Environmental Defenders Office

Submission to the Inquiry into the *Local Land Services Amendment (Miscellaneous) Bill 2020*

4 February 2021

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Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

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Environmental Defenders Office is a legal centre dedicated to protecting the environment.

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Submitted to:

Portfolio Committee 7 – Planning and Environment
Legislative Council
NSW Parliament
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Introduction

Environmental Defenders Office (EDO) welcomes the opportunity to provide comment to the Inquiry into the *Local Land Services Amendment (Miscellaneous) Bill 2020* (the **Bill**). We have had a long history of engagement on native vegetation laws and koala policy in NSW.

The Bill proposes changes to both the native vegetation regulatory framework in Part 5A of the *Local Land Services Act 2013* (**LLS Act**) and the private native forestry (**PNF**) framework in Part 5B of the LLS Act. Several proposed changes to Part 5A of the LLS Act were purportedly intended to address the interaction between Part 5A and *State Environmental Planning Policy (Koala Habitat) 2019* (**Koala SEPP 2019**). In conjunction with the introduction of the Bill, the NSW Government also amended Koala SEPP 2019 and finalised the Koala Habitat Protection Guideline.

However, it is noted that following debate on the Bill in the Upper House in November 2020, and the failure of the Bill to pass at that time, the Government has repealed Koala SEPP 2019 and the associated Koala Habitat Protection Guidelines and introduced *State Environmental Planning Policy (Koala Habitat) 2020* (**Koala SEPP 2020),** which mirrors the policy settings of the former *State Environmental Planning Policy No 44—Koala Habitat* (**SEPP 44**).

EDO does not support the Bill before the Inquiry, and recommends the Bill be withdrawn.

Following the well-publicised political row in 2020, the Bill - purportedly introduced to 'decouple' koala policy requirements from land clearing laws on private rural land - was hastily passed by the Lower House in October. On closer examination by the EDO it became clear that the Bill goes far beyond simply clarifying application of koala policy, and includes changes that would, for example, potentially override protections for coastal wetlands and littoral rainforests on rural land, allow a new category of clearing in certain environment zones and make changes to the separate framework for private native forest logging.

This Bill is the exact opposite of the law reform that is needed to save NSW koalas from extinction. The NSW parliamentary inquiry into koalas found that without intervention – including making our laws stronger – koalas could be extinct in NSW by 2050. Some experts predict extinction even sooner, and certainly some local populations are in immediate peril due to the impacts of the 2019-20 bushfire season and recent development approval decisions. The suggestion that negotiations on koala policy must go back to the drawing board is of serious concern. There was extensive consultation on the development of Koala SEPP 2019 prior to its commencement in March 2020, including recommendations as early as ten years prior that the NSW Government update the list of koala habitat trees to make it more scientifically accurate, and there was significant and protracted delay between consultation and finalisation of the updated SEPP.

Frankly, we can't wait another decade to debate the wording of a new koala policy or guideline. We need to address the fact that our laws currently allow clearing of important koala habitat. The decision to revert back to the policy settings from the former SEPP 44 is a significant backwards step. EDO recommends that the Parliament introduce legislation that actually addresses the threats, puts in place evidence-based protections such as off-limits areas, and protects our iconic koalas for generations to come.

This submission outlines EDO's concerns as follows:

1. **<u>Overarching concerns with the intent and timing of the Bill</u>**

    - The Bill pre-empts the three-year review of the land management framework
    - The Bill pre-empts the outcomes of the PNF Review
    - The policy settings underpinning the Bill are inconsistent with broader findings of the NSW Audit Office, Natural Resources Commission and Upper House Parliamentary Inquiry
    - The policy settings underpinning the Bill are inconsistent with the original recommendations of Independent Biodiversity Review Panel
    - The Bill should not proceed now that Koala SEPP 2019 has been repealed, and further consultation on koala policy is intended.

