



Submission on draft amendments to the NSW Threatened Species *Priorities Action Statement*

prepared by

**EDO NSW
February 2014**

About EDO NSW

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Successful environmental outcomes using the law. With over 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO NSW is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

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Summary of recommendations

1. The Office of Environment and Heritage (**OEH**) should provide further opportunities (such as workshops and webinars) to assist scientific experts and interested community groups to comment on the components of the PAS Review.
2. The NSW Government should fund a review by an independent scientific panel or the Natural Resources Commission, to test the likely efficacy of the Saving Our Species program in achieving long-term threatened species outcomes. The review should include consideration of the new and revised PAS actions, and various funding scenarios.
3. OEH should consider EDO NSW's initial comments on the PAS Review recommendations as OEH moves to finalise and implement the next stage of the PAS.
4. The NSW Government should clarify timeframes for the implementation of the PAS, and the stages of the Saving our Species program. This should include 'clear timetables for recovery and threat abatement planning and achievement', consistent with s 90A of the Threatened Species Conservation Act 1995 (NSW) (**TSC Act**).
5. The NSW Government should provide further comparative information on threatened species funding in NSW (including detailed funding estimates for full implementation of PAS actions and the Saving our Species program; and funding options being considered outside OEH or Saving Our Species budgets).
6. The Saving our Species program should aim to **recover** threatened species, consistent with the objects of the TSC Act, not just aim to prevent further decline.
7. The interpretation of 'viability' should be further refined to provide for robust and resilient species long into the future, including in relation to genetic diversity and climate change threats.
8. EDO NSW reiterates the need for an integrated habitat or 'ecosystem functioning' approach to managing threatened species, including identification of keystone species and regional habitats important to maintaining and improving ecosystem services.
9. The NSW Government should clarify the funding and implementation status of existing recovery plans, including for high-profile, complex or critically endangered species.
10. The NSW Government should amend the planning legislation to make the PAS a mandatory consideration in strategic planning and development assessment.
11. Further consultation and scrutiny is needed to determine whether mammals are sufficiently represented and prioritised, given their especially threatened status and ecological and social values.
12. Expert and agency roles and interaction in prioritising species – and estimating project benefits, costs and likelihood of success – should be more transparent. OEH should publish: information developed via expert panels; which experts were involved; and how socio-economic considerations or conflicts are dealt with in finalising project details.
13. The prioritisation analysis should be run every three years, with triggers to allow annual review in special circumstances. The Saving our Species program should also seek to manage the inherent conflict between annual 'dynamic prescriptions' and long-term planning for recovery.

14. *The PAS and Saving our Species should include measurable targets, and predicted recovery objectives to assess projects against, consistent with PAS Review findings and the TSC Act (s 90A).*
15. *If the landscape-managed species category is retained, specific additional funding and policy effort must be directed to improve the environmental rigour of existing legislative frameworks on land-clearing, national parks and catchment management. A whole of government approach to threatened species management should be used to ensure that site-based projects do not take precedence over effective landscape management without an appropriate prioritisation process across all threatened species.*
16. *OEH should clarify what proportion of threatened species will receive little or no management action under the Saving our Species prioritisation process, and to what extent this indicator aims to improve on the previous version of the PAS.*
17. *OEH should clarify how existing management actions will be implemented for species, populations and communities that do not receive specific funding via Saving our Species. It is unclear whether other OEH programs will fund any of this work, or if not, what this means for the ongoing management and future viability of those species.*
18. *OEH should establish a clear process and short-term timeframes to consult the community on protecting additional 'iconic species' (preferably with the injection of additional funds). This should include specific engagement with indigenous peoples and conservation organisations across NSW.*
19. *PAS implementation must be supported by, and integrated into, other regulatory frameworks such as native vegetation protection, private forestry and planning.*
20. *The PAS should set out achievable timeframes for moving species from the 'data-deficient' to the 'site-managed' stream. This could include an estimate of costs for different transition timeframes, including for species not yet funded.*
21. *The Saving our Species program must avoid the perception that prioritisation of some species equates to downgraded protection for species that are not prioritised.*
22. *The program should set out clear responsibilities, and regular timeframes and milestones for monitoring the security of 'keep watch species'.*
23. *A climate change filter needs to be added to 'partnership species' assessment, to determine whether NSW will become a higher priority area for the recovery of these species in future, particularly for species at the edge of their geographic range in NSW.*
24. *The NSW Government should commit to actively seek intergovernmental support for 'partnership species', and report on how this is being done.*
25. *Species prioritisation and project selection should place a greater focus on highly significant indicator species to support long-term ecosystem functioning.*
26. *The revised PAS should restore a number of significant, high priority actions that have been removed from a large number of species recovery strategies, or provide a justification for why these actions have been removed.*
27. *Project development and prioritisation processes should be amended to allow for the retention and proper funding of a wider range of PAS actions, in recognition of growing threats and pressures.*

Introduction

As an independent community legal centre specialising in public interest environmental law, EDO NSW welcomes the opportunity to comment on the review of the threatened species *Priorities Action Statement (PAS)*.

EDO NSW commented on the draft PAS in 2006.¹ Our submission recommended an overall increase in resources to the Department of Environment and Conservation (now Office of Environment and Heritage (**OEH**)) to improve threatened species and biodiversity protection. We also noted six gaps or areas where the draft PAS could be strengthened, namely:

1. *The need for identification of responsibilities and assessment of capacities*
2. *The need for greater analysis of priorities* [including between species]
3. *The need for greater focus on threat abatement* [i.e. key threatening processes]
4. *The need for a coordinated and integrated habitat approach to threatened species protection and management* [as opposed to a primarily single species focus]
5. *The need for greater detail and more prescription in priority actions* [including clearer responsibilities to enable more coordinated action across the State]
6. *The need for expert advice* [such as by involving an expert panel more directly in the PAS].

Seven years on, *Saving Our Species* has addressed some of these issues but many of these comments on the operation of the PAS remain valid; and some have been identified in the three-year statutory review of the PAS (2007-10) (**PAS Review**).

