



# issues background

Number 3/September 2016

NSW Parliamentary Research Service

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

On 3 May 2016, the NSW Government [released](#) a [draft Biodiversity Conservation Bill 2016](#), [draft Local Land Services Amendment Bill 2016](#) and [supporting products](#) for public exhibition. The Government aims to introduce this legislation in October 2016, with the legislation to commence in two stages in 2017 if passed by Parliament.

These Bills follow on from the [final report](#) of the [Independent Biodiversity Legislation Review Panel](#), the key recommendations of which are set out later in this paper.

This Issues Backgrounder is an introduction to key sources and debates; it is not a comprehensive account of the many issues raised by these Bills. The paper is organised under the following headings:

1.	Biodiversity legislation in NSW: the current position .....	2
2.	Independent Biodiversity Legislation Review Panel 2014.....	3
3.	Draft Biodiversity Conservation Bill 2016 and Draft Local Land Services Amendment Bill 2016.....	5
4.	Selected stakeholder commentary on the draft Bills .....	6
5.	Parliamentary publications.....	7
6.	NSW Government.....	7
7.	Commentary from political parties .....	8
8.	Commonwealth Parliament.....	9
9.	Commonwealth Government .....	9
10.	Selected media commentary .....	9
11.	Academic and conference literature .....	10

## 1. BIODIVERSITY LEGISLATION IN NSW: THE CURRENT POSITION

A number of NSW statutes currently deal with different aspects of biodiversity conservation.

### [Coastal Management Act 2016](#)

The [Coastal Management Act 2016](#) received assent on 7 June 2016, but will not commence until after public consultation on the draft [Coastal Management State Environmental Planning Policy \(SEPP\)](#) and corresponding maps. When it commences, the new Act will replace the current *Coastal Protection Act 1979*. The objects of the 2016 Act include protecting and enhancing the biological diversity of the coastal environment.

### [Environmental Planning and Assessment Act 1979](#)

The [Environmental Planning and Assessment Act 1979](#) regulates planning in NSW and provides a framework within which other pieces of legislation and policy operate to address biodiversity. The operation of the planning system at both a strategic and development assessment level has the potential to significantly impact on biodiversity conservation.

### [Fisheries Management Act 1994](#)

The [Fisheries Management Act 1994](#) provides for protection of aquatic habitats in NSW. It also establishes a threatened species regulatory framework for species, populations and ecological communities of fish and marine vegetation, utilising the same framework as the *Threatened Species Conservation Act 1995*.

### [Forestry Act 2012](#)

The [Forestry Act 2012](#) provides for the dedication, management and use of State forests and other Crown-timber land for forestry and other purposes. It also provides for the creation of flora reserves for the preservation of native flora, as well as the declaration of special management zones in areas deemed to have special conservation value.

### [Local Land Services Act 2013](#)

The [Local Land Services Act 2013](#) provides a framework for financial assistance and incentives to landholders, including, but not limited to, incentives that promote land and biodiversity conservation.

### [Marine Estate Management Act 2014](#)

The [Marine Estate Management Act 2014](#) regulates the use and enjoyment of marine parks and aquatic reserves, the carrying out of activities (including commercial activities) in these areas as well as the taking of animals, plants or materials from these areas. Its objects include promoting a biologically diverse, healthy and productive marine estate.

### National Parks and Wildlife Act 1974

Under the National Parks and Wildlife Act 1974 the Chief Executive of the Office of Environment and Heritage is responsible for the care, control and management of all national parks, historic sites, nature reserves and Aboriginal areas. State conservation areas, karst conservation reserves and regional parks are also administered under the Act. The Chief Executive is also the authority under this Act for the protection of native flora and fauna as well as Aboriginal objects and places throughout NSW.

### Native Vegetation Act 2003

The Native Vegetation Act 2003 regulates the clearing of native vegetation on all land in NSW, except for excluded land listed in Schedule 1 of the Act.

### Nature Conservation Trust Act 2001

The Nature Conservation Trust Act 2001 establishes the Nature Conservation Trust, a non-government body corporate, the primary function of which is to facilitate the conservation of natural heritage on private land through the negotiation and administration of Trust agreements.

### Threatened Species Conservation Act 1995

The Threatened Species Conservation Act 1995 provides for the conservation of threatened species, populations and ecological communities of animals and plants (the Act does not apply to fish and marine vegetation). The Act has a number of specific objects including the conservation of biological diversity and promotion of ecologically sustainable development, as well as the protection of the critical habitat of those threatened species, populations and ecological communities that are endangered. It also aims to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities and ensure that the impact of any action to these groups is properly assessed.

