

# ARMIDALE TREE GROUP NEWSLETTER

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## **The new Biodiversity laws: the return of broadscale clearing or new opportunities for conservation-minded landholders?**

**By Dr Chris Nadolny**



*Editor: Kerry Steller*  
The Armidale Tree Group  
80 Mann St, Armidale, 2350  
Phone 67711620  
[www.armidaletreegroup.org](http://www.armidaletreegroup.org)

**Cover Photo:** Clearing in progress near Moree (Photo by Glen Turner, February 2012)

### **Editor's note: 2018 Summer Edition**

Welcome to our 2018 Summer Edition of the ATG Newsletter. 2018 will be a big year for Every Tree Counts...watch this space. Our launch with landholders is happening soon and hopefully many will come on board with agreements to work with the Tree Group on this massive revegetation project along Saumarez Creek. Our sponsors and partners are starting to take shape and will feature in our next newsletter after our launch.

In this edition Chris Nadolny, ATG's Vice-President has written about the new Biodiversity laws and their impact on the landscape. Chris attempts to provide a balanced view in his review of new legislation and the impact these changes will have but he adds a note of caution. I'll let you make your own judgement on how the new legislation will affect conservation. He looks at the latest case of the attempt at felling of seventy-eight of UNE's grand old habitat trees (from which there has now been a reprieve due to a public outcry).

### **ATG Committee for 2018**

Dave Carr (President)  
Chris Nadolny (Vice President)  
Michael Patterson (Treasurer)  
Struan Ferguson (Secretary)  
John Lemon  
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Go to our website for details.

### **Also in this edition:**

- Alicia's **Manager's Report**
- The new Biodiversity Laws by Chris Nadolny
- Armidale's best kept secret – ATG wins a finalist award.

Enjoy the read.

*Kerry Steller (editor)*



*The ATG staff: Alicia, Emily, Jane, Ruth, Paul and Rob. Photo courtesy of Focus Magazine*

## **Manager's Report**

### **By Alicia Cooper**



*Alicia Cooper: Photo courtesy of Focus Magazine*

The height of Summer is often a challenging time for gardeners - wilting plants, hydrophobic soils and hot winds all conspire to keep us on our toes. Putting in the hard work now, in the form of soil amelioration, appropriate watering regimes and the ubiquitous mulch will pay dividends down the track. Healthy plants ready to embrace the Autumn growing season will lift the spirits.



We have recently acquired some new shelving (but still second hand, waste not want not) and it is proving invaluable for holding our wholesale hiko stock. There might also be some upgrades to the retail nursery section-watch this space!

Another welcome addition to our equipment list is our new Quik Spray unit. With a 100m remote control retractable hose, it will allow us to expand our weed control services, enabling us to tackle difficult areas and streamlining our weed maintenance regimes.



*Our new shelving (above) and our new Quik Spray unit out in the field.*

# **The new Biodiversity laws: the return of broadscale clearing or new opportunities for conservation-minded landholders?**

By Dr Chris Nadolny

Recently the NSW Government has almost completely re-written the legislation intended to protect native vegetation and wildlife in the State. Changes have included repealing the *Threatened Species Conservation Act*, *Native Vegetation Act*, *Nature Conservation Trust Act* and parts of the *National Parks and Wildlife Act* and replacing them with a *Biodiversity Conservation Act* and an amended *Local Land Services Act*.

The changes started with a review of the legislation by an expert panel that commenced in 2014. The new Acts were passed by Parliament in November 2016, with the Regulations, Codes of Practice and commencement of the legislation finalised in July 2017. Some of the work needed to underpin the new legislation, such as completion of new regulatory maps, has still not been finalized.

In this article, I intend to briefly describe the new legislation and assess its likely effects, especially related to protection of native vegetation. *It is not intended as, and should not be relied on, as a source of legal information for people intending to clear.* I will also mention some new opportunities created by the legislation for conservation-minded landholders to engage in and fund conservation initiatives. I will try to be objective in my assessment, but I should acknowledge that I am deeply concerned by some aspects of the legislation, so much so that I have financially contributed to a challenge to the legislation by the Nature Conservation Council in the High Court.

