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EIANZ SEQ Division

Comments on:

**Review of the Protected Plants
Legislative Framework under the *Nature
Conservation Act 1992* - Consultation
Regulatory Impact Statement**

**Prepared by the Department of
Environment and Heritage Protection**

February 2013

The Environment Institute of Australia and New Zealand (EIANZ) South East Queensland (SEQ) Division is pleased to provide the following comments on the Department of Environment and Heritage Protection's (DEHP) ***Review of the Protected Plants Legislative Framework under the Nature Conservation Act 1992***.

The EIANZ is a non-profit, apolitical professional association. Founded in 1987, the Institute is multi-disciplinary in membership and provides scope and opportunity for professional and academic interchange across all sectors of the diverse environmental industry.

The Institute has a key role within the Australian and New Zealand communities as a major contributor to the formulation of effective and responsible policies in the broad field of environmental management. The practical consequence of the Institute's involvement in environmental reform processes is a long-term improvement in the quality of environmental management. This will, in turn, lead to a better protected and managed global environment as Institute members pursue their endeavours and apply their skills to local environments.

The EIANZ SEQ Division is generally supportive of the review of the Protected Plants Legislative Framework under the *Nature Conservation Act 1992* (NC Act) and provides the following comments of the three options being considered.

Option 1- Maintaining the current framework

The review estimates that business currently spends in the order of \$52.795 million per annum complying with the current framework with the majority of these costs incurred as a result of conducting flora surveys. While this amount may be considered substantial, it is negligible when compared to the Queensland economy of \$243.8 billion. Further, the \$52.795 million spent on flora surveys drives employment in the economic sector that carries out these surveys, supporting local businesses and corporations upon which the government and the general community are relying on more and more to maintain and extend the community's botanical knowledge.

As the review identifies, Queensland has the most diverse array of native flora in Australia with more than 12,800 known species. Any expenditure on flora surveys should be viewed as contributing towards the cumulative knowledge of the Queensland flora through documentation and research of species occurrence, abundance and distribution. As a consequence this accumulated knowledge will assist the primary objective of the government's action in the context of the current review of the protected plants framework in that "threatening processes be effectively managed in a manner that maintains or improves the current conservation status of all protected plant species". Maintaining the current framework will ensure that our collective knowledge of the flora of Queensland will increase as a result of flora surveys for any development activity.

The EIANZ SEQ Division supports the need to conduct flora surveys that seek to confirm the presence of any EVNT flora species (and least concern species contributing to their survival), poorly known or previously unknown species, and species at the limit of or outside of their known range, so that they can be managed as part of development activities, in line with current processes. However, members of the EIANZ SEQ Division have suggested that any reform to the current framework may best be directed toward exempting the clearing of certain least concern plant species from permitting requirements. This would remove the requirement for onerous, time-consuming and therefore costly supplementary work that has to be completed to support these permit applications. These surveys must also assist in ensuring that least concern species do not move to a threatened or near threatened category as a result of individual or cumulative clearing activities.

Option 2- Greentape reduction and regulatory simplification

The EIANZ SEQ Division generally supports mandating through legislation the requirement for flora surveys, but has some reservations regarding the preferred Option 2. The proposed amendments to the framework should clearly stipulate the need for field survey, the skill of the surveyor/botanist involved and the required approach and survey effort. However, the definition of what constitutes a high risk clearing activity should be reviewed to remove any ambiguity. The review has defined a clearing activity as being high risk (and therefore subject to flora survey and permitting requirements under Option 2) if an existing record of an EVNT species occurs within the impact area. The EIANZ has a number of concerns related to the use of current databases as a means of identifying high risks sites, these being:

- The review stipulates that a proponent “must” conduct a search of relevant databases. The EIANZ SEQ Division is of the opinion that this requirement be legislated and not solely a due diligence requirement as indicated in **Attachment A Section 2.2**.
- Databases are incomplete and/or records are not vetted. As such misidentified species are often included in these databases. The State must invest significant resources to maintain databases, review the information being entered and ensure transparency. These databases should be centralised to ensure the search requirement is not inefficient (it is noted that this might be considered in point 2 of Section 9.1 but not implicitly stated).
- For a large proportion of the State, no detailed botanical assessments have been undertaken or if surveys have been undertaken they are not of a standard necessary to detect certain species. As a consequence no records of EVNT may exist in certain areas even though EVNT species may indeed occur. Under the proposed measures of Option 2, an absence of an EVNT record in a search area will effectively eliminate the need for a flora survey to support a clearing permit. This is highly likely to lead to clearing of threatened flora. With a few exceptions, the area within standard buffers applied to records for threatened plants is unlikely to cover more than a few percent of the species actual distribution.
- Following from the previous point, even if a EVNT plant species is not recorded from a search area, the search area may be within or near to the known distribution of a species and suitable habitat may be present within the search area. The absence of EVNT but the presence of potentially suitable habitat should warrant a flora survey to determine whether an EVNT plant population is present.
- The spatial accuracy of some database records may be as low as plus-or-minus 16 km. As a consequence point records may be incorrectly attributed to areas that do not support the EVNT plant species. The EIANZ SEQ Division suggests that point records of EVNT plant species have associated with them adequate buffer areas that reflect their spatial accuracy. As a consequence, if a buffer area falls within a high risk clearing area then a flora survey is warranted.
- As many databases are based on point data they do not provide a predictive model of species habitat. That is, other areas that do not contain a record but provide suitable habitat and therefore could contain the species are not identified within the database.
- Consideration should be given to the search buffer parameters, for example, will a search on a given point with a 1 km buffer be sufficient to retrieve records of nearby EVNT species.
- Even on sites where surveys have been undertaken in accordance with accepted methods, the absence of a species record does not necessarily indicate the absence of the species. Many species are highly cryptic and/or only detectable during certain conditions (e.g. annual species), and only through sufficient search effort at appropriate times can their presence or absence be confirmed.
- The knowledge of the Queensland flora is far from complete. Between 30 and 50 new plant species are discovered in Queensland each year. Until these new species are formally described and a conservation status afforded to them, the species are not included on the

EVNT list. These species, which are potentially of conservation value, could therefore be highly vulnerable to being cleared under this option. Therefore, undescribed or poorly known species records should also trigger a flora survey to determine if the species is of conservation value prior to clearing. The EIANZ SEQ Division suggests that either a Data Deficient category (as per IUCN criteria) or a Priority Flora category (similar to the one in use in Western Australia) be introduced to afford a level of protection to those plant species which may either be new to science or poorly known.

- Since our knowledge of the Queensland flora is incomplete, new populations and/or range extensions of both EVNT and least concern species are constantly being discovered particularly through the results of the current flora survey process.
- Again, as raised in Option 1, the information required as support for clearing permit application for least concern plant species is onerous to both the proponent and the governmental assessor. Exempting certain least concern plant species from permitting will be beneficial to the assessment process and to industry.

In light of the above points, the EIANZ SEQ Division strongly urges that Option 2 be given further consideration in terms of flora survey effort for activities defined as low risk. Defining a clearing activity as low risk solely in terms of area proposed to be impacted (if no EVNT record exists for the site) may be inadequate in many instances.

Section 2.2 of the Discussion Paper on the proposed reform (Attachment 1) seeks feedback with regard to what constitutes a “high risk clearing activity”. The EIANZ SEQ Division is of the opinion that rather than being based solely on a given area (e.g. 2 ha), the definition should be expanded to consider the following:

- The known or potential presence of EVNT plant species in the surrounding landscape based on database records and/or habitat mapping with an adequate buffer surrounding the site, the known distribution of the species and the presence of potentially suitable habitat or Regional Ecosystem.
- The coverage, adequacy and representativeness of previous flora survey efforts in the general locality of the impact area. This would include the methods employed, the area covered, the experience of the assessing botanist, time elapsed since previous surveys, timing of previous surveys etc. For example, if a database retrieval indicates no EVNT species records for a given locality (either from lack of or scant past botanical surveys) but potentially suitable habitat for a EVNT plant species is present then this should act as a trigger for a flora survey of the site.
- The bioregion in which the activity is proposed, which may determine the level of risk based on the extent and patch size of remaining habitat.
- Consideration should also be given to measures that maintain viable populations of EVNT plant taxa. Does the EVNT species in question require pollination via a specific guild of vectors to produce viable seed? What would be the result from loss of nearby habitat be on the functioning of the remaining habitat? What area of habitat is required to maintain the population dynamics of EVNT plant species?
- Section 2.2 of the Discussion Paper on the proposed reform (Attachment 1) seeks feedback with regard to whether additional exemptions beyond those proposed for clearing within known EVNT recorded areas. The EIANZ SEQ Division is of the opinion that additional exemptions are not appropriate other than the recommended exemptions for least concern species as noted previously.

In terms of the point “there will be no barriers to whole plant and part plant harvesting...where long-term sustainability or conservation gains can be demonstrated”, the EIANZ SEQ Division wants

assurances that a mechanism will be in place whereby the proponent must demonstrate to the regulator that “conservation gains” will be made prior to harvest.