2. **<u>Specific concerns regarding the changes proposed by the Bill</u>**

    - Proposed 'allowable activity land' will undermine E-zones
    - Freezes the inclusion of newly identified koala habitat in category 2 regulated land mapping
    - Limitation on planning instruments requiring consent for clearing only
    - Defences for clearing in regulated rural areas
    - Changes to Part 5B of the LLS Act – PNF

In our view, the changes proposed by the Bill will remove important protections for koala habitat and will further facilitate excessive and inappropriate land clearing. **We do not support the Bill.**

1. Overarching concerns with the intent and timing of the Bill

EDO does not support the intent and timing of this Bill. The Bill was introduced following a well-publicised dispute within the coalition about the operation of Koala SEPP 2019, despite consultation on an Explanation of Intended Effects for a revised SEPP and despite Koala SEPP 2019 already having been in operation for a number of months (it commenced on 1 March 2020).

The policy settings underpinning the Bill are inconsistent with recommendations made by the NSW Audit Office, Natural Resources Commission and NSW Upper House Inquiry; and also the original recommendations of Independent Biodiversity Review Panel. The Bill also pre-empts the outcomes of government reviews currently in progress as detailed below.

- **The Bill pre-empts the three-year review of the land management framework**

On introducing the land management framework to the NSW Parliament, the then Minister for the Environment, the Hon. Mark Speakman SC MP, said that in addition to the standard five-yearly reviews required by the legislation "*this Government will also conduct a review of the new laws, supporting policies, programs and funding within three years of implementation*".[1] Part 5A of the LLS Act has been in operation for three years. The Government should hold off on amendments to the LLS Act until it completes and publicly releases the findings of the three-year review that it has committed to.

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[1] New South Wales, *Parliamentary Debates*, Legislative Assembly, 16 November 2016 (Mr Mark Speakman, Minister for the Environment, Minister for Heritage, and Assistant Minister for Planning), available at https://www.parliament.nsw.gov.au/bill/files/3357/2R%20Biodiversity%20and%20cognate%20bill.pdf

In anticipation of the three-year review, EDO has examined the operation of the land management framework in its first three years of operation. Our report, *Restoring the balance in NSW native vegetation law - Solutions for healthy, resilient and productive landscapes* examines 10 key failings of the land management framework relating to the regulation of land clearing and identifies solutions. It makes specific recommendations for urgent law reform to strengthen protections for native vegetation and biodiversity and to improve implementation, monitoring and enforcement in order to curb the return to broadscale land clearing and provide genuine protection for biodiversity and landscape functions.[2] The Bill is inconsistent with the EDO's recommendations.

EDO has written to the government concerning progress of this review and has been provided with no useful information or update.

- **The Bill pre-empts the outcomes of the PNF Review**

The Bill proposes significant changes to the PNF framework, including preventing local environment plans from requiring development consent for PNF, and doubling the duration allowed for PNF plans (from 15 years to 30 years). These are significant changes and should not be implemented until the outcomes of the PNF Review are finalised. Further, these changes do not relate to the stated reason for the Bill – the interaction between the land clearing rules under LLS Act and Koala SEPP 2019.

- **The policy settings underpinning the Bill are inconsistent with broader findings of the NSW Audit Office, Natural Resources Commission and Upper House Parliamentary Inquiry.**

Various reports and analysis have highlighted the regulatory failure of the land management framework under the LLS Act. Notably:

- A 2019 review by the Audit Office of NSW (**Audit Office**) concluded that the new land management framework may not be responding adequately to environmental risks whilst permitting landholders to improve agricultural activities and identified significant delays in compliance and enforcement activity to address unlawful clearing.[3]

- A review of the land management framework, conducted in early 2019 by the Natural Resources Commission (**NRC Report**) found that clearing rates have increased almost 13-fold – from an annual average rate of 2,703ha a year under the old laws to 37,745ha under the new laws and that biodiversity in 9 out of 11 regions is now at risk.[4]

- A NSW Parliamentary Upper House inquiry into koala populations and habitat in NSW inquired into, amongst other things, the impacts on koalas and koala habitat from the 2016 land management reforms.[5] The Committee's report found it is clear

