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Submission on the Draft Revision of Australia's Biodiversity Conservation Strategy

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EDOs of Australia consists of eight independently constituted and managed community legal centres located across the States and Territories.

Each EDO is dedicated to protecting the environment in the public interest. EDOs:

- provide legal representation and advice,
- take an active role in environmental law reform and policy formulation, and
- offer a significant education program designed to facilitate public participation in environmental decision making.

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Introduction

Thank you for the opportunity to comment on the Draft Revision of Australia's Biodiversity Conservation Strategy – *Australia's strategy for nature 2018-2030 (Draft Revision)*.ⁱ

EDOs of Australia (**EDOA**) is a network of community legal centres that specialise in public interest environmental law and policy. Based on our practical experience, we have advised and written extensively on environmental, natural resource management and planning laws, development assessment and approval processes at the national level and in each jurisdiction.

This submission addresses five areas:

1. **Address key findings of the five-year review of Strategy implementation**
2. **Adopt SMART targets (Specific, Measurable, Attainable, Relevant, Timely) that reflect high priority environmental goals, gaps and challenges**
3. **Address key findings of the *State of the Environment Report 2016***
4. **Comments on Draft Revision: Vision, Goals, Objectives, 'Action inventory'**.
5. **An effective biodiversity strategy needs stronger environmental laws.**

In addition to the overarching recommendations noted above, our key comments on the Draft Revision (in part 4 of this submission) include:

- The focus on biodiversity should be clear throughout the Strategy
- Links between economy, society and environment must be unequivocal
- The Draft Revision includes high-level goals and objectives, but no strategies or actions
- Draft objectives invite the questions: 'What are governments committing to do, and how will success be measured?'
- Supporting principles are too vague and do not recognise the need for improved data and funding
- Actions inventory is no substitute for clear targets, actions & responsibilities.

We make more specific **recommendations** to improve the Biodiversity Strategy in each of the five areas below.

1. **Address key findings of the five-year review of the Strategy's implementation**

We **recommend** Governments and environmental agencies revisit the findings and more clearly address the recommendations of the five-yearly implementation reviewⁱⁱ (see below). We also **recommend** seeking assistance of independent environmental experts, and agencies such as the Australian National Audit Office, Department of the Prime Minister and Cabinet, or other representatives with specialist expertise in setting goals and targets, developing implementation plans and achieving outcomes.

We do not consider that the Draft Revision effectively addresses the five-year review, that it will drive change in biodiversity management priorities, or improve

alignment with Australia's international commitments under the Convention on Biological Diversity or other agreements. We hold this view because the Draft is too high-level and ambiguous to be useful. The Draft Revision is such a fundamentally different document that it is unclear which of the review findings have been implemented and how.

The five-year review outlined some major barriers to the 2010-2030 Strategy's success, and 'recommends the Strategy be revised in light of these findings'. Yet the review working group also recognised that the Strategy 'remains uniquely placed to:'

- *manage transboundary environmental issues,*
- *deliver on biodiversity-related issues that require Australian Government authority or cooperation from multiple jurisdictions, and*
- *coordinate effort and leverage investment on shared priorities for biodiversity management.*

The four key findings of the 2016 review were:

- *The Strategy did not engage, guide, or communicate its objectives to all audiences in a useful way*
- *The Strategy is too focused on preventing the loss of biodiversity in natural terrestrial environments and does not consider biodiversity contributions across all landscapes*
- *The Strategy has not effectively influenced biodiversity conservation activities, and*
- *Alignment of the Strategy with the Convention on Biological Diversity, and other related international obligations, could be enhanced.*

More detail on the findings and recommendations of the review are at **Appendix A**.

2. Adopt SMART targets that reflect high priority environmental goals, gaps and challenges

We **recommend** the working group replace the current Strategy's targets with revised targets that are Specific, Measurable, Attainable, Relevant and Timely. Targets in the Strategy should focus on key aspects of biodiversity including:

- native vegetation conservation;
- threatened species and ecological communities;
- ecosystem and landscape-scale protections;
- protected areas (private, public, Indigenous);
- carbon storage in forests, soils and wetlands; and
- climate change adaptation.

