BIODIVERSITY CONSERVATION BILL 2016

LOCAL LAND SERVICES AMENDMENT BILL 2016

Second Reading

The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (11:56): I move:

That these bills be now read a second time.

This is a watershed moment for the Parliament. It is transformative for the farming sector and for the State's biodiversity. This bill will repeal the unjust and unworkable Native Vegetation Act. It will be replaced with an integrated legislative package that will bring down the curtain on two decades of government designed and fuelled antagonism between the farming sector and the environment movement.

The burden of protecting biodiversity on privately owned land in this State will no longer be borne by farmers alone. This is a cause that the Nationals have championed ever since Bob Carr's Labor Government, with the full backing of The Greens, first introduced State Environment Planning Policy [SEPP] 46 in 1995. This instrument was forced upon rural communities with no consultation, no funding to compensate farmers for the removal of their rights and no understanding or concern about the impact it would have on primary production and the environment.

This decision epitomised the worst of politics and victimised the farmers, people, families and towns of regional New South Wales. SEPP 46, the Native Vegetation Conservation Act 1997 and the Native Vegetation Act 2003 were introduced under the guise of protecting the State's environment and ending broad scale clearing. The clear message was that farmers were destroying the environment and they needed to be stopped.

These laws and successive Labor governments perpetrated a political narrative so divisive and destructive that it remains deeply entrenched today, wrongly, inappropriately and needlessly. It pits the city against the country, production against protection and natural resource sterilisation against sustainable use and development. These simplistic "take it or leave it" political propositions belie more complex, dynamic and interdependent realities. I have toured regional New South Wales extensively in the past 18 months to consult broadly on our biodiversity reforms with the people who the reforms will have an impact on. I have sat around kitchen tables and stood in paddocks with farmers from one end of the State to the other and I have heard the same message loud and clear: The laws must be changed and fairness must be restored. The other message I have heard is that agriculture and the environment are not opposed; they are co-dependent.

Today the paradigm is being turned on its head. Our farmers, whom we know to be the true on-the-ground conservationists, will finally be recognised as the critical missing part of the solution to arrest biodiversity decline, rather than demonised as the problem. We will rid regional New South Wales of the hated and damaging Native Vegetation Act 2003 once and for all. We will replace it with a modern, innovative and integrated system that is balanced, scientific and evidence based, and places farmers at the heart of the solution. We will support these reforms

with a record investment of $240 million over five years, plus $70 million per year after that in private land conservation, in addition to $100 million to fund the Saving our Species program.

We have followed a rigorous, transparent and consultative process to get to this point. In 2014 we commissioned an independent review of biodiversity legislation in New South Wales, conducted by four leading experts in biodiversity and natural resource management, and chaired by Dr Neil Byron. Its charter was to review the failures of the past and to provide recommendations to protect and enhance biodiversity while achieving regional, social and economic outcomes derived from improved land management. The panel emphasised that conservation relies on the cooperation of landholders and that too much red tape alienates the very people whose cooperation is essential for great biodiversity outcomes. The wisdom of that message has been received loud and clear and is the foundation on which this reform has been crafted.

The independent expert panel made 43 recommendations to Government, following extensive public consultation. We made an election commitment to implement all 43 of those recommendations if returned to government in March 2015. After being re-elected we immediately began developing a package of legislation and supporting materials, undertaking targeted consultation at every step of the way with the NSW Farmers and other peak bodies. In May this year we released the reform package for broad public consultation and undertook a comprehensive engagement program, which involved more than 1,000 stakeholders and members of the public attending Government-hosted meetings and community information sessions across New South Wales. It was genuine consultation, demonstrated by the fact that the legislation before this House today has been modified to respond to feedback received on the draft package while remaining true to the intent and purpose of the independent expert panel's recommendations.

Before I turn to the detail of the bills, it is important to reiterate what has necessitated these historic reforms. Put simply, rural communities are suffering and our environment is in crisis. Agriculture is stifled and biodiversity is going backwards. We have arrived at this point for two reasons. First, it is because the productivity of the State's primary producers is being unduly impeded by unfair and unworkable legislation. Secondly, it is because the principal stewards of the State's environment are fighting to deliver outcomes on behalf of us all without guidance, without assistance, without recognition and without reward. The objectives of these reforms are to arrest and ultimately reverse the current decline in the State's biodiversity while facilitating ecologically sustainable development, in particular efficient and sustainable agricultural development. It is only in collaboration with farmers that we can improve the efficiency and sustainability of our primary industries, and it is only by cultivating and harnessing the goodwill of those same farmers that we can protect and enhance biodiversity.

