

Submission to the State Development, Natural Resources and Agricultural Industry Development Committee
regarding the Vegetation Management and Other Legislation Amendment Bill 2018

Dr Hugh Finn

– 19 March 2018

**Submission to the State Development, Natural Resources and Agricultural
Industry Development Committee regarding the Vegetation Management
and Other Legislation Amendment Bill 2018**

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19 March 2018

Summary of Submission

1. This submission is made to the State Development, Natural Resources and Agricultural Industry Development Committee to support the Committee's consideration of the Vegetation Management and Other Legislation Amendment Bill 2018 (the 'Bill') and to inform any recommendations the Committee may make as to further reform of the State's vegetation management framework.
2. If the Committee would be assisted by oral evidence, I would be available to appear as a witness at the public hearing on Friday 23 March 2018 or possibly at other hearings depending on the dates.

Evaluation of the Bill

3. There is a strong scientific basis for reforming the State's vegetation management framework to better protect remnant and regrowth vegetation.
4. The amendments proposed in the Bill would advance the purposes of the *Vegetation Management Act 1999* and the *Planning Act 2016* and would be consistent with the directive in the preamble to the *Constitution of Queensland 2001* that the 'people of Queensland...determine to protect our unique environment'.
5. Implementation of the amendments in the Bill would have considerable benefits for the welfare of native animals in this State. The proposed reforms would reduce the amount of remnant and regrowth vegetation that is cleared in the State and thereby also reduce the number of native animals that are killed, injured and otherwise harmed as a consequence of land clearing actions.

Further reforms needed to better protect the welfare of native animals

6. Nonetheless, further reforms of the State's vegetation management framework are required to better protect the welfare of native animals. In particular, further reforms are needed to ensure that:
 - (1) the welfare of native animals is expressly considered in decision-making about the clearing of remnant and regrowth vegetation; and
 - (2) the clearing of remnant and regrowth vegetation is conducted in a manner that avoids and minimises harm to native animals.

Summary of key points

7. The submission makes the following main points:

Point 1: Reducing clearing of remnant and regrowth vegetation will reduce the number of native animals that are killed, injured, or otherwise harmed by land clearing in Queensland.

In October 2017 a report authored by several of the leading wildlife biologists in Australian estimated that land clearing kills 44.7 million individuals (1.1 million mammals, 3.7 million birds and 39.9 million reptiles) per year in Queensland based on clearing rates for 2015-2016.¹

Point 2: Clearing of remnant and regrowth vegetation in Queensland causes deaths and injuries that are physically painful and psychologically distressing to native animals and which may cause them to suffer over extended periods.

Land clearing harms native animals in two basic ways. First, animals may be killed or injured when machinery is used to clear native vegetation. For example, animals may suffer traumatic injuries or be smothered when vegetation is cut or soil and debris are shifted. Second, the removal of native vegetation places animals in harm's way because it forces them into environments that are hostile, unfamiliar or unsuitable. Animals that survive the clearing process will struggle to find food and shelter and are likely to interact with threats like predators, pathogens, aggression from other animals, fences, and cars.²

Point 3: The State's vegetation management framework does not expressly require the welfare of native animals to be considered in decision-making or impose clear standards of conduct, applicable to all clearing actions, that require persons to avoid and minimise harm to native animals using practicable measures.

The main elements of the State's vegetation management framework do not expressly recognise harm to the welfare of native animals as an object or a relevant consideration. Further, there is no code of practice, made under the *Animal Care and Protection Act 2001*, to inform and regulate the conduct of persons who clear native vegetation and require the use of practicable measures to avoid and minimise harm to individual animals.³

¹ H. Cogger, C. Dickman, H. Ford, C. Johnson, and M. Taylor. (2017). Australian animals lost to bulldozers in Queensland 2013-2015. WWF-Australia, Brisbane. Available at: <http://www.wwf.org.au/ArticleDocuments/353/pub-australian-animals-lost-to-bulldozers-in-queensland-2013-15-25aug17.pdf.aspx?Embed=Y>

² H.C. Finn and N.S. Stephens. (2017). The invisible harm: land clearing is an issue of animal welfare. *Wildlife Research* 44(5): 377-391. <http://dx.doi.org/10.1071/WR17018> Available at <http://www.publish.csiro.au/WR/WR17018> or by contacting Hugh Finn at h.finn@curtin.edu.au; M. Taylor, C. Booth, and M. Patterson. (2017). Tree-clearing: the hidden crisis of animal welfare in Queensland. WWF-Australia and RSPCA Queensland, Brisbane. Available at: <http://www.wwf.org.au/ArticleDocuments/353/pub-tree-clearing-hidden-crisis-of-animal-welfare-queensland-7sep17.pdf.aspx?Embed=Y>; Hanger, J., and Nottidge, B. (2009). Draft Queensland code of practice for the welfare of wild animals affected by land-clearing and other habitat impacts and wildlife spotter catchers. Australia Zoo Wildlife Hospital, Beerwah, Queensland. Available at <http://www.aph.gov.au/DocumentStore.ashx?id=42991366-5939-4305-90be-c56e3365947e>

³ The draft 'Queensland code of practice for the welfare of wild animals affected by land-clearing' authored by Dr Jon Hanger and Ben Nottidge (see footnote 2) provides a clear framework from which to develop a code of practice to be made under the *Animal Care and Protection Act 2001*.

Point 4: The avoidance and minimisation of harm to native animals is an appropriate policy objective for the State's vegetation management framework.

Further reforms of the State's vegetation management framework to support native animal welfare can be justified on at least three grounds:

(1) Stewardship

The fauna of the State belong to the people of Queensland⁴ and the State's vegetation management framework should therefore balance the people's interest in preserving the State's native animal resource with the interests of those who wish to change the use of their land by clearing native vegetation.⁵

(2) Guardianship

Governments have a responsibility to act as guardians for animal welfare on behalf of their citizens.⁶ The State's vegetation management framework should therefore balance the welfare needs of native animals and the interests of those who wish to clear native vegetation and, as a necessary consequence of that activity, kill, injure or otherwise harm native animals that inhabit that vegetation⁷.

(3) Contemporary Community Attitudes and Expectations

The State's vegetation management framework should reflect community attitudes and expectations as to how native animals should be treated. There is a clear community expectation that the use of native animals for human benefit should be guided by scientific knowledge about the welfare needs of animals and the nature of the harms imposed by human activities.⁸

Proposed reforms to better protect native animal welfare

8. To assist the Committee's consideration of the Bill, the adequacy of the State's vegetation management framework, and the issue of native animal welfare, the submission suggests potential amendments to the *Vegetation Management Act 1999*, the *Nature Conservation Act 1992*, the State Policy for Vegetation Management, the State Planning Policy, the *Planning Regulation 2017*, and the State Development Assessment Provisions (see Appendix).

⁴ See *Yanner v Eaton* (1999) 201 CLR 351, 369-370 [28].

⁵ See *Booth v Frippery Pty Ltd* (2006) 2 Qd R 201, 216 [28].

⁶ See Commonwealth of Australia (2011). 'Australian Animal Welfare Strategy and National Implementation Plan 2010–2014.' (Commonwealth of Australia: Canberra) at page 13. Available at: <http://www.australiananimalwelfare.com.au/content/about-aaws>

⁷ See section 3 of the *Animal Care and Protection Act 2001* and the Explanatory Notes for the Animal Care and Protection Bill 2001 at pages 1-3.

⁸ See section 3 of the *Animal Care and Protection Act 2001* and the Explanatory Notes for the Animal Care and Protection Bill 2001 at pages 1-3.

9. This submission also proposes that the State Government implement a code of practice about animal welfare relating to land clearing operations, to be made under the *Animal Care and Protection Act 2001*. Such a code could be based upon the draft ‘Queensland code of practice for the welfare of wild animals affected by land-clearing’ authored by Dr Jon Hanger and Ben Nottidge in 2009.⁹

⁹ See footnote 2. A copy of that document is available at <http://www.aph.gov.au/DocumentStore.ashx?id=42991366-5939-4305-90be-c56e3365947e>

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Introduction

Background to the Bill and Policy Objective of the Bill

10. This submission is made to the State Development, Natural Resources and Agricultural Industry Development Committee to support the Committee's detailed consideration of the Vegetation Management and Other Legislation Amendment Bill 2018 ('the Bill').
11. The Bill was introduced into the Queensland Parliament by the Honourable Dr Anthony Lynham MP, Minister for Natural Resources, Mines and Energy on 8 March 2018 and was referred to the State Development, Natural Resources and Agricultural Industry Development Committee for detailed consideration.
12. The Explanatory Notes for the Bill state that the 'policy objective of the Bill is to amend the *Vegetation Management Act 1999*, *Planning Act 2016*, *Planning Regulation 2017* and *Water Act 2000* to reinstate responsible clearing laws'.
13. In the Introductory Speech for the Bill, the Honourable Dr Lynham said:

The amendments that I bring into the parliament are necessary to protect Queensland's remnant and high-value regrowth vegetation. It is all about restoring a sustainable vegetation management framework for managing a valuable resource on behalf of the people of Queensland. (Record of Proceedings, 8 March 2018, page 415)

Purpose of this Submission

14. This submission contributes information to add to the Committee's knowledge and understanding of issues relevant to its consideration of the Bill and to any recommendations the Committee may make as to further reform of the State's vegetation management framework.
15. If the Committee would be assisted by the giving of evidence at a public hearing, I would be available to appear as a witness at the public hearing scheduled for Friday 23 March 2018 (Parliament House, Brisbane) or possibly at a regional hearing depending on the date of the hearing.
16. The principal purposes of this submission are to:
 - a. review the scientific basis for how the clearing of remnant and regrowth vegetation kills, injures and otherwise harms native animals in Queensland; and
 - b. propose further reforms to the State's vegetation management framework to ensure that the welfare of native animals is expressly considered in decision-making and that the clearing of remnant and regrowth vegetation is conducted in a manner that avoids and minimises harm to native animals.