We **do not support** the proposal in the Draft Revision to adopt an 'action inventory' in place of SMART targets. An action inventory may *supplement* targets to 'showcase' what works, promote success and inspire others (as suggested in the Draft Revision). However, an inventory of actions alone, without clear targets, risks the perpetuation of poor monitoring and reporting processes that are anecdotal at best. See also part 4 below.

The five-year review noted that to drive change, targets must be ‘well defined, relevant to the desired outcomes and include clear parameters [to measure] progress.’ Further, in order to deliver the Strategy’s outcomes, targets must be.ⁱⁱⁱ

SPECIFIC—Target is well defined so its goal can be easily understood

MEASURABLE—Target has clear parameters that can be measured to track progress

ATTAINABLE—Target is challenging but realistically achievable with available resources

RELEVANT—Target aids in achieving desired long term outcomes and is consistent with other associated goals

TIMELY—Target includes a timeframe for achievement to keep progress on track

The five-year review noted that targets must be ‘realistically achievable with available resources’. Unfortunately, the lack of national coordination and transparent, accessible information makes it difficult to know what those available resources are, or how they are prioritised within and across governments.

We **strongly recommend** that all Governments involved commit specific additional resources to implement a robust national biodiversity Strategy. In particular, for:

- programs and systems to collect and aggregate environmental baseline data;
- staff to manage and implement the Strategy’s programs; and
- effective, consistent and regular monitoring and reporting published on environmental outcomes.

3. Address key findings of the *State of the Environment Report 2016*

In developing SMART targets, we **recommend** the Strategy focus on key challenges to the effective management of the Australian environment. The 2016 *State of the Environment Report (SOE Report)* identified the following six key challenges:^{iv}

- lack of a nationally integrated and cohesive policy and legislative framework** that deals with the complex and systemic nature of the issues facing our environment, and provides clear authority for actions to protect and maintain Australia’s unique natural capital
- poor collaboration and coordination of policies, decisions and management arrangements** across sectors, between different levels of government (national, state and territory, and local councils) and managers (public and private), and over time
- inadequacy of data and long-term monitoring**
- a lack of follow-through from policy to action**
- insufficient resources** for environmental management and restoration
- inadequate understanding and capacity** to identify and measure **cumulative impacts**, which reduces the potential for coordinated approaches to their management.

We **recommend** that the working group identify and advise their Governments and communities on:

- what goals, strategies, law and policy frameworks are needed to tackle these six challenges;
- the estimated costs and benefits of proposed actions, including the benefits in terms of ecosystem services, avoided and prevented losses (for example, actions to invest in retaining native vegetation may save future costs of repairing soil structure, salinity, water quality and carbon storage);
- what institutions (existing or new, at national, state and local level) and resources are necessary to deliver those priority strategies and actions; and
- information, examples and comparisons of funding in Australia and overseas.

4. Comments on the Draft Revision of the Biodiversity Strategy: Vision, Goals, Objectives & ‘Action inventory’.

The focus on biodiversity should be clear throughout the Strategy

The Vision presented in the Draft Revision is an acceptable one at a very high level.^v However, we make two further observations to improve it.

First, referring to “Australia’s nature”, in the title, the vision and in other parts of the document, makes the scope of the Strategy and actions unclear. If the Strategy is specifically focused on *biodiversity*, this term and its components should be used and clearly explained. This also provides clear links to parties’ roles in legislation.

Second, the Strategy’s high-level directions must recognise the urgency of the conservation challenge. In other words, what is at stake for the wellbeing of current and future generations due to accelerating biodiversity loss under the status quo.

