

# Institutions and policies

## Changing roles and responsibilities

In line with changing understanding of biodiversity and the ways in which it needs to be protected, roles and responsibilities in biodiversity management have changed significantly in Australia in recent years, and continue to evolve. Consideration of all classes of biodiversity indicators—pressure, state, response and implications—are influenced by these changes in terms of who has policy and law-making power, who gathers information and who is involved in management in the field.

The changing roles and responsibilities of the Commonwealth, state and territory governments were outlined earlier (see *The biodiversity challenge: Responsibilities, roles and partnerships* on page 15). Change has occurred within jurisdictions as well. Traditionally a statutory authority (a parks and wildlife authority or service) was responsible in each jurisdiction for almost all practical wildlife protection and nature conservation activities perhaps with a related policy-making branch in a government department. Some jurisdictions have moved away from this with reserve management becoming an activity carried out by a government department (e.g. the Commonwealth after the EPBC Act, although the statutory office of Director of Parks is maintained).

Another model is where the parks service is incorporated into a broader arrangement. This approach is being used in Queensland where the reserve management agency is part of a larger Environmental Protection Authority (EPA). The responsibility for biodiversity has changed often as well, ranging from an environment department to various combinations of agriculture, forestry, water pollution control, cultural heritage planning and land administration. Increasingly, other portfolios (e.g. water, agriculture) have to some extent incorporated biodiversity into their decisions (whether adequately or not).

These changes in the organisation of the public sector are reflected and in many ways are products of broader changes outside of government. The expansion of focus to include off-reserve conservation matches the move away from single government agencies managing reserves. The increasing inclusion of private landholders and community groups in policy formulation management and program delivery has been a feature of the 1990s, as well as the emphasis on self-regulatory approaches by firms and industry sectors and greater focus on the role of local government.

## Partnerships

Not only have the statutory sources of responsibility and the number of organisations protecting biodiversity changed, but also the relationships between these bodies has changed. Few of the initiatives covered in this Report are undertaken by one interest alone. Partnership arrangements are becoming normal rather than the exception and they exist in all combinations between the following:

- governments: state or territory, Commonwealth, local
- community groups representing conservation, development, public health and other interests
- private sector individuals and organisations: landholders, firms, industry associations
- research and scientific practitioners and institutions.

## Statutory policy and organisational settings

Biodiversity conservation in Australia is influenced by an immense array of statutory and policy settings. As it is a deeply cross-sectoral issue, it is doubtful that biodiversity can ever be effectively managed through a small and narrowly focused set of laws and policies.

Only a small proportion of relevant policy and law is subject to the type of monitoring that can provide an accurate evaluation of the effectiveness of biodiversity law and policy. The difficulties of reporting against many 'Response' indicators indicate this (e.g. the number of management plans and research programs and the amount of funding spent on control of exotic species).

## Major biodiversity policy, law and programs

There is a range of policy and law of direct relevance to biodiversity. Originally regulation of use and trade of wildlife and declaration and management of a reserve estate was the predominant area of activity. While such regulation remains important in recent years, there has been an expansion of legislative and policy activity especially covering threatened species and ecosystems, and management of biodiversity occurring outside of the conservation reserve estate. This broadening reflects changing understanding of biodiversity issues and the increasing range of recognised social values ascribed to biodiversity.

Key legislation, statutory or other bodies that include representatives from outside government and a selection of major policy initiatives relevant to biodiversity across Australian jurisdictions is shown in Table 7 (see *Local government and biodiversity* on page 164 for the role of local government in managing biodiversity both of its own volition and under state policy and law). Table 7 is incomplete since biodiversity is a cross-sectoral issue and will be influenced by other laws and policies in areas such as taxation, trade and regional development.

**Table 7: Key biodiversity laws, policy initiatives and statutes for Australian jurisdictions**

Acts are listed in chronological order starting from the earliest enactments. The information in this table is not comprehensive and has been assembled from readily available government sources and information made available by a limited number of jurisdictions supplemented by sources such as ANZECC (2001) and Stirling (2000). Absence from this table of a policy or statute on a specific issue does not necessarily mean that such a policy or statute is missing in that jurisdiction. Regarding stakeholder involvement, see also *Involving the community in conservation* (page 172). Inclusion of a statutory organisation or policy in this table in no way implies any judgment as to the efficacy, appropriateness or otherwise of such to biodiversity conservation or any other matter.