17. To support discussion about further reform of the State's vegetation management framework, the submission suggests potential amendments to the *Vegetation Management Act 1999*, *Nature Conservation Act 1992*, State Policy for Vegetation Management, State Planning Policy, *Planning Regulation 2017*, and State Development Assessment Provisions (see Appendix).
18. The submission also proposes that the State Government implement a code of practice about animal welfare relating to land clearing operations, to be made under the *Animal Care and Protection Act 2001*.
19. The submission includes (as an Attachment) a copy of a recent article, entitled 'The invisible harm: land clearing is an issue of animal welfare', that Dr Nahiid Stephens and I co-authored in 2017. The article was published in *Wildlife Research*, an international peer-reviewed scientific journal published by CSIRO Publishing.¹⁰ The citation to the article is:

H.C. Finn and N.S. Stephens. (2017). The invisible harm: land clearing is an issue of animal welfare. *Wildlife Research* 44(5): 377-391. <http://dx.doi.org/10.1071/WR17018>

¹⁰ There is also an accompanying piece in *The Conversation*: <https://theconversation.com/land-clearing-isnt-just-about-trees-its-an-animal-welfare-issue-too-80398>

I. Land clearing kills, injures and otherwise harms native animals

20. There is broad acceptance that land clearing is a fundamental pressure on the Australian environment and that deforestation in Queensland impacts adversely on biodiversity and ecosystem function (terrestrial, freshwater and marine) and contributes to land degradation and climate change.¹¹
21. The amendments proposed in the Bill would advance the purposes of the *Vegetation Management Act 1999* and the *Planning Act 2016* as well as other related legislation, such as the *Nature Conservation Act 1992*. The amendments would also be consistent with the directive in the preamble to the *Constitution of Queensland 2001* that the ‘people of Queensland...determine to protect our unique environment’.
22. The impacts of land clearing on the native fauna of Queensland are profound and well-documented.¹² These effects include native animal mortality rates estimated in the tens of millions per year, with the most recent estimate being that land clearing kills 44.7 million wild animals (1.1 million mammals, 3.7 million birds and 39.9 million reptiles) in Queensland per year based on land clearing rates for 2015-2016.¹³
23. There is now a strong scientific basis for the harm that land clearing in Queensland causes to individual native animals.¹⁴ A joint report by RSPCA Queensland and the World Wildlife Fund described the issue as ‘the single greatest animal welfare crisis in Queensland’ because of the extent of the death and suffering involved.¹⁵
24. That death and suffering arises because the activity of removing of native vegetation kills or injures animals in ways that are traumatic, debilitating and physically painful and because animals experience physical injuries, other pathologies, pain and psychological

¹¹ See, for example: A.E. Reside, J. Behr, A.J. Cosgrove, M.C. Evans, L. Seabrook, J.L. Silcock, A.S. Wenger, and M. Maron. (2017). Ecological consequences of land clearing and policy reform in Queensland. *Pacific Conservation Biology* 23(3): 219-230. Available at: http://www.hopeaustralia.org.au/uploads/media/Ecological_Consequences_Land_Clearing_in_QLD_Reside_et_al_2017_.pdf; W.J. Jackson, R.M. Argent, N.J. Bax, E. Bui, G.F. Clark, S. Coleman, I.D. Cresswell, K.M. Emmerson, K. Evans, M.F. Hibberd, E.L. Johnston, M.D. Keywood, A. Klekociuk, R. Mackay, D. Metcalfe, H. Murphy, A. Rankin, D.C. Smith, and B. Wienecke, B. (2016). Overview: Land-use change, and habitat fragmentation and degradation threaten ecosystems and resilience. In ‘Australia State of the Environment 2016’. (Australian Government Department of the Environment and Energy: Canberra.) Available at <https://soe.environment.gov.au/theme/overview/topic/land-use-change-and-habitat-fragmentation-and-degradation-threaten-ecosystems>; D. Metcalfe, and E. Bui. (2016). Land: regional and landscape-scale pressures: land clearing. In ‘Australia State of the Environment 2016’. (Australian Government Department of the Environment and Energy: Canberra.) Available at <https://soe.environment.gov.au/theme/land/topic/2016/regional-and-landscape-scale-p pressures-land-clearing>

¹² See, for example: V.J. Neldner, M.J. Laidlaw, K.R. McDonald, M.T. Mathieson, R.I. Melzer, R. Seaton, W.J.F. McDonald, R. Hobson, and C.J. Limpus. (2017). Scientific review of the impacts of land clearing on threatened species in Queensland. Queensland Government, Brisbane. Available at: <https://www.ehp.qld.gov.au/wildlife/threatened-species/documents/land-clearing-impacts-threatened-species.pdf>; Reside *et al.* (2017), footnote 11.

¹³ H. Cogger, H. Ford, C. Johnson, J. Holman, and D. Butler, D. (2003). ‘Impacts of land clearing on Australian wildlife in Queensland.’ WWF-Australia: Brisbane. Available at: http://awsassets.wwf.org.au/downloads/sp128_impacts_land_clearing_on_australian_wildlife_qld_1jan03.pdf; Cogger *et al.* (2017), footnote 1. The authors of those two reports include some of the most distinguished wildlife biologists in Australia.

¹⁴ Finn and Stephens (2017), footnote 2; Taylor *et al.* (2017), footnote 2.

¹⁵ Taylor *et al.* (2017), footnote 2, page 4.

distress as they attempt to survive in cleared areas and in environments they are displaced to.¹⁶

25. The benefits of the Bill for the welfare of Queensland's native animals should not be underestimated. Any reduction in the clearing of remnant and regrowth vegetation will reduce the number of native animals that are killed, injured, or otherwise harmed by land clearing in Queensland.

¹⁶ Finn and Stephens (2017), footnote 2. Relevantly, the Schedule to the *Animal Care and Protection Act 2001* defines 'pain' to include distress and mental or physical suffering.

II. The State's vegetation management framework & native animal welfare

26. To better protect native animal welfare, reforms are needed to address two particular deficiencies in the State's vegetation management framework.
27. First, key elements of the existing framework – the *Vegetation Management Act 1999*, the State Policy for Vegetation Management, and the State Development Assessment Provisions - State code 16: Clearing native vegetation – do not expressly recognise harm to the welfare of individual native animals as an object or a relevant consideration.
28. The existing framework therefore does not require decision-makers to identify and evaluate the harm that a proposed clearing action may cause to the welfare of individual animals. Relevantly, the existing regulatory framework also does not require applicants to provide information that would assist in characterising the harm that a proposed clearing action would cause, such as fauna mortality estimates.
29. Second, there is no code of practice, made under the *Animal Care and Protection Act 2001*, to inform and regulate the conduct of persons who clear native vegetation and require the use of practicable measures to avoid and minimise harm to individual animals.
30. While there are some legislative and policy instruments relating to koalas and the manner in which vegetation is to be cleared, they are species-specific and do not impose the same potential sanction if they are contravened. For example, the sequential clearing and spotter requirements in sections 10 and 11 (respectively) of the *Nature Conservation (Koala) Conservation Plan 2017* carry only a maximum penalty of 120 penalty units for a contravention, whereas section 15 of the *Animal Care and Protection Act 2001* provides the maximum penalty for a failure to comply with a compulsory code of practice requirement is 300 penalty units.

III. Avoiding and minimising harm to native animals is an appropriate policy objective for the State's vegetation management framework

31. The Legislative Assembly has plenary legislative power to make laws for the peace, welfare and good government of the State.¹⁷ Further, the preamble to the *Constitution of Queensland 2001* provides that the 'people of Queensland...determine to protect our unique environment'. The Queensland Parliament thus has the power and a clear constitutional directive to enact legislation that protects the environment of the State.
32. Reform of the State's vegetation management framework to support native animal welfare could be justified on a range of policy grounds. These include the responsibility of the State government to:
- (a) act as a custodian of the State's native animals;
 - (b) act as a guardian for the welfare interests of native animals; and
 - (c) ensure that the use of native animals reflects community attitudes and expectations as to how native animals should be treated and how activities that kill, injure, and otherwise harm native animals are to be appropriately regulated.

The State as custodian of a public resource - native animals belong to the people of Queensland

33. It is a long-standing principle in Queensland that native animals belong to the people of the State.¹⁸ As was said on the floor of the Queensland Parliament in 1924: 'The native animals belong to the people in just the same way as the timber and the minerals belong to the people'.
34. The notion that native animals belong to the people underpins the statutory vesting of property in fauna in the State under the *Nature Conservation Act 1992*.¹⁹ That vesting represents 'a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource'²⁰ which imposes upon the State a 'sort of guardianship for social purposes'²¹ in relation to that resource.²²

¹⁷ See section 2 of the *Constitution Act 1867*, read with section 8 of the *Constitution of Queensland 2001*.

¹⁸ Queensland, Legislative Assembly, Parliamentary Debates (Hansard), 12 September 1924 at page 825, quoted in *Yanner v Eaton* (1999) 201 CLR 351, 369 [28].

¹⁹ Section 83 of the *Nature Conservation Act 1992* provides that, with some qualifications, all 'protected animals' are the property of the State. The Schedule to the *Nature Conservation Act 1992* defines 'protected animal' to include an animal that is prescribed under that Act as threatened, near threatened or least concern wildlife. The effect of the provisions and schedules to the *Nature Conservation (Wildlife) Regulation 2006* is that amphibians, birds, mammals and reptiles that are indigenous to Australia are, with some exceptions, least concern wildlife unless they are otherwise prescribed as extinct in the wild, endangered, vulnerable or near threatened wildlife.

²⁰ *Yanner v Eaton* (1999) 201 CLR 351, 369 [28].

²¹ *Yanner v Eaton* (1999) 201 CLR 351, 370 [29].

²² That custodial (or stewardship) role is reflected in the emphasis on ecologically sustainability and intergenerational equity in the State's planning and environmental laws. For example, the *Nature Conservation Act 1992* refers to the 'ecologically sustainable use' of protected wildlife, which the Act defines as 'the taking or use of the wildlife' that, inter alia, ensures that the benefit of the use to present generations does not diminish the potential to meet the needs and aspirations of future generations.

