



Have your say on the statutory review of NSW native vegetation clearing rules (Part 5A of the *Local Land Services Act 2013*)

It is 5 years since new laws for biodiversity conservation and native vegetation clearing were introduced in NSW. It is time to ask – are those laws working to protect biodiversity and appropriately regulate land clearing?

In the last 5 years we have seen a significant increase in rural land clearing since the rules were relaxed; species added to our threatened lists; impacts of drought, bushfire, floods; changes to climate policy; serious concerns raised around relaxed biodiversity offsetting rules; and ongoing koala policy debates. The NSW Audit Office, Natural Resources Commission and a parliamentary inquiry have all already raised serious concerns about the regulation of habitat clearing and the regulatory framework in NSW.

This submission guide identifies how you can be involved in the review process and explains key issues with the land clearing laws that you can highlight in your submission.

Outline

1. What is the statutory review of NSW native vegetation clearing rules?
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What is the statutory review of the NSW native vegetation clearing rules?

When the laws were made, there was a requirement that they be reviewed after 5 years to see if they were achieving their objectives.¹ One of the key questions that should be asked in this review is: are the impacts of relaxing land clearing rules and allowing more unregulated clearing under the *Local Land Services Act (LLS Act)* actually being offset by increased investment in conservation under the *Biodiversity Conservation Act (BC Act)*?

¹ https://www.lls.nsw.gov.au/__data/assets/pdf_file/0005/1422464/TOR.pdf.

Despite the fact that the reforms were based on this critical trade off, the framework is being reviewed by two different agencies in two separate reviews.

Local Land Services (**LLS**) is supporting the Minister to carry out the review of Part 5 A of the *Local Land Services Act 2013*, with the assistance of an independent expert advisory panel – further information is available on the [LLS website](#).² A separate review of the BC Act is also underway – further information is available on the Department of Planning and Environment (**DPE**) [website](#).

How can I be involved?

To have your say as part of the statutory review of NSW native vegetation clearing rules you can **lodge a submission or complete an online survey by Monday 19 December 2022**.

LLS has prepared a [Discussion Paper](#) from community consultation with 14 discussion questions. Your submission should try and address any relevant Discussion Paper questions, but you can also raise any other concerns in your submission. For the greatest impact, we recommend that you personalise your submission and include issues that matter the most to you.

EDO's policy and law reform experts have reviewed the Discussion Paper and have identified key issues of concern – see below. You can use these in your submission and/or come up with your own ideas for supporting and strengthening legal framework. If you need more guidance on submission writing, see EDO's [Factsheet on submission writing](#).

Key issues with the NSW native vegetation clearing rules

Key elements of the land clearing components of the framework are summarised below in **Appendix 1**.

In this section we identify the following key issues of concern:

1. Approval pathways under the LLS Act
2. The Native Vegetation Regulatory Map
3. Monitoring, reporting, compliance, and enforcement
4. The statutory review process

1. Key concerns with approval pathways under the LLS Act

² <https://www.lls.nsw.gov.au/help-and-advice/land-management-in-nsw/statutory-review-of-the-native-vegetation-provisions-of-the-local-land-services-act>

- **Allowable activities**

- Lack of notification requirements and inadequate reporting makes it difficult to determine what percentage of ‘unallocated clearing’³ is carried out under allowable activity rules.
- Only genuinely low impact clearing should be allowed as an allowable activity under the LLS Act.

Discussion Paper Questions

Question 5 - Do each of the approval pathways for native vegetation clearing provide landholders with adequate options while managing environmental risks? Please give reasons and/or examples to support your answer.

Question 6 - Is it clear what native vegetation clearing activities are “allowable” i.e. don’t need notification or approval?

Question 7 - What, if any, other native vegetation clearing activities should be “allowable?” How could the requirements for allowable activities be improved?

- **Land Management (Native Vegetation) Code (Native Vegetation Code)**

- **The Native Vegetation Code is an inappropriate regulatory tool for managing impacts on biodiversity in rural areas.** It permits broadscale clearing without any robust environmental assessment or approval requirements (although notification or certification may be required). There is limited ability for LLS to refuse certification and prevent unacceptable and cumulative impacts on threatened species.⁴ The most recent figures (31 October 2022) indicate that total hectares approved for clearing under the Codes is more than 780,000 ha,⁵ (but not all approved clearing has been carried out).

