

**Independent Biodiversity Legislation Review Panel: Issues paper,**  
**August 2014: Submission**

## **TERMS OF REFERENCE**

It needs to be recognised that there is a potential conflict inherent in the terms of reference of this review, since "facilitating the conservation of biodiversity" is unlikely to be furthered by the promotion of development, sustainable or not, and the system of approvals based on independent environmental assessments ("red tape") is an indispensable safeguard to protect biodiversity from harmful developments.

## **ASPIRATIONAL GOALS**

"Should there be aspirational goals for biodiversity conservation?" Aspirational goals are of use where they are backed up by a determination to realise them. In the case of biodiversity, two distinct types of goal could be appropriate.

### **Attitudinal change**

A more intensive educational outreach is needed to instill a respect for the natural environment throughout society, from the decision-makers and developers to the people who flagrantly walk their dogs, off-leash, in National Parks. Part of this respect lies in first recognising and then internalising the fact that there are values other than monetary values in an increasingly urbanised and materialistic society. The basic, intrinsic values of an unspoiled natural environment and its associated biodiversity are incommensurate with monetary value and any attempt to equate monetary and environmental values is bound to be subjective and utterly arbitrary. Although conscientious and verifiable scientific data are a useful and often indispensable tool for establishing parameters, the *actual* values of conservation are not quantifiable, and unfortunately the decisions and management practices optimal for biodiversity not infrequently need to go against short-term profit. The obvious relevance of the foregoing remarks to the question of biodiversity conservation is that attitudes motivate the priorities that affect decisions crucial for biodiversity, both in the Cabinet Room and Boardroom and at the polling booth.

## Biodiversity targets

The goal to halt and then reverse population decline of threatened species remains exemplary, but, as recognised by the Review Board, its achievement has been elusive.

## **THE THEORY OF PRACTICE**

The vicious cycle of habitat loss, and of exotic species further reducing both habitat and native species population, leading to diminished genetic diversity and increased susceptibility to disease in a stressed environment – this is the cycle that needs to be broken. The first six methods listed on p. 2 of the Issues Paper are of inescapable validity as far as they go: Perhaps it is in the scope and intensity of their implementation that at least part of the problem lies. Although there have been remarkable success stories of species being brought back from the brink, it seems that for different species in different areas there may be a tipping point beyond which recovery becomes impossible. The unprecedentedly fast increase in global warming recognised by the scientific community as being largely due to human activities is another factor which will impact on biodiversity and that needs to be taken into account at a state level, both in regard to regulating contributions to the problem (if not we, then who?) and to mitigating its effects.

## Preemptive action

One way of countering the incomplete success of current policies could be by identifying populations that are still at the vulnerable stage and commencing intervention *before* species reach actual threatened status, *before* the tipping point is reached and the population is in irrevocable decline. This would include appropriate listing and legislative and planning protection of both species and critical and sub-critical habitat.

## Increase in protected habitat

Obviously an essential component of any attempt to retain biodiversity is the provision of protected areas, on both Crown and private land.

Public land National Parks, Nature Reserves, State Conservation Areas: a *serious* attempt to address the problem of biodiversity conservation in NSW would uphold the stated purposes and protections contained in the National Parks and Wildlife Act 1974.

Fashionable jargon such as "adapting to changing societal and economic needs" and "active and adaptive management" must not be used to mask the destruction of conservation values in the name of profit. Intergenerational equity requires that we pass on to our successors in this state a sufficient number of areas that are truly protected and unspoilt to conserve maximum biodiversity. Historically, activities such as logging, mining, and the grazing of exotic hard-hoofed animals have been recognised (scientifically) for their adverse effect on the natural environment on which biodiversity depends. It has been for this reason that such activities have been excluded from National Parks and in general from nature reserves and SCAs. Nothing should change in this respect.

Only a small percentage of the state is protected public land. Additional strategically placed national parks and nature reserves are needed to improve outcomes for biodiversity, for example national parks to connect Coffs Harbour-Guy Fawkes-Belinger-Nambucca-Macleay koala populations.

