve” requirement, and a return to broad scale clearing. ANPS does not believe that the NSW Government has any idea of the extent of clearing that will be undertaken under the new self-assessable codes, and the likelihood of “accidents”. The Bill is unclear on who develops the base data, monitoring programs and reporting processes. It will be impossible to determine how much biodiversity is being lost.

The BCB 2016 updates offences and penalties, and it appears that LLS [Sect 11.2 (2); Sect 12.3, Sect 13.26], planning authorities (Sect 12.3) and the Land & Environment Court [Sect 13.17 (3)] all have roles in enforcement, compliance and penalty responsibilities. ANPS cannot accept that LLS have the knowledge or capacity to undertake this role (see 3.2.8) above).

Approvals, compliance, enforcement and penalties, together with appropriate resourcing, make or break the effectiveness of legislation. The environment protection legislation which is being withdrawn was not properly resourced in latter years, particularly with regard to staff and financial components, and local government interpretations and implementation practices not giving it a chance. It is the ANPS view that the OEH must maintain a role in these issues, as they are one of the few government departments that have the skills and knowledge base to make any environmental protection legislation successful.

ANPS recommends that:

**Recommendation 13:**

- i) appropriate baseline data and targets be clearly set and their collection resourced to permit accurate monitoring and reporting processes;*
- ii) OEH is fully involved at all stages of land clearing proposals, monitoring, reporting and compliance activities.*

**3.2.11) Opportunities for reforms of biodiversity legislation**

Renewing laws that protect biodiversity do not arise on a regular basis. Given the massive declines in some species and vegetation communities, it would be a very reasonable community expectation that any reviews of this legislation would increase these protections, not diminish them. The proposed new legislation diminishes these protections significantly.

The proposed legislation does not take into account the cumulative impacts of clearing on biodiversity and clearing impacts on climate change and national carbon targets. It also does not consider potential carbon gains that might be achieved in strengthened clearing legislation.

Instead, the Bill increases exemptions and provides for unacceptable discretion for high impact developments (e.g. State Significant Development). Ecological communities regarded as threatened are excluded from the definition of threatened species. Worst of all, high impact mining developments are still permitted in areas that were offsets for other damaging developments and in Areas of Outstanding Biodiversity Value.

ANPS recommends that:

**Recommendation 14:** *all development proposals, including mining and State Significant Developments, be subject to land clearing legislation.*

**4) Conclusion**

ANPS strongly supports review of environmental laws from time to time. However, ANPS quite reasonably expects any new laws to increase – not diminish – the protections for biodiversity in a world facing climate change and what is becoming the next major extinction event. This is especially so in NSW with its poor record of extinctions and the number of threatened species and vegetation communities that are currently listed for the State.

ANPS has significant concerns about the reliance on, and expansion of, biodiversity offsets and the way they are to operate. It holds similar concerns about the proposals for covenanted lands. The

absence of climate change considerations which are very significant under the broadscale land clearing which will occur under the proposed legislation is appalling in this day and age.

The impacts of the wholesale clearing that will occur under the new legislation flies in the face of innumerable projects funded by Local, State and Federal and community directions over the last 30 years to conserve and improve the status of biodiversity in Australia. As an example, funding by the Federal government to plant 20 million trees by 2020 will be completely undone by the proposed NSW legislation, with the Bills also in direct contradiction with the Federal EPBC Act 1999.

As indicated in this submission, ANPS does not accept the thrust of the proposed legislation. The main reason for the “unsuccessful” existing legislation was the direct fault of the NSW government in not providing the appropriate levels of funding and human resources to make it successful.

ANPS calls on the NSW government to scrap these environmentally damaging Bills and maintain the current legislation with appropriate funding and staff levels. If review is still required, undertake this under the existing legislation to ensure that:

- a return to broadscale land clearing does not occur;
- biodiversity, water quality, soil health and farm productivity is maintained and improved;
- control vegetation clearance in a way that retains current carbon storage, with incentives to landholders to maintain and increase this storage;
- re-examination of the necessary base data and vegetation mapping required to conserve biodiversity;
- the intent of offsets and covenants are fully honoured and are in perpetuity;
- cash offsets are eliminated, and if offsets are used they are like for like; and
- no offsets are permitted for threatened vegetation communities.

ANPS is appalled that the NSW government would even consider putting up Bills with the potential for environmental damage that these Bills will cause if enacted. They are a retrograde step in environmental protection which will almost certainly lead to severe division in the community.

