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Submission

to

The Independent Biodiversity Legislation Review Panel. Office of Environment and Heritage.

biodiversity.legislationreview@environment.nsw.gov.au

on the

Biodiversity Legislation Review

Compiled by John Edwards
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Submission to the Biodiversity Legislation Review

Introduction

The Clarence Environment Centre has maintained a shop-front in Grafton for a quarter of a century, and has a proud history of environmental advocacy. The conservation of the Australia's natural environment, both terrestrial and and marine, has always been a priority for our members, and we believe the maintenance of healthy ecosystems and biodiversity is of paramount importance. As such, we support any move to strengthen laws and regulations that protect biodiversity in perpetuity.

General Comment

The opening comment of the Issues Paper that: *"This review provides an opportunity to address inadequacies in the current framework and develop a modern, integrated biodiversity law",* is encouraging. Current environmental laws in NSW are the result of an evolutionary process that inevitably led to contradictions and loop holes that lead to break-downs that result in failures to achieve the degree of environmental protection that those laws were supposed to provide.

In that respect a review to simplify those laws, and to reduce red tape, is a positive step. However, the continuation of the above statement that: *"The review will test whether the current institutional, policy and legislative framework is delivering efficient outcomes for government, business and the community",* needs to be analysed.

Is the current framework delivering efficient outcomes? Most definitely not! State of the the Environment Reports and numerous other indicators show a continued decline in biodiversity levels across NSW and Australia, no threatened species' declines have been reversed with the exception of the Humped-back Whale, and the list of threatened species is is increasing with every passing year.

However, that is not altogether the consequence of faulty legislation so much as the failure of successive administrations to properly apply those laws, with agencies such as the Office if Environment and Heritage and the current EPA becoming little more than licencing bodies to facilitate environmental destruction.

A prime example of this is the BioBank program which allows developers to destroy biodiversity, and even endangered species facing extinction, by purchasing offset land and placing it under a so-called conservation agreement, which do not protect that offset from future infrastructure provision or mining development. Even if that offset land was truly protected in perpetuity, the Biobanking process always results in a net loss of biodiversity.

Comments on the terms of reference

What really concerns us is the stated aim of the review to: *"support sustainable development"*. What exactly is "sustainable development"? Frankly it is just a 'feel good' phrase designed to make us believe that a proposed development will have no impact on our environment. However, the reality is that any project, no matter how small, which results in a net loss of biodiversity, and requires the use of finite resources such as minerals; and uses up non-renewable energy during construction and later in running the facility, is clearly not sustainable.

In short, there is no such thing as sustainable development, so any move to design environmental laws to <u>support</u> development would be highly undesirable. The primary function of environmental law must be to <u>control</u> development, not to support it.

We agree that the laws should be simpler, and red tape reduced. Ideally, the system should detect

'red flags' very early on in the development application process, and any such detection should result in an immediate “sorry, your development application is rejected” not, as is the current case, allow ongoing 'haggling' and 'hoop jumping' at significant cost to both the developer and the community, not to mention the inevitable cost to the environment when the project is inevitably approved.

We are told that, *“The panel will also be guided by the strategic goals and approach set out in the Office of Environment and Heritage Corporate Plan 2014–2017. In particular, the panel will find ways to:*

- *“increase regulatory efficiency, remove duplication and promote consistency in approval requirements”.*
- *increase upfront clarity and transparency in environmental standards*
- *minimise the private costs and maximise the public benefits of regulation*
- *encourage economic development, including by supporting regional and rural communities without devaluing the environment and biodiversity*
- *build resilience to environmental hazards and risks.*

The latest OEH Corporate Plan was released earlier this year, and the strategic goals that the Panel are expected to follow, appear to be mainly focused on cutting red tape, but what exactly is expected from that is unclear.