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[2] Environmental Defenders Office, August 2020, *Restoring the balance in NSW native vegetation law - Solutions for healthy, resilient and productive landscapes,* available at *https://www.edo.org.au/wp-content/uploads/2020/08/EDO-LC-report-2-spreads.pdf*
[3] Audit Office of NSW, *Managing Native Vegetation*, 27 June 2019, available at https://www.audit.nsw.gov.au/our-work/reports/managing-native-vegetation
[4] Natural Resources Commission*, Final Advice on Land Management and Biodiversity Conservation Reforms*, July 2019, available at https://www.nrc.nsw.gov.au/land-mngt
[5] NSW Legislative Council Portfolio Committee No. 7 – Planning and Environment *Koala populations and habitat in New South Wales*, June 2020, available at

that frameworks regulating clearing on private land play a vital role in koala habitat protection and therefore in preventing the extinction of the koala in NSW and must be strengthened. In that context, the Committee made a number of recommendations for strengthening the land management framework under the Local Land Services Act 2013 (LLS Act), namely:

- Recommendation 33: That the NSW Government amend the Local Land Services Act 2013 to reinstate legal thresholds so that its application improves or maintains environmental outcomes and protects native vegetation of high conservation value.
- Recommendation 34: That the NSW Government review the impact on koala habitat of the application of regulated land and self-assessment frameworks under the Local Land Services Act 2013.
- Recommendation 35: That the NSW Government adopt all of the recommendations made by the Natural Resources Commission in its 2019 Report on Land Management.

- **The policy settings underpinning the Bill are inconsistent with the original recommendations of Independent Biodiversity Review Panel.**

The Bill seeks to decouple the rules for farmers despite the recommendation of the Independent Biodiversity Legislation Review Panel to "*level the playing field for agricultural development and land management activities*" by "*treating all forms of development in a consistent and fair way, by integrating the assessment and approval of all forms of agricultural development that involve clearing of native vegetation into the Environmental Planning and Assessment Act 1979*".[6]

- **The Bill should not proceed now that Koala SEPP 2019 has been repealed, and further consultation on koala policy is intended.**

The Bill was introduced on the premise that it was needed to address the interaction between Part 5A of the LLS Act and Koala SEPP 2019. However, with the repeal of Koala SEPP 2019, this premise is no longer relevant. Further, given that the Government has indicated its intention to undertake further work on developing a new koala policy in 2021,[7] changes to the LLS Act at this time would be premature.

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https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2536#tab-reportsandgovernmentresponses

[6] Independent Biodiversity Legislation Review Panel, *A review of biodiversity legislation in NSW Final Report,* December 2014, available at https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/review-biodiversity-legislation-nsw-final-report-2014.pdf

[7] See, for example, https://www.planning.nsw.gov.au/Policy-and-Legislation/Environment-and-Heritage/Koala-Habitat-Protection-SEPP

2. Specific concerns regarding the changes proposed by the Bill

As outlined earlier in our submission, the Bill goes far beyond simply clarifying application of koala policy, and would make other changes that would still have affect despite the repeal of Koala SEPP 2019.

EDO has identified a number of key concerns with the Bill as detailed below.

- **Proposed 'allowable activity land' will undermine E-zones**

The Bill introduces the concept of 'allowable activity land' – being land that has been rezoned from rural zoning to environmental zoning (E2, E3 and/or E4).[8] There are subsequent amendments to operationalise this new concept [e.g. Bill, Sch 1[3],[6],[7],[9],[11]]. In particular, 'allowable activities' (those identified in Schedule 5A of the LLS Act and that can be carried out without any approval or other authority) will be able to be carried out on both 'rural regulated land'[9] (as is currently the case) and 'allowable activity land'.

This proposed change expands the range of land that allowable activities can be carried out on – by providing that allowable activities can be carried out in certain E-zones. We do not support this change. E-zones are intended to provide protection to land that is suitably identified as warranting protection due to its environmental values. Clearing should not be allowed to go ahead in these zones unchecked. We note that E-zones do not prohibit clearing from occurring. Rather, any clearing would need to be appropriately authorised (clearing in E-zones is regulated under the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (**Vegetation in Non-Rural Areas SEPP**).