³ Unallocated clearing can include:

- lawful clearing or reduction of landcover on rural regulated land that does not require an approval, notification and/or keeping of records (e.g. allowable activities)
- vegetation loss for which the Department of Planning and Environment (the Department) does not have access to information or records that authorise, explain or allocate the clearing to a particular land management activity
- areas that have been cleared unlawfully or are not fully compliant with approvals.

See [https://www.environment.nsw.gov.au/topics/animals-and-plants/native-vegetation/landcover-science/2020-landcover-change-reporting/unallocated-clearing#:~:text=Unallocated%20\(previously%20'unexplained'\),been%20recorded%20or%20is%20unlawful](https://www.environment.nsw.gov.au/topics/animals-and-plants/native-vegetation/landcover-science/2020-landcover-change-reporting/unallocated-clearing#:~:text=Unallocated%20(previously%20'unexplained'),been%20recorded%20or%20is%20unlawful)

⁴ The Auditor-General has raised similar concerns regarding the limited ability for LLS to refuse an application for a certificate even if LLS is concerned about the level of impact of the clearing and how well it will be managed. See Audit Office of NSW, *Managing Native Vegetation*, 27 June 2019, p16, available at <https://www.audit.nsw.gov.au/our-work/reports/managing-native-vegetation>

⁵ See *Public Information Register - Certificates Under Section 60Y*. The report for the period 09/03/2018 - 31/10/2022 shows the total treatment area for certificates issues section 60Y of the Local Land Services Act 2013 to be 782701.67 hectares,

- **Purported environmental safeguards in the Native Vegetation Code are inadequate**, meaning that the Native Vegetation Code does not adequately manage the environmental risk associated with substantial amounts of clearing undertaken with limited environmental assessment and oversight.
- **The scope of category 2 sensitive land is too narrow:** Code-based clearing cannot be undertaken on category 2 sensitive land.⁶ While this provides some protection for environmentally sensitive areas, the scope of category 2 sensitive land is limited. For example, currently only ‘core koala habitat’ is categorised as category 2 sensitive land. In practice, ‘core koala habitat’ is limited in scope; any other koala habitat outside of this definition may be able to be cleared under the Native Vegetation Code.
- **Only critically endangered ecological communities are off-limits to code based clearing.**⁷ Other categories of threatened ecological communities (e.g. vulnerable and endangered) may be able to be cleared under the Native Vegetation Code.
- **Set asides are arbitrary and have little ecological basis.** The use of an arbitrary set ratio for determining set asides requirements under the Native Vegetation Code is not ecologically sound. The Native Vegetation Code does not specify that the vegetation to be set aside should be the same condition (or of ecological equivalence) and what condition the vegetation should be in.⁸
- **Protections for threatened species are not stringent enough:** The Native Vegetation Code states that clearing is not authorised under the Code if the person who carries out the clearing harms an animal that is a threatened species, and that person knew that the clearing was likely to harm the animal.⁹ Framed in this way, ignorance can provide an excuse; a person could claim they did not know clearing was likely to harm the animal. This safeguard could be strengthened by requiring that a landholder ‘ought reasonably to know’ that the clearing would harm a threatened animal species, such as the koala.
- **Maximum clearing caps have expired:** The Native Vegetation Code includes maximum limits on the amount of clearing that can be undertaken under Part 5 – Equity Code in the initial three-year period immediately following publication of the Code.¹⁰ This was included as a safeguard to prevent excessive clearing. However, the

https://www.lls.nsw.gov.au/_data/assets/pdf_file/0004/747031/Public-Information-Register-Certificates-Under-Section-60Y-LMC2018-31102022.pdf

⁶ *Local Land Services Regulation 2014*, clause 124(1)(a)

⁷ *Land Management (Native Vegetation) Code 2018*, clause 7.

⁸ These types of deficiencies have been identified by the Auditor-General, Audit Office of NSW, *Managing Native Vegetation*, 27 June 2019, p, 21.

⁹ *Land Management (Native Vegetation) Code 2018*, clause 9.

¹⁰ *Land Management (Native Vegetation) Code 2018*, clause 82.

cap on maximum clearing was not revised once the initial three-year period expired, meaning there is currently no cap on clearing under the equity code.