The existing legislative framework ignores these self-evident facts. It makes government a regulator instead of a collaborator. For decades government has worked against landholders instead of with them. Consequently, rural communities have lost faith, and trust in the Government has eroded. This was a recurring theme in the independent panel's report. The Government is today righting the balance. We have engaged with the farmers of New South Wales, the primary producers and chief environmental stewards of our State. In close collaboration with them, we have developed a fair and balanced package of reforms that can deliver agricultural productivity and biodiversity outcomes simultaneously. A fundamental premise underpinning these reforms is that the Government must enable landholders to improve the efficiency of their agricultural systems and take a more active role in providing incentive and

supporting landholders to improve the condition and function of their ecological systems. Doing this requires a new approach to land management and biodiversity conservation, and strategic and targeted investment across a suite of government programs that together contribute to productive and resilient landscapes. That is what this package delivers.

The loss of biodiversity in New South Wales is a symptom of deteriorating ecosystems. In order to preserve biodiversity we must address both this symptom and its root cause. Critically, we must restore, manage and maintain functioning ecosystems and habitats that are viable in the long term. Native vegetation is a well-recognised proxy for ecosystem function. As the condition of native vegetation declines, its function and value decline proportionally. Evidence in successive New South Wales State of the Environment reports identifies that the condition of most native vegetation in New South Wales has deteriorated. Sixty-one per cent of New South Wales is covered by native vegetation. Only 9 per cent is considered to be close to its original condition, and the remaining 52 per cent has been modified. A key aspect of biodiversity conservation is therefore managing native vegetation to improve its condition.

The current native vegetation framework forces farmers, at their own cost, to conserve remnant native vegetation without regard to its condition or function. It provides landholders with neither the means nor the motivation to improve native vegetation. The existing framework's perverse focus on quantity rather than quality and its utter lack of support for landholders has not only imposed inequitable restrictions and burdens on farmers; it has resulted in the abysmal biodiversity outcomes we see before us today. Active and adaptive management of remnant native vegetation to improve its condition will improve biodiversity outcomes. That is unequivocal. Members need not take my word for it. The Productivity Commission's 2016 draft report on the regulation of agriculture states:

Where native vegetation and biodiversity conservation regulations require landholders to preserve trees or parcels of vegetation, it is not a matter of simply 'locking up and leaving' that land—ongoing involvement of the landholder is required. The natural ecological succession of native vegetation communities means that active management is required to keep them in preferred states.

Providing farmers with the incentive to actively manage native vegetation is essential to securing the State's biodiversity. That is clear. The existing native vegetation framework does not provide this incentive. It is overly complex, prescriptive and unfair. It imposes a higher environmental standard on agriculture than is imposed on other industries and it has been poorly administered and insufficiently resourced. The independent panel found that successive amendments to the Native Vegetation Act 2003 have produced:

… a complex system that is difficult for the community to navigate, has imposed unnecessary regulatory burdens, especially in certain regions and sectors across the state, is process driven and not fulfilling current objectives in the most effective and efficient way.

The inequity of the Native Vegetation Act has resulted in low levels of landholder engagement and fewer opportunities for government to encourage or offer incentives to landholders to implement land management practices conducive to better production and environmental outcomes. Government records indicate that between December 2005 and June 2016 fewer than 3,500 property vegetation plans were approved under the Native Vegetation Act. That means that fewer than 10 per cent of the State's 42,000 from businesses have engaged with the existing system. That is an unequivocal failure.

Today we propose an entirely new approach. Our reforms can be summarised by the following four key themes. First, a new rural land management framework will be established under which landholders will be able to improve and expand their agricultural activities, in some cases in exchange for managing parts of their property for environmental outcomes. Secondly, a new market based system will be established for avoiding, minimising, measuring and offsetting the biodiversity impacts of development, with flexible options for developers and strategic oversight by government.

Third, a modern, risk-based approach will be established for identifying, protecting and regulating interactions with native plants and animals; and finally, new arrangements will be established to deliver conservation outcomes on private land, supported by an unprecedented level of direct government investment.

The Government is confident that the reforms, taken as a whole, will reduce the tension between development and the environment, and deliver socioeconomic and ecological benefits in a truly balanced way. The scope of the reforms is set out in new principal legislation—the Biodiversity Conservation Bill; and a Local Land Services Amendment Bill. I now turn to the content of these bills. In relation to the Local Land Services (Amendment) Bill 2016, clause 3 repeals the Native Vegetation Act 2003. Landholders around the State will feel a great burden finally lifted from their shoulders. In its place, the bill establishes a new fair, balanced, farmer-focused land management framework, which will regulate impacts on native vegetation in rural areas of the State. The land management framework will be set out in a new part 5A and new schedules 5A and 5B in the Local Land Service Act 2013.