Links between economy, society and environment must be unequivocal

The section ‘Our economy depends on nature’ seems to equivocate on whether this is true or not, where it says ‘*some experts even claim that our economic activity is dependent on the services and benefits provided by nature*’ (p 5, emphasis). The fact that our economies and ways of life rely on nature is the essence of the 1992 *Rio Declaration on Environment and Development*, the Rio+20 Conference, and the concept of *ecologically sustainable development (ESD)* that informs federal and state laws.

There are many sources the Strategy could refer to, including the principles of ESD set out in the *Environment Protection and Biodiversity Conservation Act 1999*.

Seventeen years ago, the then Environment Minister, the Hon. Robert Hill, noted the importance of seeing the links between the economy, environment, and government investment:^{vi}

A new wave of thinking now acknowledges that to achieve ongoing economic growth we must respect and properly manage our natural resource base. We must move toward planning for and achieving sustainable economic growth. To achieve this we need to make the environment a key consideration in all our economic decision

making processes. We must acknowledge that respecting and protecting the environment is not an add-on to economic growth.

Recognising natural capital is no longer a ‘new wave of thinking’ but an essential requirement. As noted by National Sustainability Council (now disbanded) in its 2013 report:

Running down our natural capital risks serious economic and social implications and would undercut the wellbeing of future generations of Australians. A healthy natural environment with functioning ecosystem processes is therefore an economic and social imperative.^{vii}

Draft Revision includes high-level goals and objectives, but no strategies or actions

As the diagram on p 9 of the Draft Revision demonstrates, the document contains no actual strategies or actions that commit governments or other parties to act. Again, at a very high level there may be nothing wrong with the list of aspirations, but they are clearly not specific enough to be a Strategy.

To explore one example in the Draft Revision – under the Goal to ‘Care for nature in all its diversity’, draft objective 6 is to ‘*Maximise the number of species secured in nature*’. It is unclear what programs exist, what their level of funding is, whether governments are agreeing to continue existing programs or adopt new ideas (p 13).

It is also unclear how the success of this objective would be measured. How do you know when something is ‘maximised’? What baseline data and monitoring systems will be built or relied upon? As successive State of the Environment Reports show (as does the five-year review of the Strategy) the available data on species and ecosystems is too sparse to build a systematic picture of Australia’s biodiversity and effectiveness of management actions.

A stronger, high-level objective (and one that better reflects the Aichi Targets under the Convention) would be an aim to *prevent extinction* and ensure recovery of listed threatened species. Examples of clear strategies that the Biodiversity Strategy could commit to, in order to achieve this outcome, include:

- amend and clarify the objectives and duties in state and federal laws to prevent extinction and ensure recovery;
- commit to renew/fund/finalise outstanding draft Recovery Plans by 2020;
- a timeline to seek advice and develop Threat Abatement Plans for listed key threatening processes of *land clearance* (habitat loss) and *climate change*;
- establish a program for regional or joint recovery plans in high-pressure bioregions;
- establish a taskforce to identify, report and assist with emergency species recovery actions; and
- dedicate a certain amount of funding from each state and federal government.

For other **recommendations** on targets and actions, please refer to parts 1-3 above.

Draft objectives invite the questions: ‘What are governments committing to do, and how will success be measured?’

The explanations for many objectives in the Draft Revision only get as far as suggestions or conjecture. For example (emphasis added):

- The capacity of community groups to participate in stewardship programs *can be increased* (see objective 2)
- Australians’ understanding of the value of nature... *can be improved* through...’ (see objective 3)
- ‘Traditional stewardship of land and sea country *can be supported*... (see objective 4)
- ‘Conservation management of landscapes, seascapes and aquatic environments can be improved by enhancing [representativeness and condition of private and public protected areas]’ (objective 5)
- ‘*Options* for joint action to reduce threats... include...’ and ‘There are *opportunities* improve planning, regulation, environmental impact assessment and approvals processes.’ (objective 7)
- ‘*Some options* [to deliver green spaces] include increasing [urban] tree canopy, [greenways] and ‘gardens on rooftops to reduce carbon emissions’ (objective 9)
- ‘There are *opportunities* to streamline and coordinate...reporting mechanisms’ (objective 12)

All of the explanations of objectives in the Draft Revision invite questions, such as:

- What are governments actually committing to do?
- What strategies have been selected from these options and why?
- How will success be measured?
- Who is responsible for delivering strategies and actions?
- What existing and new resourcing is available?
- What benefits will this deliver?
- What mechanisms hold responsible governments or parties accountable?