See Discussion Questions

Question 5 - Do each of the approval pathways for native vegetation clearing provide landholders with adequate options while managing environmental risks? Please give reasons and/or examples to support your answer.

Question 8 - How effective are the requirements for establishing, managing, monitoring and reporting for set asides? Please give reasons for your answer

- **Native Vegetation Panel**

- **The Native Vegetation Panel is not operating as intended.** The Native Vegetation Panel (**NVP**) is established under the LLS Act. The primary function of the NVP is to assess and determine clearing applications for clearing on rural land that cannot be carried out as an allowable activity or under the Native Vegetation Code.¹¹ Since the commencement of Part 5A of the LLS Act, only one application has lodged and been determined by the NVP.
- The assumption therefore is that essentially *all* land clearing that has taken place on rural land since the Framework commenced has been undertaken as an allowable activity or under the Code. This raises questions as to whether the NV Panel and the overall Framework and approval pathways are operating as intended.
- Given land clearing rates, the failure of the NV Panel to operate as intended is concerning given the alternative approval pathways (allowable activities provisions and the Code) are less rigorous in terms of environmental assessment requirements. It also suggests that the scope of allowable activities provisions and the Code are too broad or open to misuse.

See Discussion Questions

Question 5 - Do each of the approval pathways for native vegetation clearing provide landholders with adequate options while managing environmental risks? Please give reasons and/or examples to support your answer.

Question 9 - What are the barriers to using the Native Vegetation Panel approval pathway and how could this pathway be improved?

2. The Native Vegetation Regulatory Map

¹¹ Local Land Services Act 2013, s 60ZF(6).

- The Native Vegetation Regulatory Map (**NVR Map**) is a fundamental component of the framework – it is intended to categorise land to determine if and where the rules apply. The NVR has not been finalised.
- Currently, transitional arrangements are in place. The published Transitional NVR Map only shows excluded land and the sensitive and vulnerable areas of regulated land (Category 2). The mapping for the vast majority of the state, which is supposed to be categorised as either Category 2 (regulated land) or Category 1 (unregulated land) is incomplete. For these areas, landholders are required to ‘self-categorise’ unmapped land in accordance with transitional arrangements.¹²
- An incomplete map makes an already confusing regulatory scheme even more difficult to navigate for landholders and members of the public alike, and transitional provisions are open to misuse.
- The Government has released a draft Native Vegetation Regulatory map for landholders in eleven local government areas in sections of the Riverina, Murray and South East regions.¹³ This is a long overdue first step. Given that the NVR Map is intended to underpin the entire Framework, it must be finalised in full as soon as possible to create the regulatory certainty that is currently lacking.

See Discussion Paper Questions

Question 2 - *How easy to understand are the land categories and the native vegetation clearing arrangements that apply under each category? What, if any, changes are needed?*

Question 3 - *How useful is the Native Vegetation Regulatory Map as a tool for categorising private rural land? What, if any, other tools could help landholders make decisions about their land?*

Question 4 - *How comfortable and capable are landholders in self-assessing their land according to the land categories? What, if any, improvements to the Transitional Arrangements should be made? Please give reasons for your answer.*

3. Monitoring, reporting, compliance and enforcement

• Monitoring and reporting

- Monitoring of and reporting on land clearing is important for understanding how much clearing is occurring across the state and what impacts clearing is having on biodiversity.

¹² *Local Land Services Act 2013*, section 60F.

¹³ See <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/native-vegetation-regulatory-map/view-your-map>