The land management framework comprises four key elements: new criteria for determining land on which native vegetation impacts are and are not regulated; new allowable activities permitting landholders to undertake routine land management activities without permission; new codes of practice permitting impacts on native vegetation in regulated rural areas; and a new clearing approval process that leverages the biodiversity offsets scheme and requires triple bottom line decision-making.

The land management framework provides a range of new opportunities for landholders to improve production outcomes, in some cases in exchange for managing parts of their property to improve environmental outcomes. For each hectare cleared under the framework, it is estimated that between two and four hectares will be set aside and managed in perpetuity. Provided take-up of the framework by landholders reaches a "critical mass", this new approach will result in productivity and large areas of land being newly managed for biodiversity. The new framework will apply to rural zones outside the Sydney metropolitan area, excepting national parks, State forests and certain land types and tenures. For land not covered by the framework, a new State Environmental Planning Policy is being developed, which will regulate vegetation clearing on that land.

All land to which the new framework applies will be divided into two categories, being category 1 exempt land and category 2 regulated land. On category 1 land, native vegetation may be cleared without authorisation under the Local Land Services Act. This is the first time land will be deregulated in this way. On category 2 land, clearing is regulated under the Local Land Services Act and some authorisation will be required. Additional protection will be afforded to category 2 vulnerable land. Vulnerable land includes riparian land, and steep and highly erodible land. In these areas regulation extends to non-native and dead vegetation. Category 2 land will consist

primarily of land that contained native vegetation at 1 January 1990 and has not been lawfully cleared since then. It will also consist of land containing sensitive values that require additional protection. All other land will be category 1 land.

The Office of Environment and Heritage is developing a native vegetation regulatory map, which will identify category 1 and category 2 land. The map will provide greater certainty to landholders about the status of vegetation on their properties. Landholders who are dissatisfied with how their land has been mapped will have a right of review. The map is currently under development. It will not come into effect until Ministers are satisfied that stakeholders have sufficient confidence in its accuracy. To this end, further engagement with landholders will be undertaken in early 2017, to explore a range of issues, such as mapping of grasslands and woody regrowth. Transitional arrangements will apply until the map is formally made.

The first type of authorisation provided for under the bill is clearing for allowable activities. Allowable activity provisions are set out in division 4 and schedule 5A. These provisions permit impacts on regulated native vegetation associated with routine land management activities, such as environmental protection works and collection of firewood; and construction, operation and maintenance of rural infrastructure, such as fences, dams, sheds and tracks. In developing allowable activities, we have consolidated, simplified and expanded the existing routine agricultural management activities in the Native Vegetation Act, and we have provided greater flexibility and discretion to landholders and Local Land Services [LLS], and an increased ability for a common-sense, practical approach to be applied. We have also included more transparent requirements to minimise impacts on native vegetation where possible.

The second type of authorisation provided for under the bill is codes of practice. Division 5 of the bill enables the Minister to make codes of practice permitting impacts on native vegetation on regulated rural land. For low-risk impacts, landholders will need to notify LLS prior to undertaking any clearing of native vegetation. Landholders will require certification from LLS prior to undertaking higher risk clearing activities. In exchange for clearing, some codes will require establishment of a "set aside area", which is an area to be managed for biodiversity outcomes in perpetuity. All set aside areas will be listed on a new public register, and set aside obligations will bind current and future landholders.

In developing draft codes, the Government has ensured that set-aside ratios are fair and reasonable, and do not impose a disproportionate burden on landholders. To enable landholders to make informed decision about code applications, we will ensure that the cost of managing set-aside areas is clear and known upfront. A range of proposed code settings were made available as part of consultation on the reform package, including setting for an equity code and a farm plan code. These codes will provide considerable additional flexibility to landholders and greatly improve productivity. They will also increase the area of native vegetation being actively managed for biodiversity outcomes.

Importantly from a biodiversity perspective, the codes will include limits on clearing and conditions, and restrictions for sensitive land and vegetation types. LLS will play a key role in assisting landholders to make informed decisions about development and conservation options on their properties. Draft code settings have been revised as a result of consultation. Draft codes will be exhibited in early 2017 and formally made on commencement of the new legislation. The Government will work closely with landholders during implementation to ensure codes deliver triple bottom line outcomes. If we find that codes are not delivering anticipated outcomes, we will amend code settings.