At face value, we have to support most of those objectives. *“Regulatory efficiency”* is something that has been almost non-existent in the past, so this must be a priority, and likewise we support *“upfront clarity and transparency in environmental standards”*, and there should always be benefits in *“minimising the private costs and maximising public benefits”.*

“Building resilience to environmental risks” is also something we support, and a matter that received a lot of publicity in recent years as a possible way of combating climate change, particularly when formulating CAP2 (Catchment Action Plan). However, rather than build resilience, the Government has launched a full scale assault on the environment, replacing the CMA with Local Land Services, effectively killing off the CAP. It has allowed grazing trials in national parks (a major key threatening process to biodiversity), and proposes to allow logging to resume in selected state conservation areas under the guise of “ecological thinning”. As well, landowners can now clear vegetation for a range of purposes (bushfire protection, thinning regrowth, removing paddock trees and more, without seeking approval; while Forest Corporation NSW is now planning to log previously protected steep slopes. Building resilience has never been a serious consideration for this government.

However, we most emphatically do not support the 4th dot point whereby environmental laws should be used to, *“encourage economic development”.* As already stated above, this is **NOT** and should never be a function of any regulatory system, certainly not environmental regulation.

The Panel is asked to evaluate *“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)”*

The so-called 'triple bottom line' has always been a cynical tool to facilitate development claiming to give equal weight to environmental, social and economic costs. However, with no accepted method to value environmental assets, there is only ever one outcome which always results in major environmental losses.

It must be recognised that without biodiversity, mankind itself cannot exist. The ecoservices provided to us absolutely free by that biodiversity, clean air and oxygen to breathe, water to drink, and fertile soils, are absolutely priceless, and it is not just air, water and soil. Biodiversity also provides all our food, most of our clothing, and medicines that protect us against disease. How then can any thinking individual advocate for an assessment system that gives equal weight to the costs to the environment and economic gain?

Areas of particular interest to the panel

We are asked to provide input to specific areas of particular interest to the panel, including:

1. Should there be an aspirational goal for biodiversity conservation?

No! the Clarence Environment Centre believes that goals as crucial as biodiversity conservation should be far more than "aspirational" - A firm commitment must be made to achieve broad-scale gains for biodiversity, in both the short and long term, with set milestones to be achieved along the way. A failure to achieve this 'turn-around' must not be allowed; simply "aspiring" to do the job is, in our opinion, planning for failure.

2. Given available evidence about the value and state of the environment, are the existing legislative objects still valid? Do the current objects align with international and national frameworks, agreements, laws, obligations? If not, what objects are required?

With most obligations to international treaties being ignored, admittedly a Federal Government responsibility but still supported at State level, and recent watering down of almost all environmental legislation at a State level, the answer to the above question has to be **NO**! This leads directly to the third area of interest for the panel:

3. To what extent are the current objects being met?

The recent Federal agreement to allow dredging and dumping in the Great Barrier Reef World heritage Area (WHA), and logging proposals for Tasmania's WHA forests, and the dumping of Australia's commitments to the Kyoto Agreement, are just 3 matters that sum up Australia's attitude to environmental laws. At a State level, allowing widespread land-clearing through the weakening of the Native Vegetation Act, removing marine park protection for critically endangered Grey Nurse Sharks; driving threatened Grey-headed Flying-fox colonies from their traditional camp sites, turning a blind eye to massive destruction of Koala and coastal Emu habitat, and removing the "E" (Environmentally) from ESD for the State's planning laws, while completely ignoring the Precautionary Principle, and Intergenerational Equity in relation to coal seam gas and other mining across the state, says it all.

This, again in our opinion, sums up the appalling legacy of this NSW State Government to the protection of such a critical life-giving asset.

4. Could the objects of the current laws be simplified and integrated? If so, how?

Yes, current laws could be simplified. The removal of 'weasel' words and phrases linked to specific requirements such as, *"where practicable",* and *"to the greatest extent possible"* from the legislation, could help enormously. For example, a definitive *"hollow-bearing trees must be protected",* without the above suffixes, would greatly simplify environmental regulations.

Hollow-bearing trees provide habitat for almost half of all land based threatened species in Australia, their protection is crucial, not only for those species identified as threatened, but to all hollow-dependent species which include, parrots species, owls, gliders, possums, micro bats, and a wide range of other birds and reptiles.

