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Panel
Biodiversity Legislation Review
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Dear Panel members

Independent Biodiversity Legislation Review

I'm writing in response to a recent email which alerted me to this Review. I gather the Issues Paper was released on 6 August but didn't hear about it until 18 August, nearly two weeks later. I am about to head overseas and have been busy preparing for that, and have very limited time to prepare a response to this review, especially given the extent of its stated 'interests'. I am not clear on the need for it, or the agenda(s) behind it. I am responding because I feel I should as the issues are important to me; but will be briefer than it deserves. It seems unduly rushed.

I would like to express my deep concern at the recent killing of a NSW Government employee while he was *doing his job* to enforce native vegetation legislation. I spent my working life mostly in environment agencies, and can relate to the negative tactics used by some people – those who just can't accept that rules are sometimes needed, that they are arrived at through thorough processes, that they have to be enforced to be effective – like intimidation, belittling and exclusion; but death on duty is despicable and must be deplored. And all concerned, especially those in public life, should seek to protect those in the service of the public, to ensure that they are treated with respect, not violence.

I have a Voluntary Conservation Agreement on a block of land in the Bega Valley and continue to do my bit for conservation, privately. I would not support the downgrading of the conservation effort in NSW, or the relaxation of legislation to protect biodiversity.

My comments follow. Please note that I have only answered some questions under themes. As well as being pressed for time, I do not have the resources to cover the range of topics on which comments are sought; gathering 'facts and evidence' (p.3) is for others (e.g. agencies) – my comments are based on personal and professional experience. And, it seems to me that some of the questions under themes are really very big (e.g. Theme 2 Q1 and Q8, Theme 3 Q3) and will require research to answer them.

Extent (Introduction)

This is a very broad ranging review: '... laws, policies and programs that manage, conserve and regulate native vegetation, threatened species and wildlife in NSW'. I am all for effective legislation to facilitate the conservation of biodiversity and support **ecologically** sustainable development (and question why that term is not used fully as that would reflect the intent of the legislation and the policy and national/international effort on which it is based). However, 'simplifying' to 'streamline' and 'reduce red tape' puts me on alert: is this review actually about winding back the system that took many years to negotiate and the significant conservation gains that it reflects? Is this review perhaps pandering to minority government politics?

Although the NPW Act dates from 1974 and the TSC Act from 1995 no doubt they've been updated from time to time (e.g. to bring them into line with ESD principles), and the NVA and NCTA are just over a decade old, so what exactly is meant by 'modern'? What, specifically, are the perceived 'inadequacies in the current framework'; putting in place 'integrated biodiversity law' is a big job (for example, consider the Commonwealth EPBC Act and what was required to develop it, implement it, administer it, amend it ... what is the verdict on it as a model? mixed I suspect), and what will the proposed integration fix, exactly?

As an observer only (I've not worked there) I have seen the almost continuous 'restructuring' of NSW agencies, such as the NPWS, which must have huge impacts on its effectiveness; would this proposal simply mean more mucking about with structures, roles and responsibilities?

Context

I don't think that there is a sufficient emphasis here on the intrinsic value of biodiversity, for itself not just human needs. The statement that 'biodiversity in NSW is in decline' is clear. What's not so clear is the 'considerable debate': is it really about 'the best ways to slow, then reverse, the decline' or is it about taking action that's inconvenient, e.g. to some landholders? to some who seek destructive recreational activities? to others who'd like to make a profit on a land development or mining enterprise?

Re the 'numerous mechanisms to address biodiversity decline' what are the mixed outcomes exactly? Have all of the mechanisms been evaluated effectively? Have all had enough time and resources to be effective? I wholeheartedly support 'comprehensive long-term evaluation and monitoring'. Legislation is underpinned by systems (policy, agencies, structures, regional arrangements, workforce, community participation ...) which are complex things that need time to prove themselves.

Theme 1: objects and principles for biodiversity conservation

The summary of the various legislative objectives (App 2) is appreciated. What it indicates to me is that they are already integrated, at least to some extent: each of the main ones includes ESD principles; they all seek to conserve biodiversity (however described), and to inform and encourage action.

The legislation has already been influenced by 'national and international obligations, laws and agreements', and 'scientific evidence'. I can't imagine how anything 'beyond the scope of government-run programs' should influence law – or is this about handing yet more responsibility without resources to private landholders, and small community groups that come and go like the wind?

1. The International Convention on Biodiversity, and the latest National Biodiversity Strategy (only a few years old) both include levels of goals/aims/objectives (or however they're described, I haven't rechecked), from the broad to the specific? These are huge documents, reflecting huge processes: what more is there to add 'aspirationally'?
4. Probably, but how/why and to what end?

Theme 2: conservation action

1. If private landholders are unhappy to protect ecosystem services at their own cost then perhaps something has gone wrong with the communication: if they are going to benefit, surely it will be worth contributing? If the biodiversity comes along with the ecosystem services, all to the good.
2. As a VCA holder, I entered the agreement in the full knowledge of the limited resources of the agency to support our management; except for regional extension services (which are *very* much appreciated) we are pretty much on our own. We do get a local rate subsidy, which is much appreciated. We do the best we can to manage the weeds on our block, but the pests are much harder to address. We are mostly surrounded by private landholders who do very little land management, and understand that we would need to act at a larger scale to effectively deal with things like rabbits and foxes. However, our native vegetation is in pretty good condition. So far we have not had anything suitable for funding under existing grants programs. Ours is not a production block, and we consider our VCA as no impediment (e.g. to a future sale of the land).
3. I'm uncertain of the role of the NCT in these matters.
4. The government should consider experience from past programs like those under the Natural Heritage Trust (and successors) when it seeks to 'enable and encourage' the community: don't chop and change endlessly between programs and approaches; don't exploit people by not considering the need for proper support for coordination of activities; don't make it too hard to apply for/report on funding and successes; get the processes/\$ as close to the activities as possible – e.g. enable existing regional/local structures. There is cynicism and fatigue in communities which may prevent/reduce personal action:

it's not that people don't understand (at least some do, and many are very enthusiastic) or don't want to do their bit, but some will have had experiences that have left them jaded.