The third type of authorisation provided for under the bill is a formal clearing approval. Provisions relating to approvals are set out in division 6 and schedule 5B. Unlike the existing native vegetation framework, which only permits clearing that will "improve or maintain" environmental outcomes, the division 6 approval pathway requires consideration of the social, economic and environmental impacts of proposed clearing. This approval pathway mirrors the development consent process in the planning system and creates a level playing field, as recommended by the Independent Panel. A new, independent assessment panel will be responsible for considering clearing applications. Where approval is granted, the panel will be required to impose a biodiversity credit retirement obligation as a condition of approval, to offset the biodiversity impacts of clearing. The panel will have discretion to vary the credit obligation if appropriate having regard to triple bottom line considerations.

There are two other parts of the LLS Amendment Bill that I will draw attention to before I turn to the Biodiversity Conservation Bill. Division 7 sets out a range of public reporting requirements, which will provide transparency regarding take-up of the land management framework. This is one of a number of new governance arrangements to enable government to better monitor and report on the impacts and benefits of reform elements across all three limbs of the triple bottom-line. Clause 60ZM makes the investigation powers in the Biodiversity Conservation Bill exercisable for compliance and enforcement activities related to the new land management framework. The Office of Environment and Heritage will be the compliance authority for this purpose. Landholders expressed concerns with some of the investigation powers in the Biodiversity Conservation Bill. To address these concerns, some powers are limited or conditioned where they are being exercised in relation to the land management framework.

I now turn to the Biodiversity Conservation Bill 2016. The functions of the bill can be broadly divided into three themes, each of which I will describe briefly. The first theme is the new biodiversity offsets scheme, which is established in parts 6, 7 and 8 of the bill. The scheme will enable streamlined and consistent assessments of the biodiversity impacts of development and require proponents to offset these impacts. It will replace a range of existing biodiversity assessment pathways. The biodiversity assessment method, made under the bill, will be used to assess the impact of development on biodiversity values. The method will determine the number and type of biodiversity credits required to offset impacts.

The biodiversity offsets scheme will apply to all developments assessed under part 4 of the Environmental Planning and Assessment Act 1979 and to major projects. Public authorities undertaking development under part 5 of that Act may elect to use the scheme, but this will not be mandatory. The bill establishes the concept of "serious and irreversible" biodiversity impacts. Consent authorities must refuse development consent under part 4 of the Planning Act where impacts are serious and irreversible. For major projects, serious and irreversible impacts will be a relevant consideration for the consent authority.

Where development consent is granted under part 4 of the Planning Act, the consent authority must impose as a condition of consent an obligation to retire the number and type of biodiversity credits determined in accordance with the biodiversity assessment method. With the concurrence of the Environment Agency Head, the consent authority may reduce the credit retirement obligation if appropriate having regard to the social, economic and environmental impacts of the proposed development. For major projects the credit retirement obligation determined by the method is a relevant consideration for the consent authority.

A proponent of development who has a credit retirement obligation may source credits from an open market to discharge their obligation. Landholders will be able to generate credits and make them available in the market by entering into a stewardship agreement with the Minister for the Environment. The number and type of credits generated under an agreement will be determined by application of the biodiversity assessment method.

In lieu of acquiring and retiring credits, proponents of development may elect to meet a credit retirement obligation by paying an equivalent monetary amount into the Biodiversity Conservation Fund. The fund will be administered by a new Biodiversity Conservation Trust. Where a developer elects to pay into the fund the trust will be responsible for sourcing the required credits. The bill will expand the biodiversity certification scheme. The scheme provides proponents of development with a new way to streamline biodiversity assessment processes and attain upfront certainty about biodiversity impacts and costs.

Identifying and protecting native plants and animals is the second theme in the Biodiversity Conservation Bill. Provisions relating to this theme are set out primarily in parts 2, 3 and 4 of the bill. The bill establishes a modern approach to identifying and protecting threatened species. Key features include: improved processes for listing threatened species and ecological communities; stronger penalties for harming threatened species or their habitat; and increased protections for areas of outstanding biodiversity value. These legislative arrangements are supported by an additional $100 million over five years for the Saving Our Species program. Under this theme, the bill also establishes a new risk-based approach to regulating human interactions with native animals and plants. High-risk activities will continue to require a licence, while low-risk activities will either be exempt from regulation or provided for under a code of practice.

The final theme in the Biodiversity Conservation Bill 2016 is private land conservation. The bill will create three new types of private land conservation agreements, which will replace a range of existing arrangements. These agreements will enable direct government investment in biodiversity outcomes on private land, to which the Government has committed an unprecedented $240 million over five years. This investment will be delivered by the Biodiversity Conservation Trust in accordance with a Priority Investment Strategy made by the Minister for the Environment.

