



Australian Network of Environmental
Defender's Offices Inc

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The Director
Terrestrial Species Conservation Section
Wildlife, Heritage and Marine Division
Department of the Environment
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By email: recoveryplans@environment.gov.au

Dear Director,

Draft Terms of Reference for a Threatened Species Commissioner (Commonwealth)

Thank you for the opportunity to comment on draft Terms of Reference (**ToRs**) for a Threatened Species Commissioner, to be established by the Australian Government by 1 July 2014.¹

About ANEDO

The Australian Network of Environmental Defender's Offices (**ANEDO**) is a network of independently constituted and managed community legal centres across Australia. Each EDO is dedicated to protecting the environment in the public interest. For the last 30 years, EDOs have provided legal representation and advice; taken an expert role in environmental law reform and policy formulation; and offered a public outreach program to help urban and rural communities understand and participate in environmental decision making. However, the unanticipated withdrawal of all federal funding from EDO offices, announced by the Attorney-General in December 2013, has placed very significant strain on our offices' capacity to assist the community on public interest environmental law matters and participate in consultations such as this one; with the very real prospect of closure for a number of EDOs around the country.

ANEDO makes the following brief proposals in response to the draft ToRs for a Threatened Species Commissioner, focusing on legal and governance issues, and the scope of the role.

Legal and governance issues

The Commissioner should:

- occupy a **statutory position**, housed within a new **National Environment Commission**,² with a dedicated staffing allocation;
- be appointed for a **four-year** renewable term;

¹ See <http://www.environment.gov.au/biodiversity/threatened/commissioner>, accessed March 2014.

² See Hawke, A., et al., *Report of the Independent Review of the EPBC Act* (2009), rec. 71. See also Senate Standing Committees on Environment and Communications, *Report on the EPBC Amendment (Retaining Federal Approval Powers) Bill 2012* (2013), rec. 4 and paras 2.59-68, available at www.aph.gov.au.

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- have powers to seek assistance and information from Federal and State government agencies;
- report directly to **Parliament and to the public** via **two-yearly reports**, for example, an interim report (first report due July 2016); and a final report for the term (first report due July 2018).

Scope of role

- The Commissioner’s mandate should extend beyond ‘threatened species’ to landscape-wide or **whole-of-ecosystem approaches** to protecting biodiversity and ecological integrity, consistent with national strategies and international obligations;³ and the principles of ecologically sustainable development (**ESD**).⁴ Priorities should include ‘keystone’ ecological species, areas and landscapes requiring additional protections, management and resourcing.
- The Commissioner should evaluate historical **funding** for threatened species management, including its sources, and make projections for the potential biodiversity outcomes of a range of budget options.
- The Commissioner should have an additional role to review and advise on the legitimate use of biodiversity **offsetting** as part of an accepted impact hierarchy of avoidance, mitigation and (where necessary and appropriate) offsetting.⁵
- Assist and work with the ABS, CSIRO, other domestic agencies and international institutions⁶ to:
 - establish a national **biodiversity monitoring system** by 2015 (in accordance with recent Senate Committee findings and the Hawke Review of the EPBC Act⁷); and
 - improve knowledge, data and valuation of **biodiversity values and ecosystem services**, to assist in strategic planning, development assessment and approval, and other relevant decision making across Australia.

At **Attachment A** to this submission we provide an amended version of the draft Terms of Reference to illustrate how the proposals above could be given effect in formal terms of reference.

We note that our proposal to house the Threatened Species Commissioner within a new National Environment Commission, as also variously recommended by the Independent Review of the EPBC Act, the Senate Environment and Communications Committee and the Productivity Commission, would require additional legislative amendment and policy development.

We hope these comments assist the Department and Minister to finalise this important initiative.

Yours sincerely,

Australian Network of Environmental Defender’s Offices



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³ Both Australia’s *Biodiversity Conservation Strategy 2010–2030* and the Convention on Biological Diversity promote a whole-of-ecosystem approach to conservation.