35. The State has exercised that power to impose various rights of control on the taking of native animals. For example, section 88(2) of the *Nature Conservation Act 1992* prohibits the taking of a protected animal unless the person is an authorised person or the taking is authorised under the Act.²³
36. The State has also exercised that power to ensure that the use of native animals for private purposes provides a pecuniary benefit to the State. For example, section 95(1) of the *Nature Conservation Act 1992* provides that if a person takes ‘protected wildlife’²⁴ under a licence, permit or other authority issued or given under a regulation, that person must pay the conservation value prescribed under the Act for wildlife of that particular class. The conservation value is said to represent ‘an expression in monetary terms of the State’s conservation concern for the wildlife’²⁵ and values range from \$14,352 per individual for endangered wildlife to \$1,785 per individual for least concern wildlife.²⁶
37. On that basis, the killing of 1.1 million mammals, 3.7 million birds and 39.9 million reptiles each year, generally in circumstances where few or no practicable measures are implemented to avoid or minimise harm to individual animals and where no direct financial compensation is paid to the State for the consumption of that fauna resource, could be said to represent a substantial derogation from the State’s responsibility to ensure that public resources are used in a manner that appropriately balances the people’s interest in preserving animal and plant life with the economic and social interests of those who wish to change the use of their land by removing remnant and regrowth vegetation.²⁷

The State as the guardian of native animal welfare – regulating a harmful and consumptive use of animals

38. There is a clear community expectation that the State Government should act, on behalf of the people of Queensland, as a guardian for the welfare of native animals. There is a further expectation that the use of native animals for human benefit should be guided by scientific knowledge about the welfare needs of animals and the harms imposed by human activities.
39. A guardianship role for the State Government in relation to native animal welfare is implicit in the scope of the *Animal Care and Protection Act 2001*, which protects both wild and domestic animals,²⁸ and in the manner in which the Act is currently enforced, which

²³ The Schedule to the *Nature Conservation Act 1992* defines ‘take’, in relation to an animal, to mean ‘hunt, shoot, wound, kill, skin, poison, net, snare, spear, trap, catch, dredge for, bring ashore or aboard a boat, pursue, lure, injure or harm the animal’. Section 88(3) then provides that it is a defence to a charge of taking a protected animal in contravention of s 88(2) to prove that: (a) the taking happened in the course of a lawful activity that was not directed towards the taking; and (b) the taking could not have been reasonably avoided. The Queensland Court of Appeal has said that s 88(3) provides a defence where the taking of a protected animal was unintended and, in the course of the defendant’s activity, was not reasonably avoidable: *Booth v Frippery Pty Ltd* (2006) 2 Qd R 201, 217 [31].

²⁴ The Schedule to the *Nature Conservation Act 1992* provides that ‘protected wildlife’ means native wildlife prescribed under that Act as falling within one of five classes of wildlife (ie extinct in the wild, endangered, vulnerable, near threatened, or least concern wildlife).

²⁵ Section 92(1) of *Nature Conservation Act 1992*.

²⁶ Regulation 351(1) of the *Nature Conservation (Wildlife Management) Regulation 2006*.

²⁷ See *Booth v Frippery Pty Ltd* (2006) 2 Qd R 201, 216 [28].

²⁸ See section 11 of the *Animal Care and Protection Act 2001*.

involves a sharing of enforcement responsibility between Biosecurity Queensland and RSPCA Queensland.

40. A guardianship role for the State means, in basic terms, that the State has a duty to identify, evaluate, and appropriately regulate human activities that have a direct impact on the welfare on native animals.²⁹ As described above, there is a strong scientific basis for the harm that the clearing of native vegetation causes to native animals. In brief, land clearing is an activity that has a high objectivity probability of causing severe harm (ie death, injury, or other significant harm) to native animals associated with the vegetation. That risk is also reasonably foreseeable – a reasonable person would recognise that it is likely, if not inevitable (in many circumstances), that native animals will be killed, injured or otherwise harmed if remnant or regrowth vegetation is cleared.
41. The State Government therefore has a responsibility to ensure that the State's vegetation management framework appropriately balances the welfare of native animals and the interests of persons who benefit from the use of the native animals that are killed, injured or otherwise harmed when an area of native vegetation is cleared.

²⁹ See Finn and Stephens (2017) (footnote 2) and the Australian Animal Welfare Strategy (footnote 6).

IV. Proposed changes to the regulatory framework

Proposed amendments

42. The Appendix presents a number of potential reforms to various elements of the State's vegetation management framework. The basic normative claim for the reforms is that the State's vegetation management framework should expressly recognise the avoidance and minimisation of harm to native animals as a legislative purpose or policy objective and as a relevant consideration for decision-making. The proposed amendments are to the following acts or instruments:

- *Vegetation Management Act 1999*;
- *Nature Conservation Act 1992*;
- State Policy for Vegetation Management (Version 3, December 2013);
- State Planning Policy (July 2017);
- *Planning Regulation 2017*; and
- State Development Assessment Provisions - State code 16: Clearing native vegetation.

A code of practice about animal welfare

43. The making of an animal welfare code of practice for land clearing operations under the *Animal Care and Protection Act 2001* would provide greater guidance and certainty to farmers, developer, and others landholders as to conduct that would avoid or minimise harm to native animals before, during and after land clearing operations. Such a code of practice could usefully sit alongside other relevant subordinate legislation, such as the *Nature Conservation (Koala) Conservation Plan 2017*.

44. If such a code of practice were made, then compliance with the code of practice should be mandatory. Section 15(1) of the *Animal Care and Protection Act 2001* provides that a regulation may require a person to comply with the whole or a stated part of a code of practice, which section 15(2) then indicates is to be referred to as a 'compulsory code requirement'. Section 15(3) then provides that a person to whom a compulsory code requirement applies must comply with the requirement.³⁰ Further, if a corporation contravenes section 15(3), an executive officer of the corporation may be taken, under section 209A of the Act, to have also committed the offence.

³⁰ The maximum penalty for a section 15(3) offence is 300 penalty units.

Signature page

Please feel to contact me if the members of the Committee have any queries or require any further information.

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Contact details supplied on cover page

Appendix

Vegetation Management Act 1999

Proposed amendment: Amend section 3

3 Purpose of Act

(1) The purpose of this Act is to regulate the clearing of vegetation in a way that—

(a) conserves remnant vegetation that is—

- (i) an endangered regional ecosystem; or
- (ii) an of concern regional ecosystem; or
- (iii) a least concern regional ecosystem; and

(b) conserves vegetation in declared areas; and

(c) ensures the clearing does not cause land degradation; and

(d) prevents the loss of biodiversity; and

(e) maintains ecological processes; and

(f) manages the environmental effects of the clearing to achieve the matters mentioned in paragraphs (a) to (e); and

(g) reduces greenhouse gas emissions; and

(h) allows for sustainable land use; and

(i) avoids or minimises harm to native animals.

Nature Conservation Act 1992

Proposed amendment: Amend section 88

88 Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal

...

- (2) A person must not take a protected animal unless the person is an authorised person or the taking is authorised under this Act.

...

- (3) It is a defence to a charge of taking a protected animal in contravention of subsection (2) to prove that—
- (a) the taking happened in the course of a lawful activity that was not directed towards the taking; and
 - (b) the taking could not have been reasonably avoided.

(3A) Where the lawful activity in the course of which the taking occurred was the clearing of native vegetation, the matters that a court may take into account in determining whether the taking could not have been reasonably avoided include:

- (a) whether the activity occurred in a breeding season or migratory period for the protected animal;
- (b) whether a fauna survey of the site was conducted by a suitably qualified person prior to the activity being carried out;
- (c) whether a suitably qualified spotter catcher was present when the activity was carried out;
- (d) any other measures that were implemented to avoid or minimise the risk of a protected animal being taken;
- (e) the manner in which the vegetation was cleared.

‘State Policy for Vegetation Management’ (Version 3, December 2013)

Proposed amendment: Amend ‘3. Principles’ at page 1

3. Principles

This policy is based on the following principles:

- responsible land use
- support for regional communities
- balanced decision making
- conservation of biodiversity
- maintenance of ecological processes and services
- voluntary protection of vegetation
- avoidance and minimisation of harm to native animals.

Proposed amendment: Amend ‘4. Outcomes’ at page 3

4. Outcomes

This policy seeks to achieve the below outcomes in accordance with the purpose of the VMA.

...

4.8 Avoid or minimise harm to native animals

- Recognise that clearing of vegetation affects the welfare of native animals.
- Provide for the implementation of measures which avoid or minimise the harm to native animals caused by clearing of vegetation.

Proposed amendment: Amend ‘5. Actions proposed to achieve outcomes’ at page 3

5. Actions proposed to achieve outcomes

The outcomes will be achieved by:

...

5.5 Animal welfare code of practice

An animal welfare code of practice for land clearing operations contains requirements, guidelines and information for avoiding and minimising harm to native animals during land clearing operations.

‘State Planning Policy’ (July 2017)

Proposed amendment: Amend ‘State interest – biodiversity’ at page 39

All of the following state interest policies must be appropriately integrated in planning and development outcomes, where relevant.

...

(6) Native wildlife and native wildlife habitat is protected by conserving and enhancing existing habitat and ensuring development related impacts are undertaken so as to avoid or minimise impacts on native animal welfare⁵.

...

⁵ Note: For example, impacts are avoided during breeding periods and migratory seasons and wildlife spotters are employed.

Planning Regulation 2017

Proposed amendment: Amend Schedule 10 (Development Assessment), Part 3 (Clearing Native Vegetation), Division 3 (Assessment by assessment manager), Table 1/Column 2

Table 1—Assessable development under s 5	
1 Category of assessment	Code assessment, if the chief executive is the prescribed assessment manager
2 Assessment benchmarks	If the chief executive is the prescribed assessment manager—the State development assessment provisions
3 Matters code assessment must have regard to	<u>Avoidance and minimisation of harm to native animals</u>
4 Matters impact assessment must have regard to	<u>Avoidance and minimisation of harm to native animals</u> <u>Estimates of native animal mortality caused by the proposed clearing</u>

State Development Assessment Provisions – State code 16: Clearing native vegetation

Proposed amendment: Amend Purpose statement at page 16-1

16.1 Purpose statement

The purpose of this code is to ensure development:

1. is consistent with any **notice requiring compliance** on the land subject to the development unless a better environmental outcome can be achieved
2. is consistent with **vegetation** management requirements for **particular regulated areas** unless a better environmental outcome can be achieved
3. does not significantly contribute to greenhouse gas emissions
4. avoids **clearing**, or **where** avoidance is not reasonably possible, minimises **clearing** to:
 - a. conserve **vegetation**
 - b. avoid **land degradation**
 - c. avoid the loss of **biodiversity**, and
 - d. maintain **ecological processes**, and
 - e. minimise harm to the welfare of native animals and loss of habitat for protected wildlife, and
5. avoids impacts on **vegetation** that is a **matter of state environmental significance**, and where avoidance is not reasonably possible, minimises and mitigates impacts and provides an **offset** for **significant residual impacts** where appropriate.

