NATIONAL PARKS ASSOCIATION OF NSW
protecting nature through community action

Nature Conservation Council The voice for nature in NSW

Regulation of Agriculture
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne Vic 8003

18th August 2016

Submission on Productivity Commission Draft Report on the Regulation of Agriculture - July 2016

Dear Sir/Madam,

The Nature Conservation Council of NSW (NCC) is the peak environment organisation for New South Wales, representing over 150 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

The National Parks Association of NSW (NPA) is a not-for-profit conservation charity formed in 1957, seeking to protect, connect and restore the integrity and diversity of natural systems in NSW. NPA includes a network of 18 branches and more than 20,000 supporters.

We wish to make a submission in response to the Productivity Commission's Draft Report on the Regulation of Agriculture (the PC report) dated July 2016. There are several recommendations of the PC report that we do not support. Our submission focuses for the most part on the state of NSW.

In our view the PC report is flawed, because it wrongly starts from the premise that environmental protection laws severely restrict agricultural activity, and fails to recognise that environmental laws protect healthy ecosystems, including water and soil which are essential for productive agriculture. The report also lags some way behind in considering contemporary issues relevant to the report recommendations that are already occurring or which are in the advanced stages of development—such as environmental-ecosystem accounts and payments to farmers for ecosystem services as occurs under the Federal Direct Action policy. Nor does the report properly evaluate the outcomes of recent changes in Queensland land management regulations, or those proposed in NSW. The failure of the report to consider these issues, beyond a brief mention in Box 3.4, undermines the credibility and the relevance of the report and is a missed opportunity to evaluate the impact of some of the concepts the report is supposedly investigating.

In regards the examples of farmers' interaction with regulations provided in the report, they are overwhelmingly negative. Why has the PC report not sought to more thoroughly survey interactions with native vegetation regulations, rather than rely on a few submissions? Or to provide examples where responsible farmers are working successfully within the regulations? When considering changes to regulations so important to biodiversity and agriculture, we believe that a more comprehensive investigation is warranted. For example, some farmers have already benefitted hugely from payments

for environmental services[1,2] and others clearly value the benefits of native vegetation such as paddock trees[3].

We are extremely disappointed that the PC report does not take into account CSIRO research (Australian National Outlook 2015) that is specifically designed to address policy questions to ensure that economic growth does not come at the cost of environmental sustainability. The CSIRO research states that 'Australia's total output of food and fibre can increase—even in scenarios with significant shifts out of agriculture—if agricultural productivity growth is restored'. How the PC report can fail to consider research so relevant to agricultural productivity is not clear to us, and the lack of consideration of the CSIRO findings lead us to question the validity of the PC report.

We have significant concerns with the reports response to a number of key issues, namely:

- Environmental regulation, including biodiversity and land clearing laws;
- Land use regulation, including the management of Crown Land;
- The role of Federal environmental laws.

Our submission highlights our key concerns with regards to each of these points, and references our previous work on a number of these issues.

We recommend that the Productivity Commission and Australian governments:

1. Retain strong land clearing regulations in recognition of the dual function of environmental and agricultural services they provide;
2. Support these regulations with increased payments for private land conservation, and increased resourcing for government agencies that implement regulations, to improve performance of the regulations;
3. Integrate existing CSIRO research that also addresses policy requirements to ensure economic growth and productivity are not at the cost of the environment;
4. Consider environmental-economic accounts when evaluating the costs and benefits of regulation;
5. Improve the case studies to better evaluate the past lessons from the Western Division of NSW and Queensland;
6. Undertake a more thorough survey of farmers' attitudes in regards native vegetation regulation and include a balance of case studies to ensure those who have successfully operated within regulations are heard;
7. Retain Crown Land in public ownership for the wide variety of public benefits it confers.

Yours sincerely,

Kevin Evans
Chief Executive Officer
National Parks Association of NSW

Kate Smolski
Chief Executive Officer
Nature Conservation Council of NSW

[1]http://www.theland.com.au/story/3547654/carbon-cash-crushes-drought/
[2]http://www.theland.com.au/story/4036203/rangeland-income-reliability-lifts-with-carbon-cash/
[3]http://www.theland.com.au/story/3378139/healthy-trees-healthy-paddocks/

Submission on Productivity Commission Draft Report on the Regulation of Agriculture - July 2016

As outlined in our cover letter, we are concerned that the Productivity Commission's Draft Report on the Regulation of Agriculture dated July 2016 (PC report) wrongly starts from the premise that environmental protection laws severely restrict agricultural activity and fails to recognise that environmental laws protect healthy ecosystems, including water and soil which are essential for productive agriculture.

We have significant concerns with the reports response to a number of key issues, namely:

- Environmental regulation, including biodiversity and land clearing laws
- Land use regulation, including management of Crown Land
- The role of Federal environmental laws.

Our submission addresses each of these specific areas.