Phasing out of clearing old-growth forests in favour of plantation timber is needed, and the recognition that burning wood for energy generation both damages potential habitat and contributes to global warming which in turn threatens biodiversity.

Private land With increased awareness of the importance of connectivity conservation, private land also has a role to play in maintaining biodiversity. Properties that provide habitat continuities, significant habitat for vulnerable and threatened species, and protection beyond the ownership of the current owners are the most valuable. The Conservation Agreement could be promoted and if necessary more financial help for management activities provided. For some of us, however, the opportunity to be able to preserve in perpetuity the conservation values of our properties is *the* major incentive to enter into a Conservation Agreement. It is already the case that landowners can enter into a Conservation Agreement for only part of their land and engage in primary production on the remainder. To allow activities like grazing and logging on land which is under some sort of conservation agreement would disturb and degrade the land *instead of* protecting biodiversity. The two land uses are fundamentally incompatible.

"Save our species" is a good initiative that deserves wider publicity, and support by the Office of Environment and Heritage to such programmes as Great Eastern Ranges Initiative and Land for Wildlife is also valuable.

#### Intensification of programmes to eradicate pest species

An area by area programme could be devised to proceed progressively and with some overlap for already treated areas, and to involve both public and private landholders and provide financial and/or practical assistance.

#### Avoidance of all but minor development (defined say as no more than 5% of area) in sensitive environmental areas and in wildlife corridors

Of particular concern is coal seam gas mining which potentially and in some cases actually threatens large areas of the state, with its associated surface disruption and pollution, damage to aquifers and surface water and likely release of methane. Areas exempt from coal and coal seam gas mining should be broadened to include *all* sensitive environmental land, and land near watercourses, and where water integrity may be compromised, and land covered by conservation agreements, and land constituting wildlife corridors, together with nature reserves and SCAs (national parks being already exempt).

#### Similarity and balance

Biobanking and biocredits have some potential to assist biodiversity, but this would be especially the case if the trade-offs were required not merely to counterbalance each other but to positively favour good biodiversity outcomes. For example, there could be a legislative requirement that biocredits should be issued only in relation to land the substitute for which not merely has a *similar* size and species composition but is either larger and or has a more diverse or more intensive biodiversity. The success of these schemes also depends on the thoroughness and impartiality of the initial assessments – a landscape scale biocertification is likely to miss significant species – and on the degree to which the biocredited land is looked after. Another factor with these schemes is that they depend upon the availability of land suitable for biodiversity conservation and they also destroy biodiversity conservation values of similar land. The supply of such land is obviously not infinite and any idea of achieving a mythical "balance" between development and a protected natural environment has, percentage-wise, been lost some time ago. Unless already cleared or damaged

land is in question, what is gained by development is lost to biodiversity, in part or in whole. "Sustainable growth" in a land-based context is or soon will be a contradiction in terms.

### Respective roles of government and private biodiversity initiatives

Private conservation work for biodiversity relies on local knowledge plus information from such sources as Threatened Species listings. Volunteers work on site at local locations, which could helpfully be aided and supplemented by an expanded National Parks and Wildlife Service. It would be helpful if NPWS could sometimes assist Conservation Agreement landowners, for example in fire management, for which NPWS has the necessary expertise and equipment. The State Government needs to collate, monitor and update data concerning biodiversity from local sources; monitor and uphold compliance with relevant legislation; ensure that advisory committees or persons are adequately qualified, and capable of factual and impartial advice; provide financial and practical support to private conservation initiatives; and maintain a legislative framework detailed and far-reaching enough to constitute a necessary and sufficient basis for biodiversity conservation.

### More species-targeted research by independent researchers

The State Government could usefully provide additional grants to universities and research institutes to identify with precision and monitor problems affecting both threatened and vulnerable species and populations.

## **PRACTICE IN PRACTICE**

Three outstanding matters of extreme environmental concern which partly still hang in the balance may give some clues as to why biodiversity continues to be under threat in the state of NSW.

## Coalpac and the Gardens of Stone

The Gardens of Stone Stage 2 Proposal for adding to the existing national park of that name and thereby protecting the unique eucalypt (*E. gregsoniana*) and poorly conserved Grassy White Box Woodlands (not to mention fantastic and beautiful sandstone pagoda formations and mountain scenery) is still under threat. Coalpac has returned with yet another proposal to be decided by the Planning Assessment Commission.