Supporting principles are too vague and do not recognise the need for improved data and funding

The ‘supporting principles’ (p 16) make brief and selective reference to key concepts – such as the precautionary principle and intergenerational equity – but not to other recognised principles of ESD (e.g. effective integration of short- and long-term considerations, improved environmental valuation).

The supporting principles do not recognise the need for improved data and funding.

The meaning and context of key terms in the supporting principles, such ‘Using an ecosystem-based approach’, and ‘Accounting for nature’, are not explained.

Actions inventory is no substitute for clear targets, actions & responsibilities

As noted above, we do not support an ‘actions inventory’ in place of clear strategies, targets, actions and responsibilities in a national biodiversity strategy.

An action inventory focuses on positive examples, but omits essential information. Just as a company cannot selectively report profit by ignoring loss, a biodiversity strategy cannot report on positive initiatives without tracking and reporting on *countervailing threats*, such as habitat loss from land-clearing, invasive species and climate change.

Rather than withdrawing from the challenge of setting clear targets, strategies and actions, Governments should build internal capacity to develop and deliver strategies across all levels of government to achieve these goals, with expert and public input.

5. An effective strategy for nature needs stronger environmental laws

EDOs of Australia submit that efficient, effective and well-designed environmental laws are essential, underpin a healthy society and economy, and are of benefit to all Australians. The *purposes* of environmental laws include:

- to recognise that the environment, economy and society are inextricably linked (including through the concept of ESD);
- to ensure decisions about activities and impacts *effectively integrate* these factors, and that decisions are transparent, informed by objective evidence, community input and equality before the law; and
- to ensure outcomes that protect, maintain or enhance the environment and natural resources for present and future generations.

However, we share the widespread concern that:

- environmental laws are not administered in a way that achieves these aims;
- there is too much focus on reducing environmental regulation rather than *strengthening its effectiveness*;^{viii}
- the failure to implement the 2009 Hawke Review of the EPBC Act has set the Act back by a decade in addressing the key challenges outlined in part 3; and
- high quality environmental outcomes need clear and cohesive goals, stronger laws and policies, more independent institutions, better information to inform decision-making, and much more (not less) resourcing.

We give three examples below to inform the National Biodiversity Strategy and improve the operation and effectiveness of environmental laws, followed by recommendations for a way forward.

Blueprint for the Next Generation of Environmental Laws

First, in 2017 the Australian Panel of Experts in Environment Law (APEEL, which includes representation from EDOA) published a *Blueprint for the Next Generation of Environmental Laws*. The Blueprint provides a forward-looking, positive agenda that addresses many of the challenges identified in the SOE Report 2016. It includes:

- new and independent institutions, including an Environment Commission to advise on and set strategy, and a national EPA to monitor and enforce the law
- stronger duties on decision-makers to achieve environmental goals in law,
- new concepts for systemic environmental protection in accordance with ESD principles, including better bioregional planning and climate change readiness and
- more effective tools and resourcing for natural resource management, nature conservation and planning and environmental impact assessment.

Blueprint for a Healthy Environment and a Productive Economy

Second, we note that in 2014 the Wentworth Group of Concerned Scientists developed a *Blueprint for a Healthy Environment and a Productive Economy*, provides a better balance between business and environmental outcomes while maintaining the Australian Government's important approval and oversight roles.^{ix}

Hawke Report – Independent Review of the EPBC Act (2009)

Third, there are a range of administrative efficiencies that were recommended in the 2009 independent Hawke Review of the EPBC Act, and other inquiries.^x The Hawke Review was a major, consultative, evidence-based inquiry to strengthen and improve the EPBC Act after 10 years of operation.^{xi} A range of beneficial recommendations were effectively derailed in 2012 and are yet to be implemented.^{xii} The Hawke recommendations must be a starting point for any future review of the EPBC Act.