## **Why does native vegetation need protection?**

The first comprehensive legislation to protect native vegetation from inappropriate clearing in NSW dates from 1995 (*State Environmental Planning Policy No. 46*). Protection was considered necessary because many areas, particularly in the cropping zone, were becoming over-cleared, resulting in what many people regarded as an unacceptable loss of wildlife, including local extinctions of woodland birds. Clearing was not occurring everywhere and, for example, farmers on the Northern Tablelands were investing heavily in planting trees to replace trees lost due to dieback in the preceding decade. However, where agricultural expansion was occurring the benefits of retaining some trees and bushland in terms of providing habitat for wildlife, shade and shelter for livestock and moderating the local environment was often not fully appreciated. Some farmers who over-cleared benefitted financially by being able to increase production, but in less productive country such benefits were often short-lived, with clearing often leading to long-term issues such as erosion, soil acidity and

salinity, which sometimes affected areas well beyond those that were cleared. The tendency was to over-clear and often to ignore long-term impacts of clearing.

The emission of greenhouse gases is an impact, which is of increasing concern. The cutting down and burning of trees adds to carbon dioxide emissions. So much so that Australia fulfilled its pledge to reduce greenhouse gas emissions under the Kyoto protocol largely by slowing down the rate of tree clearing, mainly in Queensland. It is troubling that following the relaxation of clearing regulations in Queensland emissions from land clearing are again on the increase.

### **Reasons for dissatisfaction with the laws**

The native vegetation laws undoubtedly slowed down the rate of clearing in NSW, but the laws were never fully accepted by many rural landholders. There were several reasons why dissatisfaction grew. Firstly, the reasons for the laws and for protecting native vegetation in general were often poorly understood and seldom fully explained to farmers. Public education was neglected, and a public education component is still missing from the new legislation. Secondly, a bureaucratic (“command and control”) approach made it difficult for farmers to negotiate and sometimes led to poor local outcomes when dealing with issues such as gaining approval to thin trees that have grown too densely. There were “red lights” that strictly prohibited clearing of kinds of vegetation that was considered threatened. These were good from a conservation perspective but bad for public relations, especially when coupled with the lack of understanding of the need for protection in the first place. Thirdly, as time went on farmers became aware of inconsistencies in the application of the law. For example, native pastures were supposed to be protected, but as far as I know nobody was ever prosecuted for ploughing out native pasture. In this case, the absence of prosecutions related to difficulties of proving exactly what was cleared and whether it was protected vegetation. There were unsatisfactory delays in processing approvals to clear, which grew longer as time went on.

In general, the lack of compliance staff and the difficulty of proving offences meant that no action was taken following most small breaches of the Act. This led to a perception that the legislation was poorly enforced. At the same time, in the better cropping country there were large financial incentives for farmers to clear. For example, clearing and ploughing to enable cropping could easily increase the value of an old grazing property with woodland and scattered trees by a million dollars, or more on large properties. Whereas fines of over \$100,00 for illegal clearing were rare, even if you were caught.

The difficulty of mounting a prosecution for clearing also created incentives that resulted in a minority of landholders concerned to act evasively. It became known that if a prosecution could be delayed for 2 years then the case would become statute barred. Physical evidence, such as heaps of felled trees that



could be identified and measured, were burnt as soon as it was known that investigators were on their way. Landholders failed to show up for appointments for interviews with compliance staff. Government mail sat unopened. In a few cases, this evasion developed into what I would regard as criminal behaviour, such as threatening public officials or witnesses, or worse. I am concerned that the new legislation does little to discourage this type of behaviour. For example, compliance officers still lack powers to stop clearing on the spot.



*Felled trees set on fire just before an inspection, near Bendemeer (Photo by Glen Turner, 25/8/2009)*

### **The Independent Panel**

The Independent Panel was chaired by Neil Byron, who had previously chaired the productivity commission when it reviewed native vegetation regulations and was a known critic of the *Native Vegetation Act*. The ecological representative was Professor Hugh Possingham from University of Queensland.

