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Biodiversity Reforms - Have Your Say
Office of Environment and Heritage
PO Box A290
Sydney South
NSW 1232

Re: Submission to Biodiversity legislation review

To Whom It May Concern,

Thank you for this opportunity to provide a submission to the NSW Biodiversity legislation review.

Overall, we support efforts to reform native vegetation laws to improve outcomes for biodiversity, reduce regulatory burden where possible, and to create new incentives and opportunities for landholders to engage in private land conservation.

However, we are extremely concerned with particular components of the biodiversity legislation package, which will seriously undermine the object of the Act itself, and run directly counter to the recommendations of the independent review of the Native Vegetation Act 2003 (Byron et al., 2014).

We comment on specific aspects of the legislation package below.

1. **Inconsistencies in the purpose and objects of the Act**

A key purpose of the Act is to "*to conserve biodiversity and ecological integrity at bioregional and State scales*" (s1.3(a)), yet the Act aims to achieve this by "*taking conservation and threat abatement action to* ***slow the rate of biodiversity loss****"*.

Biodiversity loss in Australia and worldwide is already at an unsustainable rate, hence a vague commitment to "slow" biodiversity loss is not sufficient to *"maintain a healthy, productive and resilient environment",* and is inconsistent with the principles of ecologically sustainable development.

The Act does not specify what the intended rate of biodiversity loss is to be **achieved,** and over what time frame**.** It is therefore unclear what the overall objective is for biodiversity under the new Act, and how the effectiveness of the Act could ever be evaluated.

2. Self-assessable Codes

The self-assessable Codes described in the LLS Codes of Practice do not preclude broad scale clearing of native vegetation, and permit several high risk clearing activities without approval. This is a significant backward step and will undo policy reform undertaken in New South Wales and other Australian jurisdictions over the last 15 years.

Major broad-scale clearing is likely to be facilitated by the Equity Code, which allows up to 500 ha to be cleared 'unencumbered' within a 3 year period, even if endangered ecological communities were present. Allowable clearing is scaled according to the amount of vegetation available to clear on a property, meaning that landholders with the financial means to purchase large properties will be able to clear more land, whereas smallholders will be unfairly penalised. The amount of vegetation available to clear is a key driver of vegetation clearing in Australia (Evans 2016).

The Codes permit several other high risk activities which are not consistent with the recommendations of the Independent Panel (Bryon et al. 2014). For example, the Efficiency code permits clearing of paddock trees, crucial for the maintenance of biodiversity in highly modified landscapes (Gibbons and Boak, 2002), simply by notification to the LLS.

The Farm Plan Code is particularly problematic as it assumes vegetation can be simply "redistributed", even though restoration is a high risk and uncertain prospect (Maron et al., 2012). The Invasive Native Species Code provides considerable scope for unrestricted clearing of native vegetation that is "acting invasively" – a term that is yet to be defined.

The Codes apparently impose no restrictions on clearing of ecological communities listed as Vulnerable.

3. Monitoring and compliance

There is scant detail available in the draft legislation of how the Act, voluntary Codes, Stewardship Agreements, offsets and set-aside areas will be monitored for compliance. There is no indication who will be responsible for undertaking compliance and enforcement responsibilities.

All environmental policies, regardless of whether they are regulations, voluntary codes or market based instruments require monitoring, evaluation and enforcement if they are to be effective. Poor monitoring and compliance enforcement has been a recurring trend over the last 40 years of native vegetation policy reform in Australia – to the detriment of the environment, landholders and policymakers (Bartel, 2003; Bricknell, 2010; Evans, 2016).

Effective monitoring and compliance enforcement was a central component of the Independent Panel's review (Byron et al. 2014), hence the draft legislation cannot be considered to be in line with Panel's recommendations.

4. Offsets and set-asides

The draft legislation relies heavily on the use of biodiversity offsets, of which there is limited evidence of their efficacy in Australia or internationally, and there remain numerous unresolved problems in practice (Maron et al., 2016).

Neither the draft legislation nor the supporting documentation explicitly define the frame of reference against which the effectiveness of biodiversity offsetting would be judged. Although the Submission Guidelines make reference to "international best-practice principles", core offset principles such as additionality and like-for-like are ignored or poorly interpreted in the draft legislation. These principles are well understood and accepted within the scientific community, so it is unclear why the draft legislation fails to adopt such rigorous and defensible standards.

The 'set-asides' permitted under the voluntary Codes unnecessarily add another layer of policy complexity to the legislative package. The use of set-asides has no apparent scientific basis. It is unclear how set-aside are distinct from offsets, and indeed why an additional definition has been introduced.

The guidelines around the use of set-asides in the LLS Codes of Practice are extremely unclear and unnecessarily complex. This policy complexity and duplication runs counter to the goal of 'simplifying land management'. We recommend that the use of set-asides be scrapped.

5. Biodiversity Trust and private land conservation

We welcome the funding commitment for a $240 million Biodiversity Conservation Fund to support private land conservation. However, funding for private conservation can never substitute for effective restrictions on native vegetation clearing. Private land conservation and biodiversity offsets are only effective conservation policy instruments when coupled with regulation on new clearing (Evans 2016).

The short term nature of the funding package is unlikely to be a sufficient incentive for landholders to reduce clearing, as evidence by the failure of South Australia's Heritage Agreements to reduce clearing in the 1980's, and the more recent experience of the Carbon Farming Initiative and Emissions Reduction Fund (Evans 2016).

Further, the incentive for landholders to engage in private conservation is diminished when there is not future funding certainty beyond a short term funding commitment.

Summary

New South Wales has a significant opportunity to reform its biodiversity and native vegetation laws to enhance positive social, economic and environmental outcomes. The draft Biodiversity Conservation Act in its current form is unlikely to deliver these outcomes. Indeed, in absence of rigorous policy monitoring, evaluation and compliance enforcement, it is not likely we will know what, if any, outcomes the new Act will achieve. Crucially, the many exemptions provided for under the Act will very likely facilitate an increase broad-scale clearing in New South Wales, which would be a significant backward step for environmental policy in Australia.

Signed:

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