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Manager, Special Projects
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By e-mail: commentsTNFVP@dpiwe.tas.gov.au

Dear Sir / Madam

Proposed Threatened Non-Forest Vegetation legislation

Thank you for the opportunity to comment on the proposed system to control clearing of threatened non-forest vegetation communities.

The Environmental Defenders Office (*EDO*) is a non-profit, community legal centre specialising in public interest environmental and planning law. We provide legal representation and advice, take an active role in law reform and policy formulation and offer education programs designed to facilitate public participation in environmental decision-making.

We strongly support moves to protect threatened native non-forest vegetation communities. We also acknowledge that the highest regulatory priority, both in terms of environmental outcomes and commitments under the Regional Forest Agreement, is the protection of threatened species. However, in our view, it is necessary to adopt a more comprehensive approach to vegetation management in Tasmania.

The first section of our submission discusses the need to implement an integrated system to regulate clearing of native vegetation, including threatened and non-threatened vegetation communities. The second section makes specific comments about the proposed legislation.

Summary of Comments

- Tasmania should develop and implement a comprehensive native vegetation management system, based on models used in other Australian states
- Vegetation management should be subject to the objectives of the RMPS and third party enforcement rights
- Decisions to approve clearing and conversion of threatened vegetation communities must explicitly describe the “overall environmental benefit” achieved by the clearing
- Landowners should be required to adopt vegetation management plans where poor management practices are likely to affect the condition or range of the threatened vegetation
- Adequate resources must be committed to monitoring and enforcement of the proposed legislation.

*The EDO gratefully acknowledges the assistance of
Noelle Rattray and James Finnila in preparing this submission.*

1. Comprehensive Native Vegetation Management

Land clearance presents one of the greatest threats to native biological diversity in Australia. The majority of clearing occurs in Queensland and New South Wales, however Tasmania is also responsible for a significant amount of native vegetation clearance.

While the proposed system addresses an important issue in Tasmania by regulating clearance and conversion of threatened non-forest vegetation, there remains a regrettable gap in the regulation of clearing of non-threatened, non-forest vegetation species. Clearing involving less than 1ha of forest or 100 tonnes of timber also falls outside the current forest practices system.

In the past few years, both Queensland and NSW have implemented and fine-tuned comprehensive land clearing legislation¹. As noted in the Regulatory Impact Statement (*RIS*), all other state governments have also introduced clearing controls, whether through existing planning systems or specific vegetation management legislation². Each of these systems provides exemptions to allow appropriate rural activities to continue.

The EDO strongly advocates the implementation of a similar approach in Tasmania. Vegetation management has been a significant political (and environmental) issue for many years – at the very least since the implementation of the Regional Forest Agreement – yet the Tasmanian government has adopted a minimalist, ad hoc approach to land clearing. The ‘Frequently Asked Questions’ section of the information material provided in support of the proposed amendments includes the question “*Will the goalposts shift again?*”. This recognises an understandable degree of frustration amongst landholders at the incremental changes to clearing laws.

While the current and proposed legislative regime will technically satisfy current obligations under the Regional Forest Agreement (including the May 2005 supplement), it does not constitute a sustainable and integrated approach to native vegetation management. Tasmania’s failure to regulate *all* clearing at a Statewide level puts it “out of step” with national developments.

The RIS describes the option of developing an integrated native vegetation management system as efficient in the long term, but neither affordable nor acceptable to most stakeholders in the short term. We wish to make the following brief comments about the introduction of a new system:

- The statement that a new legislative regime could not be achieved “within a reasonable timeframe” ignores the fact that land clearing has been a significant political issue for a decade. We acknowledge that implementation of a comprehensive clearing regime will be difficult and time-consuming, however other states have committed significant resources to achieve this objective. Tasmania should follow their lead.

¹ *Vegetation Management Act 1999 (Qld)* (as amended by *Vegetation Management and Other Legislation Amendment Act 2004*) and *Native Vegetation Act 2003 (NSW)*

² For example, *Planning and Environment Act 1987 (Vic)*; *Environment Protection Act 1986 (WA)*; *Planning Act (NT)*; and *Native Vegetation Act 1991 (SA)*

- We endorse comments in the RIS about the limitations of planning schemes for regulating clearing threatened non-forest vegetation and the compliance burdens imposed on landowners as a result of
 - inconsistent approaches to regulation; and
 - the range of legislation and policies potentially triggered by clearing on private land (for example, see the list on page 11 of the RIS).

These comments apply equally to the clearing of non-threatened, non-forest vegetation. A comprehensive, statewide land clearing regime would provide certainty to all stakeholders.

- We dispute the characterisation of a new system as not promoting cooperation. There is no reason that a comprehensive native vegetation management system would not support cooperative measures including voluntary conservation agreements, financial incentives and resource management and planning advice.
- The RIS addresses the potential restriction of competition as a consequence of the proposed restrictions on clearing and converting threatened non-forest vegetation. Arguably, Tasmanian farmers already enjoy a significant competitive advantage over their counterparts in other Australian states, given the lack of comprehensive land-clearing controls in this state.