In recent weeks EDO NSW has contacted, or been contacted by, a small number of experts and groups interested in the PAS Review. A general comment we have received is that the review involves a very large amount of detailed information, and that it is difficult to make comprehensive comments.² We make two initial recommendations which may provide additional rigour and public confidence in the revised PAS.

Recommendation: *The Office of Environment and Heritage (OEH) should provide further opportunities (such as workshops and webinars) to assist scientific experts and interested community groups to comment on the components of the PAS Review.*

Recommendation: *The NSW Government should fund a review by an independent scientific panel or the Natural Resources Commission, to test the likely efficacy of the Saving Our Species program in achieving long-term threatened species outcomes. The review should include consideration of the new and revised PAS actions, and various funding scenarios.*

This submission is divided into four parts. **Part 1** notes some key overarching issues that should frame the operating context of the PAS and threatened species protection in NSW. **Part 2** provides general comments on the PAS Review and the *Saving Our Species* program. **Part 3** comments more specifically on the six management streams and prioritisation process under *Saving Our Species*. Finally, **Part 4** comments on new and revised species strategies proposed in the PAS amendments.

¹ EDO NSW, *Submission on Threatened Species Priorities Action Statement* (August 2006), available at: http://www.edonsw.org.au/native_plants_animals_policy.

² We welcome the availability of detailed information, although we note there are numerous relevant and interacting documents, which may make written submissions complex or daunting: the PAS Review document, the SOS introduction, an SOS technical report, new and revised PAS strategies for 484 species, additional website information on proposed projects to be funded, and a list of priority bands for site-managed species.

1. Overarching issues

Acknowledging the importance of the work done by OEH in implementing and reviewing the PAS, there are three overarching issues which the NSW biodiversity protection framework, including the PAS, must better integrate and improve on to deliver lasting positive outcomes.

Planning system integration

First and foremost, until fundamental issues of interaction between planning and biodiversity laws are addressed, it is difficult to have confidence in the ability of state laws to protect threatened species over the long term.

The NSW planning system – including the imminent plans to overhaul it – must better implement commitments to biodiversity protection, and restore the critical role of the *Threatened Species Conservation Act 1995* (NSW) (**TSC Act**). Notwithstanding the enactment of the PAS in 2007, there is no corresponding requirement to consider the PAS in the NSW planning act or regulation.³ Requiring consent authorities to at least consider the PAS in assessing draft strategic plans, development applications and conditions would be an important step.⁴

The PAS Review does not sufficiently recognise the broader operating context of the PAS; or the fact that many other legal and policy mechanisms (such as planning and development assessment, land clearing controls and biodiversity offset options) are driving towards *reduced* protection for threatened species. More information on this problem is outlined in an Australian Network of EDOs (ANEDO) report on threatened species legislation across Australia (see **Attachment A**).⁵

Climate change considerations

Second, the regulatory framework must prioritise attention to the current and accelerating impacts of climate change. As the NSW State of the Environment 2012 report notes:

*Climate change is expected to exacerbate the effects of existing threats and introduce additional pressures... Studies suggest that climate change could surpass habitat destruction as the greatest global threat to biodiversity over the next few decades.*⁶

The PAS should place greater emphasis on the need for clear adaptation planning, including species migration shifting habitat ranges; and place greater focus on ‘indicator’ species that can provide indications of climate change impacts, and other perturbations that may affect a range of conservation-priority species.

Adequacy of funding

Third, EDO NSW continues to support an increase in funding to the Office of Environment and Heritage to provide meaningful, integrated protection for biodiversity and sensitive habitats. The review’s approach is to propose an ‘optimal’ number of species that can be

³ *Threatened Species Conservation Act 1995* (NSW) Part 5A. Cf *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

⁴ The EP&A Act requires *recovery plans* and *threat abatement plans* must be taken into account in deciding whether a development is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats (see ss 5A; 112A-D); and in deciding whether to grant concurrence to a development (s 79B).

⁵ ANEDO, *An assessment of the adequacy of threatened species & planning laws in all jurisdictions of Australia* (2012), Report for the Places You Love Alliance. Available at: http://www.edonsw.org.au/native_plants_animals_policy, ‘Discussion Papers’.

⁶ EPA, *State of the Environment 2012*, Ch. 5, http://www.epa.nsw.gov.au/soe/soe2012/chapter5/chp_5.1.htm.

managed within a current budget.⁷ We believe a better approach would be to consider a *range* of budgetary options, and the improved outcomes that these could deliver. This would help to stimulate community dialogue on the range of economic and non-market benefits of biodiversity,⁸ the adequacy of threatened species funding, and the trade-offs involved.⁹

2. General comments – PAS Review and *Saving Our Species*

As an introductory comment, we note that the PAS Review process has gone some way to meeting the need to establish a transparent, repeatable and defensible prioritisation process for the protection of threatened species. *Saving Our Species* has identified locations for the implementation of strategies and priority actions. This is an important step forward in the PAS process, however EDO NSW retains a number of concerns about the detail of this process.

PAS Review recommendations

The eight recommendations of the PAS Review are to be carried forward under OEH's new *Saving our Species* conservation program. EDO NSW generally supports these recommendations, which are noted (bold) below with brief comments for OEH consideration:

- 1. Establish six new management streams to better target the management of each threatened species.**
 - We comment on various aspects of this proposal in detail below.
- 2. Enhance uptake of the PAS and raise community awareness.**
 - It is unclear how this will be achieved without committing additional resources, supported by practical requirements and considerations under planning laws.
- 3. Make PAS actions, and their timing, more specific.**
 - We support this proposal, as raised in our 2006 submission on the draft PAS. For some species, specificity has come at the expense of important actions.
- 4. Provide a framework for local actions to contribute to statewide outcomes for species.**
 - Such a framework must be fully integrated into land use planning processes.
- 5. Target investment at the minimum set of actions that are crucial for securing a species.**
 - While investment must be prudent and accountable, there are inherent risks in relying on 'crucial' actions only, at a minimum number of sites, for a small number of species, at the expense of landscape-based approaches. This goes to important questions about program funding, objectives, community values and intergenerational equity.