We are also concerned that this proposed change is not restricted in its application. For example, it does not provide a timeframe in which rezoning has to have occurred. Would historical rezoning (e.g. prior to the commencement of the framework) trigger the 'allowable activity land' definition? It is also unclear if the primary production use that triggers 'allowable activity land' definition has to be an existing use under the previous rural zoning that is continued or whether it can be a (permitted) new use.

It is also unclear what is meant by 'timber-getting for commercial purposes' in the changes proposed to section 60D of the LLS Act (Bill, Sch 1 [2]), as this term is not defined. This term should be clearly defined, and it should not extend to private native forestry as this is regulated separately under Part 5B of the LLS Act.

Additionally, the proposed definition of 'allowable activity land' is problematic as it muddles the distinction between the LLS Act and E-zones. The legal drafting is unclear – for example, the proposed definition applies to 'an area of the State to which this Part applies' – which does not include E-zones, rendering the remainder of the definition potentially inoperable.

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[8] LLS Amendment (Miscellaneous) Bill – Sch 1 [2] - '*allowable activity land'* means a landholding— (a) that is in an area of the State to which this Part applies, and (b) that is or was wholly or partly in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU5 Village or Zone RU6 Transition, and (c) the whole or a part of which has been rezoned as Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living, and (d) that is used for primary production.

[9] '*Regulated rural area'* means any area of the State to which Part 5A of the LLS Act applies, that is category 2-regulated land.

To assist the Inquiry, we provide the following summary of the current interaction between E-zones and the land management framework under the LLS Act.

Clearing of vegetation in E-zones (E2, E3, and E4) is regulated by *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (**Vegetation in Non-Rural Areas SEPP**). The LLS Act has no application in E-zones.

Specifically:

- **Application of LLS Act:**
  Part 5A, section 60A of the LLS Act provides:
  60A Rural areas of State to which Part applies
  This Part applies to any area of the State, other than the following—
  (a) urban areas of the State to which *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* applies
  ….
- **Application of Vegetation in Non-Rural Areas SEPP**

  5 Land to which Policy applies
  (1) This Policy applies to the following areas of the State (the non-rural areas of the State)—
  (a) land in the following local government areas—
  Bayside, City of Blacktown, Burwood, Camden, City of Campbelltown, Canterbury-Bankstown, Canada Bay, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Georges River, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, Newcastle, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, Rockdale, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Woollahra.

  (b) land within the following zones under an environmental planning instrument—
  Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone B8 Metropolitan Centre, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 Heavy Industrial, Zone IN4 Working Waterfront, Zone SP1 Special Activities, Zone SP2 Infrastructure, Zone SP3 Tourist, Zone RE1 Public Recreation, Zone RE2 Private Recreation, **Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living** or Zone W3 Working Waterways.

To reflect this, E-zones are identified as **excluded land** (grey) in Native Vegetation Regulatory Map. The Government's website indicates that "*The Land Management framework under the Local Land Services (LLS) Act applies in rural areas of the State. Areas of the State where it doesn't apply are mapped as 'Excluded Land' on the NVR Map. These lands are generally non-rural, such as residential or industrial areas, and includes land zoned for environmental purposes. Lands mapped as Excluded are **not** subject to native vegetation land management requirements prescribed in the LLS Act*."

That is, all E-zones across the State, including in areas that are predominantly seen as 'rural' areas, are excluded from the LLS Act.

This is appropriate given that the LLS Act facilitates extensive clearing of vegetation via allowable activities and code-based clearing with less stringent environmental assessment and oversight, and E-zones are intended to protect areas with environmental value.

It is important to remember that E-zones do not prevent clearing of native vegetation. Rather additional, warranted scrutiny (including, where relevant, environmental impact assessment) is required to ensure that the environmental values of the land are not inappropriately impacted by clearing.

- **Freezes the inclusion of newly identified koala habitat in category 2 regulated land mapping**

The LLS Act provides that certain land must be designated category-2 regulated land. Clearing on this land may require authorisation under the LLS Act (e.g. via the Land Management Code or approval from the Native Vegetation Panel). Currently, it is a requirement for land identified as koala habitat in a Koala Plan of Management (**PoM**) made under *State Environmental Planning Policy No 44—Koala Habitat Protection* (SEPP 44).