5. Another big question: suggest you have a look at what's been done in the past as surely there is plenty of experience out there. The limit will be on resources available, but why throw good money after bad if you don't know what's working? Or how you could make something work better?
6. What 'tradeoffs' – this is not clear.
7. What 'system' exactly? There are obviously 'legacy impacts' on the biodiversity! Hence the need to act to conserve/recover/mitigate/manage/inform ... although I suspect you mean that 'the system' builds on what has gone before – that is the nature of things we humans do.

Theme 3: conservation in land use planning

The use of the word 'balancing', referring to development/conservation objectives, is something I feel very strongly about. I note that each of the laws under the review adopt ESD principles. One of those principles is that environment should be **integrated** with other objectives when it comes to ESD, it's not about 'balance' which infers trading things off against one another. For example, if you seek to develop a tourist venture in a sensitive environment (the reason for the human interest is likely to be the significant qualities of the place) ESD would ensure that the development does not detract from the values in the short/medium/long term through good planning, sensible construction, mitigation as required, and ongoing requirements on management of the site. It's not a matter of beach/heath/headland *OR* lodge/road/café, it's about providing facilities – as appropriate – while protecting the environment/biodiversity. Not 'loving' something to death, having that fail (economically, touristically, environmentally) and then moving on to do it again (and make a short term profit) somewhere else.

Strategic assessment should be a good thing, done well and in an ideal world, but it's not just about 'streamlining'. And, given the potential for intentions to change between 'strategic planning' (e.g. design/siting), and for knowledge about location/status of threatened species/communities to change, there will always be the possibility for the need for EIA to be revisited. It's not just a rubber stamp and off we go; there is never certainty in the commercial world, so why pretend the environmental context is any different from other relevant factors such as economy and trends in business.

Theme 4: conservation in development approval processes

The questions posed here are huge. My comments relate to two matters: offsets and cumulative impacts.

One of the most important things about offsets is stated in the text: that they should be used 'once **all** options to avoid and mitigate biodiversity loss have been **exhausted**' (my emphases). Offsets should never be considered as a convenience, e.g. 'I want this bit of land here' (which just happens to include highly significant ecological values) '... so I'll agree to give you this other bit of land' (which may be the same size or even larger, but is unlikely to equal/better the values of the subject area, and is as vulnerable as any other bit of land over time unless there is some *long-term strategy under law* to, first *recover* it if necessary to 'equal' the subject area, and then both *protect and manage it*]. And, by the way, the original piece of land and its values disappear, so there is an overall loss that is never mitigated. Offsets, over time, are not a way to increase the conservation effort.

The potential for cumulative impacts is a concern for all EIA, and has tended to be handled poorly in the past in systems that assess each proposal on its own, over time. I would absolutely welcome effective means to assess cumulative impacts.

Development approval is a complex area of governance, and is often influenced in bad ways. I will refrain from reflecting on recent history in NSW, at both state and local government levels. Of course systems for EIA, including cumulative assessment and offsetting, should be as objective and harmonised as possible, but the nature and complexity of ecosystems/landscapes/regions/seasons means that it will always be clunky. I recommend another of my favourite principles under ESD: precaution. In some cases

the place/values that are threatened by a proposal will just be too important to develop/destroy; mitigating and offsetting will not be possible. Avoidance will be the only answer.

Whatever happens, there is an absolute need for whatever process approves/licences 'offsets' to include people who know what they're doing (i.e. *experts* relevant to the values under threat), and powers to suggest alternatives or to say 'no' if that's appropriate.

Theme 5: wildlife management

I am not aware of any current issues on the matters posed, e.g. compliance management. However, I would like to offer my support to all officers employed in compliance and hope that they are enabled to do their jobs effectively (e.g. enough of them, with sufficient resources) and safely. I am aware that there has been great tumult within agencies in recent years and that that cannot have helped individuals do their jobs.

Theme 6: information provisions

I am not personally experienced in providing/using the information kept in systems used by NSW agencies. However, I would like to provide the following comments:

- any data is only as good as the method/collector/system, and sometimes one set won't be easily comparable with others; it is something that builds/improves itself over time (issues of credibility are unfortunate, but sometimes inevitable)
- sometimes collecting data isn't possible quickly, e.g. because of seasonal or resource constraints
- having national/state lists is inevitable too, as each jurisdiction has its own context
- science isn't absolute, as knowledge grows things are reconsidered (e.g. a species/community becomes more or less threatened) and this is not because of incompetence or conspiracy
- sure, collect public and private conservation data, build a nice big picture.

And my final comment, in the cause of ESD, act with precaution. Consider the public interest, which encompasses the need to conserve all living things. The creatures can't speak for themselves.

Thank you for the opportunity to comment on this review.

Yours faithfully

Bernadette O'Leary

[emailed 31/8/14]