⁷ See OEH, *Introduction to Saving our Species* (2013), 'Summary': 'For site-managed species, conservation projects will be prioritised to maximise the number of species that can be secured with available resources.' The OEH website notes that \$4.8 million has been allocated to 'kick start' 87 *Saving our Species* projects over four years (2013-16). See: <http://www.environment.nsw.gov.au/SavingOurSpecies/projects.htm>.

⁸ See, for example, UNEP, *The economics of ecosystems and biodiversity: TEEB for local and regional policymakers*, via www.teebweb.org; R. Costanza et al., 'The value of the world's ecosystem services and natural capital', *Nature* 387, 253 (1997).

⁹ See below, 'Saving our Species program, timeframes and funding'.

6. Develop a sound, repeatable and transparent process for prioritising effort between species statewide.

- We support the need for a transparent, methodical prioritisation process. The efficacy and transparency of stream allocation and prioritisation, and the level of interaction between experts and government agencies, could be improved.

7. Develop a process for monitoring and reporting on the outcomes of projects and actions for threatened species.

- We support this recommendation as in our 2006 submission on the draft PAS, while querying the removal of various monitoring actions in the revised PAS.

8. Develop a simple, user-friendly database to support program delivery.

- We support greater public access, functionality and integration with other databases. The PAS Review implies this would require extra funding, which we support. The database should also be integrated with ePlanning reforms, and include up-to-date locations of threatened species sightings (where appropriate).

Recommendation: *OEH should consider EDO NSW's initial comments on the PAS Review recommendations as OEH moves to finalise and implement the next stage of the PAS.*

Saving our Species program, timeframes and funding

Consistent with the PAS Review's recommendations, *Saving our Species* prioritises limited resources by allocating all listed threatened species into one of six 'management streams'.¹⁰ While *Saving our Species* proposes to prioritise the first four of these streams (including landscape-managed species), stage 1 of the program focuses on a limited number of site-specific, iconic and data-deficient species. The timeframes for future stages are unclear.

OEH reports that \$4.8 million has been allocated to the *Saving our Species* program over four years. However, 'This funding represents only some of the total resources required to fully implement all proposed projects for species in the site-managed and data deficient management streams.'¹¹ The program states it will 'attract greater levels of investment from public and private sources to secure threatened species in the wild in NSW',¹² but provides no information on how this is expected to happen, or contingency plans if this is unsuccessful. EDO NSW would welcome detailed funding analysis for full implementation.¹³

Conservation projects for 62 (of 401) *site-managed species* have been selected for implementation under the amended PAS, with start-up funding averaging \$780,000 a year from 2013-2016 (or \$12,580 per species project, per year). \$1.48 million has been allocated across four *iconic species* projects (averaging \$92,500 per species, per year).¹⁴ One year's funding has been secured for research into 22 *data-deficient species* (averaging \$9,318 per species). Government and private sector partners are expected to provide further support.

This information provides a useful starting point for community debate about threatened species funding. It is widely acknowledged that biodiversity conservation funding is grossly

¹⁰ *Site-managed species, iconic species, data-deficient species, landscape-managed species, partnership species and keep watch species*. See PAS Review, recommendations 1, 5 and 6.

¹¹ <http://www.environment.nsw.gov.au/SavingOurSpecies/projects.htm>.

¹² OEH, *Introducing Saving our Species*, p 2.

¹³ Estimates derived from consultation documents suggest that minimum actions for *site-managed species* alone (as listed in OEH's priority funding bands) could cost \$9.82 million per year. This is based on OEH's 5 priority bands listing site-managed species, which suggest an annual total cost of (for species in each band): (1) \$338,515; (2) \$564,655; (3) \$804,071; (4) \$1,623,467; (5) \$6,493,961.

¹⁴ *Iconic species* initially include the koala, corroboree frog, brush-tailed rock wallaby and mallee fowl.

inadequate for the scale of the global and domestic threats of the 21st century.¹⁵ However, further information on the state of funding in NSW – both in comparison to other jurisdictions, and comparison in NSW over time – is needed to develop a clearer picture of realistic possibilities for threatened species protection. This would stimulate discussion about values, options and the implications of species loss for the future of NSW (including environmental social, economic and intergenerational equity concerns).

Recommendation: *The NSW Government should clarify timeframes for the implementation of the PAS, and the stages of the Saving our Species program. This should include ‘clear timetables for recovery and threat abatement planning and achievement’, consistent with s 90A of the Threatened Species Conservation Act 1995 (NSW) (TSC Act).*

Recommendation: *The NSW Government should provide further comparative information on threatened species funding in NSW (including detailed funding estimates for full implementation of PAS actions and the Saving our Species program; and funding options being considered outside OEH or Saving Our Species budgets).*

Saving our Species should aim for species recovery, not just avoiding decline

EDO NSW agrees that threatened species management should be driven by a single clear objective to enable proper management, measurement and reporting.¹⁶ Given the crucial importance of the program objective, we submit that the proposed objective should be more ambitious.

Saving our Species ‘aims to maximise the number of threatened species that can be secured in the wild in NSW for 100 years.’¹⁷ A further key management objective for site-managed species is to *prevent any decline* in their conservation status under the TSC Act.¹⁸ We make two comments here.

First, we believe that long-term biodiversity planning should aim to *recover* threatened species, not just prevent further decline. This is consistent with the objects of the TSC Act, and the strategic plan for the Convention on Biodiversity.¹⁹ While a recovery-centred aim is more ambitious than trying to ‘hold the line’, it is also more likely to result in sustainable, long-term biodiversity protection in NSW and Australia for many generations to come.

Second, the detail behind the program’s objectives is important. A species is defined as ‘secure’ when it has a 95% chance of a viable population surviving in the wild for 100 years.²⁰ However, could ‘secure in the wild’ include isolated pockets that only exist by relying on ongoing human intervention? For example, the large emphasis on breeding programs in the revised PAS may suggest the interpretation of viability needs to be strengthened.

The SOS Technical Report gives some further, welcome clarification of ‘viability’ (p 6). However, the consideration of genetic diversity needs appears limited; as is consideration of climate change (the response to which seems limited to managing multiple subpopulations). Choosing a small number of sites while leaving out other significant NSW populations (including sites at the limits of a species’ distribution) increases climate change and genetic vulnerability. Examples include the Leafless Tongue Orchid and Broad-headed Snake.

