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5 July 2013

Submission on the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013

Thank you for the opportunity to provide this submission on the proposed revisions to the Nature Conservation Act in the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2013. Ecosure has previously submitted a response to the Consultation Regulatory Impact Statement process.

Here we summarise our concerns with the Decision Regulatory Impact Statement that has directly influenced the contents of the Bill, rather than the Bill itself, as the current Bill represents a small proportion of the legislative changes the Government is proposing. In commenting on the DRIS in this way, we are hoping to demonstrate some of the flaws in logic and premise that it contains, as a constructive contribution to further debate on what to us is a very important issue.

1. We disagree that the revised option 2 in the DRIS addresses the majority of significant issues raised during the consultation process. In Attachment 1 of the DRIS, there are many significant issues raised in responses from individuals and groups with recreational, conservation and/or natural resource management interests that are not addressed: indeed, the majority of changes to option 2 in respect of further reductions in regulatory burdens, including additional exemptions, requested by the development sector. The key recommendation

   "This recommendation is based on an analysis of the relevant issues raised by submitters, the high regulatory burden that would be associated with retaining the current framework under option 1, and the results of the impact analysis which show that option 2 will provide the greatest net benefit to the community in the short-medium term."

   is solely based on a desire to reduce costs and does not mention any benefit to the environment. The term "*greatest net benefit to the community*" is clearly refers to that part of the community who will most benefit from the proposed changes, i.e. the development community.

2. We are concerned that option 2 still includes "*lower risk activities will be self-assessable or exempt from permitting and licensing requirements*". This will be good for business, but potentially bad for the environment: if the rate of non-compliance

that the Department claims is transferred to the new system there will be inevitable breaches and potentially critical losses of plants.

3. We are concerned about the rather imprecise definitions of some the terms used in the DRIS. For instance, the definition of "*special biodiversity values*" does not contain reference to any current definition of protected areas, communities or species. What, of the current legislated protections, will be included in the new definition?

4. Also, the definition of high risk activities is very obscure. It is very concerning that this is still not adequately defined as it is a foundation concept for the changes the DRIS is proposing. In Attachment 1 of the DRIS, it is acknowledged that "*The classification of high and low risk activities is still under consideration*". Section 4.2.1 of the DRIS states that "high risk activities" will include:

   "Clearing activities undertaken in an area where there is a known record of an EVNT plant or a special least concern plant."

   and

   "An activity, where the cumulative impact (area to be developed, built on or cleared) will exceed a certain size over the life of the project/activity and the project involves the clearing of native vegetation."

   In both of these, the undefined terms "*area*" and "*a certain size*" should have definitions and limits. Later, in section 4.3.1, high risk areas and high risk activities are given a little more definition, but are still vague, and without adequate specification, any objective assessment of the proposals is impossible. In accepting option 2 without an adequate definition of what will trigger provisions in the Bill, the Government is allowing itself infinite flexibility that may, but most likely will not, be of benefit to the environment.

5. We agree that the the risk based approach in option 2 will ensure that the "*classification of a high risk clearing activity is based on ecological criteria and environmental context*", but would argue that the definition (of high risk activities) should still allow for very large developments (e.g. coal mines) whose clearing activities may not entirely fall under the EVNT or "*special biodiversity value*" conditions to be included as high risk. With so little known about the distributions and population sizes of many Queensland plants, a more sensible risk-based approach would use the precautionary principle, and *at least* use habitat modelling or a likelihood of occurrence analysis to be part of the decision process when it comes to triggering the requirement of surveys.

6. In a similar way, the definition (or rather lack of one) of special biodiversity values (see above) is concerning. Section 4.3.1 of the DRIS states the a SBVs are:

   "*Areas that are identified by the department (often in response to advice from expert panels) as containing special biodiversity values, such as multiple taxa (including EVNT plants) in a unique ecological and often highly biodiverse environment.*"

What does multiple taxa mean? Does an area have to have EVNT species to qualify? What criteria will be used to define a unique ecological environment? What relationship will this category have to current protections that are in place for reasons other than their plants, e.g. wetland protection zones, wetland management areas etc? As with the vague definitions of high risk activity and high risk area, we consider this is a weak definition and makes it impossible for any sensible assessment of the protections that will result from its application.

7. Clearing permit exemptions are also confusing. For instance an exemption is proposed for "*Clearing protected plants, if the clearing is not for a high risk clearing activity*". If there are protected plants, why would this not automatically be a high risk activity (using our interpretation of the definition of high risk activity") and therefore require not an exemption but surveys and possibly avoidance of impact, minimisation of impact, mitigation of impact, or offset?

8. In the discussion of integration with the Environmental Protection Regulation 1998, the first point that

   "*Resource activities will only be considered 'high risk' if they encroach into mapped special biodiversity areas or known records and the clearing activity does not fall under another NCA exemption (see above section). Flora surveys will only be required in the 'high risk areas' (known records and special biodiversity areas), and a clearing permit will only be required if EVNT plants are found to be in existence on the ground*"

   does not indicate whether this mean surveys are confined to these areas (i.e. encroachments on special biodiversity areas), or to a project area that includes known records or special biodiversity values? There can be a big difference between these.