The Bill proposes to remove this requirement (see Bill, Sch. 1 [4]). As drafted, the Bill will retain the requirement for land to be designated category 2 regulated land only if it is (i) identified as core koala habitat within the meaning of the repealed Koala Habitat SEPP (ii) subject to a PoM approved on or before 6 October 2020 under the repealed Koala Habitat SEPP and in force on 6 October 2020, and (iii) located in the local government areas of Ballina, Coffs Harbour, Kempsey, Lismore or Port Stephens. It will not require land identified after 6 October 2020 to be designated category 2 regulated land. The fact that the Government has reverted back to the policy settings of SEPP 44 is irrelevant here, as the amendment would clearly operate to exclude any land identified after 6 October 2020.

This essentially 'freezes in time' the identification of koala habitat identified for the purpose of designating category 2 regulated land. It means that any future identification of koala habitat will not be required to be designated category 2-regulated land. It will also prevent any koala habitat from being identified category 2 – sensitive regulated land (see cl 108(2)(b) of the *Local Land Services Regulation 2018* (**LLS Regulation**).

We do not support this change. It essentially means that land clearing on koala habitat (except that already identified) in rural areas will not be regulated. Many councils are still to develop and finalise plans of management identifying koala habitat (this was a requirement under the former SEPP 44 that continued under the new Koala SEPP 2019, and is carried over into Koala SEPP 2020). This is not an appropriate policy setting given that the koala is listed as a threatened species in NSW and loss, modification and fragmentation of habitat is a key threat to the koala;[10] and as noted, the NSW Parliamentary Inquiry found that without effective intervention, koalas will become extinct in NSW by 2050.[11]

Finally, any concerns that related to the identification of koala habitat under Koala SEPP 2019 that could have been relied on to justify this amendment (of which we say there was none in any case), are no longer relevant, with Koala SEPP 2019 having been repealed. The process for identifying koala habitat for the purpose of the LLS Act is now the same as when Part 5 of the LLS commenced.

- **Limitation on planning instruments requiring consent for clearing only**

The Bill proposes to remove the ability for a State environmental planning policy or part of a local environmental plan that adopts a mandatory provision of a standard instrument under the *Environmental Planning and Assessment Act 1979* to require development consent or other authorisation only for the clearing of native vegetation in an area of the State to which Part 5A applies.

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[10] See https://www.environment.nsw.gov.au/threatenedspeciesapp/profile.aspx?id=10616

[11] NSW Legislative Council Portfolio Committee No. 7 – Planning and Environment *Koala populations and habitat in New South Wales*, June 2020, op. cit.

Current – section 60P LLS Act	Proposed change
60P Limitation on planning instruments requiring consent for clearing only (1) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979* (other than a State environmental planning policy or so much of a local environmental plan that adopts a mandatory provision of a standard instrument under that Act) may not be made to require development consent or other authorisation only for the clearing of native vegetation in an area of the State to which this Part applies. Any such requirement in an environmental planning instrument has no effect. (2) This section does not affect the imposition of conditions relating to the clearing of native vegetation on a development consent of any other kind.	Bill, Sch 1 [10]: **60P Limitation on planning instruments requiring consent for clearing only** Omit "(other than a State environmental planning policy or so much of a local environmental plan that adopts a mandatory provision of a standard instrument under that Act)" from section 60P(1). That is, if amended, s60P(1) of the LLS will read: **(1) An environmental planning instrument under the *Environmental Planning and Assessment Act 1979*** ~~(other than a State environmental planning policy or so much of a local environmental plan that adopts a mandatory provision of a standard instrument under that Act)~~ **may not be made to require development consent or other authorisation only for the clearing of native vegetation in an area of the State to which this Part applies. Any such requirement in an environmental planning instrument has no effect.**

Our initial view was that the need for this amendment was unclear – there was no explanation of what type of clearing is expected to benefit from this change or what 'other authorisations' would be captured by this change.

