

# **Why Biodiversity Reform generally fails to address the decline of biodiversity**

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# The objectives of key stakeholders for regulatory reform

- Proponents (businesses and governments) and non-government organisations (environmentalists) have an asymmetry of interests
- Key stakeholders can approach regulatory reform as a zero sum game or a non-zero sum game
- The key stakeholders speak different languages

# The objectives of key stakeholders for regulatory reform

“Morality binds and blinds. It binds us into ideological teams that fight each other as though the fate of the world depended on our side winning each battle. It blinds us to the fact that each team is composed of good people who have something important to say.”

Jonathan Haidt – The Righteous Mind

# Conventional wisdom versus reality

- Hypothesis that the legal requirements of Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) have a significant influence on project outcomes – the ‘Legal Paradigm’
- The legal processes of SEA and EIA only contribute about 10% to project outcomes
- The legal processes of SEA and EIA just provide the scaffolding for decisions on approval

# Conventional wisdom versus reality

“Unless there is an obvious reason to do otherwise, most of us passively accept decision problems as they are framed and therefore rarely have an opportunity to discover the extent to which our preferences are *frame-bound* rather than *reality-bound*.”

Daniel Kahneman - Thinking Fast and Slow

# Challenging the 'Legal Paradigm'

“Common sense ..... is not so much a worldview as a grab bag of logically inconsistent, often contradictory beliefs, each of which seems right at the time but carries no guarantee of being right any other time.”

Duncan Watts – Everything is Obvious\*: \*Once you Know the Answer

# So what are the key drivers of SEA and EIA? What fills the voids of those legal processes?

- SEA and EIA processes are primarily driven by institutions which are less visible or obvious than the legal processes
- NGOs (environmentalists) are minor players in shaping the cultures and institutions which influence assessment processes
- Money is measurable, and in the absence of prescribed thresholds of impacts in SEA and EIA, it becomes the default factor influencing project design

**So what are the key drivers of SEA and EIA?  
What fills the voids of those legal processes?**

“Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence they structure incentives in human exchange, whether *political, social or economic.*”

Douglass North - Institutions, Institutional Change and Economic Performance



# Complex systems and emergent properties

- The 'legal paradigm', which is propagated by academics and NGOs, considers SEA and EIA as narrow simple linear systems, whereas in reality they are complex non-linear systems
- Academics and NGOs are also largely unaware of how to use EIA strategically
- The focus on law to the exclusion of other disciplines significantly diminishes the potential to reverse the decline of biodiversity

# Complex systems and emergent properties

“To predict how economic man will behave, we need to know that he is not only rational, but also how he perceives the world – what alternatives he sees, and what consequence he attaches to them.”

Herbert Simon – Models of Man: Social and Rational

# Conclusion

1. Ask simple questions – big questions are much harder to answer. A bottom-up approach can achieve more than a top-down approach.
2. Recognise the asymmetry of interests of the key stakeholders.
3. Acknowledge the need for key stakeholders to seek non-zero sum outcomes and to speak a common language.
4. Examine whether the frame of analysis accurately represents the dynamics that occur in reality.
5. Amendments are not required to legislation to reverse the decline in biodiversity. That can be done within the existing legal framework.

# Conclusion

6. EIA and SEA should be analysed in the frame of complex non-linear systems.
7. Focus on developing 'enabling constraints' within EIA and SEA processes rather than 'governing constraints'.
8. To be effective 'enabling constraints' must influence project design before the project is submitted for assessment.
9. In order to get a better insight into environmental issues, consider studying Complexity Theory, Behavioural Economics and New Institutional Economics, rather than Environmental Law.

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