

Submission
No 32

**INQUIRY INTO LOCAL LAND SERVICES AMENDMENT
(MISCELLANEOUS) BILL 2020**

Organisation: NSW Farmers' Association (NSWFA)



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About NSW Farmers

The NSW Farmers' Association (NSWFA) is Australia's largest state farming organisation (SFO) representing the interests of its farmer members. Our purpose is to build a profitable and sustainable New South Wales farming sector through promoting productivity, risk management and business continuity in individual farm enterprises.

Agriculture is a significant contributor to the NSW economy. Despite facing prolonged drought, bushfires and COVID-19 over late 2019 and early 2020, the industry reached an estimated \$12.2 billion in output over the year. Agricultural exports also accounted for 10 percent of the state's total exports during this time.

NSW is the most productive state, adding around a fifth on average to national agricultural output. The state industry has set the goal of reaching \$30 billion in output by 2030, which would make NSW a key contributor to the national target of \$100 billion by 2030.

Our state's diverse geography and climatic conditions mean a wide variety of crops and livestock can be cultivated here. Unlike most other SFOs, we represent the interests of farmers from a broad range of commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and chickens and private native forestry.

Our advocacy extends to the environment, biosecurity, water, economics, trade and rural and regional affairs. We also have an eye on the future; we are advocates for innovation in agriculture, striving to give our members access to the latest and best innovation in research, development and extension. Our industrial relations section provides highly specialised advice on labour and workplace matters.

Our grassroots structure means members are the final arbiters of the policy we advocate on. Our regional network connects members to Macquarie Street, while Annual Conference and elected forums such as Executive Council enable members to lobby for the issues that matter to them and their community. Our issue- and commodity-specific Advisory Committees are elected by members to provide specialist, practical advice to decision makers on issues affecting the sector. We are proudly apolitical – we put our members' needs first.

In addition, NSW Farmers has partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are a proud founding member of the National Farmers' Federation.

General comments

Farmers are the greatest stewards of our land and environment and want to see our native flora and fauna thrive. Many of our members are deeply concerned about the evident decline in koala populations in some areas and agree more needs to be done to find the best ways to conserve the species. It was then a significant disappointment that the Koala SEPP 2019 (Koala SEPP) was introduced in a negligent and careless manner, displaying a complete lack of understanding of the outcomes this planning instrument could have on the livelihoods of farmers in NSW, and its inappropriateness for effective conservation of Koalas on private rural land. This instrument was based on inaccurate maps, unverified locations of species of trees, that in themselves are not all priority Koala habitat, and on blunt definitions and vague interpretations of actual Koala occupation. In addition the nature of a SEPP is to empower local government to manage their land, and in this case, to apply these definitions to agricultural land with a direct conflict to the long term commitment of the NSW Government to effectively regulate agricultural land through legislation that balances the obligation of rural land owners to provide environmental benefits to the broad community while preserving their right and ability to productively manage their land. The only possible outcome to correct this poorly thought out and basically inaccurate and potentially damaging instrument is to ensure that it applies only where it can be effective, and only when its serious flaws are rectified.

NSW Farmers Association strongly supports the intent of the Local Land Services Amendment (Miscellaneous) Bill 2020. The main aim of the bill is to make changes which seek to decouple the *Local Land Services Act 2013* from the Koala Habitat Protection SEPP 2019 in how it relates to land management activities on farms.

In November 2020, after the Local Land Services Amendment (Miscellaneous) Bill 2020 (LLS Bill) failed to pass through parliament, the NSW Government announced plans to revert to the previous SEPP 44 while a new policy was being developed. In this submission we will refer to the de-operationalised Koala Habitat Protection SEPP 2019 when making a case for the Local Land Services Amendment (Miscellaneous) Bill 2020, as that policy prompted the need for the bill. Though this SEPP is no longer in effect, we expect any new policy to have similar features that will then require the decoupling solution we have been advocating for.

In the alternative to the rebirth of the Koala SEPP, and the need to then make alterations and limitations to prevent perverse outcomes of overregulation and ineffective koala management on private rural land, the NSWFA urges a solution that harnesses the skills and passions of farmers, and the committed resources of Government. There is clearly a desire in the farming community to foster koala populations and care for their security and wellbeing, and this can be achieved by partnering with land owners, using their skill and knowledge and land, and with government assisting and incentivising with education and financial benefit on behalf of the community as a whole.

