WENTWORTH GROUP
OF CONCERNED SCIENTISTS

Submission to Biodiversity Legislation Review Panel

NATIVE VEGETATION REFORMS IN NSW

SEPTEMBER 2014

The NSW *Native Vegetation Act 2003*, the *Catchment Management Authorities Act 2003* (now replaced by the *Local Land Services Act 2013*), and the *Natural Resources Commission Act 2003*, came about following the adoption as policy by the NSW government of the Wentworth Group's 2003 blueprint, *A New Model for Landscape Conservation in NSW*.

These extensive reforms to the management and administration of natural resource management across NSW, that were embodied in the Wentworth Group's blueprint, had the support of the NSW Farmers Association, Total Environment Centre, The Wilderness Society and WWF Australia.

The legislation developed was based on an extensive review by the Native Vegetation Reform Implementation Group – chaired by the former Deputy Prime Minister, the Rt Hon. Ian Sinclair and commonly referred to as the "Sinclair Group". This committee comprised representatives of the NSW Farmers Association, Total Environment Centre, Wentworth Group, Premier's Department, WWF Australia, NSW Treasury, NSW Department of Infrastructure, Planning and Natural Resources and NSW Cabinet.

The reforms were based on the need to:

- build greater economic security for users of natural resources;
- establish new institutional structures that work directly with individual farmers and irrigators to build landscape conservation into their daily business decisions; and
- use the best available science to achieve the objective of creating healthy and productive landscapes that will last for centuries.

The reforms sought to cut red tape, focus on outcomes, reward innovation, and provide resource security for business – all built on the best scientific advice.

These reforms are now 10 years old, and it is appropriate that they be independently reviewed to determine:

1. **Whether they have achieved the objectives they set out to achieve;**
2. **Whether the objectives remain an appropriate foundation for the sustainable management of natural resources in NSW; and**
3. **What improvements might be made with the benefit of 10 years of experience.**

The Wentworth Group encourages the Review Panel to consider the current Biodiversity Legislation Review within the broader context of the suite of integrated reforms to natural resource management in NSW that were initiated in 2003.

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HISTORY OF 2003 NATIVE VEGETATION REFORMS

This submission aims to assist the Review Panel to set the historical context for the Biodiversity Review. It is based on a paper presented to the Australian Centre for Environmental Law in September 2004, by the then Deputy Director General to the NSW Department of Infrastructure, Planning and Natural Resources, Peter Cosier, who was then responsible for overseeing the implementation of the *Native Vegetation Act 2003* and regulations, including the development of the Environmental Outcomes Assessment Methodology and the farm based decision support tool, the *PVP Developer*.

Prior to the enactment of the 2003 reforms, disputes over native vegetation management had plagued NSW for over a decade. In December 2002, the then NSW Premier met with members of the Wentworth Group of Concerned Scientists and asked them to consult with farmers and environmental groups to find a solution to these long-standing disputes.

These three groups - scientists, farmers and environmental groups - met many times over the following two months. The Wentworth Group subsequently presented the Premier with its report *A New Model for Landscape Conservation in NSW*. The Premier publicly released this blueprint for public comment in February 2003.

In March 2003, with support from all sides, the NSW government adopted the Wentworth Group model as the basis for its new native vegetation policy, and in October 2003 the government announced it would overhaul natural resource management institutions in NSW, following the recommendations of the Sinclair Group.

At the heart of this plan was the commitment to:

- spend less of tax payers' money writing reports;
- give money to help farmers repair over-cleared landscapes;
- end broad-scale land clearing; and
- give greater certainty to farmers and industry.

Ending broad-scale land clearing of remnant vegetation and "protected regrowth" was also an election commitment of the government in 2003.

On 11 December 2003, three bills were assented to:

- the Native Vegetation Bill 2003;
- the Natural Resources Commission Bill 2003; and
- the Catchment Management Authorities Bill 2003.

The *Catchment Management Authorities Act 2003* allowed for the establishment of 13 new Catchment Management Authorities (CMAs) to replace 72 Natural Resource Management Committees. As at September 2004, $67 million had been redirected to provide ongoing funding to run these Authorities.

Major reductions in the size of the public service also occurred at this time. Over 250 staff from the Department of Infrastructure, Planning and Natural Resources (DIPNR) were transferred to the CMAs and the department's core budget was cut by $75 million.

These and other funds were instead invested in a $430 million package that was made available to CMAs to assist farmers to repair the landscape. A minimum of $120 million of

the package was earmarked to assist farmers to maintain or improve native vegetation for biodiversity, water quality, soil and salinity outcomes over the following four years.

On 21 September 2004, the then Minister for Infrastructure, Planning and Natural Resources said that his department was now directing about half of its budget to programs, works and grants rather than being tied up in bureaucracy and red tape. He said, "In fact, money for farmers and on-ground works has catapulted from $18 million in 2002/03 to $118 million this financial year [2004/05]."

The *Natural Resources Commission Act 2003* established the Natural Resources Commission, to help government set standards and targets for natural resource management based on the best available scientific, economic and social information.

The *Native Vegetation Act 2003* provided the legislative basis for ending broadscale clearing and repairing over-cleared landscapes.