Removing the need to determine whether a development will have a *"significant impact"* on threatened species, would also improve outcomes for threatened species. Threatened species have been so declared because they are in decline and facing extinction if trends are not reversed. One threat faced by every one of those hundreds of threatened species, is **loss of habitat,** which means that any further loss is driving them ever closer to extinction. Despite this fact, tens of thousands of development applications are lodged annually, identifying loss of habitat for threatened species, but being granted approval on the basis that the development will not have a "significant impact".

Theme 2: Conservation action

We are also asked to comment on the potential for, ***"positive action to recover threatened species or address threats, and provisions to support conservation on private land.***

Focus for the Panel here is on the provision of binding or non-binding agreements with landowners over their land for conservation purposes, and recent government focus on developing new opportunities for market-based incentive mechanisms such as biobanking.

It is our firm opinion that many of these are nothing short of a confidence trick.

Many landowners have spent a life-time protecting biodiversity values on their properties, and what is more natural in their advancing years than for them to want to see their life's work protected through a voluntary conservation agreement, a contract with the Government, whereby a binding agreement, fixed to their land Title Deed, that sees that land protected "in perpetuity".

How many people in this situation are told that the agreement can be immediately overturned by the next owner if the Minister of the day is happy to sign off on the "Agreement" being annulled? How may know that if the RMS wishes to build a road across their life's work, that there is nothing to stop them? Worse still, how many realise that Voluntary Conservation Agreements provide no protection against mining and that a coal seam gas company has the right to destroy it all?

This cruel hoax also applies to offset properties under the Biobank process, a process that always results in a net loss of biodiversity.

The NSW Saving Our Species (SOS) program, a new conservation program supposedly aimed at maximising the number of threatened species that can be secured in the wild for at least the next 100 years, also gets a mention.

While acknowledging that those involved in this project may have their hearts in the right place, we do have concerns over some aspects of the scheme. Firstly the apparent decision to declare some species beyond hope of recovery, and secondly the high dependence on voluntary contributions.

Our oganisation (or rather one of our members) was involved in early work for this project, which looked at individual threatened species, and their prospects for survival over then next 100 years. We would like to focus on just one as an example of why we have concerns.

Olax angulata is a small shrub which was first discovered in scattered locations around the coastal hamlets of Minnie Water and Diggers Camp in the Clarence Valley. For many years this rare species was thought to be confined to that coastal area, much of which was within the Yuragir National Park and was subsequently declared endangered. That however, did not prevent the National Parks and Wildlife Service constructing a new access road to a caravan park straight through the population.

Some years later, two of our botanists discovered a number of plants growing on a roadside a

significant distance inland at Banyabba Nature Reserve (hence our involvement with SOS), with initial speculation that they (less than 10 plants) might have been introduced by machinery. Subsequently National Parks staff reported another small population (also less than 10 we believe) in the nearby Fortis Creek Nature Reserve. In 2011, our botanists working with the Land for Wildlife program, discovered a healthy population of approximately 50 plants at "The Pinacles" close to Fortis Creek, firmly establishing that the species occurred naturally in this general area.

When determining how the species could best survive to 2100, the SOS program immediately discarded the coastal and Banyabba populations as being too hard, presumably given human population pressures on the coast, and the proximity of the road at Banyabba, so opted to focus on the small Fortis Creek population, presumably because it would cost less to protect. The healthy Pinnacles population was immediately dismissed from any consideration, despite the owner's willingness to protect the plants, because it would require a financial contribution to the landowner.

This attitude against supporting landowners with funding to protect biodiversity, with a preference to legislate landowners into doing it for nothing, has to be be addressed, which leads us to the following areas where the panel are seeking comment:

1. Is the current system effective in encouraging landowners to generate public benefits from their land and rewarding them as environmental stewards? Or are current mechanisms too focused on requiring private landowners to protect ecosystem services and biodiversity at their own cost?

As clearly stated above, we strongly believe that stewardship payments should be provided to landowners to protect biodiversity values for the obvious benefits to all the community. We would go further in saying that landowners in marginal areas, and there are millions of hectares involved in more remote NSW, be offered the opportunity to manage their entire properties for biodiversity protection, and be paid to do so.