- Detailed information would allow the community to understand better where land clearing activities are being undertaken lawfully, and where illegal clearing may be occurring.
- A public register is a useful tool for ensuring transparency and accountability. Public registers can be used to monitor any potential ‘stacking’ of clearing actions and cumulative impacts of clearing actions on individual landholdings, or at a regional or landscape scale. Compared to the previous regime under the *Native Vegetation Act 2003 (NV Act)*, there is a significant reduction in information included in public registers under the new framework.¹⁴ This is essentially because most clearing is now undertaken as code-based clearing, or via allowable activities provisions. The LLS Act only requires reporting on aggregated information for code-based clearing that requires notification or certification,¹⁵ or an annual estimate of allowable activities.¹⁶ The lack of similar detailed information for notification and certification applications under the Code means monitoring and reporting is less transparent.
- A lack of effective monitoring was highlighted by the Audit Office, which found that the LLS undertakes only limited monitoring of whether landholders are meeting the requirements of the Code, including whether set-asides are being established and managed appropriately.¹⁷
- The Natural Resources Commission has recommended that the roles and responsibilities for monitoring and enforcing the Code (between LLS and EES) needs to be reviewed; and monitoring of compliance with certifications and notifications to clear, including the establishment and management of set asides, under the Code needs to be strengthened, including increasing transparency.¹⁸
- **Compliance and enforcement: ensure the laws are implemented**
 - As with all regulatory regimes, appropriate monitoring and enforcement is vital to ensuring the aims and objectives of the laws are being met.

¹⁴ Public registers on land clearing maintained by the LLS are available at <https://www.lls.nsw.gov.au/sustainable-land-management/public-registers>

¹⁵ Section 60ZO of the LLS Act provides that Local Land Services is to maintain and make publicly available registers of the following: (a) aggregate information about notices given under section 60X (Notice to Local Land Services of clearing), (b) aggregate information about certificates under section 60Y (Certification by Local Land Services prior to clearing—general), (c) aggregate information about certificates under Schedule 5A to which section 60Y applies, (d) approvals (and any modification of approvals) granted under Division 6, (e) applications for approval (or for modifications of approvals) that have been refused and the reasons for the refusal. Aggregate information about notices or certificates is to be compiled on a regional basis and is not to identify the particular landholder who gave the notice or to whom the certificate was issued (or the address of the landholding concerned).

¹⁶ *Local Land Service Act 2013*, section 60ZN.

¹⁷ Audit Office of NSW, *Managing Native Vegetation*, 27 June 2019.

¹⁸ Natural Resources Commission, *Final Advice on Land Management and Biodiversity Conservation Reforms*, July 2019, p 6, available at <https://www.nrc.nsw.gov.au/land-mngt>

- The Audit Office reported that clearing of vegetation on rural land is not effectively regulated and managed because the processes in place to support the regulatory framework are weak and there is no evidence-based assurance that clearing of native vegetation is being carried out in accordance with approvals.¹⁹
- The Audit Office found that there are lengthy delays in assessing compliance because identifying breaches requires satellite imagery to be compared against clearing authorisations and exemptions to identify and investigate potentially unlawful clearing.
- The Natural Resources Commission advised that as a priority, the NSW Government should develop processes to report up to date data on unexplained clearing every six months and also review the drivers behind high rates of unexplained clearing and implement measures to address any issues.²⁰
- While any person can commence civil enforcement proceeding in the NSW Land and Environment Court to enforce the law, it is the regulator that has the power to enter premises for the purpose of investigating whether the law has been breached and gathering evidence to support criminal or civil legal action. It can be extremely difficult for a member of the public to determine whether observed clearing is lawful because the NVR Map is still not complete and the public registers that record authorised clearing do not, for the most part, identify the relevant property.

See Discussion Paper Questions

Question 10 - *Is the public register for reporting on native vegetation certificates and notifications accessible, and is the information useful and easy to understand? What if any improvements to reporting should be made? Please give reasons for your answer.*

Question 11 - *How adequate are the penalties for offences for illegal clearing and breaches of set aside obligations? Please give reasons and/or examples for your answer.*

Question 12 - *To what extent does the public have confidence in compliance and enforcement of native vegetation regulation? How could public confidence be improved*

4. Overarching concerns with the land management and biodiversity conservation framework and statutory review process

- **Part 5A of the LLS Act facilitates broad-scale land clearing**

¹⁹Audit Office of NSW, *Managing Native Vegetation*, 27 June 2019.

²⁰ Natural Resources Commission, *Final Advice on Land Management and Biodiversity Conservation Reforms*, July 2019, p 33.