ENVIRONMENTAL LAWS AND REGULATIONS, INCLUDING BIODIVERSITY AND LAND CLEARING LAWS

Introduction

We welcome the PC report's recognition of the inextricable link between biodiversity outcomes and agriculture. To further develop this issue however, we believe that the report would benefit from a more thorough exploration of biodiversity issues in Australia. For example, placing Australia in a global context as being one of just 17 mega-diverse countries with a high proportion of endemic species, possessing two global biodiversity hotspots[4], being the only developed nation to be identified as one of 11 global deforestation fronts[5] and having lost 27 mammal species from the mainland since European settlement[6] would help to explain why regulations exist in the first place: most people are likely to have an innate resistance to regulation, but this resistance may not persist when the motivations of the regulation are articulated and understood.

We also take issue that providing conservation services in public reserves is costly: WWF in fact estimates the cost of building the national reserve system at, on average, just $44.40 per hectare[7]. Given that protecting habitat is the best means of protecting species[8], this represents outstanding value for money on behalf of taxpayers. The PC also fails to recognise the significant economic benefits that flow from public protected areas in regards tourism[9] and financial gains to local government[10]—which do not accrue via protections on private land. Therefore, we dispute the assertion that conservation outcomes can be achieved more cheaply on private land. We also make the point that in the absence of a conservation covenant which ensures permanent protection, investing in private land conservation is

[4] http://www.cepf.net/resources/hotspots/Asia-Pacific/Pages/default.aspx
[5] WWF. *WWF Living Forests Report: Chapter 5. Saving Forests at Risk*, <http://www.wwf.org.au/news_resources/resource_library/?13360/Living-Forests-Report-Chapter-5-Saving-forests-at-risk> (2015).
[6] Johnson, C. *Australia's mammal extinctions: a 50,000 year history*. (Cambridge University Press, 2006).
[7] Taylor, M. F. J., Fitzsimons, J. A. & Sattler, P. Building Nature's Safety Net 2014: a decade of protected area achievements in Australia. (WWF-Australia, Sydney, 2014).
[8] Taylor, M. J. *et al.* What works for threatened species recovery? An empirical evaluation for Australia. *Biodivers Conserv* **20**, 767-777, doi:10.1007/s10531-010-9977-8 (2011).
[9] Destination NSW. *Nature Based Tourism to NSW: Year ended December 2015*, <http://www.destinationnsw.com.au/wp-content/uploads/2013/05/Nature-based-tourism-YE-Dec-15.pdf> (2015).
[10] Heagney, E. C., Kovac, M., Fountain, J. & Conner, N. Socio-economic benefits from protected areas in southeastern Australia. *Conservation Biology* **29**, 1647-1657, doi:10.1111/cobi.12554 (2015).

an uncertain outcome as it has no long-term security. We do support increased government support to private land conservation, but not at the expense of building the public reserve system.

The PC report states that 'while farmers bear many of the costs of conservation (including less available grazing and cropping land), conservation also provides public benefits such as the protection of threatened species, reductions in salinity and protection against land degradation'. Although we acknowledge that these are broadly public benefits, we stress that it is farmers themselves who will benefit disproportionately from reductions in salinity and protection against land degradation. Hence farmers that practice conservation are likely to derive an economic benefit from it regardless of whether they receive payments for doing so.

We support the comment by the NSW Natural Resources Commission for the potential for perverse outcomes where farmers with degraded native vegetation are rewarded over a farmer who has managed vegetation well. The proposed changes to legislation in NSW propose to do just that: the calculation of biodiversity credits gained from management is proposed to be based on the change in condition of vegetation. Therefore it is immediately apparent that poor historic management is to be rewarded over good management, as the positive change in already high quality native vegetation will be less than more degraded vegetation.

We further highlight the benefits of and need for strong environmental regulation and respond to some of the PC Report recommendations in more detail below.

The benefits of strong environmental laws for agriculture

a) Native vegetation management, soils and salinity

Agricultural productivity is highly dependent on the maintenance of ecosystem services provided by healthy biodiversity. These include clean air, water, healthy soils, pollination and nutrient cycling[11]. Protecting biodiversity thus protects the productivity and value of agricultural land.

The conservation of native vegetation under the NSW *Native Vegetation Act 2003* (the key piece of legislation regulating land clearing in NSW) provides a case in point. Clearing native vegetation exposes soils to increased risk of erosion and salinisation. Many soil types throughout NSW are particularly vulnerable to degradation due to being old, heavily weathered, infertile, and subject to a high level of climatic variability[12]. In many parts of the state, we are still dealing with a legacy of soil degradation[13] due to the unfamiliarity of European settlers with the Australian climate and soils. In fact, the *Western Lands Act 1901* was established in response to a Royal Commission on widespread soil erosion and land degradation in the Western Division of NSW, caused by a combination of overstocking, clearing, drought and rabbits. It is astonishing that the PC report fails to provide the historic example of erosion in the Western Division in the context of discussing the costs and benefits of leasehold versus freehold, and when promoting the regulation of leasehold via state land-use regulations.