Proposed amendment:

Insert a new performance outcome and acceptable outcomes for code 'Clearing avoids or minimises impacts' in 'Table 16.2.3: General' at page 16-4. This amendment assumes the existence of a code of practice about animal welfare relating to land clearing operations, made under the *Animal Care and Protection Act 2001*.

PO1A Clearing avoids or minimises harm to native animals in accordance with [insert the name of the animal welfare code of practice for land clearing operations] and any applicable subordinate legislation, including the Nature Conservation (Koala) Conservation Plan 2017.

No acceptable outcome is prescribed.

Proposed amendment: Amend the Glossary of terms at page 16-32

16.6 Glossary of terms

...

Adverse impacts of clearing include, but are not limited to, the following:

1. the loss of vegetation
2. the loss of biodiversity
3. land degradation
4. loss of connectivity
5. altered ecological processes;
6. contributions to greenhouse gas emissions;
7. harm to native animals; and
8. loss of habitat for **protected wildlife**.

The invisible harm: land clearing is an issue of animal welfare

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Abstract. Land clearing is a significant environmental issue in Australia and an area of active legislative reform. Despite evidence of the harm that land clearing causes to individual animals, such harm is either ignored or considered only indirectly in environmental decision making. We argue that the harm that land clearing causes to animals ought to be identified and evaluated in decision making relating to land clearing and consider the following three propositions in support: (1) land clearing causes deaths that are physically painful and psychologically distressing because of their traumatic and debilitating nature; (2) land clearing causes physical injuries, other pathological conditions, pain and psychological distress over a prolonged period as animals attempt to survive in the cleared environment or in the environments they are displaced to; and (3) on the basis of current clearing rates, more than 50 million mammals, birds and reptiles are likely to be killed annually because of land clearing in Queensland and New South Wales. The scientific consensus about the harm caused by land clearing means that decisions to allow land clearing are decisions to allow most of the animals present to be killed and, as such, frameworks for decision making ought to include proper evaluation of the harm to be imposed.

Additional keywords: environmental decision making, injury, morbidity, mortality, stress, wildlife.

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Introduction

Animal welfare is an increasingly significant component of environmental decision making involving wildlife, whether the underlying decision relates to the conservation, exploitation or control of a species (Bradshaw and Bateson 2000; Twigg and Parker 2010; McMahon *et al.* 2012; Hampton *et al.* 2014; Descovich *et al.* 2015; Beausoleil *et al.* 2016). Factors that have influenced that shift in Australia include the evolution of animal welfare statutes in the Australian states and territories, government and non government initiatives to communicate welfare issues (e.g. RSPCA Australia 2002; Cogger *et al.* 2003; Johnson *et al.* 2007; Commonwealth of Australia 2011; McLeod and Sharp 2014) and improvements in our understanding of how wild animals respond to non lethal interactions with anthropogenic stressors (e.g. Bejder *et al.* 2009; Johnstone *et al.* 2012a; Brearley *et al.* 2013; van der Hoop *et al.* 2017; Tablado and Jenni 2017).

One consequence of this shift has been the development of objective and transparent procedures for the identification and assessment of the harms that human activities cause to individual animals, so that those harms can be appropriately weighed against the perceived benefits of the activity (Sharp and Saunders 2011; Calver 2012; Beausoleil *et al.* 2016). However, the integration of such harm benefit frameworks into environmental decision making has been uneven and it might fairly be said that we are currently better at identifying and evaluating certain harms than

others. Further, there are some human activities for which no effective procedure exists for the identification and evaluation of the harm caused to individual animals. The harm that land clearing causes to native wildlife is one example.

The basic premise of this article is that the deaths, physical injuries, other pathological conditions, pain and psychological distress experienced by individual wild animals during and after land clearing constitute a form of harm that is of sufficient intrinsic value to warrant broad consideration in environmental decision making, including in assessments of applications for permits (or other authorisation) to clear native vegetation, assessments of planning or development proposals that will require land clearing, and strategic planning initiatives in which land clearing is contemplated (e.g. Department of the Premier and Cabinet 2015). Currently, the harm that land clearing causes to the welfare of individual animals is either ignored in such decision making or is considered only in instrumental terms, such as when decision makers focus solely on assessing the population level effects of the loss of individuals from a proposed clearing action.

To support this premise, we seek to demonstrate three basic propositions, namely that (1) land clearing causes deaths that are physically painful and psychologically distressing because of their traumatic and debilitating nature, (2) land clearing causes physical injuries, other pathological conditions, pain and psychological distress over a prolonged period as animals

attempt to survive in the harsh and unsuitable environment of the cleared area or in the environments they are displaced to and (3) land clearing is likely to kill more than 50 million mammals, birds and reptiles in Queensland and New South Wales each year on the basis of current clearing rates.

In advocating for greater consideration of the harm that land clearing causes to individual animals in environmental decision making, we do not wish to minimise or disregard the tension that may arise between the objectives of conserving populations and species and those focussed on preventing harm to individual animals (Fulton and Ford 2001; White 2009; Paquet and Darimont 2010; Twigg and Parker 2010; Cooney *et al.* 2012; Jones *et al.* 2012; Lunney 2012a, 2012b; Harrington *et al.* 2013). Rather, we seek here to set out a normative basis for why the harm that land clearing causes to individual animals ought to be considered as a relevant and significant harm in its own right.

The article uses terminology commonly applied in wildlife pathology and in wildlife forensic investigations (see Vogelnest and Woods 2008; Ladds 2009; Cooper 2013a, 2013b; Vogelnest and Allan 2015, as well as materials supported by the Australian Registry of Wildlife Health at http://arwh.org/common_diseases, accessed 6 June 2017). Definitions and relevant references for some terms are given in Table 1. Although the focus here is on harm to mammals, reptiles and birds, the issues are broadly applicable to other vertebrates (e.g. frogs, Hazell 2003) and to invertebrate species (Valentine 2004), although we note relevant differences across taxa in terms of (e.g.) the perception of pain and the experience of psychological distress (Koolhaas *et al.* 1999; Paul Murphy *et al.* 2004; Wingfield 2005).

Land clearing in an Australia context

The conversion of native vegetation to other land uses, or 'land clearing', remains a fundamental pressure on the Australian environment (Jackson *et al.* 2016). Evans (2016) described 'land clearing' as the 'local term for deforestation' in her analysis of the clearing and modification of native forest in Australia for agricultural, urban and industrial development. The amount of native vegetation that is cleared annually in Australia for those purposes is significant on global terms (Bradshaw 2012; Ritchie *et al.* 2013; Evans 2016). Systematic monitoring of clearing rates for native vegetation is undertaken in some jurisdictions. In Queensland, for example, the total state wide woody vegetation clearing rate was reported to be 296 000 ha year⁻¹ in 2014–15 (i.e. an area of ~54 km × 54 km), of which 91% was undertaken to convert land to pasture (Department of Science, Information Technology and Innovation 2016). The remainder related to forestry (5%) and to clearing for cropping, mining, infrastructure or settlement. In New South Wales, a reduction in woody vegetation of 40 500 ha was reported for 2011–12 and 105 900 ha for 2012–13, with fire and forestry accounting for most of those reductions (Office of Environment and Heritage 2016). The rates of woody vegetation loss in New South Wales due to clearing for cropping, pasture, infrastructure, and thinning were reported to be ~13 000 ha year⁻¹ for 2011–12 and 2012–13 (Environmental Protection Authority 2016; Office of Environment and Heritage 2016). The New South Wales figures are controversial, with suggestion that they may

substantially under estimate clearing rates in that state (Hannam 2016a, 2016b).

More broadly, the national State of the Environment report for 2016 reported the following total deforestation rates for the Australian states and territories for the period 2010–14, on the basis of deforestation data reproduced from Evans (2016): New South Wales (297 482 ha), Northern Territory (7232 ha), Queensland (477 555 ha), South Australia (49 534 ha), Tasmania (17 163 ha), Victoria (54 941 ha) and Western Australia (119 231 ha) (Metcalf and Bui 2016). Illegal native vegetation clearing also remains an issue in Australia (Bricknell 2010), with 'unexplained clearing' accounting for a significant proportion of total woody vegetation clearing detected by satellite monitoring in New South Wales (Office of Environment and Heritage 2014).

Regulatory frameworks for land clearing in Australia

Evans (2016) described New South Wales, Queensland, South Australia, Victoria and Western Australia as the 'historically high deforestation states' in Australia. The regulatory frameworks for land clearing in those states typically consist of a complex amalgam of statutes, statutory instruments (e.g. regulations), policies, and guidance and technical materials (see COAG Standing Council on Environment and Water 2012; Evans 2016). Three observations may be made about the consideration that wild animal welfare receives within the regulatory frameworks for land clearing in those states.

First, the frameworks do not expressly recognise harm to the welfare of individual wild animals as a relevant category of harm caused by land clearing. Those frameworks all identify particular harms that land clearing is said to cause, either as part of a list of statutory objects for the principal acts (e.g. Section 3 of the New South Wales *Native Vegetation Act 2003* and Section 3 of the Queensland *Vegetation Management Act 1999*) or as part of a list of principles provided to guide decision making about native vegetation clearance (e.g. Schedule 5 of the Western Australian *Environmental Protection Act 1986*, Schedule 1 of the South Australian *Native Vegetation Act 1991*, and Clauses 52.16 6 and 52.17 5 of the Victoria Planning Provisions). The harms identified in those statutory objects and lists of principles include loss of biodiversity, loss or fragmentation of habitat for native species, land degradation, salinity, deterioration of surface or underground water quality, and greenhouse gas emissions. Notably absent from the compendium of harms contained in those objects and principles is the harm that the clearing of native vegetation causes to the welfare of the animals using that vegetation. Similarly, considerations of animal welfare are not mentioned in *Australia's Native Vegetation Framework*, which was intended to provide a national policy framework to guide the ecologically sustainable management of Australia's native vegetation (COAG Standing Council on Environment and Water 2012).

