

Submission

in response to

Biodiversity is Everybody's business

Victoria's Biodiversity Strategy 2010-2015

Consultation Draft

prepared by

Environment Defenders Office (Victoria) Ltd

4 June 2010

About the Environment Defenders Office (Victoria) Ltd

The Environment Defenders Office (Victoria) Ltd ('EDO') is a Community Legal Centre specialising in public interest environmental law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice. In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working to protect Australia's environment through environmental law.

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Our comments in response to the consultation draft of *Biodiversity is Everybody's Business* - Victoria's Biodiversity Strategy 2010-2015 ('Strategy') relate to Chapter 3.5 of the Strategy: Modernising legislation.

The EDO has previously made extensive submissions in response to the Consultation Paper and the *Land and Biodiversity in a Time of Climate Change* Green Paper ('Green Paper') that led to *Securing Our Natural Future* – Victoria's Land and Biodiversity White Paper 2009 ('White Paper'). In our submission to the Green Paper, we identified gaps, overlaps and inconsistencies in the legislative framework that deals with biodiversity, highlighted the lack of integration and co-ordination among the relevant agencies and legislative regimes and presented an agenda for law reform for consolidating and updating Victoria's biodiversity legislation.

Consultation

We are disappointed with the inadequate opportunity provided for public comment on the Strategy.

The Biodiversity Strategy is a vitally important document. It proposes to 'set strategic directions for biodiversity management across Victoria, inform programs, standards and targets for government and the environmental sector.'¹ As such, it is critical that the document is subject to close scrutiny and informed by a broad range of interests and values and draws upon community expertise and experience. Four weeks is an inadequate timeframe for meaningful consultation.

Background to the Strategy

The context within which the new Biodiversity Strategy operates is very unclear. If the Strategy is intended to provide practical guidance to biodiversity decision-makers such as councils and responsible authorities it would be useful to describe more clearly the context in which the Strategy operates. In particular, clarification is required on how the Strategy interacts with the package of three documents which make up Victoria's original 1997 Biodiversity Strategy and any other related policy documents. The Strategy is described as a 'renewed strategy' which is 'an amendment to Victoria's Biodiversity Strategy (1997)'.² This, however, does not provide any practical guidance as to how the Strategy works together with the existing Strategy. Also, the White Paper states that the Biodiversity Strategy will be a component of a larger Victorian Natural Resource and Management Plan, which is intended to 'prioritise management goals, standards, processes and approaches' for Victoria.³ It is also not clear how the Strategy will link into this Plan.

Furthermore, while the Strategy refers to the requirements it must fulfill under the *Flora and Fauna Guarantee Act 1988*, it would be valuable if it explained how it achieves these objectives. Similarly, while the Strategy asserts that it fulfils Victoria's formal requirements under the *National Strategy for the Conservation of Australia's Biological Diversity* (1996) and Australia's commitments under the International Convention on Biological Diversity (1994), it would be useful if it articulated how it meets those requirements.

¹ Victorian Government Department of Sustainability and Environment, *Biodiversity is Everybody's Business* - Victoria's Biodiversity Strategy 2010-2015 Consultation Draft (Draft Strategy), p 7.

² Draft Strategy, p7.

³ Victorian Government Department of Sustainability and Environment, *Securing Our Natural Future*, White Paper (White Paper) p27.

Relationship with the Biodiversity White Paper

The relationship of the Strategy to Victoria's Land and Biodiversity White Paper is unclear.

The Biodiversity Strategy is described as being developed in the context of Victoria's Land and Biodiversity White Paper.⁴ The Strategy describes the White Paper as setting the 'vision and policy agenda for the next 20 to 50 years'⁵ and the Strategy to build on it by 'describing how government will implement biodiversity initiatives over the next five years.'⁶ In many instances, however, the Strategy does not adequately develop or 'build on' the Government's White Paper commitments. In some instances, the Strategy does little more than duplicate commitments made in the White Paper, and in other instances White Paper commitments have simply been transposed or paraphrased, or are completely lacking, creating confusion as to the reason or purpose of the Strategy.