¹⁵ See OEH, *Saving our Species Technical report* December 2013 (**SOS Technical Report**), p 5, citing Balmford et al. 2003 and McCarthy et al. 2012.

¹⁶ OEH, SOS Technical Report, p 1.

¹⁷ <http://www.environment.nsw.gov.au/savingourspecies/about.htm>.

¹⁸ OEH, *Introducing Saving our Species*, p 9.

¹⁹ Threatened Species Conservation Act 1995 (NSW), s 3(b); see also Convention on Biological Diversity, *Aichi Biodiversity Targets*, Target 12, at <https://www.cbd.int/sp/targets/default.shtml>.

²⁰ OEH, SOS Technical Report, p 6.

Similarly, while the three levels of monitoring proposed are appropriate (outputs, threat outcomes and species outcomes²¹), a project could have success under all these outcomes without actually expanding the species' range, leaving it vulnerable to stochastic (unpredictable) threats such as climate change.

Recommendation: *The Saving our Species program should aim to **recover** threatened species, consistent with the objects of the TSC Act, not just aim to prevent further decline.*

Recommendation: *The interpretation of 'viability' should be further refined to provide for robust and resilient species long into the future, including in relation to genetic diversity and climate change threats.*

The need for an integrated habitat approach to biodiversity protection

EDO NSW's 2006 submission on the draft PAS noted the need for an integrated habitat or 'ecosystem functioning' approach to managing threatened species. We reiterate the importance of this approach in relation to *Saving our Species*. This requires greater emphasis on landscape-scale management actions rather than primarily site-based actions.

It is not sufficient to leave landscape-scale biodiversity management to the vagaries of other regulatory frameworks such as native vegetation, parks management and development assessment; particularly if these frameworks prioritise other ends. If the aim is to maximise the perpetual²² viability of as many species as possible, this can only be achieved in a coordinated and integrated way.²³

A number of achievements reported in the PAS Review highlight that projects can successfully maintain a population on-site, without necessarily contributing to species recovery. For example, the Review notes a land covenant securing over 46 hectares of vital breeding habitat for the regent honeyeater (p 16). While this is undoubtedly a positive action, at the same time the regent honeyeater has recently been downgraded to *critically endangered*. The regent honeyeater is known to depend on 'stepping-stones' of viable habitat to allow it to undertake annual movements – the protection of breeding habitat is not sufficient action to ensure the recovery of this species.

The PAS Review goes on to say, 'Much work has already been undertaken... to save the regent honeyeater. This species could be further helped through increased community awareness.' (p 20) What is really required, however, is for governments at all levels to ensure the clearing of regent honeyeater habitat is stopped. Yet there is nothing in the PAS Review amendments that prevents continued land clearing of threatened species, population and communities.

Two illustrative case studies relating to the approved clearing of critically endangered species, including the regent honeyeater, are provided at **Attachment B**.

Recommendation: *EDO NSW reiterates the need for an integrated habitat or 'ecosystem functioning' approach to managing threatened species, including identification of keystone species and regional habitats important to maintaining and improving ecosystem services.*

²¹ OEH, SOS Technical Report, p 20.

²² We support the intention that the 100-year viability objective this be applied 'perpetually', by constantly projecting 100 years from any point in time. See SOS Technical Report, p 6.

²³ See also Part 3, 'Landscape-managed species'; and Part 4, 'Greater focus on indicator species to support long-term ecosystem functioning'.

Unclear interaction between the PAS, recovery plans and the planning system

The PAS Review report notes that only one in 10 threatened species has a recovery plan, while the other nine out of 10 'are managed solely under the PAS'. According to the Review, 'Recovery plans continue to be important for guiding the recovery of high-profile, complex or critically endangered threatened species.'²⁴ Apart from four *iconic species*,²⁵ it is unclear how any of the other 90-odd species' recovery plans will continue to be implemented without specific funding.

The unclear status of existing recovery plans is also significant because decision-makers under the *Environmental Planning and Assessment Act* are required to consider recovery plans and threat abatement plans (but not the PAS itself) if a development may affect threatened species or critical habitat. With nine out of 10 species not subject to a recovery plan, and with funding uncertainty for the one in 10 species that are, the effectiveness of considering recovery plans alone when determining development activities is questionable.

Recommendation: *The NSW Government should clarify the funding and implementation status of existing recovery plans, including for high-profile, complex or critically endangered species.*

Recommendation: *The NSW Government should amend the planning legislation to make the PAS a mandatory consideration in strategic planning and development assessment.*

3. Saving Our Species management streams and prioritisation

Site-managed species

401 threatened species (42%) are initially allocated to the site-managed species stream.

Mammals at great risk of extinction, but poorly represented in 'priority bands'

The *Saving our Species* introduction notes that mammal species are most at risk of extinction in NSW (with 59% of mammals threatened²⁶). Nevertheless, the SOS prioritisation process results in only one mammal in OEH's top three priority bands (in Band 3) and only nine mammals on the prioritisation list in total (as this list focuses on 'site-managed' species). This leaves over 50 threatened mammal species unprioritised in other categories.²⁷

Recommendation: *Further consultation and scrutiny is needed to determine whether mammals are sufficiently represented and prioritised, given their especially threatened status and ecological and social values.*

Expert and agency roles in the species prioritisation process should be more transparent

The SOS Technical Report provides useful information on the expert panel process to develop projects for individual site-managed species. While this process appears reasonable (on the basis of available species information), it could be improved in three ways. First, the species information developed via the expert panels should be made available to the public.

²⁴ OEH, *Review of the NSW Threatened Species Priorities Action Statement*, p 4.

²⁵ To be managed via projects based on existing recovery plans. *Introducing Saving our Species* 4,13.

²⁶ Compared with 28% of birds, 34% of amphibians, 18% of reptiles and 13% of plants. OEH, *Introducing Saving Our Species*, p 2.