Many of those landowners currently receive special circumstances assistance backed up by social security payments. In exchange for removing livestock and committing to manage pest weeds and animals, those landowners could regain self respect and purpose at relatively little cost to the tax-payer. A win – win situation in our opinion.

2. Are there elements of the current system for private land conservation that raise impediments (for example, the binding nature of agreements and potential loss of production) for individuals who want to manage their land for conservation?

In our opinion there are little or no impediments. The vast majority of uncleared land in Australia, is uncleared because its value for agricultural production is minimal, otherwise it would have been cleared years ago.

3. What should be the role of organisations and bodies, such as the Nature Conservation Trust, in facilitating and managing private land conservation through mechanisms such as conservation and Biobanking agreements?

We believe the work of organisations such as the Nature Conservation Trust should be encouraged and expanded. However, we have already made our views clear on offset mechanisms such as Biobanking, they should only ever be considered when damage to biodiversity can absolutely not be avoided.

4. How should the government determine priorities for its investment in biodiversity conservation while enabling and encouraging others (e.g. community groups) to contribute to their own biodiversity conservation priorities?

This is not an issue we feel qualified to answer. However, by guaranteeing that conservation agreements provide 'rock solid' in-perpetuity protection, and not open to destruction by mining or supposedly “critical infrastructure”, would provide certainty to those groups and individuals interested in conservation issues..

5. How can the effectiveness of conservation programs be monitored and evaluated?

By properly resourcing and supporting the relevant agencies.

6. How should any trade-offs be assessed?

We have already identified our belief that trade-offs should only ever be considered when damage to biodiversity can absolutely not be avoided.

7. To what extent is the system forward looking or dealing with legacy impacts?

We do not believe the system has ever been forward looking, certainly not beyond the next election. As stated earlier, biodiversity protection has to be both a short and long-term commitment.

8. To what extent does current practice (rather than the legislation) determine outcomes?

We are unsure of the meaning of the question, but current outcomes, such as the recent murder of an OEH ranger, coupled with the pitiful fined applied to law breakers on the rare occasions that they are even prosecuted, shows there is a serious problem. Much of this can be blamed on 'attitudes' of politicians and regulators who are gutless when facing violent minority opposition.

Landowners need to recognise that they do have a responsibility to others. Whatever they do on their property has the potential to impact negatively on everyone living downstream. They need to stop complaining about their perceived “rights” and become responsible global citizens.

Having said that, landowners should not be left out of pocket for acting on our behalf. There are mechanisms, from stewardship payments to carbon credits that can be incorporated to ensure landowners are treated fairly.

Protecting biodiversity values

In this we are told the Panel needs feedback on:

1. How effective are current arrangements at ensuring biodiversity values are identified early and properly considered in strategic planning systems? How can they be improved?

All development applications including private native forestry and related rural activities, must have a degree of environmental assessment, something that is not required. How can we protect biodiversity which we don't even know exists?

2. How effective are current arrangements for delivering strategic outcomes for biodiversity and enhancing ecosystem services? How can they be improved?

Poor to non-existent. See previous response.

3. How should the effectiveness of strategic planning approaches be monitored and evaluated?

We believe this is a problem that needs an entire separate 'planning' submission, and something best left to professionals such as the Environmental Defenders Office.

The approvals process

Concerned at the ways biodiversity is considered in the regulation of development, including land clearing for agricultural production, major projects and all development that is assessed on a site-by-site basis, has prompted the Panel to request views on:

1. To what extent has the current framework created inconsistent assessment processes, environmental standards, offset practices and duplicative rules? What can be done to harmonise processes?

Environmental protection and biodiversity conservation must be the core consideration. Everything else must logically follow from there. Currently, the core consideration is job creation and economic growth, but there is a somewhat silly but highly relevant 'bumper sticker" statement that *"there is no economy on a dead planet"*. Think about it. What should be our core consideration?

2. Can we have a single, integrated approach to the approval of all forms of development, including agricultural development, that is proportionate to the risks involved? If yes, should one methodology (or a harmonised methodology) be used to assess all impacts? Does a need remain for some differences in assessment approaches?