Laws, policy initiatives and statutes	Notes
<b>Commonwealth</b>	
<b>Key legislation</b>	
<i>Environment Protection (Impact of Proposals) Act 1974</i>	Replaced by EPBC Act
<i>Australian Heritage Commission Act 1975</i>	
<sup>A</sup> <i>Great Barrier Reef Marine Park Act 1975</i>	
<sup>A</sup> <i>National Parks and Wildlife Conservation Act 1975</i>	Replaced by EPBC Act
<i>Antarctic Treaty (Environment Protection) Act 1980</i>	
<i>Whale Protection Act 1980</i>	Replaced by EPBC Act
<i>Antarctic Living Marine Resources Conservation Act 1981</i>	
<i>Environment Protection (Impact of Sea Dumping) Act 1981</i>	
<sup>A</sup> <i>Wildlife Protection (Regulation of Exports and Imports) Act 1982</i>	
<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	
<i>World Heritage Properties Conservation Act 1983</i>	
<i>Biological Control Act 1984</i>	
<sup>A</sup> <i>Endangered Species Protection Act 1992</i>	Replaced by EPBC Act
<i>National Environment Protection Council Act 1994</i>	
<i>Wet Tropics of Queensland World Heritage Area Conservation Act 1994</i>	
<i>Natural Heritage Trust of Australia Act 1997</i>	
<sup>A</sup> <i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</i>	See <i>The Environment Protection and Biodiversity Conservation Act 1999</i> box (page 38)
<i>Environmental Reform (Consequential Provisions) Act 1999</i>	
<b>Selected major policy initiatives</b>	
National Strategy for Ecologically Sustainable Development	Includes Commonwealth and collaborative national policies
NSCABD	See text and the <i>National strategy for the conservation of Australia's biodiversity</i> box
National Principles and Guidelines for Rangeland Management	
National Strategy for the Conservation of Australian Species and Communities Threatened with Extinction 1992	
National Framework for the Management and Monitoring of Australia's Native Vegetation	

Table 7: Key biodiversity laws, policy initiatives and statutes for Australian jurisdictions (continued)

Laws, policy initiatives and statutes	Notes
National Weeds Strategy	
Strategic Plan of Action for the National Representative System of Marine Reserves	
National Forest Policy Statement/ RFA process	
Australia's Ocean Policy	
Coasts and Cleans Seas Program	
National Greenhouse Strategy	Includes land cover issues
Wetlands Policy of the Commonwealth Government	
National Reserves System Program	
Action Plan for Australian Birds	Revised 2000
Endangered Species Program (ESP)	
Bushcare	
Australian Biological Resources Study (ABRS)	
National Feral Animal Control Program	
National Policy on Fisheries Bycatch (NPFb)	
National Strategy for the Management of Acid and Sulfate Soils	
Biodiversity Convention and Strategy Program	
<b>Selected statutory and other bodies including non-government stakeholders</b>	
Biodiversity Advisory Committee (BDAC)	Under the EPBC Act
Threatened Species Scientific Committee	Under the EPBC Act
Indigenous Advisory Committee	Under the EPBC Act
Council for Sustainable Vegetation Management	
Australian Landcare Council	
National Oceans Advisory Group	
<b>Key intergovernmental institutional arrangements involving the Commonwealth</b>	
Australian and New Zealand Environment and Conservation Council (ANZECC)	
Intergovernmental Agreement on the Environment	
Great Barrier Reef Marine Park Authority	Commonwealth–Queensland
Council of Australian Governments (COAG) water reform framework	Includes environmental flows
Murray–Darling Basin Initiative	Includes nature conservation
<b>Australian Capital Territory</b>	
<b>Key legislation</b>	
<i><sup>A</sup>Nature Conservation Act 1980</i>	
<i>Land (Planning and Environment) Act 1991</i>	
<i>Commissioner for the Environment Act 1993</i>	
<i>Environment Protection Act 1997</i>	
<b>Selected, major policy initiatives</b>	
Nature Conservation Strategy	
ACT and Subregion Planning Strategy	
Greenhouse Strategy	
<b>Selected statutory and other bodies including non-government stakeholders</b>	
Commissioner for the Environment	
Environment Advisory Committee	
ACT Flora and Fauna Committee	

Table 7: Key biodiversity laws, policy initiatives and statutes for Australian jurisdictions (continued)