In our view, given developments in other states, increasing degradation and reduction of agricultural resources and the recognised benefits of maintaining vegetation cover, it is inevitable that comprehensive land clearing controls will be developed in the future. We recommend that that Tasmanian government commit to this process immediately, building on experiences in other states to achieve a workable vegetation management system.

2. Proposed Threatened Vegetation Legislation

2.1. Forest Practices System

The regulation of clearing of threatened non-forest vegetation via the existing forest practices system is understandable in the short term. However, we do not believe that the forest practices system is the most effective mechanism to deliver long-term sustainable management outcomes. Our major concerns about this system are:

1. The forest practices system is not subject to the explicit sustainable development objectives of the Resource Management and Planning System
2. The Forest Practices Authority has a poor record of monitoring and enforcement of forest practices (see our additional comments regarding enforcement below). The system is largely self-regulated, reducing transparency and accountability.
3. There is no provision within the forest practices legislation for civil enforcement by a third party. Effective implementation of the proposed legislation relies on the interpretation of concepts such as “clearance and conversion”, “overall environmental benefit” and “detract substantially from the conservation values”. In our view, it is critical that affected stakeholders be given the opportunity to challenge decisions

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based on interpretations of these concepts. Third party enforcement rights also allow the community to give effect to legislation where the regulatory body does not take action against people who fail to comply with the clearing laws.

Therefore, we believe that the regulation of vegetation clearing should be brought within the Resource Management and Planning System.

2.2. Overall Environmental Benefit

The proposed legislation allows clearing and conversion of threatened vegetation communities where there is an “overall environmental benefit”. This term is not defined in the legislation, and the RIS states that the determination would be “*based on advice from the Forest Practices Authority or a qualified Forest Practices Officer*”.

In our experience, the forest practices system does not always achieve satisfactory outcomes in the management of threatened species. It is essential that:

- any application for a FPP to allow clearing of threatened vegetation communities be subject to advice from the Threatened Species Unit; and
- any decision to certify a FPP on the basis that the clearing and conversion has an “overall environmental benefit” must explicitly provide reasons for this assessment.

2.3. Addressing Poor Management Practices

Proposed section 3A(2) states that

*a management practice carried out on any land is not taken to constitute the clearance and conversion of a threatened native vegetation community on that land if the range, and species composition, of the threatened native vegetation community is **reasonably unlikely** to be permanently altered by the management practice* (emphasis added).

We acknowledge that the adoption of best practice land management techniques is best achieved through education and consultation with landowners, rather than regulation. However, the identification and management of threatened vegetation species is a complex issue and the current system leaves large areas subject to management regimes which *may* ultimately result in substantial changes to the native vegetation. Therefore, we recommend that a regulatory instrument be introduced to allow forest practices officers who become aware that management practices are impacting on threatened vegetation communities to require the landowner to enter into a vegetation management plan.

An appropriate model for this instrument could be the environmental improvement programme system under Part 3, Division 7 the *Environmental Management and Pollution Control Act 1994*. Adoption of the vegetation management plan would secure a sound environmental outcome (e.g. by requiring rehabilitation work) and bring the landowner into compliance with the legislation.

2.4. Adequate Resources

Vegetation mapping

One of the findings of the Productivity Commission's *Inquiry into the Impacts of Native Vegetation and Biodiversity Regulations* was that accurate mapping plays a crucial role in the effective management of native vegetation. We strongly agree with this finding – accurate mapping is essential to ensure that landowners understand their obligations, to design appropriate management programs and to effectively monitor changes in local and regional vegetation cover over time.

DPIWE acknowledges that current indicative TasVEG mapping is not necessarily accurate at a property level. Therefore, it is important that resources are dedicated to ensuring that maps are maintained and updated as new information becomes available (e.g. through consultation with affected landowners as part of the implementation of the new system).

Given the extent of exempt clearing under the legislation, many landowners will not seek approval for clearing. This presents a risk that inappropriate clearing will go largely unregulated. Therefore, we believe that effort and resources should be dedicated to improve remote detection of land clearing activities. Regular analysis of remote sensing images would allow the Forest Practices Authority to identify areas of unauthorised clearing.

Where large areas have been cleared without a Forest Practices Plan, it is appropriate for a forest practices officer to ask the landowner to show that no conversion has taken place, or that an exemption legitimately applies to the clearing. The existing powers under ss.40(1)(ab) and (2) would allow for appropriate enquiries to be made.

Monitoring and enforcement activities

The proposed regime will only be effective in protecting threatened vegetation if there is a reasonable expectation that the legislation will be enforced. Inadequate enforcement encourages non-compliance and disadvantages those landowners who do the right thing.

We therefore strongly support the provision of additional resources to the Forest Practices Authority to improve their capacity for training, monitoring and compliance activities relating to the new system.

As discussed above, we also advocate third party enforcement provisions to allow affected stakeholders to take action where the Forest Practices Authority does not.

Please do not hesitate to contact us if you wish to discuss anything raised in this submission.

Kind regards,

Environmental Defenders Office (Tas) Inc

Per:

Jess Feehely
Principal Lawyer

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