We do not believe a single approach to all approvals can be applied, they are far too varied and complex, so developments must be assessed on a case by case basis.

3. What are the advantages and disadvantages of the different biodiversity assessment methodologies? Are the rules transparent and consistent? Is the way data is used to underpin decisions transparent? Do the assessment methodologies appropriately accommodate social and economic values?

To be honest, most assessment methodologies are a complete mystery to us. There is little or no transparency in the way data is used, and because developers choose their own consultants to assess the impacts, the economic values are those that receive the greatest focus.

4. Does the regulatory system adequately protect listed threatened species, populations and ecological communities? Is there utility in specifically protecting these entities through the regulatory system?

The fact that all threatened species are still in decline must lead to the conclusion that something is wrong. But it is not the legislation that is at fault, it is the application, and the complete lack of compliance monitoring and enforcement that is failing our natural environment.

5. Are there other models (international or Australian) that regulate activities impacting on biodiversity that may be relevant to NSW?

Unable to say, but this appears to be a universal problem, but that doesn't mean we shouldn't try.

6. To what extent has the current regulatory system resulted in lost development opportunities and/or prevented innovative land management practices?

Again we are not in a position to say, but we are sure the development industry will come up with some massively inflated number. What we need to ask is, "what are we being forced to do without because of all those supposedly 'lost' opportunities"?

7. Some impacts cannot be offset. What are they? Are these appropriately addressed in approval systems? What is the relevance of social and economic benefits of projects in considering these impacts?

Another silly question that we find difficult to understand. In fact we are unaware of any development impact that cannot be off-set. Right now, a Koala population near Ballina is about to be pushed into extinction by the Pacific Highway upgrade, and still the project can proceed despite less impactive options being available.

8. How can offsets be more strategically located?

As already stated, we believe off-sets are unacceptable as they always result in a net loss of biodiversity.

9. Are there areas currently regulated that would be better left to self-regulatory codes of practice or accreditation schemes?

NO! There is no evidence that self regulation works

No right wing government review of environmental legislation would be complete without looking at ways to make money out of hunting or selling wildlife. Under the guise of "wildlife management", the Panel asks for our views on a number of issues, including licencing for:
• scientific and educational purposes
• recreational and commercial keeping of wildlife
• wildlife rescue and rehabilitation
• sustainable use of wildlife (e.g. animal and plant harvesting) and
• managing human/wildlife interactions and conflict.

Specifically, the panel ask:

1. Have the threats to biodiversity posed by: (a) people taking animals and plants from the wild, (b) feral animals and weeds, and (c) illegally imported species, been effectively managed?

Clearly, with little focus on illegal wildlife trafficing, this is likely to be a thriving industry. Feral animals and weeds are out of control across the state. Over-logging has led to major weed invasions of state forests, and no weed eradication programs are currently being undertaken because of a lack of funding, and the corporatisation of Forests NSW.

2. Has the NPW Act and the supporting policy framework led to a positive change in the welfare of native animals (captive and free-living)? What role if any should the government have in ensuring the welfare of individual native animals – particularly where there are already stand-alone welfare laws such as the Prevention of Cruelty to Animals Act 1979?

No. The NPW Act is little more than a licencing tool for the slaughter of native wildlife. Reports of hunting organisations in NSW advertising to Victorian duck hunters to come to NSW to slaughter water fowl including rare and endangered species, says it all.

How can anyone suggest that the Prevention of Cruelty to Animals Act is a successful legislative tool? Currently we have activities such as 'pig-dogging' being condoned, along with the use of bows and arrows, including by unaccompanied children, which is seeing incidents of dead and dying animals being found with arrows in them, becoming more and more commonplace.

3. Are the provisions for marine mammals effective?

Clearly not. Removal of recreational fishing restrictions in critically endangered Grey Nurse Shark aggregation sites, has seen a resurgence in the number of Sharks with hooks embedded in them. Shark nets claim whale victims almost on a daily basis it seems, sharks are being 'finned' and illegal netting is commonplace. All of which indicate that marine protection is lacking.

The current moratorium on new marine park declaration is also regrettable.