The Panel proposed 43 recommendations, highlights were:

- To focus on conservation at Bioregional/State scale and to drop the so-called “maintain & improve test”, which was intended to ensure that developments maintain environmental values at a site scale (e.g. by requiring off-sets to compensate for ecological harm)

- That the approval process for “new” agricultural developments be consistent with approvals for non-agricultural developments, while other on-farm clearing would be administered by the Local Land Services
- To promote and provide funding for private land conservation
- To develop regulatory maps for the whole State to show precisely whether clearing of native vegetation is constrained by regulations or is exempt from regulation.
- More use of offsetting and greater use of “Codes of practice”
- To ensure that the legislation comply with the *Principles of Ecologically Sustainable Development* and change the definition of those principles to include social considerations.

### **Writing of the new legislation**

While the NSW Government adopted all the recommendations of the Panel and there was merit in many of them, as more became known about the new legislation it soon became obvious that “the devil was in the detail”. The promise that assessment of agricultural developments would be consistent with that of non-agricultural developments never eventuated. In practice, there was a marked disparity between assessments under the *Biodiversity Conservation Act* and those under the amended *Local Land Services Act*. Actions such as conversion of grazing land to broadacre cropping were not treated as comprising new developments. And the legislation certainly did not comply with the *Principles of Ecologically Sustainable Development*.

The Panel became divided over the issue of what should be permitted under “Codes of Practice”. The Codes of Practice are to enable landholders to carry out specified clearing for a specified purpose provided they agree to specified conditions. Hugh Possingham became concerned that the codes were being written to enable what he considered “high-risk activities”, such as clearing of threatened ecological communities and broad-scale clearing. Eventually Hugh Possingham, finding that he was unable to convince the other Panel members about this issue, resigned from the Panel. Virtually all his objections were overridden. The draft legislation was released for public exhibition prompting over 6000 submissions, which led to some changes, with other changes made as the legislation went through Parliament. However, the nature of what is allowable under the legislation has largely remained unchanged, with the minor exceptions such as stipulation of extra restrictions on clearing of land mapped as vulnerable.

### **Provisions for regulation of clearing on rural land**

A key feature of the new regulations will be the provision of a regulatory map that designates where clearing of native vegetation is or is not regulated. For



example, clearing would not be regulated where native pasture is mapped as being of low conservation value. This map has not been finalised and transitional arrangements are in place.

On regulated land, there is allowable clearing for rural infrastructure, for example, in our region, a maximum of 30 m of clearing along fencelines or around specified infrastructure is allowed without a permit. There is also clearing that can be done under the codes of practice, which have been consolidated in the *Land Management (Native Vegetation) Code 2017*. Under the Code there are an assortment of separate codes listed under five broad categories:

***Invasive Native Species*** – enables the removal of invasive native species that have reached unnatural densities and dominate an area.

***Pasture Expansion*** - enables the removal of woody native vegetation by uniform or mosaic thinning.

***Continuing use*** - enables clearing of a nature that occurred since 1990 or since 1950 to be repeated.

***Equity*** - enables the removal of paddock trees, compromised native groundcover, and native vegetation in exchange for set aside areas containing remnant vegetation.

***Farm Plan*** - enables the removal of paddock tree areas and clearing regulated rural land in exchange for set aside areas containing remnant vegetation or set aside areas where revegetation will be required.

(See: <https://www.lls.nsw.gov.au/sustainable-land-management> )

Use of codes mostly requires notification and some require the establishment of set-aside areas that are managed for conservation. Some codes, if widely adopted, may significantly impact native vegetation. For example, under the equity provisions on a property with 1000 ha of native woodland up to 100 ha can be cleared under the Code in a 3-year period (that is one square kilometre), with another 100 ha of clearing allowable in the following 3 years. Set-aside areas that are managed for conservation would need to be at least double the area cleared, but set-asides will never compensate for the loss of habitat for wildlife. Furthermore, threatened entities are not adequately protected.

