



# Environmental Defenders Office

NSW Local Land Services  
LLS Policy  
By email: [consultation@lls.nsw.gov.au](mailto:consultation@lls.nsw.gov.au)

30 April 2026

## **Re: Remake of the Local Land Services Regulation**

Dear LLS Policy unit,

EDO is a community legal centre specialising in public interest environmental law. We have a long history of providing legal advice on the protection of the environment and management of native vegetation in NSW.

Thank you for the opportunity to provide feedback on the remake of the Local Land Services Regulation.

Our submission addresses proposed changes to provisions of the Local Land Services Regulation that relate to the management of native vegetation. We have not considered nor provide feedback on other elements of the proposed Regulation changes.

Our submission is structured as follows:

1. Comments on the draft Local Land Services Regulation 2026 – public consultation draft
2. Opportunities for regulatory changes to improve the management of native vegetation

Our key recommendations are summarised as follows:

- Retain clause 139 of the LLS Regulation (or equivalent); and clarify, for the purpose of subclause 139(3), that a landholder may still be guilty of an offence under this provision if a third party (who is not the landholder) undertakes the clearing.
- Clarify why clause 140 of the LLS Regulation is not being retained.
- Fix drafting errors in proposed clause 50 of the draft 2026 Regulation.
- Ensure redrafting of provisions doesn't lead to inadvertent errors or perverse outcomes.
- Expand the scope of category 2-sensitive regulated land.
- Improve transparency and accountability, including by requiring more detailed information on public registers.

### **1. Comments on the draft Local Land Services Regulation 2026 – public consultation draft**

#### **• Removal of clause 139 of the Local Land Services Regulation**

The NSW Government is proposing to remove clause 139 of the *Local Land Services Regulation 2014* (**LLS Regulation**), which creates an offence for contravening certain requirements of approvals,

certificates or code (for native vegetation clearing). It states this is to “to ensure consistency with the regulation-making powers under the LLS Act, and that section 60N of the Local Land Services Act 2013 prohibits the same conduct”.

No further explanation is provided, and it is unclear exactly what is meant by “to ensure consistency with the regulation-making powers under the LLS Act”. We note there are broad regulation-making powers set out in section 206 of the LLS Act, including (emphasis added):

- Subsection(1): The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed **or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.**
- Subsection (3): The regulations **may create an offence punishable by a penalty not exceeding 100 penalty units.**

It appears that clause 139 of the LLS Regulation is consistent with these broad regulation-making powers.

While we agree there may be some overlap between conduct captured by section 60N of the LLS Act and conduct captured by clause 139 of the LLS Regulation, the two provisions create different offences. Section 60N of the LLS Act relates to unauthorised clearing broadly, whereas clause 139 of the LLS Regulation is a more targeted offence, relating to a breach of a requirement set out in a relevant instrument, which could include for example a condition or prescribed standards, rather than the overarching legality of clearing itself. The evidence required to establish each offence may be slightly different, and the remedy sought by the regulator in each case may be slightly different.

Clause 139 was part of the original provisions introduced into the LLS Regulation as part of the Land Management and Biodiversity Conservation reforms in 2017. We have not been able to find any clear explanation about the inclusion of this clause from that time, but presumably, there was a policy rationale for its inclusion. In general, providing a range of regulatory tools creates an effective compliance framework that allows regulators to match the enforcement response to the nature and scale of breach.

In our view, clause 139 is consistent with the regulation-making powers in the LLS Act and having multiple regulatory options is useful to support effective compliance and enforcement of the vegetation management framework. The removal of clause 139 of the LLS Regulation has not been justified and we **do not support its removal**. It would also be useful to clarify, for the purpose of subclause 139(3), that a landholder may still be guilty of an offence under this provision if a third party (who is not the landholder) undertakes the clearing.

- **Removal of clause 140 of the Local Land Services Regulation**

Clause 140 of the LLS Regulation provides that “*The Native Vegetation Panel may, with the approval of the Minister, engage such consultants as it requires to exercise its functions*”. This provision is not replicated in the proposed new Regulation and there has been no explanation of this change. It is unclear if the policy intent is to preclude the Native Vegetation Panel (**NVP**) from engaging consultants in all instances, or to simply no longer require the Minister’s approval to do so. Further explanation of this change would be useful, including confirmation of whether or not the NVP is able to engage consultants.

- **Errors in legal drafting**

There are drafting errors in proposed clause 50 of the Regulation. Subclauses (1) and (3) inadvertently leave out “l” from the reference to subsection 60l(2) – see underlined sections below. These sections should read 60l(2)(j) and 60l(2)(n) respectively.

**50 Land to be designated as category 2-regulated land—the Act, s 60l(2)(j), (l) and (n)**

2014 regulation, cl 109(2), 111–113

- (1) For the Act, section 60(2)(j), koala habitat that the Environment Agency Head considers to be core koala habitat is prescribed.
- (2) For the Act, section 60l(2)(l), mapped land must not be designated as category 2-regulated land unless the land directly adjoins the location, as identified in the records kept by the Environment Agency Head, of particular plants of a critically endangered species.
- (3) For the Act, section 60(2)(n), land of a kind listed in Schedule 2 is prescribed as category 2-regulated land.
- (4) Land listed in Schedule 2, item 10 must not be re-categorised only because of a change in the criteria referred to in the item if the Environment Agency Head is satisfied the native vegetation on the land met the relevant criteria when the land was designated as category 2-regulated land.

- **Redrafting of provisions**

The consultation website explains that:

“Most of the changes in the proposed Regulation are not material, but will improve the overall clarity, consistency and ease of application of the LLS Regulation. As a result, the proposed Regulation looks different”.