Good environmental outcomes are reliant on participation by landowners, not from prohibition by Government. While the focus on this submission is on the LLS Bill and its importance in enabling the proper function of the Koala SEPP, NSWFA will continue to firmly support outcomes in koala conservation, in the short and long term, that brings the environmental and agriculture groups closer together in partnership, rather than divided by overregulation.

The case for decoupling

1. The final Koala Habitat Protection SEPP 2019 was developed without engagement with the farming sector

Private landholders manage the majority of the NSW landscape and are the biggest stakeholder group with an interest in biodiversity regulation, yet the farming sector was not consulted with before the gazetting of the Koala Habitat Protection SEPP 2019. In 2016, the Government exhibited an 'Explanation of Intended Effect' signalling an intention to reform koala policy, however the 2019 instrument goes significantly beyond what was consulted upon in 2016 and no additional opportunity for input was afforded.

After significant pressure from NSW Farmers Association and individual farmers across the state the Guideline for Koala Habitat Protection were placed on public exhibition in March 2020, in tandem with the SEPP coming into effect

2. The Koala Habitat Protection SEPP 2019 is not an appropriate instrument for the farming landscape

The Koala Habitat Protection SEPP has been designed to manage the impacts of peri-urban development on koala habitat through council KPOMs. It is not an appropriate instrument for the farming landscape where most activities pose little risk to koalas. Where risks need to be managed a purpose built set of controls for the agriculture sector should be developed.

Decoupling the Local Land Services Act 2013 from the Koala Habitat Protection SEPP 2019 will not leave koalas without protection. There has been a significant financial and personnel investment in recent years in developing process, policy and funding of land management regulation, balancing productivity and environmental outcomes. The LLS Act and Biodiversity Conservation Act were designed and implemented to achieve this, and provide the suitable platform for protection of vulnerable fauna and flora, and for constructive interaction with the Commonwealth Environment Protection of Biodiversity Conservation Act 1999. It is to proper implementation and enforcement of these legislative controls that can be effective in creating platforms for the conservation and long term population growth in suitable areas of koalas.

The new SEPP means that if a landholder has any vegetated country there is a high risk that they will be required to manage it for conservation without compensation, regardless of whether there are koalas present. SEPP 44 protected areas where koalas were present and breeding because of habitat features such as feed trees and access to water. The new SEPP permits an ambit recruitment of large areas of vegetated private land as 'koala habitat', even where there are no koalas or essential landscape features present. For this reason, farmers see the SEPP as a thinly veiled ploy to require them to reserve and manage their land for biodiversity conservation outside the agreed Land Management and Biodiversity Conservation / Biodiversity Offset Scheme (BOS) framework – limiting the productive potential of their land, undermining their property rights and devaluing their landholding without compensation.

Furthermore, because of the linkage between koala habitat identified under a KPOM and Category 2 Sensitive Regulated Land under the Land Management and Biodiversity Conservation framework, the SEPP de-facto prohibits the land management activities that are otherwise permissible under the Land Management Code, notwithstanding that no development consent is required for these land management activities. Farmers would have raised very significant opposition to the creation of this linkage between KPOMs and the Land Management Codes during the 2016 reforms if the Government had made clear its intention to dramatically widen the definition of land that could be declared as koala habitat under a KPOM.

3. The Koala Habitat Protection SEPP 2019 impacts the viability of NSW farming businesses

Category 2 Sensitive Regulated Land (under the Land Management and Biodiversity Conservation Framework legislation) includes such koala habitat identified in a KPOM that the Environment Agency Head (EAH) (not the local Council) decides is core koala habitat. The Land Management Codes that were the centrepiece of the 2016 Land Management reforms are dis-applied from Sensitive Regulated Land. The wide definition of koala habitat under the SEPP, coupled with the discretion of the EAH to identify the extent of the koala habitat that comprises core koala habitat, makes it likely that the newly legislated land management reforms will be overridden by this SEPP for most vegetated land in NSW identified on the SI Map and the DA Map.