4. Is the current framework for wildlife licensing, offences and defences, including those applying to threatened species, easily understood? Is the current licensing system too complex? How can it be improved and simplified to focus on conservation outcomes?

We do not believe that the licencing system is too complex. However, the regulators must be adequately resourced to ensure recovery plans and breeding programs are funded on a long term basis, and not terminated half way through.

5. Is there currently appropriate regulation for the sustainable use and trade of wildlife?

There should be no trafficking of wildlife allowed.

Scientific research

Of particular interest to the panel are:

1. What information should be generated about the different kinds of value (for example, monetary

Again we do not fully understand what this means. However, if we are talking about a monetary value of biodiversity, try working out what it would cost to mechanically separate oxygen from Carbon dioxide so that we can breathe. Work out how much oxygen is produced by a single hectare of forest, and work out the value of that service which is provided to us absolutely free. That would be a start but then we should work out how much it would cost us to filter water for us to drink, another ecoservice forests provide. And so on, until a true value of biodiversity is determined.

2. What type, quality and frequency of data should be collected about biodiversity?

In our opinion there can never be to much genuine research, but it must be independent research, not directed for political or commercial benefit alone.

3. Is current data about biodiversity highly credible and readily accessible? If not, how can quality and access be improved?

Don't know.

4. How effective is the threatened species listing process (including the listing of key threatening processes) in guiding subsequent conservation action?

The process of threatened species listing is effective, but expensive and time consuming, and generally left to private individuals to nominate species to the Scientific Committee. Th OEH should have adequate resources to undertake a thorough analysis of all species identified as being under threat, and resources provided to develop recovery plans, and then to carry them out. As far as we can see, current recovery plans are left on shelves with no recovery being undertaken at all.

Also, we believe that in cases of threatened species being endemic to a single state, that species should automatically be incorporated into the EPBC Act listing. This would save time and money in nominating the species all over again.

5. Should threatened species listing decisions be decoupled from decisions on conservation actions (including recovery planning) and regulatory processes?

Do not understand the question.

6. To what extent, if any, does having national and state lists of threatened species cause confusion, regulatory burden or duplication of conservation effort? How could national and state lists be rationalised?

We believe that our suggestion that in cases of threatened species being endemic to a single State, that species should automatically be incorporated into the EPBC Act listing. This would save time and money when nominating the species all over again. A national listing however, is important in highlighting cases where a species can be listed as threatened in one State while being prolific just across the border in another State. This also highlights the importance of species living at the extremities of their range, where any destruction of those extremities effectively reduce the range of those species.

7. To what extent is the identification of critical habitat an effective tool for biodiversity conservation? Should we list critical habitat for more species where relevant and useful?

Very effective, and yes

8. Should private conservation data be collected and if so how?

The collection of data is already required under a Scientific Licence. We see no reason why private conservation data should not be collected.

Recommendations

The Clarence Environment Centre believes that:

- Environmental laws require simplifying with a great deal less red tape. However, we strongly believe in the need for the current two tier (Commonwealth and State) system to provide a safety net.
- Developers rightly require a much faster assessment process, but that must not diminish environmental protection; in fact environmental protection must be strengthened, and the maintenance of what remains of our natural environment must be a priority for both State and Federal Governments.
- In terms of threatened species listing, we know that there are many more that those currently listed under the TSC and EPBC Acts that are in serious decline. Therefore, we believe funding should be provided for a full assessment of those species with a view to their beeing listed and protected as quickly as possible. To simplify this, we propose that threatened species that are endemic to any one state, should automatically qualify as threatened under the Federal Act without the need for expensive time-consuming duplication of the nomination process.
- By definition, threatened species face extinction if the declines in their populations are not reversed. As such we strongly believe that the current 7 part test of “significant impact” should be dumped, and any identified impact of a development on a threatened species should result in the development application being denied. We can no longer afford to assess impacts in species in isolation. Cumulative impacts of the thousands of developments, deemed individually to have no significant impact, must be considered.

We thank yo for the opportunity to comment and hope that our comments will be taken seriously.

Yours sincerely

John Edwards
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Clarence environment Centre