EIANZ supports in principle:

- Extending clearing permit currency is appropriate for certain situations;
- Reducing double-up efforts and costs through integration with application under other statutes is an appropriate strategy for achieving efficiency and reducing the financial outlay on business, government and the community. However, as indicated in the comments made regarding Option 1, the EIANZ SEQ Division refutes the claim that Option 2 will result in significantly lower costs to business through the need for less flora surveys, assuming that projects contributing the majority of current expenditure will remain as defined as large scale and therefore high risk and not exempt under Option 2. The EIANZ SEQ Division is of the opinion that flora survey costs will be much greater than the \$2.638 million estimated in the review document. In addition, any cost saving in this regard may be absorbed by increased permit processing fees as proposed under Option 2.

In general, EIANZ SEQ Division is of the opinion that unless the above issues are addressed, the proposed reforms will fail to meet their primary objective because threatening processes will not be effectively managed in a manner that maintains the current conservation status of all protected plant species.

Option 3 – Co-regulation

The review document states that DEHP proposes to conduct site specific plant evaluations for clearing activities “captured by the framework”. While the EIANZ SEQ Division acknowledge that DEHP proposes to outsource these evaluations, it questions whether DEHP has fully considered the logistics of undertaking these evaluations. It is highly likely that the evaluations will require significant resources, time and skilled staff that DEHP appears to no longer have in-house. Should the DEHP not have the resources available, the time to produce a plant protection map could be significant and could be longer than a permit approval currently takes. Even with a fee for service arrangement in place, will DEHP engage and train sufficient staff to undertake these audits? The cost to Government as outline in **Section 5.3.2** must be an underestimate given this extra imposition.

DEHP states that the approach taken in Option 3 to conduct site specific plant evaluations will allow “higher levels of certainty around the distribution of threatened and special interest plants throughout the state”. The EIANZ SEQ Division question why this does not presently occur as a result of current flora surveys, which are generally undertaken by consultants who are obliged to report their findings, submit data returns for collected specimens (including all EVNT species) for incorporation into the WildNet database in accordance with their scientific permit conditions, and submit all EVNT specimens with locality details to the Queensland Herbarium for verification.

The EIANZ SEQ Division is of the opinion that for Option 3 to be a viable and realistic option, auditing activities undertaken by DEHP will need to be properly resourced. There needs to be a very good chance, if not a definite occurrence, that a proponent’s effort to protect and manage populations of EVNT plant species will be audited by the government. The EIANZ SEQ Division also questions how DEHP proposes to evaluate whether “biodiversity is conserved”. This is not clearly costed in **sections 5.2.2 and 5.2.3**.

The consultation regulatory impact statement states that “under Option 3, it will be solely the responsibility of proponents to ensure their actions do not threaten the viability of plant species in the wild. Therefore, if operators do not adequately manage their impacts on protected plants in accordance with the self-regulatory code, extinctions could occur, similar to if there was no regulation

at all...” The EIANZ SEQ Division is of the opinion that without adequate governmental auditing that Option 3 would not be worth implementing and will fail the policy objective to “maintain or improve the current conservation status of all protected plant species in Queensland”.

General Comments

The review makes scant reference to conditions imposed relating the transplanting/translocating of Type A (special least concern) plants under the NC Act. It appears that these will still be regulated according to **Attachment A Sections 2.2 and 3.2**. The current requirement of many proponents to transplant Type A plants is costly, is not always successful and has little conservation gain. Given many of these plants are otherwise common and are regulated owing to their commercial value, the effort and finances directed to their transplanting would be better directed to projects offering real conservation outcomes such as restoration of threatened plant habitat or improving the knowledge about the distribution of a species. It is acknowledged that some Type A plants species have special requirements (e.g. specialised niches, slow growth) but not all. The legislation needs to consider this so that genuine conservation outcomes can be achieved.

In **Section 2** (stakeholder dot points), the EIANZ SEQ Division suggests that environmental practitioners who are ecological consultants need to be included as stakeholders along with the EIANZ. Many environmental practitioners and consulting botanists are the people acting between the policy and environment and representing many of the other stakeholders identified.

In **Section 3** (constraint dot point), EIANZ has identified the general paucity of botanical skills especially with regard to the identification of possible EVNT plant species. There are limited professionals with the adequate skills to recognise EVNT species in the field.

In the definition section the definition of a “plant”, mosses and liverworts are included but hornworts, the third division of bryophytes, is not.