Supporting the achievement of Australia's environmental vision, goals & laws

Finally, in developing a way forward, EDOs of Australia recommends a number of steps to improve the achievement, administration and effectiveness of Australia's environmental vision, goals and laws.

We **recommend** the Australian Government develop clear and cohesive environmental goals, laws and policies that provides leadership to and collaboration with the States and Territories. This must include clear goals, effective strategies, agreed responsibilities and independent monitoring and reporting.

We **recommend** the Australian Government should improve the effectiveness of national environmental laws, and work with States and Territories to improve their environmental assessment and approval processes and consistent standards.

Basic elements of more effective environmental law and policy frameworks include:

- aims to promote and achieve ecologically sustainable development, and requiring that decisions comply with ESD principles
- independent, trusted institutions to give direction and oversee compliance
- strategic and improved assessment standards, including cumulative impacts and climate change impacts (emissions reduction and adaptation)
- reinforcing goals with stronger threatened species laws and protections
- more accountable governance for assessors and decision-makers
- greater transparency and public participation before decisions are made
- increased access to justice for communities, including court appeal rights, and
- joined-up data systems that allow for leading practice monitoring, reporting and continuous improvement.

Conclusion

Thank you for considering the EDOs of Australia submission on the Draft Revision of Australia's Biodiversity Conservation Strategy. We hope our recommendations inform a new iteration of the Strategy, and would be happy to discuss them further.

Appendix A - Key findings and selected recommendations of the five-yearly review of Australia's Biodiversity Conservation Strategy 2010-2030 (2016)

The 4 key findings and some of the Government review's recommendations are cited below:

i) The Strategy did not engage, guide, or communicate its objectives to all audiences in a useful way

...

- *better guidance for stakeholders about how they can identify and build on existing efforts to implement the Strategy and contribute to addressing gaps*

...

- *clearly identify how all levels of government and other relevant sectors can contribute and benefit from its implementation*

...

- *could initially focus on coordinating the efforts of governments before progressively incorporating other sectors.*

...

- *There remains a place for a national direction for biodiversity conservation by establishing desired national outcomes and agreed priorities for implementation*

...

- *program logic methodology should be utilised to map the links between actions and outcomes ensuring this information is displayed in a way that is transparent and easy to understand.*

...

- *A revised Strategy could be more action-orientated, and may consider a smaller set of well-specified targets for more efficient collective action towards nationally agreed priorities.*

ii) The Strategy is too focused on preventing the loss of biodiversity in natural terrestrial environments and does not consider biodiversity contributions across all landscapes

...

- *the Strategy could more comprehensively address the full continuum of Australian landscapes including production and built landscapes*

...

- *better address biodiversity conservation in aquatic and marine environments by including more targeted and specific outcomes*

...

- *The Strategy would benefit from a clear and realistic explanation of the trade-offs which occur between biodiversity and other interests, and their short and long term costs and benefits. Better recognition of biodiversity as a determinate of our economic prosperity, and health and wellbeing is necessary to ensure consideration of long term benefits is integrated into shorter-term decision making.*

iii) The Strategy has not effectively influenced biodiversity conservation activities

...

- *A durable and well-supported governance structure is required to ensure the Strategy is successfully implemented over its lifespan.*

...

- *actions for achieving [Strategy outcomes] needed to be supported by the development of an implementation plan [as a practical tool] to establish transparency [and oversight] and accountability for each jurisdiction's contribution towards delivery of targets and outcomes.*

iv) Alignment of the Strategy with the Convention on Biological Diversity, and other related international obligations, could be enhanced

...

- *the Strategy would benefit from an adaptable framework which can accommodate the [Biodiversity] Convention's evolving themes and priorities over time.*

...