Laws, policy initiatives and statutes	Notes
<b>New South Wales</b>	
<b>Key legislation</b>	
<i>Clean Waters Act 1970</i>	
<sup>A</sup> <i>National Parks and Wildlife Act 1974</i>	
<i>Heritage Act 1977</i>	
<i>Coastal Protection Act 1979</i>	
<i>Environmental Planning and Assessment Act 1979</i>	As amended
<i>Biological Control Act 1985</i>	
<sup>A</sup> <i>Wilderness Act 1987</i>	
<i>Catchment Management Act 1989</i>	
<i>Rural Land Protection Act 1989</i>	
<i>Protection of the Environment Administration Act 1991</i>	
<sup>A</sup> <i>Threatened Species Conservation Act 1995</i>	
<sup>A</sup> <i>Native Vegetation Conservation Act 1997</i>	
<sup>A</sup> <i>Marine Parks Act 1997</i>	
<i>Protection of the Environment Operations Act 1997</i>	
<i>Environmental Trusts Act 1998</i>	
<b>Selected major policy initiatives</b>	
NSW Biodiversity Strategy	
Native Vegetation Management Strategy	Draft
Weeds Strategy	
New Weed Incursions Strategy	
Vertebrate Pest Strategy	Linked to National Feral Animal Control Program
Rivercare	
Streamwatch	
Coastal Policy	
Policy for Sustainable Agriculture	Includes nature conservation
NSW Wetlands Management Policy	
<b>Selected statutory and other bodies including non-government stakeholders</b>	
Native Vegetation Advisory Council	
National Parks and Wildlife Advisory Council	
Healthy Rivers Commission	
Council on Environmental Education	
State Wetlands Action Group	
Forestry Advisory Council	
Coastal Council of NSW	
Resource and Conservation Assessment Council	
Sydney Catchment Authority	
Environment Protection Agency	
NSW Scientific Committee	<i>Threatened Species Conservation Act 1995</i>
<b>Queensland</b>	
<b>Key legislation</b>	
<i>Beach Protection Act 1968</i>	
<sup>A</sup> <i>Marine Parks Act 1982</i>	

Table 7: Key biodiversity laws, policy initiatives and statutes for Australian jurisdictions (continued)

Laws, policy initiatives and statutes	Notes
<i>Rural Lands Protection Act 1985</i>	
<i>Local Government (Planning and Environment) Act 1990</i>	
<sup>A</sup> <i>Nature Conservation Act 1992</i>	
<i>Queensland Heritage Act 1992</i>	
<i>Wet Tropics World Heritage Protection and Management Act 1993</i>	
<i>Land Act 1994</i>	
<i>Environmental Protection Act 1994</i>	
<i>Fisheries Act 1994</i>	
<i>Coastal Protection and Management Act 1995</i>	
<i>Integrated Planning Act 1997</i>	
<sup>A</sup> <i>Vegetation Management Act 1999</i>	
<b>Selected major policy initiatives</b>	
Establishment of Qld Environmental Protection Agency: 1998–1999 incorporating Parks and Wildlife Service	Consolidation of environmental protection and nature conservation administrative arrangements
Statewide Landcover and Trees Study	
State Policy for Vegetation Management on Freehold Land	
Regional Vegetation Management Plans (RVMP)	In process
Coastal Management Plan	Draft
Coastal Contingency Action Plan	
Biodiversity strategy	Proposed
<b>Selected statutory and other bodies including non-government stakeholders</b>	
Wet Tropics Management Authority	
Wet Tropics Scientific Advisory Committee	
Natural Resource Management Policy Council	
Beach Protection Authority	
Brisbane River Management Group	
Landcare and Catchment Management Council	
Queensland Scientific Committee	
<b>South Australia</b>	
<b>Key legislation</b>	
<sup>A</sup> <i>National Parks and Wildlife Act 1972</i>	
<i>Coast Protection Act 1972</i>	
<i>Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986</i>	
<i>Soil Conservation and Landcare Act 1989</i>	
<i>Environment Protection Act 1993</i>	
<sup>A</sup> <i>Native Vegetation Act 1991</i>	
<sup>A</sup> <i>Wilderness Protection Act 1992</i>	
<i>Environment Resource and Development Court Act 1993</i>	
<i>Water Resources Act 1997</i>	
<b>Selected major policy initiatives</b>	
Vegetation Cover	
Wildlife Conservation Grants	
Revegetation Strategy for SA	Including regional plans
Biodiversity Plan for the South East	

Table 7: Key biodiversity laws, policy initiatives and statutes for Australian jurisdictions (continued)