- Land clearing data shows that since Part 5A of the LLS Act commenced a significant increase in rates of native vegetation clearing for agriculture; data shows that land clearing rates for woody vegetation²¹ across NSW have increased from 8500 ha in 2011 to 27,100 ha in 2017, 29, 400 in 2018, 23, 400 in 2019, and 13,000 in 2020.²² Additionally, in 2020, 46,100 ha of non-woody vegetation²³ was cleared for agriculture on rural land.
 - This significant increase in land clearing rates triggered the government’s own internal review process in October 2018,²⁴ yet policy settings remain largely unchanged.
- **Policy objectives**
 - As set out in the Discussion Paper, the objective of Part 5A of the LLS Act is ‘to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development’ (LLS Act, s 3(e)).
 - Notably, the replacement of the NV Act with Part 5A of the LLS Act removed the objective of preventing broadscale land-clearing and the requirement to ensure clearing ‘improves or maintains environmental outcomes’ – either at the site scale or at the landscape scale. The replacement land management framework established by Part 5A of the LLS Act introduces a system that is less stringent (allowing increased clearing), less evidence-based (with more reliance on self-assessment) and less accountable (with less detailed information available on public registers).
 - Current policy objectives are not ambitious enough to reflect the current environmental context in NSW. Since Part 5A of the LLS Act commenced:

²¹ For the purpose of NSW data, woody vegetation is defined as vegetation that:

- produces wood as their primary structural tissue
- is typically trees, shrubs or woody vines (lianas)
- is usually perennial.

See <https://www.environment.nsw.gov.au/topics/animals-and-plants/native-vegetation/landcover-science/statewide-landcover-tree-study>

²² See *Results woody vegetation change statewide landcover and tree study 2020* tab 1, available from <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Native-vegetation/results-woody-vegetation-change-statewide-landcover-and-tree-study-2020.xlsx?la=en&hash=3ABF0AF453CB9CF071482933184B51E1AF6804EB>

²³ Non woody vegetation includes grasses, small shrubs and groundcover – see Department of Planning, Industry and Environment, *Woody and non woody landcover change on rural regulated land Summary report 2019*, available at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Native-vegetation/woody-non-woody-landcover-change-rural-regulated-land-summary-rpt-2019-210192.pdf>

²⁴ As noted in the 2019 report of the Natural Resources Commission (op. cit): “Prior to legislation being passed, a policy review trigger was agreed upon between the then Minister for the Environment and the then Minister for Primary Industries to “initiate a review of the policy framework (including legislative, regulatory and financial settings)” if notified clearing and applications for certification for clearing reached an annualised threshold figure of 20,000 hectares measured in any six month period.”

- The 2021 NSW State of the Environment report has confirmed that the number of species considered at risk of extinction continues to rise and permanent clearing of native woody vegetation in NSW has increased about three-fold since 2015 and stands at an average of 35,000 ha cleared each year.²⁵
- Severe drought, followed by catastrophic fires and unprecedented floods have greatly impacted the NSW landscape.

The more appropriate policy objective for the LLS Act would be a clear objective to reduce broadscale land clearing and commitment to *improve* biodiversity outcomes.

- Current policy objectives do not align with other NSW government policies. For example, the NSW Koala Strategy aims to double koala numbers in NSW by 2050,²⁶ yet Part 5A continue to facilitate the clearing of koala habitat (despite some safeguards for ‘core koala habitat’).
- Current policy objectives of the LLS Act are also not ambitious enough to align with broader, global objectives to reduced halt and reverse forest loss and land degradation by 2030 (*Glasgow Leaders’ Declaration on Forests and Land Use*) or reverse biodiversity loss by 2030 (*Leaders Pledge for Nature*).
- **Independent analyses have highlighted significant concerns with the implementation of the framework**

Audit Office of NSW

- A 2019 review by the Audit Office of NSW (**Audit Office**) concluded that the new laws 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.²⁷

- The Audit Office concluded:

The clearing of native vegetation on rural land is not effectively regulated and managed because the processes in place to support the regulatory framework are weak. There is no evidence-based assurance that clearing of native vegetation is being carried out in accordance with approvals. Responses to incidents of unlawful clearing are slow, with few tangible outcomes. Enforcement action is rarely taken against

²⁵ See <https://www.soe.epa.nsw.gov.au/all-themes>

²⁶ NSW Koala Strategy, available at <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/programs-legislation-and-framework/nsw-koala-strategy#:~:text=Under%20the%20NSW%20Koala%20Strategy%2C%20%2423.2%20million%20is%20being%20invested,fires%2C%20drought%2C%20and%20heatwaves.>

²⁷ Audit Office of NSW, *Managing Native Vegetation*, 27 June 2019.

landholders who unlawfully clear native vegetation. There are processes in place for approving land clearing but there is limited follow-up to ensure approvals are complied with.