## Leard State Forest

Leard State Forest, an island for native biodiversity in a sea of agricultural land, seems like an obvious candidate for legislated conservation protection. The Forest contains 396 species of plants and animals, including habitat for 34 threatened species and several endangered ecological communities. This particular area of White Box Gum Woodland is vital habitat since it contains an average 100 hollows per hectare, hollows which take over 100 years to form and which are needed by many species. Together, Maules Creek Project, Tarrawonga and Boggabri Coal will destroy more than 5000 ha of Leard State Forest including 1082 ha of the nationally listed and critically endangered Box Gum Woodland. Not only will the combined projects destroy over half the Leard State Forest, but the remaining forest will be divided by positioning the mines through the centre of the forest, with the potential of change to the microclimate in the forest, resulting in stress to species. Mining 24 hours a day, blasting and heavy machinery noise and bright lighting at night will further stress vulnerable species. This attack on local biodiversity has already been approved, in the face of state-wide public opposition.

## The NSW Natural Resources Commission vs SCAs

The NSW Natural Resources Commission has released a draft report advocating legislative changes to allow logging and grazing in State Conservation Parks in the Pilliga region. The White Cypress Pines (described by the Commission as "invasive" presumably because they have managed to propagate themselves) that are targeted for logging are a native species and part of the ecology. They will simply be burnt to generate energy – and greenhouse gas (carbon dioxide) – and profit for the loggers – but overall loss to the NSW people. Cattle would be introduced allegedly to control weeds and thereby reduce fire risk. It will be seen that these reasons given for effectively removing conservation status from these SCAs have a semblance of rationality

and even "science", but the science is spurious – occasional fires will be needed to stimulate eucalypt seed germination, and cattle grazing and logging have been shown to have a deleterious effect on the environment and its biodiversity, and for this reason have been excluded from conservation areas. Neither the cattle nor the loggers will have turned into fairies since. If this iniquitous proposal is acceded to, it would open the door to developers in all the SCAs, with corresponding loss of biodiversity. This case also raises the question of *advice* and how to achieve balanced and sensitive recommendations. The Natural Resources Commission has forfeited its credibility by this draft report. A serious look needs to be taken at the composition of advisory committees at all levels, to eliminate the influence of vested interests.

If the results of these three important and conspicuous cases of threats to biodiversity (*and* contributors to global warming) can hang in the balance, what must one suppose of the myriad of smaller developments capable of eroding biodiversity values piecemeal?

## **LEGISLATIVE PROTECTION FOR BIODIVERSITY vs FACILITATION FOR PROFITMAKERS**

### "A single integrated approach"

"A single integrated approach to the approval of all forms of development " would have to be simplified to the point where the sort of scientific detail necessary for a scientific committee to assess proposals for different kinds of developments at given scales of development in given locations, and provide a finding that would reflect all the facts necessary for the protection of biodiversity or of the wider environment, would be almost impossible and would demolish even the degree of theoretical protection of biodiversity embodied in the current Acts in question. The provisions of these current Acts have at least been drawn up to take into account actual complexities – and to do this effectively is one of the hallmarks of good legislation. This is not an argument for never changing any law, but an acknowledgement of the fact that artificially simplified and inflexible uniformity is going to omit relevant details. This would likely lead either to approvals that are deleterious to the environment and its biodiversity – because, without detail, the onus of proof for the environment will be more difficult to achieve – or, if the wording is ambiguously inclusive or interpretable, to the necessity for clarification in court. Any simplified "one size fits all"

approach is almost certainly going to favour the developer, especially as, from the phrasing of Page 9, Question 2 (Issues Paper), the assumption is that it is the environment that would wear the risks. Any government has more responsibility to take care of the environment during its term of stewardship than it has to allow the facilitation of development across the board. Given the irreversible losses that can result from a wrong or hasty decision, the risks to biodiversity are too disproportionate. Ethically speaking, the risks are not even the government's to take.