We note that there is substantial redrafting of the provisions in Part 14 of the LLS Regulation, including moving the provisions to Part 6 of the proposed new *Local Land Services Regulation 2026*. While the changes may improve clarity and consistency, there is always the risk that substantial redrafting of provisions can have perverse or unintended consequences, or errors can be made (see above). To that end, we question whether such substantial changes are needed, particularly where the redrafting of provisions is not intended to change the policy intent of the provisions. It is important to ensure redrafting of provisions doesn't lead to inadvertent errors or perverse outcomes

## **2. Opportunities for regulatory changes to improve the management of native vegetation**

The remake of the LLS Regulation due to its sunseting provides an opportunity to consider whether the LLS Regulation is still fit for purpose, or whether the provisions and policy settings in the Regulation need updating.

It is disappointing that more substantial changes to the vegetation management provisions of the LLS Regulation have not been proposed as part of this remake, given various feedback provided by stakeholders in the almost nine years that those provisions have been operative, including as part of the 5-year statutory review of the provisions of Part 5A of the LLS Act.

In particular, we highlight the following opportunities for updating the LLS Regulation.

- **Updating category 2 sensitive land**

Clause 108 of the LLS Regulation prescribes land that is to be designated as category 2-sensitive regulated land. Category 2 sensitive land is intended to capture areas of land with high conservation value, where clearing native vegetation is generally not permitted under the Land Management (Native Vegetation) Code 2018. Notably, clearing is not precluded on category 2-sensitive regulated land, but requires environmental assessment and approval by the Native Vegetation Panel.

As currently drafted, the scope of values captured by category 2-sensitive regulated land is narrow, and does not capture the range of values that the community would expect to be subject to robust environmental assessment before clearing is allowed. Over the nine years that the Regulation has been operational, the condition of the NSW environment has continued to decline. For example, the NSW State of the Environment Report 2024 reports that indicators for extent of native vegetation, clearing of native vegetation, habitat condition, ecological carrying capacity and number of threatened species listed are all getting worse.<sup>1</sup> We cannot expect improvements across these indicators unless policy and regulatory settings are adjusted accordingly.

The range of values and land categorised as category 2 sensitive land should be expanded, via changes to the Regulation (e.g. by prescribing land as category 2-regulated land under section 60I(2)(n) of the LLS Act (if needed) and designating the land as category 2-sensitive regulated land under new clause 48 of the Regulation). This would ensure that the impacts of vegetation clearing in more of our State's sensitive areas are subject to robust assessment, and allow for those impacts to be managed through more effective tools (e.g. conditions of approval), or refused where inappropriate.

EDO has previously recommended expanding category 2-sensitive regulated land to include:

- all *endangered* ecological communities, not just critically endangered ecological communities. These are unique communities of species at *very high risk of extinction in the near future* and are not suitable for code clearing;
- all *vulnerable* ecological communities. These are at *high risk* of extinction in the medium term;
- the entire coastal zone (not just coastal wetlands and littoral rainforests area);
- all small holdings;
- travelling stock reserves (**TSRs**). TSRs have high conservation value as they play a key role in ecological landscape connectivity and biodiversity conservation;
- a broader definition of koala habitat, encompassing koala habitat not yet mapped in a Koala Plan of Management to ensure all koala habitat is off limits to code-based clearing;
- nominated Areas of Outstanding Biodiversity Value (**AOBVs**), not just declared AOBVs;
- all set-aside areas; and
- steep or highly erodible land.

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<sup>1</sup> [https://www.soe.epa.nsw.gov.au/sites/default/files/2025-06/NSW\\_SoE2024\\_ReportCards\\_File.pdf](https://www.soe.epa.nsw.gov.au/sites/default/files/2025-06/NSW_SoE2024_ReportCards_File.pdf)

- **Improving transparency and accountability, including via public registers**

Compared to the previous regime under the *Native Vegetation Act 2023* (NSW), there is a significant reduction in information included in public registers under the current framework. This is essentially due to the fact that most clearing is now undertaken as code-based clearing, or via allowable activities provisions, and reporting is only required in the aggregate.

In order to improve transparency and accountability, the Regulations could make further provision for or with respect to public information registers, including by prescribing more detailed information be required to be included on a public register. While a register cannot identify the particular landholder who gives notice or to whom a certificate is issued under the Land Management (Native Vegetation) Code 2018, it could be required to provide much greater transparency of approved clearing, including for example:

- the location and area to be cleared (in hectares), and
- to identify which specific provisions of the framework are relied on to undertake the clearing.

### **High rates of clearing in NSW warrant further reforms to land management framework**

We also take this opportunity to reiterate our ongoing concerns with the land management framework more broadly and the high rates of clearing occurring across NSW that is contributing to the ongoing decline of biodiversity. Our concerns are most recently summarised in our submission to the 5-year statutory review of the LLS Act.<sup>2</sup> As part of the ongoing implementation of the NSW Plan for Nature,<sup>3</sup> including the implementation of any recommendations made by the Natural Resources Commission following its commissioned reviews, we hope to see further changes to the land management framework that address persistent high clearing rates and deliver improved outcomes that can contribute to the government's goal of actively turning around the loss and restore habitats and biodiversity and to leave nature better off than we found it.

Yours sincerely,

**Environmental Defenders Office**



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<sup>2</sup> EDO, Submission to the Statutory Review of the native vegetation provisions (Part 5A and Schedule 5A and Schedule 5B) of the Local Land Services Act 2013, <https://www.edo.org.au/wp-content/uploads/2022/12/221219-LLS-Act-Review-EDO-submission.pdf>

<sup>3</sup> <https://www.nsw.gov.au/departments-and-agencies/cabinet-office/resources/nsw-plan-for-nature>