[11] EPA (2012) Op. cit.
[12] EPA (2006) *NSW State of the Environment Report 2006*, Environmental Protection Authority, Sydney.
[13] EPA (2015) New South Wales State of the Environment 2015

Land clearing since European settlement has been responsible for significantly increased soil erosion in NSW because removing ground cover vegetation damages soil structure and allows loss of soil particles[14]. Significantly, areas subject to the highest rates of clearing prior to the introduction of the *Native Vegetation Act 2003* equate to those with the greatest vulnerability to erosion[15]. The most recent NSW State of the Environment Report (2015), showed that 74% of the 124 priority soil monitoring units examined were rated as poor or very poor for at least one degradation hazard. Perhaps even more significantly, erosion, loss of organic carbon and acidification are all increasing in impact in NSW. This is clear evidence that farming is still not on an ecologically sustainable footing in NSW. The appropriate policy response to this is not to clear more land, it is to begin to restore lost vegetation. In fact, the NSW State of Environment Report 2015 identifies the *Native Vegetation Act 2003* as one of two key pieces of legislation protecting soils and facilitating sustainable land management.

Soil salinisation is a serious threat to land and water resources in NSW and is the major cause of land degradation in the Murray-Darling Basin. Soil salinisation reduces agricultural productivity and promotes erosion by impairing plant growth[16]. Land clearing is also the major cause of soil salinisation in NSW. Intact native vegetation absorbs rainwater entering the soil and allows small amounts to enter groundwater (groundwater recharge). When native vegetation is cleared the rate of groundwater recharge is increased and water tables begin to rise. In areas with saline groundwater and soils this carries salt to the surface resulting in increased soil salinity[17].

By regulating land clearing the *Native Vegetation Act 2003* has thus made a major contribution to preserving the value and productivity of agricultural land as well as avoiding costs in combating soil erosion and salinisation and beginning to slow and reverse the 150 years of soil degradation. It is important to note however that the *Native Vegetation Act 2003* does not prevent land clearing. Instead it requires that land clearing be consistent with the 'maintain or improve' principle. In order to assess whether clearing meets that principle, the *Native Vegetation Act 2003* uses the Environmental Outcomes Assessment Methodology (EOAM), which measures the impact of clearing against factors such as soil erosion, salinisation and water quality as well as biodiversity to ensure that clearing does not result in land degradation. The EOAM is world's best practice, but the EOAM would now benefit from some revision to integrate considerations of carbon emissions on land management decisions.

Furthermore, by allowing the management of over 3.9 million hectares of invasive native scrub (INS) under INS Property Vegetation Plans (PVPs)[18], the *Native Vegetation Act 2003* has improved the value of agricultural land in NSW. While there are ecological questions about the need to clear INS (given it is likely to be an initial pioneer revegetation stage after excessive clearing and grazing), it was recognised that INS management that resulted in a faster return to grassland/woodland mosaic had both environmental and economic benefits and reflected a balance between agricultural needs and environmental stewardship. It is emphasised that without the *Native Vegetation Act* 2003, such a large area would not have come under such active management. However, the PC report contains this quote:

[14] EPA (2000) Op. cit.
[15] EPA (2006) Op. cit.
[16] EPA (2000) Op. cit.
[17] Ibid.
[18] OEH (2014b) *Public register of approved clearing PVPs and development applications.* http://www.environment.nsw.gov.au/vegetation/approvedclearing.htm. Accessed 13 September 2014.

'Although woody weeds cause land degradation these invasive native species have been protected by land clearance legislation … The woody weeds protections are seen to compromise the feasibility of the law in achieving its stated environmental objectives, and are thereby also undermining the legitimacy of the law and of government'. (Bartel 2014, p. 900). Yet this is observation is not consistent with the reality that farmers are permitted to undertake management of INS via a Code of Practice[19].

The ability of farmers to undertake INS management via a Code of Practice is just one example of the suite of exemptions that exist under the *Native Vegetation Act 2003* that permit farmers to undertake day to day farm management. Farmers can, under existing regulations, conduct a wide range of activities such as clearing for fence lines, clearing around buildings, collection of firewood and the removal of isolated paddock trees.

We therefore do not accept the assertion that native vegetation regulation prevents farmers from running a business, and we would like to see the PC more accurately reflect the management situation in the revised report so that decisions on land management can be made in full knowledge of the facts. We do however accept that improvements could be made in improving the efficiency of the process of developing PVPs required under the *Native Vegetation Act* 2003. We urge the NSW government to focus on removing these impediments to enhance efficiency, rather than removing regulation entirely.

It is also important to note that the *Native Vegetation Act* 2003 simply regulates *changes* to land use—such as the removal of remnant native vegetation from currently vegetated areas. It does not regulate existing land use. In this respect the *Native Vegetation Act* 2003 is effectively a form of environmental protection zoning, analogous to that which operates under Local Environment Plans (LEPs) throughout NSW. There are no provisions for compensation under environmental planning zones for restrictions on changing land use, just as there are no provisions for publicly harnessing windfall gains due to changing land use.