Endangered species and ecological communities can be cleared under the codes, with only critically endangered species and ecological communities being fully protected. Endangered ecological communities such as Brigalow, which grows on arable soils and has already been reduced to less than 10% of its original extent in NSW, will be particularly susceptible to further clearing under this code.

Use of other codes could also lead to significant clearing. For example, there are many places that were cleared since 1950 that could easily be cleared again using the continuing use code. And widespread use of the Farm Planning code, replacing 100-year-old trees with seedlings would hardly be a plus for wildlife habitat.

If a landholder intends to carry out on-farm clearing that does not comply with a code then there is a provision to enable the application to be put before a Panel. However, I expect such applications will be relatively infrequent. The new legislation still has heavy penalties for illegal clearing, although the capacity of compliance and legal officers to launch successful prosecutions under the new legislation remains untested.

### **Private Land Conservation**

The NSW Government has committed \$240 million to private land conservation in first 5 years and then \$70 million per year afterwards. Three tiers of private land conservation arrangements will be supported:

1. Biodiversity Stewardship Agreements – which are intended for secure perpetual protection and involve a covenant specifying the land will always be managed for conservation
2. Conservation Agreements – which are slightly less onerous
3. Wildlife Refuge Agreements – which support more general conservation activities on farms.

The funds will be invested based on priorities set by the NSW Biodiversity Conservation Trust (see <https://www.bct.nsw.gov.au/> ).

In addition to the arrangements that the NSW Government are directly supporting, they are brokering the establishment of off-sets, which are areas that are managed for conservation in perpetuity and are intended to compensate for the impacts of developments assessed under the *Biodiversity Conservation Act*, such as new mines, urban subdivisions, etc. The idea is that improvements in the off-set sites achieved through long-term management for conservation will compensate for the environmental destruction resulting from the development. The concept requires that off-set and development sites are matched, with similar vegetation supporting a similar assemblage of native fauna.

I have concerns about over-reliance on off-sets. In the long-run, with each new development the total area of bushland diminishes, and the off-setting system relies too much on the honesty of environmental contractors to match like-for-like. However, the approach is at least loosely based on conservation science and, for example, ecologists have been widely consulted regarding the expected time-frame over which positive changes in site conditions can be achieved. If implemented properly the off-sets will result in a lot more forests and woodlands being managed for conservation. An interesting facet of the system is that provision of off-set sites will be put out to tender and hopefully at least some of the people ultimately doing the management for conservation, will be people who are genuinely interested in conservation.

## **An overall assessment – What will the new legislation mean for conservation?**

The reforms will certainly make it easier for landholders to clear land legally. And if the recent clearing trends in Queensland, which followed a similar loosening of regulations, are a guide, then absolute rates of clearing (legal + illegal) will increase too. In Queensland clearing rates went up from less than 100,000 ha in 2010-11, to 298,000 ha in 2014-15, to 395,000 hectares in 2015-16 (Source:

<https://www.qld.gov.au/environment/land/vegetation/mapping/slats-reports#slats-most-recent-reports> ). Areas managed for conservation should also increase, but I expect that from a biodiversity perspective that will not compensate for the increase in clearing.

One problem with making any assessment is that the latest clearing figures available for NSW are for the year 2012-13, with the people who normally assess clearing rates all busy on the regulatory map. In 2012-13 some 13,000 hectares of woody vegetation were reported as being cleared for agriculture or provision of infrastructure

(<http://www.environment.nsw.gov.au/vegetation/reports.htm> ). This excludes clearing of native grasslands and wetlands, clearing for forestry, losses from wild fires. While this a low rate compared with Queensland, all the information I have suggests that clearing rates, particularly illegal clearing on the north-west floodplains, have increased very substantially since then. We need reliable information to make a proper assessment of how much clearing is happening, so that we can figure out what to do about it.