The Biodiversity Strategy should be a mechanism which further develops policy commitments from the White Paper. It should not simply re-hash broad commitments which were enunciated in the White Paper.

Goals for Biodiversity Legislation

The goals proposed for new biodiversity legislation in Victoria, although positive, are too broad to be meaningful. While the EDO does not disagree with the broad goals for biodiversity legislation outlined in the Strategy and supports the commitment to update biodiversity legislation, we are concerned about the call to streamline biodiversity legislation without any detail of what the streamlining is intended to involve. It is unclear from the Strategy which direction new biodiversity legislation in Victoria is heading in, or what processes will be followed to develop those commitments.

Key Activities – Modernising Legislation

The Biodiversity Strategy does no more than transpose the commitments from the White Paper with respect to modernising legislation into 'key activities' in the Strategy. While the Strategy identifies key issues with current biodiversity legislation it fails to provide any detail on the nature and the scope of the legislative changes envisaged. Therefore, as noted above, there is enormous uncertainty and concern as to the direction in which biodiversity legislation in Victoria is heading. It is not clear what the proposed Biodiversity Conservation Bill will contain – what aspects of the current legislative regime will be retained, what aspects will be lost and what new concepts will be introduced.

If it is thought to be necessary and desirable for the Strategy to include commitments previously made in the White Paper regarding legislative reform, then the Strategy should contain some of the necessary details of the reform rather than simply re-stating or paraphrasing vague commitments from the White Paper. To be of value, the Strategy should articulate a clear direction for biodiversity legislation. It should detail clear objectives, principles and mechanisms to be included in new Biodiversity Conservation Bill.

⁴ Draft Strategy, p7.

⁵ Draft Strategy, p7.

⁶ Draft Strategy, Executive Summary.

Furthermore, the Strategy does not adequately reflect the importance of public participation in the development of legislative reform commitments. While the Strategy notes that 'appropriate consultation with stakeholders during the review or development of biodiversity legislation *would assist* in identifying areas for improvement, increasing community support for the legislation and improving compliance'⁷, EDO submits that public consultation is *essential* and *must* be a meaningful component of any review and reform of Victoria's biodiversity legislation. As we have noted above in relation to the consultation on this Strategy, it is critical that the process of reform is informed by a broad range of interests and values and draws upon community expertise and experience.

We also note that while the Strategy refers to the White Paper's three tiered approach to legislative reform which includes the development of a Natural Resources Management Bill, a Biodiversity Conservation Bill and a Public Land Bill,⁸ it is unclear why the Strategy fails to identify the development of a Public Land Bill in the 'key activities' for modernising legislation.

It also unclear why the extensive reform agenda for processes and institutional arrangements proposed in the White Paper is not reflected in the Strategy. There is no mention of, or further detail on, the proposed structural and administrative reforms to natural resource management organisations.

Principles underlying Legislation

Despite the White Paper's commitment that new biodiversity legislation will reflect a common set of overarching ecologically sustainable development (ESD) principles⁹, chapter 3.5 of the Strategy provides insufficient attention to the principles of ESD. There is only brief recognition of the need to better integrate ESD principles into decision-making, including the application of the precautionary principle, at page 60 of the Strategy.

As previously submitted in the White Paper process, the principles of ESD are now widely recognised in Australia and internationally to be core components of government decision-making. Victoria's legislative framework for biodiversity conservation must provide an adaptable forward-thinking regime which expressly integrates these principles into decision-making. As such, the Strategy should more strongly reflect the principles of ESD throughout the document and in particular, in the chapter relating to modernising legislation.

Ongoing status of the Strategy

The ongoing status of the Strategy is unclear. The preparation of such a strategy is a requirement under section 17 the *Flora and Fauna Guarantee Act 1988* (FFG Act). It would therefore be useful to articulate in the Strategy its ongoing status once the proposed repeal and consolidation of the FFG Act (as proposed in the White Paper and the Strategy itself) is effected.

⁷ Draft Strategy, p62.

⁸ Draft Strategy, p62.

⁹ White Paper, p42.