### Wilderness Act 1987

The Wilderness Act 1987 provides for the identification of wilderness and the protection and management of the 49 declared wilderness areas in the State. Wilderness areas are large areas of land that remain in a natural state.

## **2. INDEPENDENT BIODIVERSITY LEGISLATION REVIEW PANEL 2014**

The Independent Biodiversity Legislation Review Panel commenced a comprehensive review of the State's biodiversity legislation in June 2014. The scope of the review included the Native Vegetation Act 2003, Threatened Species Conservation Act 1995, Nature Conservation Trust Act 2001 and Part 4 Divisions 11 through 13, Part 6A (insofar as it relates to native plants and animals), and Parts 7 through 9 of the National Parks and Wildlife Act 1974. It also included all associated

regulations and policies. During the review the panel met with [key stakeholders](#), and released an [issues paper](#).

A total of [395 submissions](#) were received as part of this Review, including:

- [Environmental Defender's Office](#)
- [Law Society of NSW](#)
- [Local Government NSW](#)
- [Natural Resources Commission](#)
- [NSW Farmers](#)
- [NSW Minerals Council](#)
- [NSW Scientific Committee](#)
- [Urban Development Institute of Australia](#)
- [Wentworth Group of Concerned Scientists](#)
- [Wilderness Society](#)

The Panel tabled its [final report](#) in December 2014. The report:

- **Proposes** a new 'Biodiversity Conservation Act', with the goal to maintain a healthy, productive and resilient environment for the greatest wellbeing of the community, now and into the future, consistent with the principles of ecologically sustainable development.
- **Recommends** focusing on conserving biodiversity at a bioregional or state scale.
- **Proposes** a vision of landscape scale conservation and productivity through a connected network of public and private land which meets national and international obligations – and is in line with international best practice – and is feasible, achievable and affordable.
- **Recommends** repealing the *Native Vegetation Act 2003*. The Act has not met expectations as a central pillar of biodiversity conservation in NSW. It has been contentious because of difficulties in implementation and the inequitable distribution of the costs involved, in particular sectors and in particular regions of the state.
- **Recommends** repealing the *Threatened Species Conservation Act 1995* and parts of the *National Parks and Wildlife Act 1974 Act* and reconstituting elements of them in a new 'Biodiversity Conservation Act'.
- **Recommends** that management of native vegetation in the context of **existing** agricultural management would be assisted and supervised by Local Land Services, while **new** agricultural developments which would impact on native vegetation would require consent from the appropriate authorities (often Local Government), as occurs for any other change in land use.
- **Capitalises** on opportunities to not only identify areas of high-conservation value outside of the public reserve system but also promote private land conservation and provide funding their long-term on-going management.

- **Encourages** the broader and deeper application of offsetting, as approved in the NSW Biodiversity Offsetting Policy for Major Projects and through mechanisms such as biodiversity certification and BioBanking. A statewide biodiversity offsets fund should be operational as soon as possible.
- **Modernises** and streamlines the regulation of human-wildlife interactions, particularly in recognition of the increasing popularity of keeping native animals (especially birds and reptiles) as pets, while maintaining the general provisions restricting harm to, or trade in, native wildlife.
- **Recommends** the development and use of a comprehensive system for monitoring and reporting the condition (extent and quality) of biodiversity in NSW.

The NSW Government [committed to implementing](#) all 43 of the Review Panel's recommendations in its proposed reform package in March 2015, prior to the 2015 State Election.

### 3. DRAFT BIODIVERSITY CONSERVATION BILL 2016 AND DRAFT LOCAL LAND SERVICES AMENDMENT BILL 2016

On 3 May 2016, the NSW Government [released a draft Biodiversity Conservation Bill 2016, draft Local Land Services Amendment Bill 2016 and supporting products](#) for public exhibition. The Government aims to introduce this legislation in October 2016, with the legislation to commence in two stages in 2017 if passed by Parliament.

Under the proposed reforms, the [Threatened Species Conservation Act 1995](#) and [Nature Conservation Trust Act 2001](#) will be repealed in full by the Biodiversity Conservation Bill 2016. Additionally, parts of the [National Parks and Wildlife Act 1974](#) (NP&W Act) will also be repealed, thereby creating a single piece of biodiversity legislation. The [Local Land Services Amendment Bill 2016](#) will repeal the [Native Vegetation Act 2003](#).