It is difficult to argue on a moral basis that leaving land in equal or better condition for future farmers is not the responsible thing to do. In this light, measuring the impact of clearing via a regulatory tool like the EOAM is a vital component in ensuring that our activities do not impact on the ability of future generations to produce food and fibre and access clean water. Current proposals in NSW to repeal the *Native Vegetation Act 2003* and abandon the 'maintain or improve' principle therefore show scant regard for the next generation of farmers and will in future likely be seen as an act of selfishness.

b) Carbon, climate change and native vegetation

When the north west of the state of NSW is in the grip of a severe drought, with much soil exposed after previous land clearing, the question must be asked as to why we as a society desire more land clearing. This part of the state is subject to frequent drought, is clearly 'marginal' for agricultural production and is likely to become more so as climate change progresses.

Forests and woodlands mitigate global warming by absorbing and retaining greenhouse gasses. By protecting native vegetation, land clearing laws have made an important contribution to greenhouse gas abatement efforts. They were the primary reason Australia was able to meet its Kyoto Protocol commitments. Australian agricultural and natural systems are highly vulnerable to climate change[20] and

[19] http://www.environment.nsw.gov.au/resources/vegetation/140276INSorder.pdf

[20] McAlpine, C.A., Syktus, J., Ryan, J.G., Deo, R.C., McKeon, G.M., McGowan, H.A. & Phinn, S.R. (2009) A continent under stress: interactions, feedbacks and risks associated with impact of modified land cover on Australia's climate, *Global Change Biology*, 15, 2206-2223.

organisations are increasingly considering forest establishment and management to help reduce the build-up of greenhouse gases in the atmosphere[21,22]. It makes little sense to reduce protections to existing native vegetation, only to then have to undertake revegetation of extensive areas that is both expensive and takes a substantial period of time, for the purpose of absorbing greenhouse gases.

Purchasing carbon abatement via avoided deforestation has been to this point the cornerstone of the federal government's Emissions Reduction Fund (ERF). Over the three auctions to April 2016, abatement from vegetation (avoided clearing and revegetation) accounted for 98.5 million tonnes, or 69% of total emissions purchased[23]. At the average price of $12.10 per tonne, the total amount paid by Australian taxpayers for carbon from averted clearing and revegetation is $1.2 billion. Landholders in NSW have been the largest benefactors from the ERF: 47% of all contracted projects are in NSW. The increased clearing that has recently occurred in Queensland as a result of a relaxation in native vegetation regulations will add 115 million tonnes of CO_2 by 2030[24]. At the average ERF price of $12.10 per tonne, these emissions would cost almost $1.4 billion—more than the $1.2 billion worth of vegetation-based abatement purchased by the ERF to April 2016. Given the stark similarities between Queensland's legislative changes and those proposed in NSW, we can expect clearing of native vegetation in NSW to follow the same pattern as Queensland. Therefore we expect the extent of wastage of taxpayer funds will be closer to $2 billion.

This represents a double hit to taxpayers: not only has the ERF investment been entirely wasted by ill-conceived state regulation changes undermining federal efforts, but these emissions will have to be reduced again in order for Australia to meet international obligations.

Land clearing also has important implications for climate at regional and national scales. Intact vegetation and moist soils in forests and woodlands absorb more solar energy than areas cleared for pastures and crops[25]. Historic clearing in today's agricultural landscapes has already resulted in reduced exchange of moisture to the atmosphere, less cloud cover and reduced rainfall[26,27].

Land clearing has also significantly reduced the moderating influence of native vegetation on extreme El Niño events and is strongly connected with more severe and prolonged droughts in eastern Australia. The result has been more dry and hot days and reduced rainfall[28,29].

The *Native Vegetation Act 2003* has thus played a vital role in protecting the value of agriculture by contributing to efforts to combat climate change and protecting agricultural systems from more severe droughts and extreme temperatures. The act therefore serves the common interest of landowners by preserving the systems on which their livelihoods depend. We urge state and federal governments to

[21] CSIRO (2011) *Greenhouse gas and carbon management in forests*. http://www.csiro.au/Outcomes/Climate/forests-and-carbon-management.aspx
[22] CSIRO (2015) Australian National Outlook 2015. Economic activity, resource use, environmental performance and living standards, 1970-2050
[23] Clean Energy Regulator. *Emissions Reduction Fund, auction results April 2016*, <http://www.cleanenergyregulator.gov.au/ERF/Auctions-results/april-2016
[24] Bulinski, J., Enright, R. & Tomsett, N. Tree clearing in Australia: Its Contribution to Climate Change. (CO2 Australia Limited, 2016).
[25] McAlpine *et* al., (2014) Op. Cit.
[26] Ibid.
[27] Mahmood, R., Pielke, R.A., Hubbard, K.G., Niyogi, D., Dirmeyer, P.A., McAlpine, C., Carleton, A.M., Hale, R., Gameda, S., Beltrán-Przekurat, A., Baker, B., McNider, R., Legates, D.R., Shepherd, M., Jinyang, D., Blanken, P.D., Frauenfeld, O.W., Nair, U.S. & Fall, S. (2014) Land cover changes and their biogeophysical effects on climate, *International Journal of Climatology*, 34, 929-953.
[28] Deo, R.C., Syktus, J.I., McAlpine, C.A., Lawrence, P.J., McGowan, H.A. & Phinn, S.R. (2009) Impact of historical land cover change on daily indices of climate extremes including droughts in eastern Australia, *Geophysical Research Letters*, 36, L08705, doi:10.1029/2009GL037666.
[29] Deo, R.C., (2011) Links between native forest and climate in Australia, *Weather*, 66, 64-69.