²⁷ The *State of the Environment 2012* report (5.1), notes there are 138 mammal species in NSW, with 82 listed as threatened (including 25 extinct).

Second, the list of experts involved in each panel should also be published; along with any dissenting opinions in light of final project parameters (such as the exclusion of certain sites or threats due to social or economic factors).

Third, there needs to be greater transparency around the 'Project review' stage.²⁸ For example, it appears that actions could be modified in consultation with government land managers and operational stakeholders before cost benefit was calculated, and before the likelihood of success (effectiveness) was added into the cost benefit equation. This makes it unclear who was making the decisions about likelihood of effectiveness. Assessing likelihood of success is highly subjective, with many variables, so it needs to be clear who is making these judgements and on what basis, particularly where 'no single participant [has] expert knowledge of the species' ecology or habitat requirements across its entire range.'²⁹

It is also unclear whether scientific experts were able to comment on later input of agency stakeholders. For example, what if a panel of ecologists agreed upon several crucial project sites and actions, but NSW Forestry objected to the inclusion of land that it manages as being an 'inappropriate' site? How would such conflicts be resolved?

Recommendation: Expert and agency roles and interaction in prioritising species – and estimating project benefits, costs and likelihood of success – should be more transparent. OEH should publish: information developed via expert panels; which experts were involved; and how socio-economic considerations or conflicts are dealt with in finalising project details.

Annual prioritisation reviews must avoid ad hoc decisions that create uncertainty

One justification for the shift to *Saving our Species* is to avoid ad hoc decision-making and improve prospects of long-term funding for threatened species management.³⁰ However, according to the Technical Report, 'the prioritisation analysis will be run annually (incorporating current best available knowledge) to support decisions related to continuing or discontinuing investment in particular conservation projects.'³¹ Annual priority reviews (as with annual assessments of success) may be of limited value when trends are likely to be discernable only over longer timeframes.

Recommendation: The prioritisation analysis should be run every three years, with triggers to allow annual review in special circumstances. The *Saving our Species* program should also seek to manage the inherent conflict between annual 'dynamic prescriptions' and long-term planning for recovery.

Targets and indicators

Finally, while the PAS Review and TSC Act note the need to establish performance indicators, we are not aware of any measurable targets or predicted recovery objectives against which the site-managed species projects can be assessed.

Recommendation: The PAS and *Saving our Species* should include measurable targets, and predicted recovery objectives to assess projects against, consistent with PAS Review findings and the TSC Act (s 90A).

²⁸ SOS Technical Report, 'Project reviewed by relevant land managers and operational stakeholders', pp 8 and 10-11.

²⁹ SOS Technical Report, p 8.

³⁰ SOS Technical Report, p 1.

³¹ SOS Technical Report, p 16. Similarly, see p 24: 'The development of dynamic prescriptions for managing particular species, as opposed to static planning documents (e.g. recovery plans), will allow the evidence base to improve over time, facilitating adaptive management.'

Landscape-managed species

The concept of *landscape-managed species* comes closest to the idea of supporting integrated habitat and ecosystem functioning as the basis for threatened species protection.³² However, under *Saving our Species*, the mobilisation of resources towards site-managed species creates a great deal of uncertainty about the management and funding of the initial 131 (14%) landscape-managed species.³³

Management and monitoring actions for these species appear to have been delayed because there are not specific, site-confined tasks that can be allocated. As discussed in Part 2 above, this fails to recognise that *protecting landscapes* will be the most effective way of conserving large numbers of species (including those not yet threatened with extinction).

We understand that landscape-managed species may be dealt with at stage 2 of *Saving our Species*,³⁴ although timeframes are unclear. We can discern no clear strategy for ensuring that these species are protected in the meantime, beyond broad statements about management of land clearing, national parks and catchment management;³⁵ even though the SOS Technical Report acknowledges that the distinction between site-managed and landscape-managed species is 'relatively arbitrary'.³⁶

Sole reliance on existing approaches under the Native Vegetation Act and national park estate to protect landscape-managed species is inadequate. Threatened species continue to be listed even with these frameworks in place; there are pressures on the Government to further weaken them; and a lack of connectivity across landscapes is still a serious concern.

Recommendation: *If the landscape-managed species category is retained, specific additional funding and policy effort must be directed to improve the environmental rigour of existing legislative frameworks on land-clearing, national parks and catchment management. A whole of government approach to threatened species management should be used to ensure that site-based projects do not take precedence over effective landscape management without an appropriate prioritisation process across all threatened species.*

Will other species, ecological communities and key threatening processes receive funding?

According to the SOS Technical Report (p 5):

Management of landscape-managed species, partnership species, endangered populations, endangered ecological communities and key threatening processes will continue to be guided by existing actions developed in 2007.

Protection of endangered ecological communities and key threatening processes faces an uncertain future. It remains unclear whether draft recovery plans will be finalised, whether Threat Abatement Plans will continue to be implemented, and if so, how they will be funded. Being 'guided by existing actions' is ambiguous without specific funding commitments.

Furthermore, while around 90% of threatened species 'are managed solely under the PAS', 30% of threatened species received little or no management action under the PAS in 2007-

³² Examples of important landscape species include the large Powerful Owl *Ninox strenua*, Barking Owl *N. connivens*, Sooty Owl *Tyto tenebricosa*, Masked Owl.

³³ SOS Technical Report, p 5: 'At this stage of the program, only species in the site-managed and data-deficient species streams have had their PAS strategies reviewed and redeveloped to include more specific and measureable actions. Only conservation projects for site-managed species have undergone a cost-effectiveness prioritisation (see Project priority score).'

³⁴ SOS Technical Report, p 22.

³⁵ See, for example, *Review of the NSW Threatened Species Priorities Action Statement*, p 18.

³⁶ SOS Technical Report, p 3.

10.³⁷ There is no explicit indication whether the Government considers this acceptable; whether the proportion of ‘unmanaged’ species will reduce or increase under *Saving our Species*; or whether those species are being monitored for signs of disproportionate decline.