The objects of the draft Biodiversity Conservation Bill 2016 are as follows:

- (a) to conserve biodiversity and ecological integrity at bioregional and State scales, and
- (b) to facilitate ecological sustainable development, and
- (c) to improve and share knowledge, including local and Aboriginal knowledge, about the status and values of biodiversity and of ecosystem services and the effectiveness of conservation actions.

These objects are to be achieved by:

- (a) taking conservation and threat abatement action to slow the rate of biodiversity loss, and
- (b) facilitating prioritised investment in conservation on private land to conserve biodiversity and increase ecosystem services, and
- (c) effectively regulating high-risk interactions with wildlife, and

- (d) ensuring that land management activities appropriately protect biodiversity and ecosystem services, and
- (e) establishing market-based conservation mechanisms through which environmental impacts of development and activities can be avoided, minimised or offset at landscape and site scales,
- (f) establishing a method to assess the impacts of development on biodiversity values and conservation management actions, and
- (g) assessing the extinction risk of species and ecological communities through an independent and rigorous scientific process, and
- (h) collating and sharing data, and monitoring and reporting on the status of biodiversity and ecosystem services and the effectiveness of conservation actions, and
- (i) drawing on expert advice and knowledge to assist Ministers and officers in implementing this Act.

The [Local Land Services Amendment Bill 2016](#) will amend the current [Local Land Services Act 2013](#) to enable it to regulate native vegetation clearing.

Specifically, it will replace section 3(e) with the following object:

- e) to ensure the proper management of natural resources consistent with the principles of ecologically sustainable development (described in section 6 (2) of the Protection of the Environment Administration Act 1991).

The Bill also inserts provisions to allow the Act to regulate native vegetation land management under a new Part 5A, as well as establishing allowable activities for the clearing of native vegetation under a new Schedule 5A.

The reform package includes the following:

- [Proposed Local Land Service Codes of Practice](#)
- [Draft Native Vegetation Map Method Statement](#)
- [Draft Biodiversity Assessment Method \(BAM\)](#)
- [Draft Code of Practice for Commercial Kangaroo Harvesting in NSW](#)
- [Native Vegetation Regulatory Map](#)
- Draft SEPP (Urban Tree Removal) – to be released by the end of 2016

#### **4. SELECTED STAKEHOLDER COMMENTARY ON THE DRAFT BILLS**

A number of stakeholders have contributed formal submissions to the public consultation process, along with commenting publicly:

- [Environmental Defender's Office](#)

- [Housing Industry Association](#)
- [Law Society of NSW](#)
- [Nature Conservation Council of NSW](#)
- [NSW Farmers](#)
- [Planning Institute Australia](#)
- [Property Council of Australia](#)

Along with its formal submission, the EDO has written a number of publications outlining its views on the proposed legislation:

- [Biodiversity Law Reform: What it Means and How to Have Your Say](#)
- [Our top 10 concerns with the draft Biodiversity Conservation Bill 2016 and Local Land Services Amendment Bill](#)
- [The 2016 NSW biodiversity reforms: 6 things you need to know](#)

The NSW Farmers has launched a public campaign – [Farmers 4 Land Reform](#) – to communicate its position on land reform under the proposed biodiversity reform package.

## 5. PARLIAMENTARY PUBLICATIONS

L Ismay, [Threatened species legislation in NSW: A recent history](#), NSW Parliamentary Research Service, e-brief 05/2016, 2016

Bombell A & Montoya D, [Native vegetation clearing in NSW: a regulatory history](#), NSW Parliamentary Research Service, Briefing Paper 5/2014, 2014

H Park, [Biodiversity certification](#), NSW Parliamentary Research Service, e-brief 9/2010, 2010

H Park, [Biodiversity: Regulatory Frameworks](#), NSW Parliamentary Research Service, Briefing Paper 3/2010, 2010

## 6. NSW GOVERNMENT

### 6.1 Biodiversity Legislation Review

Independent Biodiversity Legislation Review Panel, [Terms of Reference](#)

Independent Biodiversity Legislation Review Panel, [Issues Paper](#), August 2014

Independent Biodiversity Legislation Review Panel, [Submissions Report](#), October 2014

Independent Biodiversity Legislation Review Panel, [A review of biodiversity legislation in NSW: Final Report](#), December 2014

A series of papers on specific issues related to the policy and legislative framework around the Independent Review were also prepared by OEH:

- [Objects](#)
- [Information provisions](#)
- [Conservation action](#)
- [Conservation in land-use planning](#)
- [Conservation in development approval processes](#)
- [Wildlife management](#)