The proposed amendment would only have effect in limited circumstances, being:

- **an application for clearing of vegetation only** (not clearing association with an application for development); and
- **on land to which the Part 5A of the LLS Act applies** (not areas covered by the urban areas or other zones covered by *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (*Vegetation Non-Rural Areas SEPP), national parks estate and other conservation areas or State Forestry Land); and
- **that requires development consent** (ordinarily clearing of vegetation on land to which the Part 5A of the LLS Act applies would be undertaken as an allowable activity, in compliance with the Land Management Code or with approval from the NV Panel).

While the intent behind the proposed amendment is still unclear, we have now identified a number of implications if the proposed amendment goes ahead.

- ***State Environmental Planning Policy (Coastal Management) 2018*** (**Coastal Management SEPP**).

The proposed amendment to s 60P of the LLS Act will affect the operation of cl 10 of the Coastal Management SEPP, which provides:

> **10 Development on certain land within coastal wetlands and littoral rainforests area**
> (1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the *Coastal Wetlands and Littoral Rainforests Area Map* only with development consent—
> (a) the clearing of native vegetation within the meaning of Part 5A of the *Local Land Services Act 2013*,
> …

If amended as proposed, s 60P of the LLS Act would operate so that cl 10(1)(a) of the Coastal Management SEPP would have no effect. In which case, clearing of vegetation (which could include littoral rainforest) could occur without the need for development consent. However, clearing would need to be carried in accordance the Part 5A of the LLS Act.

We note that section 60P of the LLS only applies to land to which the Part 5A of the LLS Act applies. Therefore, for any areas within coastal wetlands and littoral rainforests area to which Vegetation Non-Rural Areas SEPP applies (e.g urban areas and E-zones and other zones identified in cl 5(1)(b) of the Vegetation Non-Rural Areas SEPP), cl 10 of the Coastal Management SEPP will continue to apply.

- **Standard Instrument clauses**

The proposed amendment to s 60P of the LLS Act will affect the operation of any clause of the *Standard Instrument—Principal Local Environmental Plan 2006* **(Standard Instrument)** that would require development consent for the clearing of vegetation only on land to which Part 5A of the LLS Act applies.

Clauses 5.9 and 5.9AA are clauses that may be affected, although these clauses should have been repealed when the Vegetation Non-Rural Areas SEPP began operation.

There may be other provisions of environmental planning instruments (EPIs) that we have not identified that are also affected by the proposed amendment to s60P of the LLS Act.

Given that there has been no sufficient explanation of need for the proposed amendment to s60P of the LLS Act and the perverse impact the proposed amendment may have on the operation of EPIs (including some which we may have not have identified), we recommend that the amendment to s60P of the LLS Act not proceed.

- **Defences for clearing in regulated rural areas**

Section 60N of the LLS Act provides that a person who clears native vegetation in a regulated rural area is guilty of an offence unless:

a) the clearing is for an allowable activity authorised under Division 4 and Schedule 5A,
b) that the clearing is authorised by a land management (native vegetation) code under Division 5,
c) that the clearing is authorised by an approval of the Panel under Division 6,
d) that the clearing is authorised under section 60O (Clearing authorised under other legislation etc),

e) that the clearing is the carrying out of a forestry operation authorised under Part 5B (Private native forestry

The Bill proposes to add that clearing authorised under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* is also a defence for the purpose of section 60N of the LLS Act (see Bill, Sch. 1 [8]). This is a consequential amendment that follows the introduction of the concept of 'allowable activity land', which as noted above, we do not support.

- **Changes to Part 5B of the LLS Act – PNF**

As outlined above, the Bill proposes changes to the PNF framework, including:

- preventing local environment plans from requiring development consent for PNF (see Bill, Sch. 1 [14]);[12]and
- doubling the duration allowed for PNF plans from 15 years to 30 years (see Bill, Sch. 1 [18]).

These are significant changes and should not be implemented until the outcomes of the PNF Review are finalised.

In summary, for the reasons set out in this submission EDO does not support the proposed Bill and recommends that it be withdrawn.

[12] Currently, development controls in Local Environment Plans may require proponents to obtain development consent for PNF in addition to a PNF Plan approval under Part 5B of the LLS Act.