stop ignoring the impact of land management changes on emissions reductions targets and to deal proactively with the threat of climate change to Australian farmers. Failure to do this will result in rural landholders being disproportionately affected by climate change via extreme weather events, continued erosion of financial reserves, and continued reductions in rural populations and associated service declines[30].

The need for retaining strong land clearing laws

Biodiversity is in decline in NSW. When Europeans arrived in 1788 there were an estimated 897 species of native terrestrial vertebrates found in NSW. Since that time 12 bird species (2%) and 25 mammals (9%) have become extinct in NSW. The latest NSW State of the Environment Report (2015) shows that this decline is continuing, with 999 species of plants and animals and 108 ecological communities listed as threatened under NSW legislation[31].

Clearing of native vegetation and the associated destruction of habitat has been identified as the process representing the greatest single threat to biodiversity in NSW[32]. Land clearing is listed as a key threatening process under both NSW and Commonwealth biodiversity legislation. Protecting habitat and controlling land clearing is therefore essential if further loss of biodiversity is to be avoided. The pressure of an increasing population and economic growth means that land clearing and development impacts on biodiversity are significant.

We are living in a time of rapid climatic change, and considerations of climate change are imperative for effective land management and biodiversity conservation. For example, climate change will disrupt the 'climatic envelope' for many species and in response these species will either alter their distributions to more suitable climatic zones or go extinct. For less mobile species and habitat specialists, connectivity of high quality native vegetation will be key to determining whether they can move in the landscape, and therefore whether they can persist in the face of climate change.

The protection of biodiversity is important in its own right; however, it is also fundamental for maintaining healthy ecosystem services and, subsequently, our way of life. In fact, a comprehensive report on ecosystem services and Australian Natural Resource Management stated that: "Protecting as much biodiversity as possible is a wise strategy for managing risks associated with medium-term and long-term climate change and other environmental changes and for keeping future management options open"[33].

Biodiversity provides ecosystem services such as oxygen, the recycling of nutrients, control of pests and diseases, pollination of crops, regulation of water quality, and exercise of climate controls[34]. It can also provide genetic resources and opportunities for improved food and medicine production, renewable resources, such as fuel, and building materials and clothing[35]; and deliver concrete agricultural sustainability benefits particularly in marginal areas prone to soil loss.

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[30] Hughes, L., Rickards, L., Steffen, W., Stock, P. & Rice, M. *On the front line: climate change and rural communities*, <https://www.climatecouncil.org.au/uploads/564abfd96ebac5cbc6cf45de2f17e12d.pdf> (2016).
[31] NSW State of Environment Report 2015, p 104, www.epa.nsw.gov.au/soe/soe2015/index.htm
[32] NSW State of Environment Report 2015, p 114 www.epa.nsw.gov.au/soe/soe2015/index.htm
[33] Cork et. al. 2007: *Ecosystem services and Australian natural resource management (NRM) futures*: paper to the Natural Resource Policies and Programs Committee (NRPPC) and the Natural Resource Management Standing Committee (NRMSC)
[34] EDO and Nature Conservation Council (2006) *The Status of Biodiversity Conservation in New South Wales and recommendations for reform,* citing "Biological Diversity Advisory Committee, A National Strategy for the Conservation of Australia's Biological Diversity – Draft for Public Comment, AGPS, 1993 in Gerry Bate, 2006, Environmental Law in Australia, 6th Edition, Lexis Nexis, Butterworths Australia.
[35] Ibid.

Our current laws, while not perfect, have played crucial roles in the protection of biodiversity in NSW by improving the knowledge about biodiversity; the independent listing of threatened species; creation of an objective test of environmental impacts and use of the 'maintain and improve' test.

Our own research shows that:

- The *Native Vegetation Act* 2003 in particular has led to over 4 million hectares of native vegetation on farmland actively managed through property vegetation plans[36].

- Land clearing has declined by about 40%. Before the Native Vegetation Act 2003, more than 17,500ha/year of bushland was being destroyed in NSW[37]. Under the Native Vegetation Act (2006-2011), that figure fell to about 10,000ha/ year[38].

- About 1.16 million native mammals have avoided death over 10 years. WWF has calculated that 116,000 native mammals have avoided death due to agricultural clearing each year since the introduction of the Act[39].

- Australian greenhouse gas emissions from Land Use, Land Use Change and Forestry (LULUCF) - the sector that includes tree clearing -almost doubled between 2012–2015 from 13 Mt CO_2e to 23 Mt CO_2e, while emissions from almost all other sectors declined. This follows the substantial weakening of state tree clearing regulations in Queensland[40]. A similar result is expected if land clearing laws are weakened in NSW.