Recommendation: *OEH should clarify what proportion of threatened species will receive little or no management action under the Saving our Species prioritisation process, and to what extent this indicator aims to improve on the previous version of the PAS.*

Recommendation: *OEH should clarify how existing management actions will be implemented for species, populations and communities that do not receive specific funding via Saving our Species. It is unclear whether other OEH programs will fund any of this work, or if not, what this means for the ongoing management and future viability of those species.*

Iconic species

Consultation and identification

EDO NSW is concerned that only four *iconic species* have been identified as highly valued by the community³⁸ – and for which a full suite of management actions will be undertaken (beyond *crucial* actions as proposed for site-managed species). The SOS Technical Report notes: ‘OEH will... gauge community interest in particular species via public interaction with the *Saving Our Species* website and database’ – as a basis for future allocation of more iconic species. However, there are many other existing channels by which to gauge community value of specific species, including via local councils, CMAs, Landcare groups or wider community surveys such as *Who cares about the environment?*. OEH could also seek comment from the scientific community, including the 250+ experts engaged in the Review.

Linkage to other regulatory frameworks

The koala is an example of an iconic species. Unfortunately, the actions proposed exemplify why current actions – disconnected from other regulatory frameworks – are unlikely to be successful in protecting threatened species. One of the proposed actions is ‘Working with private landholders to protect and rehabilitate koala habitat, and establish regional habitat corridors’.³⁹ However, as one example of the conflict with other regulatory frameworks, the Private Native Forestry codes (under the NSW *Native Vegetation Act* framework⁴⁰) do not require proper, demonstrated assessment for koalas before logging occurs.

These fundamental inconsistencies in land and species management must be addressed if actions to protect threatened species are to have any chance of being effective. This means greater emphasis on landscape-based approaches and improvements to related regulatory frameworks. It is untenable if the PAS is operating to achieve important biodiversity outcomes while other frameworks, such as the PNF codes, undermine these outcomes.

Recommendation: *OEH should establish a clear process and short-term timeframes to consult the community on protecting additional ‘iconic species’ (preferably with the injection of additional funds). This should include specific engagement with indigenous peoples and conservation organisations across NSW.*

Recommendation: *PAS implementation must be supported by, and integrated into, other regulatory frameworks such as native vegetation protection, private forestry and planning.*

³⁷ OEH, *Review of the NSW Threatened Species Priorities Action Statement*, ‘Executive Summary’.

³⁸ Koala, brush-footed rock wallaby, corroboree frog and malleefowl.

³⁹ OEH, *Introducing Saving our Species*, p 13.

⁴⁰ <http://www.epa.nsw.gov.au/pnf/>.

Data-deficient species

Around 178 (18%) of NSW listed threatened species have been allocated to the 'data-deficient' stream.⁴¹ We understand that funding for data-deficient species is currently limited to \$205,000 for one year, across 22 funded species research projects.⁴²

Both the limited amount of funding provided, and the single-year funding status, may decrease the certainty of research prospects and outcomes. Also, while the TSC Act states that the PAS 'sets out clear timetables for recovery and threat abatement planning and achievement', the expected timeframes to transfer these species to other streams (which is the overall management objective) are unclear. Finally, the status of current and future research into the other 156 'data-deficient' species is also unclear.

Recommendation: *The PAS should set out achievable timeframes for moving species from the data-deficient to the site-managed stream. This could include an estimate of costs for different transition timeframes, including for species not yet funded via Saving our Species.*

Keep watch species

98 threatened species (10%) have been initially allocated to the *keep watch* stream. It is very important that allocating threatened species into 'management streams' does not result in negative outcomes for species that are not in a priority stream. This is relevant for *keep watch*, *partnership*, *data-deficient* and *landscape-managed* species.

It therefore needs to be clear that choosing to invest resources in protecting a species (via management streams and prioritisation protocols) does not equate to downgrading the level of protection that listed threatened species require. It would be a perverse outcome if adequate management plans were not implemented for a 'lower priority' species – for example, if new developments downplayed the need to protect the species because it was on the 'keep watch' list.

Recommendation: *The Saving our Species program must avoid the perception that prioritisation of some species equates to downgraded protection for species that do not receive priority funding.*

Recommendation: *The program should set out clear responsibilities, and regular timeframes and milestones for monitoring the security of keep watch species.*⁴³

Partnership species

Around 151 threatened species (16%) are allocated to the *partnership species* stream.⁴⁴ Partnership species are an example of an approach that does not adequately consider climate change. Under this approach, the NSW Government will only 'consider managing [partnership] species that are nationally listed and have key populations in NSW in partnership with the leading jurisdiction'.⁴⁵ Even for the species that are nationally listed, the program only commits to *consider* undertaking management actions.

⁴¹ SOS Technical Report, Figure 2.

⁴² Sloane's froglet and 21 flora species www.environment.nsw.gov.au/SavingOurSpecies/projects.htm

⁴³ Noting the need for 'regular monitoring to ensure they continue to be secure' (SOS Technical Report, p 4).

⁴⁴ 'Partnership species have less than 10% of their population occurring within NSW... Other state and territory governments are therefore better placed to lead the recovery, where required, of these species.' See *Introducing Saving our Species*, p 16.

⁴⁵ OEH, *Introducing Saving our Species*, p 4.

Recommendation: A climate change filter needs to be added to 'partnership species' assessment, to determine whether NSW will become a higher priority area for the recovery of these species in future. This is particularly important for species at the edge of their geographic range in NSW.

Recommendation: The NSW Government should commit to actively seek intergovernmental support for partnership species, and report on how this is being done.

4. New and revised species strategies under the PAS Review

As noted in the introduction, with 484 new or revised recovery strategies under the PAS, it is only possible to provide general comments on the nature and pattern of these changes, with illustrative examples for a small number of species. These comments have been prepared with assistance from the EDO NSW scientific team and members of our expert register.

Greater focus on indicator species to support long-term ecosystem functioning

We make some initial observations with regard to prioritisation of species and actions for frogs, birds, mammals and reptiles. Across all four categories, the focus on site-managed species has resulted in an imbalance towards some groups (such as severely impacted species of frogs; seabirds and Lord Howe bird species) at the expense of others (such as forest-dependent species, particularly wet sclerophyll and rainforest species,⁴⁶ and species highly significant to ecosystem functioning⁴⁷).