Second, those regulatory frameworks do not require decision makers to identify and evaluate the harm that a proposed clearing action may cause to the welfare of individual animals. None of the four principal acts indicated in the paragraph above nor the Victoria Planning Provisions contain any provision or clause that expressly requires decision makers to take animal welfare considerations (i.e. the causing of physical injuries, other

Table 1. Definitions and descriptions of pathological conditions that animals may experience in environments in which vegetation has been removed or in environments they are displaced to

Pathological condition	Description
Deceleration injury	Blunt impact trauma incurred when the body in motion is forcibly stopped; however, because of inertia, the body cavity contents continue in the line of motion. The brain is particularly vulnerable.
Dehydration	Excessive loss of water from the body, occurring in several ways (e.g. inadequate intake of food, diarrhoea, vomiting). It can result in inadequate tissue perfusion and electrolyte imbalances and, ultimately, death (i.e. hypovolaemic shock). ^A
Disease	Wobeser (2006) defines disease as 'any impairment that interferes with or modifies the performance of normal functions, including responses to environmental factors such as nutrition, toxicants and climate; infectious agents; inherent or congenital defects; or a combination of these factors'. Therefore, disease is a heterogeneous term, capturing any dysfunction or perturbation in normal physiologic homeostasis and there is a spectrum, ranging from mild and clinically insignificant, through to severe and life threatening.
Disease transmission (increased likelihood of)	The loss of vegetation and possible dispersal to a new habitat may alter intra- and inter-specific contact rates and vector (e.g. ticks, mosquitos) and host densities, thus increasing the likelihood of vector-borne or direct transmission of infectious disease. ^{B,C,D}
Exertional (capture) myopathy (rhabdomyolysis)	A degenerative disease characterised by muscle damage, usually following extreme exertion, struggle or stress (or a combination of factors) and potentially exacerbated by high ambient temperature, nutritional deficiencies and electrolyte depletion (dehydration). ^{A,E G} It may occur when animals are pursued, are entangled or entrapped, or are panicked and fleeing. Although seen in a range of species including birds, it is most commonly diagnosed in macropods. ^E
Immune function (adversely affected)	Immune function refers to an animal's capacity to mount an immune response to a pathogenic (i.e. capable of causing disease) challenge. Conditions relating to land clearing such as chronic stress, inadequate energy intake, exposure to temperature extremes, and secondary infections of wounds sustained during clearing can adversely affect immune function (stress-induced immunosuppression), thereby making animals more susceptible to infectious disease and opportunistic pathogens (e.g. pneumonia, parasites). ^{H,I}
Maladaptation	Maladaptation is a circumstance of chronic stress in which an animal fails to adapt to its environment because of (e.g.) unfamiliarity with it, lack of necessary resources or of conspecifics to associate with, or adverse interactions with other animals. ^{E,J} Immune function and other normal function may be compromised.
Misadventure	Death that is caused by the animal interacting with its physical environment in some way. During clearing or during attempted dispersal, death could occur through (e.g.) vehicle strike, drowning or entanglement in fencing. ^{E,K}
Morbidity	The state of being diseased. It may also refer to the incidence or prevalence of a disease.
Mortality	The state of being dead. It may also refer to the incidence or prevalence of death.
Nutritional disease	Nutritional disease most often refers to a general nutritional deficiency (e.g. inadequate intake of proteins or calories, vitamin deficiency) and less commonly to disease resulting from nutritional excess or some other nutritional disorder. ⁵ Inadequate or negative energy balance will result in resource partitioning, and potentially dampening of key systems or processes such as immune function, reproduction and growth. ^D
Pain	An unpleasant sensory and psychological experience associated with actual or potential tissue damage. ^{L,M} Animals may experience pain if they sustain physical injuries or are experiencing tissue damage because of some other pathological condition. Pain comprises heterogeneous categories (e.g. deep pain, visceral pain, cutaneous pain), which vary significantly in their quality, duration, and function and, further, gradation exists, ranging from low level and relatively tolerable (at least in the short term) through to unbearable.
Pathologic conditions (pathologies)	A state indicative of or caused by disease, rather than that which occurs physiologically as a result of homeostasis. Therefore, a pathogen is any agent (infectious or not) that is capable of causing disease (e.g. infectious agents such as viruses, bacteria and parasites and non-infectious agents such as toxins, adverse environmental conditions, and nutritional deficiencies or excesses).
Predation	Death as a result of attack by a native or non-native predator, or by a domestic animal.
Reproduction (adverse effects on)	The reproduction of animals may be affected by a reduction in fertility or reproductive output, or in survivorship of offspring, because of (e.g.) the death of offspring at foot or <i>in utero</i> or a failure to reproduce because of diminished body condition and diversion of resources (energy), the absence of a conspecific to mate with, or the lack of a suitable hollow or other nest site. ^{D,I}
Reservoir	An animate (e.g. any animal or plant) or inanimate (e.g. soil, water) nidus or host of an infectious pathogen in which it normally lives. The pathogen primarily depends on the reservoir for its survival, and must also be able to multiply within it, typically without causing significant clinical disease within animate reservoirs. Significant clinical disease may eventuate in a susceptible host following transmission.

(continued next page)

Table 1. (continued)

Pathological condition	Description
Shock	A physiological response to diverse causes (such as trauma resulting in haemorrhage and hypovolaemia or other challenge), involving inadequate blood flow to tissues, cardiovascular collapse, and cellular hypoperfusion and hypoxia that can be life threatening. ^{A,N}
Stress and stressors	The optimal state of equilibrium (homeostasis) is constantly challenged by intrinsic and extrinsic forces, which are known as stressors (which may be multiple and may interact). Duration and frequency of stress is central to its significance. In general, a short-term response is an adaptive 'emergency' allostatic response that promotes survival until the stressor(s) subside(s) as well as a return to homeostasis, and is functional (i.e. physiological). However, prolonged and or frequent stress causes allostatic overload and can be maladaptive (i.e. pathological), potentially resulting in a variety of dysfunctions (i.e. disease), including adverse effects on immune and reproductive function. ^{D,O}
Stress-related pathology	Animals may experience maladaptation and chronic stress because of sustained exposure or anticipation of biotic (e.g. predators, hostile conspecifics) or abiotic (e.g. suboptimal environmental conditions) stressors, which may have adverse effects on physiologic functions and, thereby, on body condition, growth, immune function and reproduction. ^{B,D,E,P}
Temperature-related injuries	Injuries owing to hyperthermia or hypothermia as a result of excessive or extreme heat or cold arising because of lack of shelter or cover and changes in microclimates. ^{E,F} Burns may occur if debris is burned.
Traumatic injury	Injury caused by a sudden, violent force resulting in the compression, stretching, avulsion, torsion, fracturing or penetration of tissue, as well as haemorrhage. ^N
Vector	Any living creature that transmits disease from one host to another. Typically, the term applies to arthropods (e.g. mosquitoes, ticks, biting flies).

Sources: ^AZachary and McGavin (2012); ^BHing *et al.* (2016); ^CBrearley *et al.* (2013); ^DWobeser (2006); ^ELadds (2009); ^FVogelnest and Woods (2008); ^GWiggins *et al.* (2010); ^HPacioni *et al.* (2015); ^IAcevedo-Whitehouse and Duffus (2009); ^JCooper (2013a); ^KHanger and Nottidge (2009); ^LInternational Association for the Study of Pain (2016); ^MBateson (1991); ^NCooper and Cooper (2013); ^OMcEwen and Wingfield (2003); ^PNarayan and Williams (2016).

pathological conditions, pain, and psychological distress to individual animals) into account when making a decision in relation to proposed clearing actions.

Three, some indirect consideration of the harm that land clearing causes to individual animals may occur if decision makers are required to evaluate the potential impact of a proposed clearing action on a threatened species or to assess the value of vegetation proposed for clearing as habitat for a threatened species or for native species generally. For example, threatened species assessment guidelines issued and enforced under Section 94A of the New South Wales *Threatened Species Conservation Act 1995* provide for the evaluation of direct and indirect impacts of proposed developments, including land clearing, on individuals and their habitat (Department of Environment and Climate Change 2007). Nonetheless, the focus of those impact assessment guidelines, similar to guidelines in other Australian jurisdictions (e.g. Commonwealth of Australia 2013; Department of Environment and Heritage Protection undated; Environmental Protection Authority 2016), is on population level impacts. Further, as was observed by Thompson and Thompson (2015, p. 223), 'rarely, if ever, are impacts on the non threatened fauna seriously considered in the [environmental impact] assessment process and mitigation strategies included in the approval conditions'.

For reasons of length, it is not proposed here to set out any particular mechanisms by which the harm caused to individual animals could be integrated into decision making for land clearing. Nonetheless, it is relevant to point out that there are a range of potential statutory mechanisms, including the express extension of statutory prohibitions on the taking of fauna to the circumstances of land clearing (McDonald *et al.* 2003), the

statutory expression of considerations or principles relating to animal welfare that decision makers are required to consider in assessing applications to clear native vegetation and statutory requirements for applicants or proponents to provide estimates of native fauna mortality likely to occur if a proposed clearing action proceeds (Thompson and Thompson 2015). Statutory changes could be complemented by the development of policy based mechanisms, including assessment methodologies to appropriately identify and evaluate harms from land clearing actions. A key point is that the objective of making considerations of individual animal welfare legally relevant to decision making about land clearing does not necessarily prescribe any particular mechanism by which that aim might be implemented.

Why the issue is relevant for wildlife researchers and managers and other environmental professionals

An evaluation of the harm that land clearing causes to wildlife may seem unnecessary because there would appear to be little scientific controversy as to the basic proposition that clearing native vegetation kills animals living at that site (Ehmann and Cogger 1985; Glanznig 1995; Williams *et al.* 2001; Cogger *et al.* 2003; McDonald *et al.* 2003; Department of the Environment 2006; Johnson *et al.* 2007). Nonetheless, there are several reasons why it is timely to review the harm that land clearing causes in a journal read by wildlife researchers and managers and environmental consultants, as well as by other environmental administrators and professionals.

First, regulation of the clearing of native vegetation remains an active area of legislative reform in Australia (Evans 2016).

For example, in November 2016, following the release of a review of New South Wales biodiversity legislation in December 2014 (Byron *et al.* 2014) and of a package of proposed biodiversity and land management reforms by the New South Wales Government in May 2016, the New South Wales Parliament passed the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016*. Notably, those legislative reforms provided for the repeal of the *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2013* (as well as the *Threatened Species Conservation Act 1995*) and the introduction of a new statutory framework for native vegetation clearance in rural areas that will remove many existing controls on clearing activities. In Queensland, a bill to reform the *Vegetation Management Act 1999* failed to pass the Queensland Parliament following debate in August 2016. Those legislative reforms had been proposed as a response to increases in land clearing rates in Queensland, following the repeal or weakening of key statutory restrictions on land clearing in 2013 by the previous Queensland Government (Department of Science, Information Technology and Innovation 2016; Metcalfe and Bui 2016).

It is important to recognise that what the scientific community states, individually and collectively, about the harm that land clearing causes to wild animals can influence political debate about appropriate regulatory frameworks for land clearing. For example, on 17 August 2016, during the Second Reading speech in the Queensland Parliament for the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016*, Jacklyn Trad (then Deputy Premier for the Queensland Government) observed the following:

The fact is Queensland has a shameful history on the issue of broadscale tree clearing. In 1997, we were clearing over 400 000 hectares annually and, according to the Society for Conservation Biology Oceania's scientific declaration, it is estimated that 100 million native animals were dying each year between the years of 1997 and 1999 (Queensland Parliament 2016, p. 2934).

The text of that declaration, signed by over 250 scientists and environmental professionals, is available at <http://scooceania.org/policystatements/landclearing>, accessed 6 June 2017.

Second, it is axiomatic in conservation biology that local population declines and, ultimately, extinctions at regional and species level scales are primarily driven by the mortality, morbidity and reduced reproductive success of individuals (e.g. Saunders *et al.* 1991; Ford *et al.* 2001; Lindenmayer and Fischer 2006; Ford 2011). There is, therefore, a basic commonality of interest between concerns about harm to individual animals and efforts focussed on conserving populations and species (Cogger *et al.* 2003; Johnson *et al.* 2007). On that basis, efforts to integrate consideration of the death, physical injury and other pathological conditions caused by land clearing into environmental decision making should also support better conservation outcomes.

Third, on going debate over the efficacy of offsets for land clearing (Gibbons and Lindenmayer 2007; Maron *et al.* 2015, 2016; Sonter *et al.* 2016; May *et al.* 2017) and of programs to capture and translocate animals from sites to be cleared (Germano *et al.* 2015; Thompson and Thompson 2015, 2016; Menkhurst *et al.* 2016) suggests a need for careful consideration of the precise harm that the removal of vegetation may cause to individual

animals present at that site, so that such information can then assist in environmental decision making. In particular, such information is necessary to support appropriate applications of the mitigation hierarchy, robust evaluations of potential offset measures for residual impacts and adequate assessments of the overall significance and acceptability of impacts from land clearing.

Finally, the clearing of native vegetation for agricultural, urban and industrial development is clearly analogous to the practice of clearcutting in forestry, and thus investigations of wildlife responses to clearcutting may also yield insights for decision making in relation to proposed land clearing (Semlitsch *et al.* 2009; Blumstein 2010). For example, studies of the behaviour and fate of individual animals after clearcutting have investigated whether observed declines in abundance reflect mortality associated with clearcutting, displacement into adjacent forest, or other processes (Tyndale Biscoe and Smith 1969; Miller *et al.* 1997; Di Stefano *et al.* 2007; Semlitsch *et al.* 2008; Escobar *et al.* 2015).

Evaluating the harm that land clearing causes

The article deliberately uses the word 'harm' to describe the deaths, physical injuries, other pathological conditions, pain and psychological distress that animals may suffer when vegetation is cleared for two reasons.

First, the term 'harm' carries with it connotations of physical injury and deliberate intent. While noting that individuals of some species may disperse to other habitats (if such habitat is available) when vegetation is cleared, the clear scientific consensus is that most, and in some cases all, of the individuals present at a site will die as a consequence of that vegetation being removed, either immediately or in a period of days to months afterwards (Cogger *et al.* 2003; McDonald *et al.* 2003; Johnson *et al.* 2007).

That consequence is an important basic consideration for environmental decision making because it means that any decision to clear native vegetation (or to allow it to be cleared) is also a decision to kill most or all of the individual animals inhabiting that vegetation (or to allow them to be killed). Although a person who clears land may not desire for animals to suffer, suffering is the inevitable consequence of the decision to do so. The relevant question for decision making is not *if* death, injury and other pathology will occur when land is cleared, but *how much* of that harm will occur, how severe it will be, and whether it ought to be avoided. If such harm is, nonetheless, deemed necessary, then the question is how the harm to be imposed could be minimised.

Broadly speaking, as a question of animal welfare, the removal of native vegetation may harm individual animals by causing some immediate or longer term adverse change to their physical or mental state, either directly (e.g. by causing traumatic injury through the application of mechanical force during the clearing process) or indirectly, when animals interact with harmful physical and biological agents (e.g. inimical microclimates, predators, aggressive conspecifics, lack of food) present in the cleared environment itself or in other environments the animals are displaced to. Whereas efforts are sometimes made to distinguish between 'direct' and 'indirect' harms in

environmental impact assessment (e.g. the New South Wales threatened species assessment guidelines differentiate between 'direct impacts' and 'indirect impacts', see Department of Environment and Climate Change 2007, pp. 3, 4), the physical clearing of native vegetation creates environments (or causes animals to encounter environments) where the risk of exposure to harmful agents is high. Thus, land clearing can relevantly be said to place animals 'in harm's way' both during the clearing process and afterwards.

The Australian Animal Welfare Strategy, published in 2011, noted Australia's acceptance of the agreed international definition of animal welfare from the World Organisation for Animal Health (OIE) (Commonwealth of Australia 2011). That OIE definition appears at Article 7.1.1 in the current version of the OIE Terrestrial Animal Health Code (OIE 2016) and states, in part, the following:

Animal welfare means how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear, and distress.

The changes that land clearing causes to the physical or mental state of an animal can be considered in terms of the underlying pathology. Thus, land clearing could be said to 'harm' an animal if the clearing of vegetation causes (or leads to the development of) disease in that animal. Disease is here understood in the broad sense of being a departure from or an impairment of the normal structure or function of any part, organ or system of an animal, which can be caused by (1) *infectious* agents (e.g. viruses, bacteria) or (2) *non infectious* agents (e.g. physical injuries, nutritional deficiencies) or by a combination of both (Wobeser 1981, 2006; Ladds 2009; Jakob Hoff *et al.* 2014). Disease can vary in its degree of severity and may have multiple causes.

The second reason for using the word 'harm' is to establish a linkage between the harm caused by land clearing and the concept of harm to individual animals that underlies animal welfare legislation in Australia. Notably, several Australian animal welfare statutes include definitions for 'harm'. For example, Section 3 of the South Australian *Animal Welfare Act 1985* defines 'harm' to mean any form of damage, pain, suffering or distress (including unconsciousness), whether arising from injury, disease or any other condition, and Section 5 of the Western Australian *Animal Welfare Act 2002* defines 'harm' to include injury, pain and distress evidenced by severe, abnormal physiological or behavioural reactions.

The purpose in noting those statutory definitions of 'harm' is not to suggest that land clearing is an animal cruelty offence under existing statutory frameworks for animal welfare in Australia, although arguably there may be grounds for a prosecution in some jurisdictions in circumstances where an unlawful clearing action is undertaken, on a basis that the suffering that an animal experienced was unnecessary because there was no legitimate object (i.e. purpose) for the activity, and where there exists some evidence to demonstrate the suffering that the animal experienced (Radford 2000; McEwan 2016). Rather, we highlight the overlap in concepts of harm to demonstrate that land clearing causes harm that is of a character that would be

prohibited if such harm were inflicted on an individual wild animal in other circumstances.

The concept of the harm that land clearing causes to animals should also be broad enough to include the adverse mental states (i.e. what we broadly refer to as psychological distress in the present paper) that animals will experience as a consequence of experiencing pain, physical injury, other debilitating pathological conditions, and the range of abiotic and biotic stressors they will encounter in environments fundamentally inimical to their survival. A conception of harm that includes mental states is consistent with the concepts of distress and wellbeing applied in the *Australian Code for the Care and Use of Animals for Scientific Purposes* (8th edition; National Health and Medical Research Council 2013) and with conceptions of animal welfare used in frameworks for assessing the humaneness of wildlife management actions (Mellor *et al.* 2009; Sharp and Saunders 2011; Beausoleil *et al.* 2016).

We now turn to three specific propositions we make to support the claim that the harm that land clearing causes to individual wild animals ought to be identified and evaluated in environmental decision making as a relevant and significant harm in its own right.

Proposition 1: land clearing causes deaths that are physically painful and psychologically distressing because of their traumatic and debilitating nature

Land clearing involves the removal of some or all of the aboveground biomass of native vegetation present at a site, as well as the destruction of burrows, middens and termitaria in or on the substrate. The methods by which vegetation may be removed are diverse; for example, plants may be cut, toppled, burnt, ploughed, grazed, ring barked, poisoned or otherwise damaged (Australian Greenhouse Office 2000; Seabrook *et al.* 2006). In most cases, vegetation is removed using machinery designed for earth moving or forestry operations or, for broad scale clearing, by dragging a chain between two tractors (Turnbull *et al.* 1992; Fulton and Majer 2006; Harris *et al.* 2010; Gleeson and Gleeson 2012; Thompson and Thompson 2015). Fallen vegetation is often pushed into piles of residue that are later removed, burnt, buried, wood chipped, or allowed to decompose in place (Newell 1999; Department of Industry Innovation, Climate Change, Science, Research and Tertiary Education 2013; Pyne 2015; Thompson and Thompson 2015).

The use of machinery to clear vegetation may cause traumatic injury or entrapment (i.e. physical confinement or burial within hollows, burrows or other cavities, underneath fallen stems or branches or other debris, or within soil or other matter) (Shine and Fitzgerald 1996; Rhind 1998, 2004; Cogger *et al.* 2003; Johnson *et al.* 2007; Andrews *et al.* 2008; Hanger and Nottidge 2009; Gleeson and Gleeson 2012; Thompson and Thompson 2015).

Possible outcomes include death arising from traumatic injury or non drowning asphyxiation as a result of suffocation, as well as pain and shock. Forms of traumatic injuries that animals may experience as a result of land clearing include compression injury, penetrating injury, laceration, degloving injury, amputation, fracture, joint luxation (displacement of a bone from a joint) or subluxation (partial dislocation), and blunt force injury to the skeleton, soft tissues, and central nervous system and internal

haemorrhage. Those injuries may be sustained through contact with vegetation (e.g. as it is felled or shifted after felling), soil, machinery, motor vehicles, or containment barriers.

Thompson and Thompson (2015) undertook a catch and relocation program for reptiles, amphibians and mammals during vegetation clearing at a coastal site in the Pilbara region of Western Australia and found that survivorship during clearing operations differed by the type of machinery used in clearing operations (e.g. dozer, excavator, loader) and by taxa. They observed that survivorship in the clearing process appeared to reflect the 'preferred retreat site' and movement speed of animals, and the manner in which vegetation was removed and substrates disturbed.

Animals that live in tree hollows, either in living trees or in woody debris, may be injured, crushed, suffocated or entrapped when vegetation is felled and pushed into piles and when substrates are disturbed (Rhind 1998, 2004; Hanger and Nottidge 2009; Thompson and Thompson 2015). Clearing often involves the shifting of soil by machinery, which may capture, bury and crush animals present on the surface, in the soil or in termitaria (Thompson and Thompson 2015). Animals that shelter in debris piles may suffer burns or be incinerated when the piles are set alight, or killed when the vegetation is transported, sawn or ground to woodchips.

The size of arboreal animals and the capacity for flight may affect whether they are killed or seriously injured when trees are felled. A study of the effects of logging on brush tailed phascogales (*Phascogale tapoatafa*) in the jarrah forest in south western Australia assessed the fate of phascogales and two possum species (western ringtail possums (*Pseudocheirus occidentalis*) and brushtail possums (*Trichosurus vulpecula*)) when trees were felled during logging operations (Rhind 1998, 2004). Rhind (2004) reported that three radio collared phascogales that were present in trees when they were felled survived without apparent injury, but that, of 65 possums found in the hollows of felled trees over an area of ~63 ha in a 12 week period, 17% had died when the tree was felled. Tyndale Biscoe and Smith (1969) reported that the number of sugar gliders (*Scolecobates volans*) killed at tree fall was small and that most were able to escape the effect of impact by gliding free of the tree. Newell (1999) reported that Lumholtz's tree kangaroos (*Dendrolagus lumholtzi*) remained in the tree or vine thicket they were using until a bulldozer approached the tree or a chainsaw had nearly toppled it, then leapt from the tree and quickly hopped away.

A draft Code of Practice developed for the welfare of animals affected by land clearing in Queensland includes descriptions of the deaths and injuries that animals may experience when land is cleared (Hanger and Nottidge 2009). The authors were then from the Australian Wildlife Hospital (now the Australia Zoo Wildlife Hospital) and could speak of the injuries suffered by animals because of land clearing through their own first hand experience of them (see also Gonzalez Astudillo *et al.* 2017). Hanger and Nottidge (2009) described the traumatic injuries and issues of entrapment that may arise when native vegetation is cleared in the following terms:

Animals injured directly in the process of vegetation clearing generally suffer from major crushing, deceleration or fall related injuries. Arboreal species

may suffer from trauma associated with falling from a tree and/or crushing and avulsive injuries associated with boughs falling on or beside them. Such injuries include severe internal bleeding and organ disruption, multiple bone breaks, [and] eye and head injuries. Animals resting in hollows, similarly, may receive crushing injuries if the hollow bough disintegrates, or suffer internal organ injuries and tearing as a result of rapid deceleration (deceleration injury).

Ground dwelling animals, such as bandicoots, echidnas, snakes and lizards, most commonly suffer from crushing and avulsive injuries (such as traumatic limb amputation), or may be buried alive during earthworks.

Highly mobile species such as birds and macropods may avoid direct injury by machinery, but may suffer injuries by running into fences, motor vehicle strike or other misadventure.

Injuries suffered by animals during land clearing vary from mild to severe and fatal, but these animals are only rarely presented to wildlife hospitals or shelters. This is primarily because they are less likely to be discovered by members of the community and are more usually buried or confined in piles of debris during the process of clearing, which are then subsequently burnt or chipped (p. 6).

We will deal further with the pain and psychological distress associated with debilitating conditions below, but it should be obvious that the types of traumatic injuries inflicted by land clearing cause tissue damage that will result in severe physical pain (see Bateson 1991; Weary *et al.* 2006). Animals will also experience the adverse mental states associated with the subjective experience of pain and with their cognitive assessment of their circumstances (including the experience of being smothered or physically entrapped) (Machin 2007; Mellor *et al.* 2009; Rogers 2010; Mosley 2011; Ferdowsian and Merskin 2012; Beausoleil *et al.* 2016; Miller and Patronek 2016; Griffin *et al.* 2017).

Proposition 2: land clearing causes physical injuries, other pathological conditions, pain and psychological distress over a prolonged period as animals attempt to survive in the cleared environment or in other environments they are displaced to

Animals that survive the clearing process and that remain at the cleared site are left to inhabit a harsh and radically altered environment that is generally inimical to their survival (Tyndale Biscoe and Smith 1969; Newell 1999; Bladon *et al.* 2002; Cogger *et al.* 2003; Fulton and Majer 2006; Johnson *et al.* 2007; Thompson and Thompson 2015). Likewise, animals that leave the cleared site may encounter environments that are, for example, unfamiliar (Powell and Mitchell 2012), unsuitable (Sato *et al.* 2014) or hostile (Doherty *et al.* 2015).

Many native species show strong attachments to small areas of habitat and have low mobility and, thus, if vegetation is removed from a site, most individuals will not disperse to adjacent habitat (if such habitat is available), but will remain at or near the cleared site (Newell 1999; Cogger *et al.* 2003; Johnson *et al.* 2007; Kavanagh *et al.* 2007; Brown *et al.* 2008). Containment barriers around the area where clearing occurs may prevent those animals

that do manage to avoid land clearing activity from actually being able to leave the cleared area (Environment and Communications References Committee 2017, paragraph 2.22).

Even if individuals are able to leave the cleared site, they are likely to die or suffer physical injury or other pathological conditions because of the predators and other environmental challenges (e.g. vehicle strikes) they will encounter, both in the environments they disperse through and in the habitat they are ultimately displaced to (Fischer and Lindenmayer 2000; Bennett 2003; Cogger *et al.* 2003; Johnson *et al.* 2007; Guy and Banks 2012; Armstrong *et al.* 2015; Menkhorst *et al.* 2016; Gonzalez Astudillo *et al.* 2017). Further, a new habitat, if suitable, may already be occupied by conspecifics, which may lead to hostile interactions, competition for resources, and infectious disease transmission because of increased population density (Cogger *et al.* 2003; Wobeser 2006; Ladds 2009; Sainsbury and Vaughan Higgins 2012; Pacioni *et al.* 2015). A new habitat may also result in contact with new species, who may act as either vectors for infectious disease or as reservoirs for hitherto novel infectious diseases (Wobeser 2006). Even if dispersal is initially successful, the ultimate harm of dispersing to another habitat might not manifest until sometime later (McAlpine *et al.* 2017).

The clearing of vegetation from a site removes or substantially alters the habitat features present, including the abiotic environmental conditions (e.g. temperature, humidity), the availability of resources (e.g. shelter (cover), food resources, water) and the biotic and social environment (e.g. the presence or absence and abundance of prey, predators and conspecifics, interspecific interactions with novel species including potential infectious disease vectors or reservoirs) (McIntyre and Hobbs 1999; Ford *et al.* 2001; McAlpine *et al.* 2002; Cogger *et al.* 2003; Kanowski *et al.* 2003; Wardell Johnson *et al.* 2004; Pearson *et al.* 2005; Wobeser 2006; Johnson *et al.* 2007; Craig *et al.* 2012).

The harms that may occur as a consequence of those changes include, but are not limited to, pain from tissue damage sustained through physical injury or other pathological condition, predation, temperature related injuries, stress related pathology (e.g. adverse effects on reproduction, adversely affected immune function, suppression of growth), secondary infection and shock (sepsis) arising from injuries sustained during clearing or afterwards, maladaptation, misadventure, exertional myopathy, nutritional disease, dehydration and increased likelihood of infectious disease transmission (see Table 1).

It is not feasible to discuss all of those harms here. However, the harms associated with stress related pathologies deserve some comment because they are complex and are an area of active research for Australian species (Brearley *et al.* 2013; Narayan 2015; Hing *et al.* 2016; Bradshaw 2017; McAlpine *et al.* 2017). Notably, physiological stress responses to human modified landscapes have been documented for several Australian marsupials (Brearley *et al.* 2012; Johnstone *et al.* 2012b; Davies *et al.* 2013; Hing *et al.* 2014; Narayan and Williams 2016).

An environment in which vegetation has recently been removed will present animals with multiple persistent and potentially interactive environmental stressors, both biotic (e.g. interactions with predators, food availability) and abiotic (e.g. suboptimal temperatures) (Wingfield 2005; Saunders *et al.* 2011;

Sih *et al.* 2011; Schulte 2014; Hing *et al.* 2016; Narayan and Williams 2016; Schoepf *et al.* 2017). Where exposure to stressors is acute, an animal may mount a suite of behavioural and physiological responses in adaptation to the stressors (i.e. an allostatic response) and experience no lasting detriment to their health (McEwen 2005; Wobeser 2006; Schulte 2014). However, the intensity and duration of the stressors present in cleared environments are such that animals are likely to experience maladaptation and chronic stress (Moberg 2000; Gunderson *et al.* 2016; Narayan and Williams 2016). Further, they may sustain physical injuries that can act as an additional stressor (Ganswindt *et al.* 2010). In situations of maladaptation and chronic stress, the burden of maintaining adaptive responses to stressors may cause diversion of energy away from physiologic processes or have other deleterious health effects, and predispose the animal to disease (McEwen and Wingfield 2003; McEwen 2005; Wobeser 2006; Hing *et al.* 2016). Notably, the immune function of an animal may be adversely affected after chronic physiological stress (Acevedo Whitehouse and Duffus 2009; Brearley *et al.* 2013; Hing *et al.* 2016; Narayan and Williams 2016). Because of the energetic cost of mounting and maintaining an immune response, resource allocation away from physiologic processes such as growth and reproduction may also result in minimised reproductive effort and adverse reproductive outcomes (Acevedo Whitehouse and Duffus 2009).

Clearing related mortality and morbidity in animals that survive the initial clearing process will typically reflect a multifactorial aetiology. For example, Gonzalez Astudillo *et al.* (2017) analysed a substantial ($n=20\,250$ entries) long term (1997–2013) dataset of koala (*Phascolarctos cinereus*) records at wildlife hospitals in south eastern Queensland to assess causes of morbidity and mortality. The authors identified 11 aetiologies, as well as several spatial temporal clusters (or ‘hotspots’) for the occurrence of particular aetiologies or for combinations of aetiologies. Gonzalez Astudillo *et al.* (2017, p. 7) suggested that these aetiologies were acting together as multifactorial determinants for koala decline in the region and observed that current extensive land clearing in Queensland ‘could be leading to starvation in koalas, an issue that has surprisingly not generated much discussion’.

How long animals survive in cleared environments may reflect a range of factors, including the species and condition of the individuals affected, the prevailing environmental conditions (e.g. summer vs winter) and water availability, whether vegetation debris is left for a period after clearing, the proximity of other native vegetation, and the ability of predators to access the area (Newell 1999; Cogger *et al.* 2003; Sih *et al.* 2011; Schoepf *et al.* 2017). A study of the effects of habitat fragmentation on eastern pygmy possums (*Cercartetus nanus*) found that a pre clearing population of at least 15–20 individuals declined to five to eight animals within 12 months after 30% of the study site was cleared (Bladon *et al.* 2002). The clearing coincided with the pygmy possum breeding season and the recruitment of young appeared greatly reduced. Tyndale Biscoe and Smith (1969) found that, following clear felling of a forest block, few sugar gliders dispersed into an adjacent depopulated area, indicating that most gliders died *in situ* without migrating out of their original home range. The authors reported that ‘(t)he process of clear felling thus results in the death

of over 90% of the glider population inhabiting the area, only a few animals on the boundary being able to survive in adjacent forest. The majority lose weight, lose pouch young and presumably die within 1 week of tree fall' (Tyndale Biscoe and Smith 1969, p. 656). Newell (1999) reported Lumholtz's tree kangaroos surviving for months within clear felled forest where debris was retained (before its eventual burning to create pasture), but that mortality rates of affected animals appeared to increase after clear felling, with evidence of predation by domestic dogs or dingoes and also of infectious disease.

Animals that survive the clearing of vegetation, but remain at the cleared site are likely to experience pain caused by physical injuries or by debilitating pathological conditions (e.g. malnourishment progressing to starvation, with negative energy balance also predisposing them to increased risk of infectious disease, secondary to stress induced immunosuppression) related to the clearing of vegetation, for periods ranging from days to months after clearing. These animals will also experience adverse mental states that persist (either continually or intermittently) for similar periods because of their subjective experience of such pain, perception of other physiological states associated with pathological conditions such as thirst, hunger, nausea, dizziness, debility and fatigue (Mellor *et al.* 2009), experience of fear or anxiety (or other adverse emotions) relating to the presence (or anticipation) of predators or hostile interactions with conspecifics or other species (Steimer 2002; Morgan and Tromborg 2007) and cognitive assessment of their circumstances and emotional state (Panksepp 2005; Mellor *et al.* 2009; Rogers 2010; Mellor 2016).

Proposition 3: land clearing causes substantial mortality

The overall conclusions reached by Cogger *et al.* (2003) and Johnson *et al.* (2007) were strikingly clear, namely that the removal of native vegetation leads to the rapid death of all or nearly all of the birds, reptiles and mammals present. Cogger *et al.* (2003, p. 14) stated the following:

One general assumption made in these calculations [of mortality from clearing], based primarily on knowledge of the ecology of a wide range of species, as well as the absence of any evidence that remaining remnant vegetation supports higher densities of a wide range of species following adjacent land clearing, is that the vast majority of animals displaced by clearing will die either immediately or after a short space of time. Deaths result primarily from physical injury, exposure to lethal conditions of temperature or lowered microclimatic humidity, predation, or lack of food.

Both Cogger *et al.* (2003) and Johnson *et al.* (2007) estimated the scale of mortality from land clearing on the basis of published population densities for birds, reptiles and mammals. These densities were then multiplied by available information on the area (in ha) of native vegetation cleared (in Queensland and New South Wales respectively) to obtain estimates of mortality from clearing. Cogger *et al.* (2003) estimated that clearing in Queensland between 1997 and 1999 killed ~100 million native birds, mammals and reptiles per year. Johnson *et al.* (2007) estimated that approved land clearing in New South Wales between 1998 and 2005 killed more than 104 million native

mammals, birds and reptiles. Both reports emphasised that the estimates were highly conservative and that actual mortality rates were likely to be substantially higher. Taylor and Dickman (2014) conducted a comparison of land clearing and mammal deaths in New South Wales from clearing before and after 2005, and suggested that a decline in clearing rates (and, thus, also in associated mammal deaths) post 2005 could be attributed to the more stringent clearing controls established by the New South Wales *Native Vegetation Act 2003*, which came into force in 2005. As indicated earlier, that statute is to be repealed as part of the legislative reforms undertaken by the New South Wales Government in 2016.

The 2006 State of the Environment report for Australia included an indicator (BD 08 estimated loss of biodiversity resulting from land clearing) to represent the number of wild animals killed by land clearing (Department of the Environment 2006). The indicator was expressed as a measure of the pressure that land clearing places on biodiversity and was based on the following assumption:

The immediate effect of clearance of native vegetation on plant and animal species can be significant. When land is cleared, everything that lives in it is killed. Estimates of the number killed are a direct indicator for this pressure.

The information presented in support of the indicator noted the mortality estimates in Cogger *et al.* (2003) and the absence of similar information on clearing related mortalities on a continent wide scale. The information provided for the indicator then stated the following, as a way of giving 'a very rough indicator, rather than a serious estimate':

In the absence of any similar continent wide study, if the Queensland averages were assumed to apply across Australia... a national death toll from land clearing can be extrapolated. AGO [Australian Greenhouse Office] remote sensing data suggests that around 424 727 hectares of wooded land was cleared across the continent in 2004... Using the WWF averages [a reference to information provided in Cogger *et al.* 2003], the animal death toll from this land clearing, in mammals, reptiles and birds alone, would have been around 95 million animals. Across the 17 million hectares cleared since 1972, approximately 4 billion birds, reptiles and mammals would have died.

Updated information for the Indicator BD 08 did not appear in the 2011 or the 2016 State of the Environment reports. However, a rough assessment of the current situation can be undertaken by applying the methodology and fauna density estimates in Cogger *et al.* (2003) and Johnson *et al.* (2007) to the current estimates of clearing rates for (1) each biogeographic region in Queensland (Department of Science, Information Technology and Innovation 2016) and for (2) the state of New South Wales as a whole (Office of Environment and Heritage 2016).

In Cogger *et al.* (2003), the overall annual clearing rate applied to estimate mortality in Queensland was 445 900 ha year⁻¹, whereas Johnson *et al.* (2007) estimated mortality in New South Wales from 1998–2005 on the basis of the amount of native vegetation approved for clearing by the state government across the whole 8 year period (639 930 ha). By comparison, the overall annual woody vegetation clearing rate for Queensland in 2014–15 was 296 000 ha year⁻¹ (largely for

conversion of native vegetation to pasture; Department of Science, Information Technology and Innovation 2016), whereas the overall annual rate of woody vegetation loss for New South Wales in 2012–13 for cropping, pasture, thinning and infrastructure was 13 000 ha year⁻¹. Those clearing rates would indicate, as a combined mortality estimate for the two states together, that more than 50 million mammals, birds and reptiles are killed each year in Queensland and New South Wales because of land clearing.

Conclusions

Free ranging native animals suffer, of course, independent of any human action, and that suffering is both severe and substantial (Kirkwood *et al.* 1994; Nussbaum 2006; Doherty *et al.* 2016). A world of more frequent and more intense wildfires also promises that animals will suffer, both during fires and in their aftermath (Chia *et al.* 2015), as does a world of more roads and more traffic (Lunney 2013; Rhodes *et al.* 2014).

However, the central fact remains that land clearing kills, injures or otherwise harms animals in a manner that is direct (i.e. the clearing of vegetation either causes damaging physical contact with animals or creates the cleared environment that animals subsequently experience), demonstrable (i.e. the harms can be demonstrated through forensic or scientific investigation) and capable of being avoided or minimised with appropriate application of the mitigation hierarchy.

Thus, efforts to ignore the harm that land clearing causes must present as an act of wilful blindness which is inconsistent with objective and transparent decision making about the benefits and harms of land clearing. Further work is needed to develop appropriate statutory and policy based mechanisms to identify and evaluate the harms caused by proposed land clearing activities and to allow for the effective consideration of those harms in decision making relating to land clearing.

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