⁴ See *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), sections 3-3A.

⁵ See our recent ANEDO submission to the Senate Inquiry into Offsets (2014). Our key recommendation was for a comprehensive and independent review of offsetting processes in Australia to be undertaken in order to develop national standards for offsetting based on scientific principles. Available at: www.edo.org.au.

⁶ See UN Environment Program, *The Economics of Ecosystems and Biodiversity*, 2010 (www.teebweb.org).

⁷ Senate Environment and Communications References Committee, *Effectiveness of threatened species and ecological communities’ protection in Australia* (2013), rec. 34; Hawke, A., et al., *Report of the Independent Review of the EPBC Act* (2009), rec. 67.

Threatened Species Commissioner

Draft Terms of Reference

Background

The Threatened Species Commissioner will bring a new national focus and effort to address the growing number of plants and animals in Australia that are faced with extinction.

The Commissioner, sitting within **a new statutory National Environment Commission, and transitionally supported by** the Australian Government Department of the Environment, will champion the development and implementation of practical conservation actions designed to secure priority national threatened species in the wild for at least the next 100 years.

An important part of the Commissioner's role will be to bring together partners to deliver the agreed programme of conservation actions—whether through funding or contributing other skills and expertise.

The Commissioner will also lead efforts to report on the outcomes of conservation actions, including the effectiveness of specific investments and achievements in terms of the goals of securing priority species in the wild.

A key role for the Commissioner will be to work collaboratively with all levels of government, scientists, the non-profit sector, industry and the community to build on new initiatives and strategic **whole-of-ecosystem** approaches to threatened species conservation being trialled across the country; to better coordinate conservation effort; and to share information about these activities.

The work of the Commissioner will complement but not duplicate or override the important statutory responsibilities of the Threatened Species Scientific Committee.

Roles/responsibilities

In the short term (first 12 months):

- **work with scientific experts and stakeholders to** identify priority nationally listed threatened species for which conservation actions are likely to be successful.
- work with **scientific experts and** stakeholders to identify the highest priority actions to secure those species in the wild for at least the next 100 years
- identify and secure partners and funds to implement this programme of high priority actions over the longer term

- ~~guide a process of reform to simplify and streamline the statutory recovery plan process~~ **review the efficiency of the statutory recovery plan process and make recommendations for improvement.**

In the medium to long term (1 – 5 years):

- advise on and direct conservation actions in priority national threatened species recovery programmes in collaboration with the programme coordinators
- building on government, non-government and community-based threatened species initiatives, develop a strategic, **landscape-based or whole-of-ecosystem** approach to threatened species conservation, including a prioritisation framework for species and conservation actions
- work closely with the Threatened Species Scientific Committee to strengthen the connection between the statutory listing and recovery planning processes and the implementation of conservation actions
- **review and advise on the legitimate use of biodiversity offsetting under state and federal approvals, as part of an impact hierarchy to avoid, mitigate and only if appropriate, offset**
- **evaluate historical funding and its sources for threatened species management and project potential biodiversity outcomes based on a range of federal government budgetary options**
- identify opportunities for longer term funding models, including co-investment and partnerships, to support the threatened species conservation action programme
- **work with the CSIRO, ABS, State governments and stakeholders to establish a national biodiversity monitoring system by 2015**
- monitor the effectiveness of priority conservation actions and report to the **Parliament** and to the public **every two years.**

Programme outcomes

- implementation of conservation actions for priority nationally listed species
- priority threatened species are secured in the wild for at least the next 100 years
- more integrated, complementary threatened species conservation efforts at a national level
- targeted, practical and cost effective investment in threatened species conservation actions
- clear and accessible public reporting on effectiveness of threatened species conservation actions **over appropriate and regular time frames.**
- a more strategic, **landscape-based or whole-of-ecosystem** approach to threatened species conservation to better inform government policy and planning
- **establishment of a national biodiversity monitoring system.**