9. The last point under EP Regulation is that

   "The department will seek further input from the resources sector on how protected plant considerations can best be integrated into the EP Act, in a way that streamlines existing approval processes and benefits all parties."

   suggests that resources sector companies will be asked for inputs an how to further streamlines their processes. This is a very limited provision as it excludes all other stakeholders or interested parties and will not necessarily benefit the broader community if as a result plant protections are further eroded.

10. We disagree with the method used to estimate the costs of flora surveys. The DRIS admits that "*... the estimated costs incurred by business and landholders under the current framework would possibly be lower if the full extent of noncompliance was known and accounted for*." These costs are certainly grossly overestimated, and it is concerning that the Department cannot place a better estimator on them: could not the SLATS data be used to assess broad-scale clearing that was not subject to appropriate assessment and approvals? Even a ball-park estimate of non-

compliance would be available, and a better comparison of costs between the current and proposed option would be possible.

11. Similarly, in section 5.1.4 of the DRIS, it is stated that:

    "As it is not currently a requirement to notify the department when a flora survey has been undertaken, it has been assumed (for the purposes of this impact assessment) that a flora survey is carried out before an area of vegetation is cleared, as per current regulatory requirements."

    This is confusing: if it is a requirement for flora surveys to be done, then how come it is not a current requirement to notify the department?

12. Under the benefits of option 2 for the community and environment it is stated that

    "Option 2 will also require applicants to provide results of flora surveys to assessment officers, so that the department will now be able to capture this data to update and verify existing records. This is expected to improve knowledge of location and distribution of EVNT plants."

    As far as we are aware, a condition of holding a scientific purposes permit (necessary for such survey work) is that a return of data is made to the Department each year – so data is already being fed back into the system. Also, this "new" requirement to submit data will only marginally improve our knowledge of EVNT species, as the only instance in which a survey is required is if there is already a record a such a species – there will be no mechanism to add to knowledge by surveys in places where there are no exiting records, i.e. any "low risk" areas or activities.

    Also

    "...there is no requirement under the current framework to provide results of flora surveys to Government, and as such the Government has not had the ability to use data obtained from flora surveys to improve its own data and knowledge of location and distribution of species."

    So what is the data returned to EHP as a condition of scientific purposes permits used for? Where does the WildNet data come from? The government *does* have this ability.

13. In option 2

    "...permits will not be required for clearing outside of known threatened plant locations or mapped special biodiversity areas, even if the clearing inadvertently results in the clearing of a threatened plant."

    This is contradictory to the assertion in the DRIS that option 2 will result in a high level of protection of plants. This is a *de facto* admission that a net loss is inevitable,

and goes against the government's professed interest ("…in 20 years time, the people of Queensland and Australia will look back at this side of politics and say this is the greenest government they have ever seen" – Hon. Steve Dickson, Queensland Parliament, 17 April 2013) about the Queensland environment.

14. Attachment 1 summarises the submissions made to the CRIS and the Department's responses. In our view the way this has been treated is presumptive of the outcome. For instance, the claim is made that:

    "Whilst current legislation provides a higher perceived level of protection it is poorly complied with and difficult to enforce and therefore does not result in better conservation outcomes."

    There is no evidence given to support this, and implicit in this statement is the acknowledgement that option 1 would continue to protect plants better than option 2. This argument is also given in support of option 2 in respect of habitat protections. And why is it only "perceived" that the current system affords greater protection to plants, whilst option 2 is generally just the preferred option?

15. Option 2 allows for:

    "Exemptions for small scale development and routine activities will apply in special biodiversity areas."

    It is not clear if these activities will require either surveys or offsets: if not, then this will lead to further net loss. Also, the proposal that:

    "Option 2 directs regulatory attention to where risks are known and a community education program will be run that encourages the vouchering and reporting of plants to add to the known records thus increasing the information base."

    will not result in the quantity or quality of data required to ensure adequate protection. This response is totally inadequate given the comments and issues raised in the column adjacent (under *Scaling back flora survey and clearing permit requirements*).

16. A submission was made to the effect that special least concern plants should also include species that provide critical habitat to significant fauna. This is an important issue, but is summarily dismissed as being outside the scope of the review. If the NC Act is to remain the primary vehicle for plant protection in Queensland, then any changes that might affect plants and their role in sustaining biodiversity should be within the scope of a review and subsequent amendments. We view this as a significant oversight.

17. We disagree with the statement that

    "The framework's primary consideration is the conservation of protected plants in a manner that does not provide overly burdensome or duplicative red tape to industry."

We respectfully suggest that the framework is primarily designed to reduce costs to business (in itself no bad thing), but to suggest that the review and Bill are designed mainly for plant protection is not convincing.

18. Attachment 2 (Breakdown of option preference by sector group) shows that the majority of comments (66%) came from recreational, conservation and natural resource management interests. This demonstrates the depth of interest and concern about plant protection. The overall preference of this group was for the retention of option 1 – only the “special interest groups” (these are not defined) preferred option 2. In addition, of all 102 respondents to the CRIS, there was a small majority in favour of keeping option 1 (39) over option 2 (37). Despite these statistics, the department has elected to recommend option 2 as the preferred option. If the CRIS represents what the community think (and that is what the CRIS process is for), then the community clearly does not agree with the DRIS outcome.

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