Laws, policy initiatives and statutes	Notes
Weeds Strategy	
Biological Survey of SA	
Parks Agenda Program	
Marine and Estuarine Strategy	
Urban Forest Biodiversity Program	
<b>Selected statutory and other bodies including non-government stakeholders</b>	
Native Vegetation Council	
Coast Protection Board	
Wilderness Advisory Committee	
National Parks and Wildlife Council	
Water Resources Council	
<b>Victoria</b>	
<b>Key legislation</b>	
<i>Victorian Conservation Trust Act 1972</i>	
<sup>A</sup> <i>Wildlife Act 1975</i>	
<sup>A</sup> <i>National Parks Act 1975</i>	
<i>Planning and Environment Act 1987</i>	
<sup>A</sup> <i>Flora and Fauna Guarantee Act 1988</i>	
<i>National Parks (Alpine National Park) Act 1989</i>	
<sup>A</sup> <i>National Parks (Wilderness) Act 1992</i>	
<i>Heritage Rivers Act 1992</i>	
<i>Catchment and Land Protection Act 1994</i>	
<i>Coastal Management Act 1995</i>	
<i>Fisheries Act 1995</i>	
<i>Environment Conservation Council Act 1997</i>	
<b>Selected major policy initiatives</b>	
Biodiversity Strategy	
Coastal Strategy	
Native Vegetation Management Framework	Draft
Greenhouse Action Statement	Includes Replanting Victoria 2020
Weed Strategy	
Commissioner for Ecologically Sustainable Development	Proposed
<b>Selected statutory and other bodies including non-government stakeholders</b>	
National Parks Advisory Council	
Scientific Advisory Committee	Under <i>Flora and Fauna Guarantee Act 1988</i>
Trust for Nature Victoria	
Catchment Management Council	
Coastal Management Council	
Environment Protection Board	
Environment Conservation Council	Replaces Land Conservation Council (LCC)
Fisheries Co-Management Council	
<b>Western Australia</b>	
<b>Key legislation</b>	
<i>Town Planning and Development Act 1928</i>	

Table 7: Key biodiversity laws, policy initiatives and statutes for Australian jurisdictions (continued)

Laws, policy initiatives and statutes	Notes
<i>Soil and Land Conservation Act 1945</i>	
<sup>A</sup> <i>Wildlife Conservation Act 1950</i>	
<sup>A</sup> <i>Conservation and Land Management Act 1984</i>	
<i>Environment Protection Act 1986–1993</i>	
<i>Water and Rivers Commission Act 1995</i>	
<i>Botanic Gardens and Parks Authority Act 1998</i>	
<b>Selected major policy initiatives</b>	
Western Shield Baiting Program and Return to Dryandra Recovery Program	Feral animal control and native species reintroduction
Remnant Vegetation Protection Scheme	
Ecoplan	Urban bushland
Perth Bush Forever	
FishPlan	
Wetlands Conservation Policy	
Salinity Strategy	
Environmental Weeds Strategy	
Marine Conservation Strategy	
Biodiversity Strategy	Under development
<b>Selected statutory and other bodies including non-government stakeholders</b>	
FarmBush Advisory Committee	
Marine Parks and Reserves Authority	
Conservation Commission of WA	
Threatened Species Scientific Committee	
Wetlands Coordinating Committee	
Roadside Conservation Committee	
Coastal Zone Council	
Botanic Gardens and Parks Authority	
Waterways Management Authorities	
Environmental Protection Authority	
<b>Northern Territory</b>	
<b>Key legislation</b>	
<sup>A</sup> <i>Territory Parks and Wildlife Conservation Act 1976</i>	
<i>Bushfires Act 1980</i>	
<i>Cobourg Peninsula Aboriginal Land Sanctuary and Marine Park Act 1981</i>	
<i>Environmental Assessment Act 1982</i>	
<i>Biological Control Act 1986</i>	
<i>Fisheries Act 1988</i>	
<i>Nitmiluk (Katherine Gorge) National Park Act 1989</i>	
<i>Pastoral Lands Act 1993</i>	
<sup>A</sup> <i>Parks and Wildlife Commission Act 1995</i>	
<b>Selected major policy initiatives</b>	
Enhancement of tourism usage and management of reserves	
Strategy for Conservation through the Sustainable Use of Wildlife	
Regional natural resource management plans	Process established
Regional biodiversity surveys	Five completed

Table 7: Key biodiversity laws, policy initiatives and statutes for Australian jurisdictions (continued)