This Act and accompanying regulations were designed to deliver the Sinclair Report's recommendations by providing the practicality and flexibility for continuing routine agricultural management activities as well as establishing new consent processes for native vegetation management based on Property Vegetation Plans.

Property Vegetation Plans

Property Vegetation Plans (PVPs) were and still are a cornerstone of the 2003 NSW native vegetation management reforms. Property Vegetation Plans are voluntary, but binding agreements, negotiated and developed on-site between the landholder and the local Catchment Management Authorities – not unlike Development Consents that apply to most other forms of new development under the *Environmental Planning and Assessment Act 1979*.

PVPs were designed to provide an equitable and transparent way to end broadscale clearing unless it improves or maintains environmental outcomes - a core objective of the *Native Vegetation Act 2003*.

They were also designed to create a simple and fair way to provide incentives to help farmers restore over-cleared landscapes and conserve native vegetation.

Property Vegetation Plans were designed to be the vehicle by which farmers:

- access funding to manage native vegetation;
- secure existing rotational farming practices;
- obtain assessment and approval of proposals for broadscale clearing that improve or maintain environmental outcomes, including with the use of offsets;
- meet the requirements of the threatened species legislation; and
- gain long-term security for farming activities, including up to 15 years for clearing approvals.

Property Vegetation Plans were also designed to provide resource security for farmers. There are three types or components of Property Vegetation Plans:

- continuing use;
- incentives; and
- existing use (including regrowth).

A practical and objective computer-based assessment process for Property Vegetation Plans - the *PVP Developer* - was developed by scientists in close consultation with key stakeholder representatives, including the NSW Farmers Association and chairs of the CMAs.

A key component of the PVP Developer is the biodiversity assessment tool, prepared by scientists from the Department of Environment and Conservation, which accounts for requirements under the *Threatened Species Conservation Act 1995* as well as the *Native Vegetation Act 2003.* The *Threatened Species Conservation Act 1995* was amended in 2004 to link to the PVP Developer.

The amendments to the *Threatened Species Conservation Act 1995* sought to mirror the philosophy of the 2003 reforms by:

- shifting the focus away from a species by species, site by site approach;
- protecting high priority habitat by 'switching off' the Threatened Species Conservation Act where CMA regions or Local Environmental Plans, are 'certified' by the Minister for the Environment; and
- using incentives to conserve important habitat, and allow both Catchment Action Plans and Local Environment Plans to direct high impact development toward lower value habitat.

Other assessment tools to predict the outcomes for salinity, soils and water quality were also developed and integrated with the PVP Developer.

Satellite Imagery

To underpin Property Vegetation Plans and Catchment Action Plans, in 2004 the NSW government also invested over $5 million in the generation of high resolution satellite imagery for NSW.

At a property level, this high resolution information allows CMAs to help each farmer prepare Property Vegetation Plans, based on good quality photo-maps of the property – developed free of charge.

At a regional level, high resolution satellite imagery also assisted CMAs to develop comprehensive Catchment Action Plans to target areas that can make the most difference in repairing rural landscapes.

The imagery also allows CMAs and the Natural Resources Commission to audit progress towards achieving state-wide standards and targets, and report clearing statistics to the NSW community.

Traffic Light Approach

Assessment of clearing applications is based on a 'traffic light' approach with three categories:

"Green Light" = Clearing activities that of *themselves* would improve or maintain environmental outcomes would be rapidly assessed for approval. An example would be thinning of cypress pine. Other clearing activities undertaken within prescribed protocols (which may or may not include offsets) would be 'deemed' to improve or maintain environmental

outcomes and so would also be rapidly assessed for approval. An example would be clearing of invasive scrub under a set protocol.

"Red Light" = Proposed clearing activities that would never be likely to improve or maintain environmental outcomes. An example would be clearing of intact bushland listed as a threatened ecological community.

"Amber Light" = Clearing that does not fall into the previous two categories and requires more detailed assessment. Consideration would be given to offsets, in order to decide whether the proposal *as a whole* could improve or maintain environmental outcomes. An example would be scattered paddock trees.

Offsets

An important aspect of the 2003 reforms is the ability of PVPs to allow landholders to secure offsets, which can be assessed together with clearing proposals in order to pass the "improve or maintain environmental outcomes test" which underpins the legislation.

Offsets are actions that result in positive environmental outcomes, which may offset any negative impacts of clearing. Offsets must:

- occur within the same area as the impacts of the proposed clearing;
- persist for a minimum of the duration of the negative impact of the proposed clearing (which could be in perpetuity); and
- be assessed using the same methodologies used to assess the impacts of the proposed broadscale clearing.

For the first time, with the introduction of offsets, there was a system which gave value to remnant vegetation and regrowth and allowed private trading in offsets, leading to improved environmental outcomes at reduced public cost.

One of the goals of the 2003 reforms was to make native vegetation an asset for farmers and to reward them for managing this resource on behalf of the rest of the community.