In our view, key criticisms of the existing laws have more to do with failed implementation, rather than the specific provisions of the laws. Previous allocations of funding to support private land conservation have dwindled, and inequities in the rules applying to farmers, developers and industry were not addressed, as had been intended[41].

Comments on specific recommendations and key points

- We take issue with the statement that 'the need for regulation is not disputed by farm businesses'. Our experience while engaging in the current proposals to deregulate land management in NSW is that there is a vocal minority of farmers who oppose any form of regulation whatsoever—including regulation on clearing and compliance. This was evident by NSW Farmers withdrawing support for the proposed regulations on the eve of the consultation period closing citing concerns of over-regulation[42]. This is despite the proposal to allow a return to broad-scale land clearing via the equity code, and to employ self-assessment in applying codes. We strongly believe that the drive to deregulate land management is designed to appease a minority group who feel they have the right to operate with no regard for broader society.

[36] *Total Environment Centre, Laws for the bush - Benefiting biodiversity and people* (2014) - www.tec.org.au/images/reports/LFTB_Report_Web.pdf
[37] WWF (2016), *Land clearing & biodiversity, NSW, 2010-15*,
[38] WWF, *Native wildlife at risk if NSW Native Vegetation Act is repealed* ,(2015) www.wwf.org.au/news_resources/resource_library/?12820/Native-wildlife-at-risk-if-NSW-Native-Vegetation-Act-is-repealed
[39] WWF, *Native wildlife at risk if NSW Native Vegetation Act is repealed* ,(2015) http://www.wwf.org.au/news_resources/resource_library/?12820/Native-wildlife-at-risk-if-NSW-Native-Vegetation-Act-is-repealed
[40] *Climate Change and Australia's Tree Clearing Crisis* - The Wilderness Society (2016) - Link
[41] See Wentworth Group of Concerned Scientists, Submission to Biodiversity Legislation Review Panel, September 2014, http://wentworthgroup.org/wp-content/uploads/2014/10/Submission-to-Native-Vegetation-Review-Final-September-2014.pdf
[42] http://www.theland.com.au/story/3995816/nsw-farmers-shock-move-on-native-veg/

- We support the assertion that government could improve their consultation and engagement process with farm businesses. We note that the implementation of the *Native Vegetation Act* 2003 took place with the support of NSW Farmers, scientists, environment groups and governments. It also resulted in a dramatic increase in funding to undertake on-ground restoration works. However, this good-will has since broken down to the point where the NSW government is proposing to unwind all form of environmental protection on farms. The lesson here is that had funding not dried up to manage elements of the *Native Vegetation Act* 2003 such as the processing of PVPs, and had government engagement with farmers following the implementation of *Native Vegetation Act* 2003 not declined, then a broadly successful piece of legislation would still be functioning well. The appropriate response to this is not to scrap all legislation, but to make sure that it functions properly.

- We take issue with the PC's apparent definition of 'costs' of regulations as outlined in Figure 1. The PC uses a purely financial interpretation of costs, yet this is an outdated approach to accounting. 'Environmental accounting', a mechanism to factor in the benefits received by nature allow a more thorough and transparent analysis of costs and benefits. The Wentworth Group of Concerned Scientists suggested a method for developing environmental accounts in 2013[43], the Australian Bureau of Statistics (ABS) published a set of 'environmental-economic accounts' in 2015[44] and the Australian National University, in conjunction with the ABS, published an experimental set of accounts for the Victorian Central Highlands in June 2016[45]. We are disappointed that the PC sees fit to ignore an entire set of accounts, effectively placing a zero value on services such as water supply, carbon sequestration, pollination and tourism.

- We concur with the PC's view that ongoing changes to regulation create uncertainty for farmers. That is why we support the retention of current regulations in NSW (the *Native Vegetation Act* 2003), but support increased government investment in both private land conservation and in Local Land Services to remove some of the processing logjams that are said to have accrued due to underinvestment in government services. The example in Queensland, where broader Australian society has lost over $1 billion (via the increased emissions due to clearing) and suffered unaccounted environmental damage, for the enrichment of a small number of landholders should be avoided in NSW.