NSW Natural Resources Commission

- A review of the Framework, conducted in early 2019 by the Natural Resources Commission (**NRC Report**), but not publicly released until late March 2020, 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;
 - Biodiversity in 9 out of 11 regions is now at risk;
 - Unexplained clearing has increased, with the NRC concluding “compliance frameworks are inadequate and high rates of clearing pose a major risk”;
 - The proposed ‘set aside’ areas and areas managed under conservation agreements that were supposed to offset cleared areas – (i.e. the government’s whole justification for relaxing rules and introducing self-assessable codes) – are woefully inadequate being 33,743ha below the minimum required area.²⁸
- The NRC Report also confirmed that:²⁹
 - A Native Vegetation Regulatory Map showing all map categories is not publicly available;
 - Compliance frameworks are inadequate and high rates of unexplained clearing pose a major risk; and
 - Widespread use of Part 3 of the Code – which relates to thinning – poses a risk to biodiversity state-wide.

NSW Parliamentary Inquiry

- 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.³⁰ The Committee’s report found that it is clear 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. The Committee found that without effective intervention, koalas could go extinct in NSW by 2050.

²⁸ Natural Resources Commission, *Final Advice on Land Management and Biodiversity Conservation Reforms*, July 2019.

²⁹ Natural Resources Commission, *Final Advice on Land Management and Biodiversity Conservation Reforms*, July 2019 p 5-6.

³⁰ See: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2536>

- 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.*

Environmental Defenders Office

- In August 2020, EDO released its report [*Restoring the balance in NSW native vegetation law - Solutions for healthy, resilient and productive landscapes*](#).³¹ The report identifies 10 areas of regulatory failure and sets out a law reform pathway with 27 recommendations for reform.

- **The statutory review process**

- It does not make sense to conduct the review of the Part 5A and Schedules 5A and 5B of the LLS Act separate to the review of the BC Act. As noted in the Discussion Paper, Part 5A and Schedules 5A and 5B were introduced as part of broader Land Management and Biodiversity Conservation reforms. Section 212(2) of the LLS Act explicitly states that the review of Part 5A of the LLS Act is to be undertaken in conjunction with the review of the BC Act.
- When introduced it was acknowledged that the Land Management and Biodiversity Conservation reform package “may lead to some increased clearing at a property scale, but that checks and balances such as set asides, biodiversity offsets and investment in private land conservation would ensure the impacts of that clearing are managed”.³² It is not clear how the terms of reference for either the review of Part 5A of the LLS Act or the review of the BC Act intend to examine the legislative framework as a whole and determine whether checks and balances across the framework are sufficient.

³¹ EDO, *Restoring the balance in NSW native vegetation law - Solutions for healthy, resilient and productive landscapes*, August 2020, available at <https://www.edo.org.au/publication/report-nsw-native-vegetation-law/>

³² Statutory Review of the native vegetation provisions (Part 5A and Schedule 5A and Schedule 5B) of the Local Land Services Act 2013 - Discussion Paper, November 2022, p7.

See Discussion Paper Questions

Question 13 - Overall, how relevant are Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act in achieving the social, economic and environmental interests of the State? The other questions in this Discussion Paper consider the individual provisions of the Local Land Services Act in more detail and may provide you extra context when answering this question.

Question 14 - What if any other issues should be considered as part of the statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act? Please give reasons why they should be considered in your answer.

How do I lodge a submission?

There are three ways to lodge your submission

- **Upload your submission [online](#)**
- **Email** your submission to policy@lls.nsw.gov.au
- **Mail** your submission to: Part 5A LLS Act Statutory Review Policy Division Local Land Services, 117 Bull Street, Newcastle West 2302

Alternatively, you can provide your feedback to the statutory review via an [online survey](#).

What can I expect after lodging a submission?

Once the consultation period has closed:

- Local Land Services will support the Minister to consider all submissions, comments and feedback in responding to the Terms of Reference for the statutory review
- the Minister will table a final report in both houses of Parliament in August 2023.