As protection of forest-dependent species is likely to result in improved protection for many species, and these species are likely to become major casualties of climate change, greater focus on 'indicator species' within this category would more strongly link threatened species management with ecosystem health and increase our understanding of present and impending climate change trends and management needs.

It also appears that there are no updated strategies or prioritisation for the Spotted-tailed Quoll *Dasyurus maculatus* or Grey-headed Flying-fox *Pteropus poliocephalus*, both of which are NSW and EPBC Act-listed species, highly significant in ecosystem functioning, and potentially 'iconic'.

Recommendation: Species prioritisation and project selection should place a greater focus on highly significant indicator species to support long-term ecosystem functioning.

Many revised PAS strategies have removed important details or research actions

There is a danger that the narrowed focus of the revised PAS strategies – to a small number of key sites and 'crucial' actions – will significantly reduce important actions, omit key threats that apply elsewhere in the species' range, and ignore large populations at other sites. Overall this could result in a significant watering down of current recovery prescriptions for a large number of threatened species, increasing exposure to growing threats and pressures.

The Leafless Tongue Orchid *Cryptostylis hunteriana* provides one example. The focus of the proposed action statements is very limited, and could not be deemed comprehensive in

⁴⁶ Examples of relevant mammal species are Parma Wallaby *Macropus parma*, Eastern Tube-nosed Bat *Nyctimene robinsoni*, Golden-tipped Bat *Kerivoula papuensis* and Hastings River Mouse *Pseudomys oralis*.

⁴⁷ Examples of important landscape species include the large Powerful Owl *Ninox strenua*, Barking Owl *N. connivens*, Sooty Owl *Tyto tenebricosa*, Masked Owl (we understand landscape-managed species are to be dealt with further at stage 2 of *Saving our Species*).

either a preventative or restorative sense. Actions have been reduced to a small number of key sites with little or no justification. For example, the Orchid ranges discontinuously from East Gippsland to Southern Queensland, with significantly large populations and large threats around the Nowra/Shoalhaven area; yet the focus of recovery has been reduced to Bulahdelah (Great Lakes LGA) and Tomaree Head (Port Stephens LGA).

Many of the Leafless Tongue Orchid's documented threats are ignored in the amended action prescriptions, and the actions that have been proposed are limited to only two areas within the species' known NSW distribution. Without disputing that these sites are important, no information is provided as to how these populations or sub-populations were selected, how the proposed actions were selected, how either was prioritised, or who the experts were who were involved in their formulation. The significance of the Shoalhaven populations and a range of other populations have been omitted from the management objectives outlined.

Additional serious threats to this species are encroachment of urban and peri-urban areas within the range of this species; and inappropriate fire regimes. It is unclear why action on these issues has been omitted. Instead, the proposed activities are limited to site based weed control and land manager consultation, and yet no detail about the frequency of weed control or frequency of consultation has been provided. Evidence to support the efficacy of such management activities is unclear. Few records exist for roadsides and yet this is targeted for specific action. A proposed monitoring action requires 'regular' monitoring but it is unclear as to whether annual monitoring or once every twenty years would be sufficient. It is also unclear as to who will undertake the monitoring.

Like the orchid species referred to above, the replacement recovery and threat abatement strategies for the Broad-headed Snake, *Hoplocephalus bungaroides*, focus on a limited number of sites compared with the species' current distribution. Unlike the current PAS, this revised process omits sites at the limit of its distribution which are likely to be important under a changing climate, and important to future genetic variability of the species.

We note that some revised recovery strategies include actions tailored to priority sites, which may improve management. However, in many cases, individual species' actions should be more detailed and specific to the species' or population's particular needs.⁴⁸ This is consistent with PAS Review recommendation 3, and our 2006 submission on the draft PAS.

Based on our review of a sample of strategies, the revised versions have removed many of the previous research, data-gathering and related scientific actions for site-managed species (including 'priority 1' actions). Such actions have been replaced with a greater emphasis on management and community awareness actions for these species. There is no indication which previous actions are complete, are now inappropriate, or were seen as 'not crucial'.

It is important that further research to improve understanding and management of species (such as regional habitat requirements,⁴⁹ and data-gathering on range, threats and propagation) is not overlooked as a result of allocation to the site-managed stream. For example, the *NSW State of the Environment 2012* reiterates that we have 'no information' on long-term loss of distribution for 44% of mammals and 47% of birds.⁵⁰

⁴⁸ To take a few examples of the above: Booroolong Frog *Litoria booroolongensis*; Golden Whistler (Lord Howe Is ssp.) *Pachycephala pectoralis pectoralis*; Yellow-bellied Glider population on the Bago Plateau (*Petaurus australis* - endangered population).

⁴⁹ See EDO NSW *Submission on Threatened Species Priorities Action Statement* (2006), 'The need for a coordinated and integrated habitat approach to threatened species protection and management', 5.

⁵⁰ Furthermore: 'The lack of data makes it difficult to assess the distribution and abundance or conservation status of many species of native fauna, particularly those that are rare.' EPA, *State of the Environment 2012*, Ch. 5, http://www.epa.nsw.gov.au/soe/soe2012/chapter5/chp_5.1.htm.

Such scientific actions are also important in improving monitoring and reporting of outcomes, as recommended in the PAS Review. However, the future status of these important actions will become even more uncertain, unless they are retained in the revised PAS.