- Recommendation 3.1: NSW offers an excellent contemporary lesson that the PC should consider in the context of this recommendation. In regards risk-based regulations, the existing *Native Vegetation Act* 2003 does take a risk-based approach as it allows for a small-scale clearing to be conducted under a suite of unregulated and code-based activities while larger clearing must satisfy the maintain or improve test under the EOAM—in other words be subject

[43] Sbrocchi, C. *Guidelines for Constructing Regional Scale Environmental Asset Condition Accounts: Quick Guide*, <http://wentworthgroup.org/wp-content/uploads/2013/12/Quick-Guide-for-Constructing-Regional-Scale-Environmental-Asset-Condition-Accounts.pdf> (2013).
[44] Australian Bureau of Statistics. *Australian Environmental-Economic Accounts*, http://www.abs.gov.au/ausstats/abs@.nsf/mf/4655.0> (2015).
[45] Keith, H., Vardon, M., Stein, J., Stein, J. & Lindenmayer, D. *Experimental Ecosystem Accounts for the Central Highlands of Victoria. Summary document for discussion*, <https://www.wavespartnership.org/sites/waves/files/kc/VCH%20Accounts%20Summary%20FINAL%20for%20pdf%20distribution.pdf> (2016).

to a risk assessment in regards biodiversity, salinity, soil and water impacts. However the proposed changes to NSW land management legislation would allow up to 500 hectares of native vegetation to be cleared per property in every three year period and without being subject to any form of test. This is clearly not an example of appropriate risk-based legislation. One of the recommendations in the review of biodiversity legislation was to level the playing field between different forms of development—as mentioned in the PC report. Yet the draft legislation continues to favour mines over farmers by permitting mine site rehabilitation to count as offset credits.

- Although the NSW review of biodiversity legislation[46] recommended that the impacts of clearing be considered at a landscape scale rather than on a farm scale, and offered a means by which to achieve this, the subsequent bills failed to implement the recommendations and removed the maintain or improve standard completely rather than shifting the scale. Proposed management zones are coastal, tablelands, central and western, and they therefore do not reflect bioregional boundaries and the ecological considerations that are implicit in bioregionalisation. This is not appropriate for laws that purport to protect biodiversity.

- We also contend that the PC's consideration of 'social and economic factors' is much too narrow: we have previously outlined the value of ecosystem services provided by nature to farmers, and we again reiterate that a failure to consider climate change will have much greater social impact on rural communities than native vegetation regulation. It is past time the government began to look at timescales beyond the current generation.

- Recommendation 3.2: we welcome the PC highlighting of some of the shortcomings of offsetting and would like to take this opportunity to reinforce our view that a best-practice offset regime must include 'red flags' (species or ecosystems that cannot be cleared); must avoid the use of supplementary measures, must ensure like for like offsets, must have legal protection and must follow the hierarchy avoid, limit, offset. The proposed changes to NSW land management do not meet these standards, and permit the offsetting of offsets.

- The recommendation to use market-based approaches is not new insight. The Wentworth Group of Concerned Scientists 2015 report 'A Blueprint for a Healthy Environment and A Productive Economy[47] focused on the use of markets to conserve natural capital. Furthermore the PC has completely ignored the example of the federal Emissions Reduction Fund (ERF) that has been purchasing emissions reductions from private landholders via avoided clearing for 18 months. We reiterate that the $1.2 billion of taxpayers money that has been spent on averted emissions via avoided deforestation has been completely undermined by deregulated land clearing in Queensland, with NSW set to follow suit. This highlights how environmental stewardship payments must complement, rather than replace, regulation. It is either disingenuous or a serious oversight on the part of the PC to ignore this example, and we urge the PC to include the ERF as a case study in any future iteration of this report.

[46] Byron, N., Craik, W., Keniry, J. & Possingham, H. P. *A review of biodiversity legislation in NSW*, <http://www.environment.nsw.gov.au/resources/biodiversity/BiodivLawReview.pdf> (2014).
[47] The Wentworth Group of Concerned Scientists. *A Blueprint for a Healthy Environment and a Productive Economy*, <http://wentworthgroup.org/wp-content/uploads/2014/11/Blueprint-for-a-Healthy-Environment-and-a-Productive-Economy-November-2014.pdf> (2014).

LAND USE REGULATION, INCLUDING THE MANAGEMENT OF CROWN LAND

We are concerned that the PC report fails to recognise the important environmental and cultural values of Crown lands and is too quick to dismiss the important need to maintain these values through the effective management of Crown land. For example, in central and western NSW, Crown land represents a significant proportion of the remaining vegetation within some catchments and is therefore important to the provision of reliable water supplies. Crown lands in urban areas can contain important remnant vegetation and can be critical to the survival of resident, itinerant and migratory birds and other animals.

In 2014, in response to the Crown Lands Legislation White Paper, NPA and NCC commissioned a report titled "The significance of Crown Lands in Biodiversity Conservation". The report highlights the extent and significance of native vegetation, fauna and habitats as well as some other environmental values that occur on Crown land in NSW. Habitat types range from marine subtidal; coastal terrestrial, estuarine and freshwater habitats to the arid habitats of the Western Division. Major conclusions of the report are:

- All Crown land types offer a range of important conservation values. These values include providing remnant vegetation and habitat for threatened species[48] in highly cleared landscapes, habitat connectivity and irreplaceable coastal values
- Crown leases and Crown reserves overwhelmingly offer high habitat connectivity, especially the Crown leases of the Western Division.
- Crown leases in the Central and Eastern divisions (which include Travelling Stock Routes) and Crown waterways contain extremely important vegetation remnants in heavily cleared landscapes, with many Crown leases forming part of remnants larger than 1,000ha.
- Significant records of threatened species have been found across all Crown land types, with Crown reserves showing the highest abundance of threatened species recorded.
- Most Crown lands of Central Division contain endangered ecological communities.
- Crown leases in Western Division within Western CMA contain extremely high numbers of threatened species records while for most Crown land types, Northern Rivers, Hunter—Central Rivers and Southern Rivers CMAs tend to have the highest occurrence of threatened species records.