Farmers are required to manage Category 2 Sensitive Regulated Land for environmental conservation. The activities regulated under the Land Management Code and most of the 'allowable' land management activities permitted under the *Local Land Services Act 2013* are not permitted on Category 2 Sensitive Regulated Land. Furthermore, if the land is rezoned for Environmental Protection the limited range of permissible development types will restrict the establishment or expansion of farming enterprises on farming land and land management activities are effectively prohibited.

Complying Development otherwise permitted under an EPI is not permitted on land designated as Environmentally Sensitive land, imposing a further restriction on farming development. The Guidelines suggest that a development consent on any part of a farm lot that includes koala habitat (many farms are comprised of only one lot in a DP, though these are very large lots) is likely to enliven conditions of development consent that will require the farmer to provide koala conservation infrastructure for all areas of koala habitat on the lot, even if there is minimal impact on the habitat. Koala habitat extends beyond lot boundaries, and development applications on one farm may trigger mitigation measures on a neighbouring farm if both farms are in the same ownership (as is common).

4. The mapping contains significant and widespread inaccuracies and should not be regulatory

When the Koala Habitat Protection SEPP 2019 was first released NSW Farmers heard many anecdotal accounts of inaccuracies with the mapping that the SEPP relies on. In April 2020, NSW Farmers invited members to provide feedback on their experience with the mapping. We received 46 responses from

landholders across NSW. All 46 responses were generally very unsatisfied with the inaccuracy of mapping. Many responses indicate the presence of SI and DA mapping in regions that haven't had koala sightings in the last 50-100 years. Some of these areas are subtropical rainforest and non-eucalypt native species that do not constitute koala habitat.

The responses also revealed a number of other concerning mapping trends:

- 11 responses indicated that DA mapping covered one or multiple examples of built infrastructure on their properties including: sheds, houses, tanks, silos, silage pits, sheep/cattle yards, chicken pens, bridges, power poles
- 29 responses indicated that DA mapping covered non-native and exotic tree species and even plantations and orchards
- 6 responses indicated that DA mapping covered areas of registered private native forestry or timber plantation
- 9 responses indicated that DA mapping covered areas that are highly clear of trees including cropping land and grasslands

NSW Farmers is not privy to the data set that has informed these new mapping layers, however we suspect that it could be at least 7 years old. This estimate is based upon several responses from farmers who have distinct pockets of previously vegetated land captured in the DA mapping.

The SI Map identifies the only land in NSW that is capable of being regulated as 'core koala habitat' under a KPOM. The SI Map thereby limits the exercise of the function of the council to identify land as core koala habitat to the land identified on the SI Map. This is the regulatory function of the SI Map, and it has significant impacts for landholders whose land is identified. For example, identification of land on the SI Map or the DA Map will instantly devalue that land. Such classification will need to be disclosed to potential purchasers of land, and to banks and other insurers and will likely affect access to finance. There is no mechanism for a landholder to contest or rectify the map, despite its regulatory impact.

Furthermore, the SEPP does not include process by which a landholder can dispute or correct a defective map, except in the context of the making of a KPOM or a development assessment. Affected landholders should have been provided with the opportunity to comment on the regulatory impact before the SEPP was made and there should have been an opportunity to verify and ground truth the maps, as well as opportunity to rectify the maps at no cost the landholder.

The predictive mapping approach is coercive and is likely to promote perverse outcomes. Capturing land that does not contain koalas or suitable koala habitat, significantly impacts landholders but has no added benefit for koala conservation. An effective regulatory scheme depends on proactive compliance from the regulated community.

5. Mismanagement of public lands

It is notable that the SEPP does not apply to public lands. The findings of the recent 'Inquiry into Koala Populations and Habitat in NSW' indicate one of the greatest threats to koala populations is habitat loss through bushfire events. Though many factors contributed to the bushfire season that devastated the

east coast last summer, it is clear that our large public land estate is not being sufficiently managed for fire. Our members do not think it unreasonable to demand that government first meet its own obligations to effectively manage the risks to biodiversity caused by bushfire, pest animals and weeds, before they ask more of farmers.

Farmers are the best stewards of our environment and want to see our native species thrive. We should be supporting them to manage the biodiversity on their properties and not burdening them with extra regulation where it does little to improve koala outcomes.