



## **Cumberland Bird Observers Club**

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**Native Vegetation Regulation Review  
Conservation Policy and Strategy Section  
Office of Environment and Heritage  
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SYDNEY SOUTH 1232**

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### **Re: Submission from CBOC on Native Vegetation Regulation 2012 – public consultation draft**

Cumberland Bird Observers Club Inc (CBOC) wishes to submit the following remarks about the Native Vegetation Regulation 2012 Draft, as posted on the OEH website.

The destruction of native vegetation on a massive scale, over several decades, in agricultural regions of NSW (especially the Slopes and eastern Plains) has been the main factor causing severe declines in the populations of many species of native birds and other wildlife in these regions. This gloomy scenario is no doubt very familiar to OEH.

The Native Vegetation Act 2003 plays a crucial role in preventing the total destruction of the many endangered vegetation communities and their associated wildlife in agricultural areas. Its integrity needs to be underpinned by detailed regulations and a robust methodology for assessing clearing proposals and environmental outcomes. Since many of the threatened ecological communities (the vegetation and its wildlife) on more fertile soils in the agricultural areas are not ever likely to be adequately represented in formal reserves like National Parks, we think the State has a duty to pursue the conservation of these communities on private lands, in part through workable and effective vegetation regulations that are supported, or at least agreed to, by landowners. Admittedly, finding an effective balance is difficult.

### **Specific comments**

CBOC considers there are a number of areas of concern in the Draft Regulation, as detailed below.

Assessing environmental effects of broadscale clearing: Currently, amendments to methodology can only be made after advice to the Minister from the Natural Resources Commission (NRC), which has

at least 30 days to reply. The NRC may also propose amendments to the Assessment Methodology. Advice from the NRC could be expected to be impartial and well-considered. On the other hand, under the Draft Regulation the role of the NRC is much reduced, in that the Minister “may provide the NRC with a copy of the proposed amendment ... and request the Commission to provide advice and recommendation ...” The proposed public consultation procedure does not appear likely to provide high-quality, impartial advice such as the NRC would provide; moreover the Minister would be able to amend Assessment Methodology unilaterally if the amendment is “of a minor nature” (a subjective judgment). **Thus, the procedures for amending Assessment Methodology in the Draft Regulation appear to be retrograde compared with the current procedures.**

The Minister for Environment should always be the Minister administering the Regulations (and Act), to ensure that environmental values will be properly considered at all times.

Exemption for broadscale clearing for conservation purposes or long-term environmental benefits:

It is hard to imagine circumstances where broadscale clearing would have “long term environmental benefits”, especially for wildlife. The terms “broadscale” and “minor clearing” should y be clearly defined so the intent is clearer.

Routine agricultural management activities (RAMAs) allowing clearing without approval:

This includes “invasive native plant species”, or INS. The definitions of what constitutes INS need to be very explicit, otherwise landholders could treat any natural regeneration as INS and think they can clear it or burn it without restriction. This would potentially result in the loss or severe degradation of thousands of hectares of vegetation that is of great importance to birds and other wildlife, and which may be the only habitat remaining over large areas of the landscape. **Most areas of regrowth vegetation that represent regeneration of previously cleared or radically thinned mature vegetation communities should be protected, and not left open to the risk of unregulated destruction.**

RAMAs, including INS clearing and thinning of native vegetation, are proposed to be done under “codes of practice”, but there seems to be no mechanism proposed to ensure that the codes are being followed, except possibly in the case of more extensive INS clearing, when the local Catchment Management Authority (CMA) appears to have an advisory role (but not an approving/non-approving role?). Equally worrying, there is no provision for assessing the cumulative impacts of clearing under RAMAs. The Native Vegetation Report Card is not proposed to report on activities carried out as RAMAs. **The lack of monitoring RAMA clearing and tracking of clearing impacts may only encourage violation of the rules, could obscure what is happening, and weakens the credibility of the draft Regulation.**

Encouragement of incremental vegetation loss: Changes to the Regulation that would facilitate the clearing of small (requiring definition) vegetation clumps and paddock trees signal an acceptance of incremental loss of vegetation, which was a problem with the pre-2003 Native Vegetation legislation. While it would not be fair or feasible to prevent clearing of all isolated trees in agricultural areas, the value of paddock trees and small vegetation clumps as habitat (and foci for regeneration) in denuded landscapes needs to be kept firmly in mind. Paddock trees are often old and contain scarce nesting hollows for birds, marsupials and bats. **An “open slather” approach to these features, on the basis that their individual value may be small, should certainly not be permitted.**

“Low condition” vegetation and offsetting: OEH Fact Sheets suggest that some vegetation that is of “low condition” (degraded) has not been designated as such previously, with the implication that

increased areas of “degraded” vegetation may be approved for clearing. Some vegetation that is not very degraded is capable of ecological improvement and it may provide the only wildlife habitat in some denuded districts. Therefore, decisions to on its destruction need to be made in these contexts. Once again, there is scope for unscrupulous landholders to describe non-degraded vegetation as “low condition” in order to get clearing approval. Applications need to be properly evaluated to avoid such abuses of the system.

A strength of the current EOAM (Environmental Outcomes Assessment Methodology) is the mechanism to identify “red light” vegetation that cannot be cleared. The ecological integrity of the Regulation would be severely diminished if this mechanism is brought into line with changes to the biobanking tool, to allow offset trading between vegetation formations rather than types.

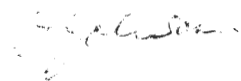
Compliance and enforcement:

OEH expects that most landholders will be prepared to work within the Regulation and the spirit of the Act. It says it hopes to “rebuild trust between the Government and landholders in native vegetation management” We hope this confidence is well-founded. However, there is still a need for significant penalties for serious infringement; but these are not evident in the Draft Regulation (Schedule 1). If the Regulation lacks “teeth” it will just be an encouragement to a fringe group of extremist landholders who think they have a right to do whatever they like on their land (and do not trust Governments). Such people are likely to influence others to act in the same way to subvert proper environmental management.

Conclusion:

An honest attempt to increase efficiency and clarity in the administration of the Native Vegetation Act 2003 is a worthwhile exercise, **but this should definitely not be done at the expense of effective vegetation conservation on the ground.** CBOC recommends a careful reconsideration of the aspects of the Draft Regulation (outlined above) that are we consider are likely to weaken environmental protection. If the Act is poorly or weakly administered through the Regulation, the result will be a further severe decline in native vegetation in many regions where it has already been reduced to small remnants. As a result, many species of birds and other animals that are still “hanging on” at the moment are likely to be pushed to extinction or near extinction in NSW; and this would be an entirely avoidable tragedy.

Yours faithfully,



I.G. Johnson

**Conservation Officer, for  
Cumberland Bird Observers Club**