Many of the State's ecosystems are poorly represented in conservation reserves particularly west of the Great Dividing Range and in coastal lowlands[49]. Crown lands have the potential to fill in many of these gaps.

We reject the Productivity Commission's (PC) assertion that restrictions on the use of land under pastoral leases lacks a sound policy justification. We reiterate that the *Western Lands Act 1901* was a response to a Royal Commission into widespread erosion and land degradation—which in modern terms would be called 'ecosystem collapse'. Therefore we believe that the principles of Ecologically Sustainable Development (ESD) that guide leasehold Crown Land management are an integral part of ensuring that agriculture in a fragile and climatically variable part of the state does not result in the ecological degradation of land. In NSW, land clearing on leasehold Crown Land in the Western Division

[48] The report only investigated threatened species and endangered ecological communities listed under the NSW Threatened Species Conservation Act and did not attempt to investigate the distribution of threatened species or endangered ecological communities listed under the Commonwealth Environment Protection and Biodiversity Act which also occur on Crown land. [Check]]

[49] NPWS Establishment Plan 2008

is already regulated through the *Native Vegetation Act* 2003 (meaning recommendation 2.1 is already in place). The proposed changes in NSW regulations however would permit broad-scale land clearing (via the equity code) in a region that has already seen an ecological collapse. Ignoring the lessons of history, as the PC has done in this instance, diminishes the credibility of the role of government in managing resources for society as a whole and for future generations.

We do not support the blanket assertion that pastoral leases offer less security of tenure than freehold land. The PC report makes this statement despite highlighting in Box 2.5 that perpetual leases are available in NSW, Queensland and the Northern Territory. We urge the PC to accurately reflect the findings of its work in its summations.

Comments on specific recommendations and key points

Recommendation 2.1: leasehold in the Western Division of NSW is already administered via land use regulations. We urge the PC to evaluate this in the next version of the document, including the potential impact of the proposed legislative changes in NSW. We do not feel that it is appropriate for the PC to recommend a policy of conversion of public land to private land. The narrow focus of the PC report means that the full suite of benefits of public lands have not been considered and much more community consultation is required in this regard. We would also point out that there is an Upper House Inquiry into Crown Land current in NSW, and that the findings of this inquiry could help inform consultation in other states.

Finding 2.2: the failure of the PC to fully consider the full suite of costs and benefits via the inclusion of 'ecosystem accounts' means that we have no confidence in the PC's assessment of the value of land use.

THE ROLE OF FEDERAL ENVIRONMENTAL LAWS

The Draft Report criticises the overlap between State and Federal laws, particularly in the areas of native vegetation and management of water resources. We wish to briefly highlight the important role of Federal environmental laws, namely:

- Only the Federal government is suited to make environmental decisions in the national interest;
- There is a significant conflict of interest when states are proponents or have vested interests in the outcomes of projects;
- States have a poor record of establishing and administering environmental laws;
- The Commonwealth holds primary responsibility for ensuring that Australia's international obligations, and National laws enable Australia to meet its international environmental obligations;
- Protection of environmental assets requires a robust system of checks and balances

These issues are outlined in more detail in NCC's 2014 submission to the *Inquiry into streamlining environmental regulation, 'green tape' and one stop shops*[50].

[50] NCC Submission to the Inquiry into streamlining environmental regulation, 'green tape' and one stop shops, April 2014, <www.nature.org.au/media/1895/140430-sb-inquiry-into-streamlining-environmental-regulation-green-tape-and-one-stop-shops.pdf>

RECOMMENDATIONS TO THE PC AND AUSTRALIAN GOVERNMENT

As outlined in our submission, we are of the view that the PC report is flawed, because it wrongly starts from the premise that environmental protection laws severely restrict agricultural activity and fails to recognise that environmental laws protect healthy ecosystems, including water and soil which are essential for productive agriculture. It fails to take into account relevant information and research or provide a balanced range of case studies.

We make the following recommendations:

1. Retain land strong clearing regulations in recognition of the dual function of environmental and agricultural services they provide;
2. Support these regulations with increased payments for private land conservation, and increased resourcing for government agencies that implement regulations, to improve performance of the regulations;
3. Integrate existing CSIRO research that also addresses policy requirements to ensure economic growth and productivity are not at the cost of the environment;
4. Consider environmental-economic accounts when evaluating the costs and benefits of regulation;
5. Improve the case studies to better evaluate the past lessons from the Western Division of NSW and Queensland;
6. Undertake a more thorough survey of farmers' attitudes in regards native vegetation regulation and include a balance of case studies to ensure those who have successfully operated within regulations are heard;
7. Retain Crown Land in public ownership for the wide variety of public benefits it confers.