Substantial clearing is associated with either expansion of cropping or removal of paddock trees on the North-Western Floodplains and Central West. This is where the climate is rapidly becoming hotter and drier and cropping could easily become marginal. The reason why many cropping farmers remove trees - that get in the way of their farm machinery - is easy to appreciate. But are we creating a desert? If the farmers need to return to grazing all the shade, shelter and trees that help to moderate the climate will be gone. The American biologist E. O. Wilson has suggested that all we can expect of environmental laws is to slow down actions to make people think of the consequences. But the pathway to stop environmental destruction is through education. We need to develop a better understanding of nature and our place in it and act appropriately.

Chris Nadolny, January 2018



### **The felling of habitat trees on University of New England Campus – a link to the new legislation**

UNE is currently carrying out a plan to fell about 78 large trees on campus. Many of them are hollow-bearing indigenous trees that possibly pre-date European settlement, and are of immense value as wildlife habitat. Possums, gliders, parrots, insectivorous bats and a range of other creatures depend on the hollows. In addition, the trees are food-trees for Koalas.

The Government proclaimed planning policies dealing with approvals for clearing of vegetation in urban areas that are linked with other legislation discussed in this article. It appears that the felling of the trees on UNE Campus is being done legally under the *State Environment Planning Policy (Educational Establishments and Child Care Facilities) 2017* on the grounds of risk to people or infrastructure based on the assessment of qualified arborists. A tree will need to be planted for each one felled.

Under the legislation there is no requirement to consult with ecologists, even if wildlife is clearly at risk, and there is no requirement to explore other means of addressing safety concerns before resorting to removing trees altogether.



*A tree is felled in the Natural Resources carpark (Photos by Tim Collins, Jan 2018)*

## **Armidale's Best Kept Secret and our Finalist Award for our efforts by Kerry Steller**

You may have discovered this gem of an area to walk and relax. Commonly known as the Mike O'Keeffe Woodland, the Black Gully Crown Reserve has been transformed from a weed-infested dumping ground into the restored and revegetated area we all enjoy today. As trustees of this Crown reserve the Armidale Tree Group was recognised as one of three finalist in the 2017 Department of Primary Industries Crown Reserve Trust – Corporate Manager's Award.



*Kerry and David Steller with Daniel Gibson (Prime 7) with the finalist plaque at the Awards night in Newcastle last November.*

The Black Gully Crown Reserve has been managed and restored by the Armidale Tree Group Inc. volunteers over the past twenty-two years. Over this time the Tree Group's vision to 'Re-leaf New England' has resulted in the restoration of this remnant threatened Ribbon Gum, Mountain Snow Gum, Grassy Forest and Woodland ecological community as both an educational and a leisure facility for the community. This restoration has involved the construction of a large weir, extensive woody weed removal, the growing and planting of 5,000 trees and shrubs, the construction of a bird hide, nesting boxes, boundary fences and gates, walking tracks, seating, and the erection of ecological signage throughout the reserve.



The local community has been provided with a peaceful, well maintained bushland area within the city boundary that provides opportunities for local residents for walking, bird watching and placid recreational and leisure activities. Feedback from locals who utilise the reserve is overwhelmingly positive, especially over the last five years, as the restoration has neared completion. Many local residents have had an ongoing input onto this area and as a result display stewardship of this area.



*The weir over Black Gully in the Mike O'Keeffe Woodland*

*Planting and Naming the  
Mike O'Keeffe Woodland*





## Membership Application/Renewal

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Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**Payment method:** cash / cheque / credit card / direct credit

Membership is \$5.00 per year

Donation \$ \_\_\_\_\_

Please find enclosed my/our cheque for \$ \_\_\_\_\_

Make cheques payable to Armidale Tree Group Inc.

or

Please debit my credit card for \$ \_\_\_\_\_

**Card type:** Visa / Mastercard only

**Card number:** \_\_\_\_\_

**Expiry date:** \_\_\_\_\_

**CCV number:** \_\_\_\_\_

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**Donations over \$2.00 are tax deductible to The Armidale Tree Group Fund**

Date processed: \_\_\_\_\_

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