## 6.2 Policies and reports

Office of Environment and Heritage, [Growth Centres Biodiversity Offset Program: Annual Report 2014–15](#), 2015

Office of Environment and Heritage, [Saving our Species: Landscape species strategy](#), 2015

Office of Environment and Heritage, [Establishing Biobank sites on public land - A report on the Linking Landscapes through Local Action Grant Program 2012–2015](#), 2015

Office of Environment and Heritage, [Biodiversity certification – A guide for applicants](#), 2015

NSW Environment Protection Authority, [NSW State of Environment 2015](#), 2015

Office of Environment and Heritage, [Native Vegetation Information Strategy 2014-2018](#), 2014

Office of Environment and Heritage, [BioBanking Assessment Methodology 2014](#), 2014

Office of Environment and Heritage, [BioBanking Scheme: Statutory Review Report](#), 2014

Office of Environment and Heritage, [NSW Biodiversity Offsets Policy for Major Projects](#), 2014

Office of Environment and Heritage, [Framework for Biodiversity Assessment](#), 2014

## 7. COMMENTARY FROM POLITICAL PARTIES

The Hon. Mehreen Faruqi MLC, Greens Spokesperson for the Environment – [Media Release](#), 19 August 2016

The Hon. Penny Sharpe MLC, Shadow Minister for the Environment – [Adjournment Debate](#), 11 August 2016



## 8. COMMONWEALTH PARLIAMENT

Senate Environment and Communications References Committee, [\*Inquiry into Environmental Offsets\*](#), 2014

House Standing Committee on Climate Change, Environment and the Arts, [\*Managing Australia's biodiversity in a changing climate: the way forward\*](#), 2013

Senate Environment and Communications References Committee, [\*The effectiveness of threatened species and ecological communities' protection in Australia\*](#), 2013

## 9. COMMONWEALTH GOVERNMENT

### 9.1 Legislation

[\*Environment Protection and Biodiversity Conservation Act 1999\*](#)

[\*Environment Protection and Biodiversity Conservation Regulations 2000\*](#)

### 9.2 Policy

Department of the Environment and Energy, [\*Evaluating business investment in biodiversity conservation – Final report\*](#), 2016

Department of the Environment, [\*Australia's Fifth National Report to the Convention on Biological Diversity\*](#), 2014

COAG Standing Council on Environment and Water, [\*Australia's Native Vegetation Framework\*](#), 2012

Natural Resource Management Ministerial Council, [\*Australia's Biodiversity Conservation Strategy 2010-2030\*](#), 2010

## 10. SELECTED MEDIA COMMENTARY

*ABC Online*, [\*Proposed NSW land-clearing, biodiversity laws dealt blow in submissions\*](#) – 21 September 2016

*The Belingen Shire Courier-Sun*, [\*NSW Biodiversity Act, the debate set to ramp up\*](#) – 18 September 2016

*ABC Online*, [\*Farmers divided over changes to NSW land-clearing laws\*](#) – 17 July 2016

*SMH*, [\*NSW land clearing laws 'a failure' even after farmers come out in opposition\*](#) – 28 June 2016

*ABC Online*, [\*NSW Farmers unhappy with native vegetation reforms\*](#) – 28 June 2016

*The Land*, [\*Farmers pick apart NSW land management reform\*](#) – 4 June 2016

SMH, [“That would be tragic”: Worries new landclearing laws will gut biodiversity](#) – 6 May 2016

SMH, [NSW Government promises biodiversity win from land clearing laws](#) – 3 May 2016

*The Guardian*, [NSW land clearing law will let farmers clear native vegetation with no approval](#) – 3 May 2016

*Daily Telegraph*, [NSW land clearing to be made simpler: government](#) – 3 May 2016

*The Australian*, [NSW laws ease way for farmers to clear land](#) – 3 May 2016

## 11. ACADEMIC AND CONFERENCE LITERATURE

Law Society of NSW Journal, [Policy and practice: Law society advocacy and law reform: Latest news and developments](#), *LSJ: Law Society of NSW Journal*, No. 25, Aug 2016: 68-69.

Neil Perry, [NSW Government is choosing to undermine native vegetation and biodiversity](#), *The Conversation*, May 9 2016

Rachel Walmsley, [Missed opportunity to strengthen biodiversity laws](#), *Nature New South Wales*, Vol. 59, No. 1, Autumn 2015: 16-17.

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**Last updated:** 23 September 2016

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