Field Trials

The PVP Developer was designed so that a local CMA officer, together with the landholder, creates each Property Vegetation Plan on-site so that farmers do not have to worry about filling in application forms or paying application fees. The CMA officer provides all relevant natural resources information, as well as photo-maps of the property. Landholders provide property details and are available for the on-site development of the Property Vegetation Plan. A decision is not necessary immediately: the farmer is given as much time as they wish to consider options. Approval of the PVP is determined by the CMA.

To ensure that the proposed PVP framework was fully operational by the time regulations commenced, PVP field trials were conducted on up to 100 properties across NSW in 2004/05. These trials also formed part of an intensive training program for CMA officers.

ISSUES FOR NATIVE VEGETATION MANAGEMENT

While there is substantial evidence that the *Native Vegetation Act 2003* has been successful in addressing a number of issues, there are others that require examination.

1. **Ending broad-scale land clearing:** The *Native Vegetation Act 2003* was built upon an 'improve or maintain' the environment test to achieve a balance between conservation and land clearing. On the evidence available it appears to have achieved its objective of significant reduction in the broad scale clearing of native vegetation. Prior to the 2003 reforms, clearing rates of woody native vegetation in NSW in the 1980s and 1990s were as high as 100,000 ha per year, or higher if the clearing of native grasslands was included.

   What is not understood is:

   a) Whether the offsets that were required in the approval of clearing PVPs to satisfy the improve or maintain test have been complied with; or

   b) Whether the level of illegal clearing in NSW has changed since the introduction of this legislation.

2. **One biodiversity standard for all development:** Approval processes in NSW for biodiversity are complex. The legislated planning pathway to determine approval for land clearing depends upon the location, type and capital value of development. There are six possible approval pathways across three Acts in NSW and one federal Act that all apply different assessment methods to ascertain impacts of land clearing.

   This review presents an opportunity to create consistency and simplify approvals processes for all development types in NSW. This could be achieved by having a single standard for biodiversity, salinity, water quality and soil erosion that applies to all development, based on the improve or maintain test.

3. **Exemptions for routine agriculture**: It was never the intention of the *Native Vegetation Act 2003* to restrict clearing of all native vegetation. The approval requirements of the Act were intended to apply to the clearing of remnant, protected regrowth vegetation and other vegetation of high land and water management and conservation significance.

   This means a landholder is free to carry out day to day routine agricultural management activities, including the right to clear other regrowth vegetation on their property without needing approval.

   What is not understood is whether these exemptions have been successful in helping farmers efficiently manage their business, or conversely, whether the exemptions have resulted in clearing of large areas of protected regrowth or remnant native vegetation.

4. **Flexibility:** There have been approximately 950 PVPs approved since 2005, 13% (118) of which exercised the minor variation clause. These approvals have been granted to landholders to undertake clearing (8,337ha), thinning (5,882ha) and clearing of paddock tree areas (6,449ha) as part of a PVP. The total clearing, thinning and paddock tree areas approved represent less than 1% of the total Invasive Native Scrub approved for clearing.

These figures suggest there may be barriers in the operation of the legislation which is discouraging landholders from developing a PVP.

We would encourage the review to assess whether the development process is providing landholders with sufficient flexibility to plan farming operations across their properties, or across a group of properties, while maintaining or improving environmental outcomes.

5. **Management of Invasive Native Scrub:** A further 3.82 million ha of consents have been secured for management of Invasive Native Scrub (INS).

   While this level of uptake is quite remarkable, what is not known is how much of this INS has actually been cleared and whether those areas are being managed to improve or maintain environmental outcomes as required.

6. **No carbon credits for Invasive Native Scrub:** A number of landholders in western NSW have sought Australian Carbon Credit Units (ACCUs) through the Commonwealth Carbon Farming Initiative that require them to retain the INS on their properties. This has the potential to create a perverse economic incentive to leave land degraded, because INS managed under a PVP is considered to improve environmental outcomes.

7. **Quantify economic Impact**: there have been assertions that the native vegetation regulations are having a significant impact on agricultural production across NSW.

   We are not aware of any analysis of the long-term opportunity cost to farming operations, particularly in marginal land, attributable to native vegetation laws in NSW.

8. **Time taken to approve PVPs:** There have been assertions that administrative arrangements are resulting in long delays to approve PVPs. The original intention of the PVP developer was for CMAs to assist landholders quickly reach an understanding on whether a PVP was required and if so, what offsets would be most effective.

   If there is evidence of significant delays, we would encourage a review of administrative arrangements to ensure delays do not deter landholder uptake of PVPs.

9. **Public funding to support sustainable farming:** Much of the remaining native vegetation in NSW lies on private property, and it was for this reason that financial support was provided directly to farmers to conserve native vegetation and restore over-cleared land to achieve public good conservation outcomes.

   It was a goal of the 2003 reforms that public funding would be made available through an Incentive PVP to evaluate the cost effectiveness of such investments. This had been the case in some regions, such as by the Murrumbidgee CMA, but not in others.

   What is unknown is whether the level of public funding that was provided as part of these reforms in 2003 is still available to farmers to encourage conservation and management of native vegetation on their properties. Also unknown is whether the Incentive PVP is the most effective means for assessing the cost effectiveness of these investments.