### "Impacts that cannot be offset"

It is in this context that "impacts that cannot be offset" (Page 9, Question 7 (Issues Paper)) need to be considered. Because of the gravity of the risks involved, and because of the unpredictability of outcomes affecting species and populations, a precautionary principle needs to be observed. Yes, there is utility in specifically protecting species, populations, and ecological communities through the regulatory system, indeed it is a necessity, but those protections need to be broadened and strengthened to include not only those species, populations etc that are threatened or critical, but those that are vulnerable and sub-critical.

Identification of critical habitat, as of sub-critical habitat, is a basic and essential tool for this, and, as long as the designated areas are extensive enough to be viable, and the specific legislation to protect them cannot be overridden by judicial or ministerial decision, they would be a most effective tool. The threatened species listing process (including the listing of key threatening factors) is also a basic and necessary tool and needs to be part of the legislative protection.

Not even a substantial social or economic benefit should be allowed to outweigh "the impacts that cannot be offset", the endangered species, the unique and critical habitats, the irreplaceable natural values. If once an exception is made and a precedent set, what of biodiversity will survive, as population steadily increases and a correspondingly greater "social or economic benefit" can be demonstrated from destroying more and more habitat, populations and species and pressed for ever more urgently. (This is why, as a nation and as a state, we need a population policy and we also need genuinely renewable energy). The balance is already tipped steeply in our favour, the paramount need currently is to work within the constraints of protecting those areas of natural environment and biodiversity that remain *now*, and creating wildlife corridors where needed.



## Licence to harm wildlife

Not much more than 100 years ago, koalas were plentiful in NSW. They were killed in large numbers for their fur. This resulted in restricted populations, which have been and are being endangered by continuing destruction of their habitat by humans, with the accompanying proliferation of dog ownership and car use, also major contributors to koala mortality. Whenever animals can be killed for profit, there is a danger of populations going into a spiral of decline. Populations have been known to crash quite suddenly. Thousands of kangaroos are shot across the state every year – for profit, and quotas are not reliable insurance for continuous population stability. (It is a marker of the thinness of our veneer of civilisation, that the emblems of our nation, the kangaroo and the emu, are both exploited and killed for profit.)

The other consideration with respect to the exploitation of wildlife for profit relates to animal welfare. Kangaroos, for example, are intended to be killed with one shot to the head, but even conservative estimates suggest that at least 4% of adult kangaroos "processed" each year show evidence of additional wounding. This does not take into account the kangaroos that manage to get away and later die slowly and painfully from their wounds. It also ignores the joeys at foot that wander off into the bush to starve or be taken by wild dogs or foxes, nor the joeys in pouch, which are either decapitated or bludgeoned to death. If someone were to bludgeon a puppy to death, they would be liable to be charged with cruelty.

This of course highlights the ethically indefensible distinction made between what is allowable treatment of domestic animals compared to what is meted out to those animals exploited and killed for profit. With respect to wildlife at least, to reduce the suffering of target animals, provisions need to be made in Part 9 of the current NPW Act to make licences temporary, for use only where absolutely necessary to prevent environmental damage or damage to agricultural crops, as assessed by an independent and suitably qualified arbiter. Owners applying for a licence to harm should also be required to pass a special test at intervals to demonstrate that they can shoot with the requisite accuracy.

Permitting the shooting of native animals for profit is hardly the way to inculcate that respect for the environment which at the beginning of this submission was seen as a necessary underpinning for any successful attempt to retain and enhance biodiversity.

## CONCLUSION

If biodiversity is not to diminish further, it will require the strengthening of current legislative protections to give more weight to the safeguarding of native species habitat other than that classed as "critical" and to the protection of species other than those listed as "threatened". It will require more money to be directed towards the eradication of pest species. It should also incorporate better protections for native animals that are killed. It will also require decision makers in strategic use planning and bodies such as the Planning Assessment Commission to maintain high standards of impartiality and integrity and genuine concern for the environment.

More fundamental change is needed than just rearranging the legislation, and simplification that does not correspond to the irreducible complexities of the objects of legislation is destined to result in less protection for biodiversity, not more.

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