Appendix 1: An overview of the land management and biodiversity conservation framework

On 25 August 2017, a new legal framework for regulating land clearing and impacts on biodiversity commenced in NSW (Land Management and Biodiversity Conservation reforms).³³ The new legal framework involved:

- The repeal of the *Native Vegetation Act 2003 (NV Act)*, the *Threatened Species Conservation Act 1995*, the *Nature Conservation Trust Act 2001* and parts of the *National Parks and Wildlife Act 1974* relating to private land conservation and native animal and plant management.
 - Commencement of the BC Act.
 - Commencement of Part 5A and Schedules 5A and 5B of the LLS Act.
- **Land clearing on rural land is regulated under Part 5A and Schedules 5A and 5B of the LLS Act.**

Under section 60A of the LLS Act rural land is defined as any area of the state except:

- urban areas of the State to which *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* applies;
- national park estate and other conservation areas; and
- State forestry land.

Land that falls outside the scope of the LLS Act is identified as *excluded land*.

Under Part 5A of the LLS Act, rural land is categorised as either:

- *Category 1 – exempt land*; or
- *Category 2 – regulated land*, including the following sub-categories:
 - *Category 2 – vulnerable regulated*
 - *Category 2 – sensitive regulated*.

➤ **Land clearing on rural land is regulated under various pathways**

Clearing on clearing category 1 – exempt land is unregulated (i.e. there are no rules regulating clearing on category 1 exempt land).

Clearing on category 2 regulated land is regulated via three different pathways:

- **Allowable activities** – Low-impact clearing associated with land management activities are permitted without any authorisation or approval. Allowable activities

³³ Background on the reform process leading up to the commencement of the new framework can be found on the Department of Planning and Environment website: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/overview-of-biodiversity-reform/legislation/review>

include the construction of rural infrastructure such as fences, tracks and sheds, public works and telecommunications and electricity infrastructure.³⁴³⁵

- **Code-based clearing** – Code-based clearing is clearing that is compliant with the *Land Management (Native Vegetation) Code 2018* which covers the following broad categories: invasive native species; pasture expansion; continuing use; equity and farm plan. Formal assessment or approval is not required. Instead, there are requirements for landholders to notify LLS of intended clearing and for LLS to issue a voluntary code-compliant certificate or a mandatory code-compliant certificate depending on the type of clearing.
- **Approval** – For higher impact clearing that cannot be undertaken as an allowable activity or under the Code, approval from the Native Vegetation Panel (**NV Panel**) is required. This level of clearing triggers biodiversity assessment requirements under the BC Act.

*Additional restrictions apply to land categorised as category 2 – vulnerable regulated or category 2– sensitive regulated. For example, there are different allowable activity rules for category 2 – vulnerable regulated or category 2– sensitive regulated; and code-based clearing cannot be undertaken on category 2– sensitive regulated.*³⁶

➤ **Regulation of clearing on exempt land**

Clearing on *exempt land* is regulated by other rules:

- **Land clearing activities in non-rural areas (urban areas) and environment zones** that are being carried for a purpose not requiring development consent and tree clearing on excluded land are regulated under Chapter 2 - Vegetation in non-rural areas of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.
- **Land clearing undertaken for a purpose that needs development consent** (e.g. as part of residential development, or mining operations) is assessed and determined as part of the development application process under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, and may trigger the new biodiversity assessment requirements under the BC Act.

➤ **Changes to private land conservation**

Changes to private land conservation were also introduced as part of the biodiversity conservation and land management framework, including a revision of the private land conservation program and the introduction of the Biodiversity Conservation Trust to take over functions of the Office of Environment and Heritage and Nature Conservation Trust. The Government committed \$240 million over 5 years to support

³⁴ <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/overview-of-biodiversity-reform/statutory-review-of-the-biodiversity-conservation-act-2016>

³⁵ *Local Land Services Act 2013*, Schedule 5A.

³⁶ *Local Land Services Act 2013*, Schedule 5A, Part 4.

private land conservation, with \$70 million each subsequent year dependent on performance reviews.³⁷

³⁷ See <https://www.environment.nsw.gov.au/news/native-vegetation-act-to-be-repealed-replaced-with-new-and-fairer-system>