- *Improving alignment of the Strategy with the [Biodiversity] Convention's Strategic Plan may also facilitate more coordinated national implementation of other biodiversity-related conventions...*

References

ⁱ <http://www.environment.gov.au/biodiversity/conservation/strategy/draft-revision>.

ⁱⁱ Biodiversity Working Group, *Report on the Review of the first five years of Australia's Biodiversity Conservation Strategy* (2016), Australian Government Department of the Environment and Energy, available at: <http://www.environment.gov.au/biodiversity/publications/australias-biodiversity-conservation-strategy-five-year-review>.

ⁱⁱⁱ Biodiversity Working Group, *Report on the Review of the first five years of Australia's Biodiversity Conservation Strategy* (2016), see Appendix C. The review found that: 'Some targets could not be clearly interpreted or easily monitored to track trends, while others could not realistically be achieved in the given timeframe. Most of the interim targets contain quantitative parameters for change, however many lack the specificity needed to effectively guide the efforts of [contributing] parties...'

^{iv} Report to the Australian Government, *State of the Environment 2016*, Overview of challenges to effective management, at: <https://soe.environment.gov.au/theme/overview/topic/overview-challenges-effective-management>

^v Draft Revision, 'Australia's Strategy for Nature', p 3: 'Australia's nature, now and in the future, is healthy and resilient to threats, and valued both in its own right and for its essential contribution to our health, wellbeing, prosperity and quality of life.'

^{vi} Statement by Senator the Honourable Robert Hill, then Minister for the Environment and Heritage, 22 May 2001 'Investing in Our Natural Heritage – Commonwealth Environment Expenditure 2001-02'.

^{vii} Australian Government National Sustainability Council, *Sustainable Australia Report 2013*, p 81, at <http://www.environment.gov.au/resource/sustainable-australia-report-2013-conversations-future>.

^{viii} An international report commissioned by the Organisation for Economic Co-operation and Development (OECD) found that environmental regulation does not inhibit productivity. The report found that more technologically advanced industries can benefit from more stringent environmental policies, and that environmental policies have no longer-term effects on productivity growth. S.Albrizio et al. *Do Environmental Policies Matter for Productivity Growth? Insights from New Cross-Country Measures of Environmental Policies*, 1: OECD, France, No. 1176.

^{ix} Wentworth Group of Concerned Scientists, *Blueprint for a Healthy Environment and a Productive Economy* (2014) available at: www.wentworthgroup.org.

^x Including the Senate Environment and Communications Committee inquiry into the EPBC Amendment (Retaining Federal Powers) Bill 2013; Environment and Communications References Committee report on *Effectiveness of threatened species and ecological communities' protection in Australia*; House of Representatives Standing Committee report on *Managing Australia's Biodiversity in a Changing Climate* (2013).

^{xi} Unlike the 2012 COAG 'green tape' announcements, which came from one stakeholder group, the Hawke Review's public consultation process sought and analysed specific feedback on the operation of the Act. This included 220 submissions, 119 supplementary submissions, and face-to-face consultations in each state and territory with industry, NGOs, the community, individuals, research groups, academics, individual corporations, and agencies from every level of government. See Hawke, A., et al., *Report of the Independent Review of the EPBC Act (2009) (Hawke Review)*, at <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/epbc-review-2008>.

^{xii} Hawke Review recommendations included (among others):

- completion of a single, harmonised threatened species list based on robust scientific criteria (we note that similar work is underway);
- methods to assess and avoid cumulative impacts of multiple projects;
- establishing a statutory National Environment Commission to provide strategic advice and oversight of environmental regulation and emerging issues;
- an interim 'greenhouse trigger' to require federal approval of major polluting projects, in the absence of a national carbon price;
- strategic assessment processes that can accredit other approval systems that genuinely 'maintain or improve' environmental outcomes, and that consider cost-effective climate change mitigation options; and,
- a range of enforcement, accountability and transparency mechanisms to improve decision-making and community access to justice.