## 5) List of recommendations

ANPS recommends that:

***Recommendation 1:*** *these bills be withdrawn but, if these Bills are to be persevered with, that the public consultation period be extended to allow appropriate time for responses given the detailed changes to legislation and the pertinent number of documents available.*

***Recommendation 2:*** *if changes or amendment of legislation is actually needed, the NSW government completes the task within existing legislation.*

***Recommendation 3:*** *the objectives in Sect 3 of the Threatened Species Act 1995 be incorporated into the new BCB 2016 if it is to be enacted.*

***Recommendation 4:*** *the NSW Government examine and publicly report on the potential clearing that will be done and how it impacts on Australia’s international carbon commitments.*

***Recommendation 5:*** *if these Bills proceed to the next stage, they are thoroughly reviewed to ensure they are consistent in all respects with existing Federal and State laws.*

**Recommendation 6:** *if the current Bills are to be enacted, then current assessment practices under the NVA 2003 should be continued until the NSW Scientific Committee resolves publicly that the data collected and the standard of vegetation mapping is such that it may be used under the new legislation.*

**Recommendation 7:** *the NVA 2003 be retained and reviewed in its own right, allowing an appropriate amount of time for public consultation.*

**Recommendation 8:** *the legislation builds in the ability and appropriate time periods for community comment and consultation, and the potential for legal challenge.*

**Recommendation 9:** *the intent in which covenants are made should be paramount, and be designated in-perpetuity.*

**Recommendation 10:**

- i) there is too much dependence on the use of offsets and set-asides and this should be minimised;*
- ii) there should be no offsets permitted for threatened vegetation communities (i.e. these communities should not be cleared);*
- iii) offsets involving cash payments should not be permitted;*
- iv) all information involving offset transactions should be publicly available.*

**Recommendation 11:**

- i) stewardship/incentive payments are a viable means of conserving biodiversity;*
- ii) all stewardship/incentive agreements are appropriately monitored by a qualified agency (e.g. OEH);*
- iii) appropriate levels of funding be guaranteed to conduct the business of relevant agencies associated with any clearing legislation into the future.*

**Recommendation 12:**

- i) site based assessment be incorporated to ensure no threatened species present and that habitat suited to local threatened species is not removed;*
- ii) the assessment method under the NVA 2003 be retained for future land clearing proposals;*
- iii) OEH be involved with vetting land clearing proposals;*
- iv) proposed clearing of post-1990 revegetation be assessed due to its potential importance to threatened species in highly cleared landscapes;*
- v) the current “red light” system be retained.*

**Recommendation 13:**

- i) appropriate baseline data and targets be clearly set and their collection resourced to permit accurate monitoring and reporting processes;*
- ii) OEH be fully involved at all stages of land clearing proposals, monitoring, reporting and compliance activities.*

**Recommendation 14:** *all development proposals, including mining and State Significant Developments, be subject to land clearing legislation.*

## References

Ref 1) *A review of biodiversity legislation in NSW –Final Report*. Dr Neil Byron, Dr Wendy Craik, Dr John Keniry & Prof. Hugh Possingham. A report to the NSW Government – 18 December 2014. <http://www.environment.nsw.gov.au/biodiversitylegislation/review.htm>

Ref 2) *Draft Biodiversity Conservation Bill 2016*.

Ref 3) *NSW Biodiversity Offsets Policy for Major Projects* 2014. State of NSW and Office of Environment and Heritage. <http://www.environment.nsw.gov.au/biodivoffsets/biooffsetspol.htm>

## Other documents reviewed

ABC news website - <http://www.abc.net.au/news/2015-06-16/land-clearing-soars-in-queensland-leaked-figures-show/6550622>

NSW Nature Conservation Council website. *Biodiversity Offsetting – Key Features of the Draft Biodiversity Assessment Method*.  
[https://d3n8a8pro7vbm.cloudfront.net/natureorg/pages/144/attachments/original/1465506993/FAC\\_T\\_SHEET\\_-\\_Biodiversity\\_Offsetting\\_.pdf?1465506993](https://d3n8a8pro7vbm.cloudfront.net/natureorg/pages/144/attachments/original/1465506993/FAC_T_SHEET_-_Biodiversity_Offsetting_.pdf?1465506993)

NSW Environmental Defenders Office website – *Top 10 concerns with draft biodiversity conservation bill 2016 and local land services amendment bill*  
[http://www.edonsw.org.au/edo\\_nsw\\_top\\_10\\_concerns\\_with\\_draft\\_biodiversity\\_conservation\\_bill\\_2016\\_and\\_local\\_land\\_services\\_amendment\\_bill](http://www.edonsw.org.au/edo_nsw_top_10_concerns_with_draft_biodiversity_conservation_bill_2016_and_local_land_services_amendment_bill)

Clayton Utz website. *Sweeping biodiversity and native vegetation reforms proposed for NSW*  
[http://www.claytonutz.com/publications/edition/26\\_may\\_2016/20160526/sweeping\\_biodiversity\\_and\\_native\\_vegetation\\_reforms\\_proposed\\_for\\_nsw.page](http://www.claytonutz.com/publications/edition/26_may_2016/20160526/sweeping_biodiversity_and_native_vegetation_reforms_proposed_for_nsw.page)

NSW Government website – *Ecologically Sustainable Development*  
<https://www.landmanagement.nsw.gov.au/ecologically-sustainable-development/>