

# Biodiversity legislation review - submission

## Balance or integration? (ToR para 3)

"The current laws do not deliver *balanced* outcomes across the NSW Government's environmental, social and economic objectives" (ToR para 3). "How legislation should deal with *trade-offs*" (Issues paper, page 3). "The social and economic impacts of the legislation including whether the current regulatory provisions *balance* environmental, social and economic factors in decision making (i.e. consideration of the triple bottom line)" (Terms of Reference, Method, 1, 4th point).

"Balance" means trade-off between or among objectives. What is needed is integration of objectives with other objectives, to achieve multiple objectives, with a minimum of balancing one against the other. Particularly as biodiversity is not fungible (one sort of biodiversity cannot be substituted for another, unlike say money, or elements of economic growth, or commodities in a commodity market) and biodiversity loss is irreversible (unlike say losses of money or of economic growth). Once biodiversity is gone it is gone and no amount of economic growth or regret will get it back. You can trade it against other objectives, lose biodiversity step by small step and never get it back; or you can integrate it with other objectives, have both, and have the satisfaction of having done well. There are many ways of sustaining and rebuilding human wellbeing, of achieving social and economic objectives; there is only one way of conserving biodiversity and that is not losing it. The point of triple bottom line accounting is to increase the total of the three elements. Balancing between the three elements, trading one off against the other, does not achieve that objective, it changes the mix without changing the total. The idea is to increase the value of each element without trading it off against the others, to integrate the achievement of each element with achievement of the others. That requires intelligence and hard work rather than political judgement. The only reference to integration in the terms of reference is "options for effectively *integrating* native vegetation management with the protection and maintenance of land and water resources and the conservation of biodiversity". Least cost, effective biodiversity conservation needs much more than that: it needs to be integrated across the board.

## "Facilitate the conservation of biological diversity" (ToR para 5)

Legislation and policy will actually have to result in conservation of biodiversity - so in some cases legislation and policy will need to do more than 'facilitate' it. Conservation of biodiversity may need regulation by court enforceable processes with suitable penalties to discourage deliberate acts contrary to law. A successful approach will need to use a range of policy instruments to achieve biodiversity objectives, including but probably not limited to criminal law, civil law, bans, standards, subsidies, taxes, charges, information, education - all supported by monitoring and enforcement to ensure that results are in line with objectives. You can't afford to muck around with biodiversity. The success of the legislative framework will not be measured by the quality of the drafting, nor by whether it facilitates conservation, but by whether it actually results in conservation of biodiversity.

**"Appropriate frameworks to abate environmental risks, prevent species extinction and maintain ecological processes" (ToR, Method, 3, 9th point)**

That is a crucial point. If species go extinct and ecological processes fail, then the objectives are not met. Yet the process of protection can at best be one of risk management because people are not uniformly or universally well informed, well resourced or well intentioned, and no system of management is going to ensure that biodiversity objectives are met all of the time. Because any practical system of management has to be risk based, particular attention will be needed for fail safes (e.g. refuges for biodiversity from which biodiversity and ecological processes can be partially restored in other places) and systems to provide remedial action where primary management for biodiversity has failed for whatever reason and at whatever level.

Ultimately the planet doesn't care one bit what we do with biodiversity. The planet will continue to exist, time will continue to tick by, and life will continue to evolve (without a care as to which directions it evolves in - with or without dinosaurs, with or without people: it just gets on with it as it has done after the great extinction events of geological history) no matter what we decide. Only people care which way it goes at this stage of its history. It is entirely up to us what we do with biodiversity. We can consume it, squander it, destroy it, pollute it, ignore it; impoverish ourselves and regret it all later as we and our forebears have done for two centuries in this country and many would have us continue to do - or we can celebrate it, enjoy it, integrate it with everything else we do and leave it for others to do as they will with in their turn.

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