Recommendation: *The revised PAS should restore a number of significant, high priority actions that have been removed from a large number of species recovery strategies, or provide a justification for why these actions have been removed.*

Recommendation: *Project development and prioritisation processes should be amended to allow for the retention and proper funding of a wider range of PAS actions, in recognition of growing threats and pressures.*

ATTACHMENT A: Recent ANEDO review of threatened species laws

In December 2012, EDO NSW and the Australian Network of EDOs undertook an audit of threatened species and planning laws in all Australian jurisdictions.⁵¹ The context was the Australian Government's proposed delegation of EPBC Act powers, which is now underway. Our report's key finding was that *no State or Territory biodiversity or planning laws currently meet the suite of federal environmental standards necessary to effectively and efficiently protect biodiversity*. While the laws in some jurisdictions look good 'on paper', they are not effectively implemented. For example:

- Key provisions are often discretionary. Critical tools such as recovery plans and threat abatement plans are not mandatory. Timeframes for action and performance indicators are largely absent.
- Effective implementation is further hampered by a lack of data and knowledge about the range and status of biodiversity across Australia.
- Threatened species laws do not *prevent* developments that have unacceptable impacts on biodiversity. Project refusals on the basis of threatened species are extremely rare (and may result from EPBC Act refusals or third party litigation).
- Provisions to 'fast-track' environmental impact assessment (**EIA**) for major projects effectively override threatened species laws. While NSW is not alone, this is the case for State significant development and infrastructure, and transitional Part 3A projects.
- Required levels of impact assessment tend to be discretionary, and projects can be approved even where they are found to have a significant impact on critical habitat, for example. The quality of different levels of species impact assessment is highly variable across local and state jurisdictions, and rarely audited.

Until some of these fundamental issues of interaction between planning and biodiversity laws are addressed, it is difficult to have confidence in the ability of state laws to protect threatened species over the long term. This is not a criticism of attempts to prioritise threatened species protection, but a call to address broader, systematic legal problems.

Unfortunately, since ANEDO undertook this report, several States and Territories have further *lowered* standards by so-called 'streamlining' of regulatory oversight. While this trend is not limited to NSW, examples include:

- amendments that prioritise the economic benefits of mining and resource projects as the 'principal consideration' over competing land uses under the Mining SEPP;⁵²
- removal of references to ESD and its principles in the draft Planning Bills, including the precautionary principle, and ecological integrity as a fundamental consideration;
- no increase in threatened species consideration or protection in the Planning Bills, and continued exemptions from legal procedures for state significant projects;
- current and potential weakening of regulatory oversight and standards for native vegetation clearing (*Native Vegetation Act 2003* and regulation) and biodiversity offsetting (BioBanking and Biocertification schemes);
- the recent delegation of federal EPBC Act assessment powers to the NSW planning department, and proposals to further delegate EPBC Act approval powers.⁵³

⁵¹ ANEDO, *An assessment of the adequacy of threatened species & planning laws in all jurisdictions of Australia* (2012), Report for the Places You Love Alliance. Available at: http://www.edonsw.org.au/native_plants_animals_policy, 'Discussion Papers'.

⁵² *State Environmental Planning Policy (Mining Petroleum Production and Extractive Industries) 2007*, cl. 12A.

Attachment B: Case studies – threatened species & planning laws

Case study: Approval to clear Regent Honeyeater habitat⁵⁴

In February 2014, the Friends of Tumblebee, represented by EDO NSW, launched legal action in the Land and Environment Court challenging Cessnock Council's approval of a development which would clear 3.2 hectares of a forest which provides habitat for the Regent Honeyeater.

This forest is located in the Hunter Economic Zone, within an area that is considered one of the few remaining viable breeding sites for the Regent Honeyeater in Australia, supporting about 10 per cent of the national (and therefore global) population of between 350 to 400 birds, according to the latest expert assessment.

Friends of Tumblebee claim that the proposed development is likely to significantly affect the Regent Honeyeater, and therefore the development application should have been accompanied by a Species Impact Statement (SIS).⁵⁵

The Council approved the development in October 2013, without an SIS, despite advice from its own ecology officer that one was required because the development is likely to significantly affect a number of threatened species and communities, including the Regent Honeyeater and its habitat, and the Lower Hunter Spotted Gum Ironbark Forest, an endangered ecological community.

Case study: Council decisions contrary to listing status; and limited role of recovery plans⁵⁶

NSW threatened species laws do not protect threatened species absolutely. Rather, the laws set up administrative procedures (such as requiring Species Impact Statements) to guide decision-making where threatened species are concerned. This means that under the Environmental Planning and Assessment Act 1979 (EP&A Act), a consent authority may grant development consent which will adversely affect threatened species.

For example, in 2011 Penrith City Council decided to approve the clearing of 300 hectares of vegetation from the Australian Defence Industries site (ADI site) near St Mary's in Western Sydney. Only one month before the Council granted the approval, the NSW Scientific Committee made a preliminary decision downgrading Cumberland Plain Woodland's status to critically endangered.

In Western Sydney Conservation Alliance Inc v Penrith City Council [2011] NSWLEC 244, EDO NSW brought judicial review proceedings on behalf of Western Sydney Conservation Alliance, challenging Penrith City Council's approval of four residential subdivisions on land containing the critically endangered Cumberland Plain Woodland.

The Land and Environment Court found that the Council had failed to consider the Cumberland Plain Recovery Plan of February 2011 as required under the EP&A Act.⁵⁷ However, the Council later regranted the development applications for subdivision with a minor alteration, this time taking into account the Cumberland Plain Recovery Plan, notwithstanding the species' status.

Significantly, the Court also held that the main decision-making considerations in NSW (s 79C of the EP&A Act) do not require a species recovery plan to be considered when evaluating the environmental impacts of a development, or the public interest.⁵⁸ This reduces the impetus for consent authorities to take positive steps to help recovery of a threatened species when assessing development applications.

⁵³ See ANEDO, *Submission on Draft NSW-Commonwealth Bilateral Assessment Agreement* (2013), http://www.edonsw.org.au/native_plants_animals_policy.

⁵⁴ See: www.edonsw.org.au/hunter_group_takes_council_to_court_to_protect_endangered_species.

⁵⁵ The purpose of an SIS is to provide the Council with detailed information about how the proposed development would affect the critically endangered Regent Honeyeater, and to assist the Council in deciding whether or not to approve the development.

⁵⁶ Further information on this and related cases at www.edonsw.org.au/native_plants_animals_cases.

⁵⁷ As the SIS and other documents before Council erred in their treatment of the recovery plan. The Court ordered that the consents be suspended, subject to the Council reconsidering the development applications, having regard to the Recovery Plan.

⁵⁸ Rather, a recovery plan becomes a relevant consideration only where an SIS is submitted, or in considering whether the proposed development is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats.