

Briefing Note: Biodiversity Legislation Review

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1. BACKGROUND

- 1.1 The NSW Government is undertaking a review of the *Native Vegetation Act (2005)*, *Threatened Species Conservation Act (1995)*, *Nature Conservation Trust Act (2001)* and parts of the *National Parks and Wildlife Act 1974*.
- 1.2 An Independent Panel was appointed in June 2014. The Panel released an Issues Paper in August 2014 and undertook stakeholder engagement and community consultation.
- 1.3 The Independent Panel's final report was delivered to Government on 18 December 2014.
- 1.4 The government expects to release its response in February as part of an election policy.

2. KEY CONCERNS WITH THE INDEPENDENT PANEL'S FINDINGS AND RECOMMENDATIONS

2.1 *The Native Vegetation Act has met its objectives*

The *Native Vegetation Act* has resulted in significant biodiversity achievement, with over 950 property vegetation plans and over four million hectares under protection or improved. There have only been a small number of voices who have expressed dissatisfaction in relation to the operation of the *Native Vegetation Act*, and this should not be viewed as a failure of the Act, especially when contrasted with its many achievements.

2.2 *The removal of the 'improve or maintain' test is a backward step*

The removal of the 'improve or maintain' the environment test would be a significant backward step. It would lower the current importance given to biodiversity considerations by requiring decision makers to 'balance' social, economic and environmental considerations. This will not ensure the same level of biodiversity protection as the 'improve or maintain' test, and reinjects the same factors that have led to our historic loss of biodiversity and which has resulted in over 1140 threatened species and ecological communities in NSW.

2.3 *The recommended reforms will create more complicated, uncertain and costly processes for landowners*

- Historically, landowners have been able to receive assessments and advice from Catchment Management Authorities at no cost; under the recommended changes landowners will now be required to lodge development applications at their own cost, including the cost of biodiversity assessment

- Under the *Native Vegetation Act*, the ‘improve or maintain’ test, and the Environmental Outcomes Assessment Methodology that underpins it, has provided clear criteria for landowners and decision makers in assessing impacts on biodiversity; the proposal to require balanced consideration of economic, social and environmental considerations under the planning system is highly discretionary, less certain and weakens the importance given to threatened biodiversity.
- An increased reliance on self-assessment will put landowners, who do not necessarily have the skills or expertise to undertake technical assessment, at risk of being in breach of regulations.

2.4 *There is an over-reliance on biodiversity offsetting and weakened biodiversity offsetting principles will lead to poorer biodiversity outcomes*

- Biodiversity offsetting is not appropriate in all circumstances. Areas of high conservation and biodiversity value must be adequately protected through appropriate mechanisms such as “red flags” or “no-go zones” that cannot be offset.
- A recent Senate Standing Committee on Environment and Communications report, Inquiry into Environmental Offsets, tabled on 16 June 2014 recommended “that offsets be used only as a last resort”
- If biodiversity offsetting is to occur, it must meet best practice principles that require ‘like for like’ offsets and no net loss of biodiversity. Loosening of the “like for like” requirement could lead to outcomes where the offset does not adequately represent the biodiversity lost, particularly impacting on vulnerable biodiversity. The NSW Biodiversity Offsetting Policy for Major Projects has been the subject of criticism for this reason.

2.5 *Local Land Services and Local Councils are not adequately skilled or resourced to undertake biodiversity assessments or increased decision making roles*

- Local Lands Services, local councils and local planning staff are not generally trained in biodiversity regulation and assessments.
- While Local Land Services staff are highly experienced in regulation of biosecurity issues (livestock disease and pest animals, including the impact of pest animals on threatened fauna and flora), they have little experience of biodiversity issues relating to native vegetation. As a result, they are not well placed to regulate such issues.
- Local councils have little experience in the management of agricultural development, and would require significant additional funding and training. Inevitably, local council employees have numerous other factors to address when making their decision, which ultimately risks placing biodiversity behind a range of other competing considerations.

2.6 *Allowances to clear small areas of land, or a certain number of hectares of land annually, will lead to greater clearing*

- Exemptions that would allow clearing of small areas of land have historically led to loopholes and compliance issues.
- The cumulative impacts of exemptions are significant, difficult to monitor and can lead to increased levels of clearing.

2.7 *Abolishing requirements for recovery planning, threat abatement and priorities action statements may lead to 'species triage'*

- Abolishing requirements for recovery planning, threat abatement and priorities action statements from the *Threatened Species Act 1995* may lead to a 'species triage' approach resulting in some threatened species effectively being abandoned as too 'difficult' or 'costly' to conserve.
- If a 'species triage' approach were to eventuate, it would also conflict with the Review recommendation to propose a vision of landscape scale conservation through a connected network of private and public land.

2.8 *Significant resources will be required to implement the Panel's recommendations*

- A significant investment of resources is required to develop mapping that will underpin the recommended changes.
- The proposals anticipate changes to Local Environment Plans. This will be resource intensive for local councils, many of which have recently updated their plans in line with the Standard Instrument, and the Department of Planning and Environment.
- Such regional plans have in the past, caused much local controversy, as all land owners are affected by 'lines on maps'. This problem does not occur with the Native Vegetation Act which takes a case by case approach.
- Local councils will also have to allocate additional resources to assess and determine land clearing applications.
- Resources will have to be directed to Local Land Services to support their increased support and assessment roles under the recommended changes.
- The repeal of existing legislation and creation of a new Biodiversity Conservation Act is a significant legislative task for the NSW Government, given the time required to draft new legislation and consult with a broad range of stakeholders.

3. KEY MATTERS

The following key matters must be addressed in order to conserve biodiversity in NSW:

- 3.1 In order to address the drastic decline in biodiversity, the NSW government must commit to maintaining or improving biodiversity, including achieving healthy and viable populations of native animals and plants, including of animals and plants presently threatened with extinction. This must be enshrined in legislation.
- 3.2 The principles of ecologically sustainable development must apply.
- 3.3 There must be both incentive and enforcement mechanisms available to stop the decline in biodiversity.
- 3.4 Areas of high conservation and biodiversity value must be adequately protected through mechanisms such as "no-go zones". The areas are not suitable for development or biodiversity offsetting.
- 3.5 Where biodiversity offsetting is used, it must be in accordance with best practice and meet the "like for like" test.

- 3.6 Decision making processes must be objective, and underpinned by robust scientific methodologies.
- 3.7 Other legislation (e.g. mining and planning laws) must not be allowed to override biodiversity and conservation protections
- 3.8 Investment priorities for biodiversity conservation should be driven by scientific data and aim to stop and reverse biodiversity decline.

4. THE NEED FOR STRONG BIODIVERSITY AND CONSERVATION LAWS

- 4.1 Over the last 200 years NSW has experienced a marked decline in biodiversity with over 100 plant and animal species becoming extinct. There are currently over 989 species of plants and animals, 49 populations and 107 ecological communities threatened with extinction in NSW. Between 2009 and 2012 an additional 35 species were listed as threatened. At present a total of 45 key threatening processes, predominantly the result of human activities, have been identified as contributing to biodiversity decline.
- 4.2 Biodiversity provides essential ecosystem services such as oxygen, the recycling of nutrients, control of pests and diseases, pollination of crops, regulation of water quality, and exercise of climate controls. It can also provide genetic resources and opportunities for improved food and medicine production, renewable resources, such as fuel, and building materials and clothing; and deliver concrete agricultural sustainability benefits particularly in marginal areas prone to soil loss.
- 4.3 Our existing legislation has played a crucial role in the protection of biodiversity in NSW by improving the knowledge about biodiversity; the independent listing of threatened species; creation of an objective test of environmental impacts and use of the 'maintain and improve' test; with the *Native Vegetation Act 2003* in particular leading to over 4 million hectares of native vegetation on farmland protected or under improved management with more than 950 property vegetation plans.
- 4.4 However the continuing loss of biodiversity demonstrates that much more needs to be done. The review of biodiversity laws is timely because there is an urgent need to strengthen them.

5. FURTHER INFORMATION

For further information, see recent submissions to the Independent Biodiversity Legislation Review Panel and reports:

- [NCC, TEC, NPA and TWS joint submission: Conserving and Restoring Biodiversity in NSW](#)
- [EDO submission: A legal assessment of NSW biodiversity legislation](#)
- [HSI submission](#)
- [TEC: Laws for the Bush: benefitting biodiversity and people](#)

Submissions can be downloaded at:

www.nature.org.au/resources/submissions/