Biodiversity stewardship agreements are the first of the three types of agreement. These are in-perpetuity agreements that require landholders to undertake management actions in exchange for annual payments. Anticipated improvements in biodiversity arising from management actions will be quantified by the biodiversity assessment method and generate biodiversity credits. Credits may be sold in the biodiversity offsets market or retired to meet a credit retirement obligation. Credits may also be purchased and retired by the Biodiversity Conservation Trust under the private land conservation program.

Conservation agreements are the second type of agreement provided for under the private land conservation theme. These agreements will typically be used for higher conservation value land where modest management effort is required to protect existing values. In accordance with the recommendation of the independent panel, conservation agreements provide a mechanism for landholders to be rewarded for the provision of ecosystem services to the community. Wildlife refuge agreements are the final type of agreement. These are agreements between landholders and the Biodiversity Conservation Trust for the purposes of studying or conserving the biodiversity values of the land.

There is just one further element of the Biodiversity Conservation Bill 2016 that I will draw to the attention of the House. Schedule 11 to the bill makes a range of consequential amendments to other Acts. This includes amendments to the Forestry Act 2012, which preserve existing arrangements for private native forestry that formerly resided in the Native Vegetation Act. The independent panel explicitly recommended reviewing regulatory arrangements for timber harvesting on private land and establishing new arrangements that recognise forestry as a sustainable form of land use and not clearing. It recommended doing so as part of a separate process. That separate process has commenced and the Government is developing new legislation that will give effect to this recommendation. That ends my synopsis of the bills.

What I have just outlined is a comprehensive framework for the future of land management and biodiversity conservation in New South Wales. In close consultation with the independent panel and key stakeholders, including NSW Farmers, the Government has worked hard to develop an integrated and holistic package of reforms. The Government is confident it has got the balance right. We are committed to continuing our collaborative approach during implementation. This will involve working closely with all willing sectors and all willing parties to harness their knowledge and expertise and ensure that the best possible outcomes are delivered. This will include close engagement with the Aboriginal community to incorporate their traditional knowledge, protect their cultural heritage and explore options to leverage the reforms to deliver benefits for their communities.

We commit to continuing to evolve the framework over time to ensure balanced and fair outcomes—for individuals, for communities, for regions and for the State as a whole. To demonstrate this commitment, we will undertake two pilot programs to build upon and further test key elements of the new framework. First, Local Land Services will pilot development of a strategic land use map in one regional area of the State. The map will draw on the best available data to identify land that is likely to be of high, moderate and low conservation value at a landscape scale, and land that is likely to be suitable for high-value agricultural development. The map will be developed in close consultation with landholders and other interested stakeholders.

Once developed the map will be validated by applying the biodiversity assessment method in strategic locations to test conservation value assumptions. This will enable provision of detailed information to landholders about the costs and benefits of participating in the offsets scheme. Subject to a review of pilot outcomes, development of similar maps could be rolled out in priority regions across the State to inform decisions about conservation and development opportunities and priorities.

The second pilot will involve development of two strategic biodiversity certification applications in an agricultural context—one in an area with a high proportion of remnant vegetation and one in an area in which native grasslands are particularly prevalent. The pilots will provide an opportunity to investigate the viability of biodiversity certification as an option in an agricultural context. This will include consideration of arrangements required between participating landholders. Once the applications are prepared participating landholders may elect to submit applications to the Minister for the Environment seeking formal biodiversity certification. This would enable future development to be undertaken without an assessment of biodiversity impacts.

Subject to a review of pilot outcomes, Local Land Services may consider developing further strategic bio-certification assessment pilots in priority areas around the State.

I commenced my contribution by referencing the fraught and conflict-ridden recent history of this issue. It has been a long and depressing two decades for the State's farmers not only in the sense of productive impacts but also because of the continual decline in biodiversity. It is time for the Parliament to right those historical wrongs. With the package of reforms before the House, we collectively have the opportunity to make a clean break from the past and usher in a new era in land management and biodiversity conservation—one in which we work with rural communities instead of against them, and one in which agriculture and the environment flourish. But this is not the end of the story; much work still remains to be done. The Government acknowledges that it must redouble its efforts to ensure that it gets implementation right. We must actively monitor and evaluate the impacts of the land management framework to ensure triple bottom line outcomes are delivered to regional communities throughout New South Wales. The New South Wales Government commits to ensuring our natural resource management policies fully engage the cooperation of landholders. I commend the bills to the House.