Laws, policy initiatives and statutes	Notes
<b>Selected statutory and other bodies including non-government stakeholders</b>	
Bushfires Council (BFC)	
Pastoral Land Board	
Landcare Council	
Central Land Council	
Northern Land Council	
<b>Tasmania</b>	
<b>Key legislation</b>	
<i>National Parks and Florentine Valley Act 1950</i>	
<sup>A</sup> <i>National Parks and Wildlife Act 1970</i>	
<i>Whales Protection Act 1988</i>	
<i>State Policies and Projects Act 1993</i>	
<i>Environmental Management and Pollution Control Act 1994</i>	
<sup>A</sup> <i>Threatened Species Protection Act 1995</i>	
<sup>A</sup> <i>Living Marine Resources Management Act 1995</i>	
<i>Inland Fisheries Act 1995</i>	
<i>Resource Planning and Development Commission Act 1997</i>	
<i>Weed Management Act 1999</i>	
<b>Selected major policy initiatives</b>	
Threatened Species Strategy	
Action Plan For Whale Rescues: Tasmania	
Protected Environmental Values for Tasmanian Surface Waters	
State Coastal Policy	
Weed Management Strategy	
Nature Conservation Strategy	In preparation
<b>Selected statutory and other bodies including non-government stakeholders</b>	
State Biodiversity Committee	
National Parks and Wildlife Advisory Council	
Environment Protection Advisory Council	
Wildlife Advisory Committee	
World Heritage Area Consultative Committee	
Resource Planning and Development Commission	
Board of Environmental Management and Pollution Control	

<sup>A</sup> Denotes principal nature conservation and biodiversity Acts.

Most policies included in Table 7 have been developed since 1996. The inclusion of statutory and other bodies which in some way include non-government stakeholders also reflects recent change—again most of these arrangements are recent.

### **The Environment Protection and Biodiversity Conservation Act 1999**

At the Commonwealth level, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which came into force in mid-2000, represents a major consolidation of legislation dealing with biodiversity. The *Environment Protection and Biodiversity Conservation Act 1999* box summarises the major features of the EPBC Act that concern biodiversity. With any law of this kind, and especially in this case, the proof of legislative effectiveness lies in the implementation and this cannot be assessed so early in the life of the EPBC Act. Overall, the EPBC Act is considered by many to be a welcome consolidation of biodiversity law. Critical

## The Environment Protection and Biodiversity Conservation Act 1999

The new Commonwealth legislation, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), came into effect in July 2000. It aims to define, consolidate and streamline the role of the Commonwealth in environmental protection, assessment of environmental effects on nationally significant places and issues, and in biodiversity conservation. The EPBC Act replaces the following existing legislation: *Environment Protection (Impact of Proposals) Act 1974*, *National Parks and Wildlife Conservation Act 1975*, *Whale Protection Act 1980*, *World Heritage Properties Conservation Act 1983* and the *Endangered Species Protection Act 1992*.

The Objects of the EPBC Act defined at s3 are to:

- provide for the protection of the environment especially those aspects of the environment that are matters of national significance
- promote ESD through the conservation and ecologically sustainable use of natural resources
- promote the conservation of biodiversity
- promote a cooperative approach to the protection and management of the environment involving governments, the community, landholders and Indigenous peoples
- assist in the cooperative implementation of Australia's international environmental responsibilities
- recognise the role of Indigenous peoples in the conservation and ecologically sustainable use of Australia's biodiversity
- promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of that knowledge.

The EPBC Act primarily deals with actions of the Commonwealth, Commonwealth areas and matters of national environmental significance. Matters of national significance have been initially defined as: World Heritage areas, Ramsar wetlands, nationally listed threatened species and communities, nationally listed migratory species, nuclear actions and the marine environment.

The principal provisions and procedures under the EPBC Act concerning biodiversity conservation are as follows:

- lists threatened species and ecological communities, migratory species and threatening processes, and the preparation of recovery plans, wildlife conservation plans and threat abatement plans (TAPs)

- creates offences and penalties for activities such as killing, injuring and trading of listed species or communities in a Commonwealth area
- establishes the Australian Whale Sanctuary
- allows for regulations to be developed dealing with access to biological resources in Commonwealth areas
- allows for regulations to be developed to list non-native species that do, or may, threaten biodiversity, control trade in those species and make plans for their management or elimination
- provides for conservation agreements between the Commonwealth and landholders relating to biodiversity, including possible assistance for management; these agreements are binding to successor landholders
- establishes procedures regarding the nomination and management of World Heritage areas, Ramsar wetlands and biosphere reserves
- allows for the declaration and management of Commonwealth reserves, including regulation of activities, management plans and public consultation; 'conservation zones' may be declared as an interim measure prior to declaration of a Commonwealth reserve
- establishes the Indigenous Advisory Committee, Threatened Species Scientific Committee and BDAC.

Any project that will have, or is likely to have, a significant effect on a matter of national environmental significance needs to be approved and assessed under the EPBC Act. To end the duplication of assessing projects under both state and Commonwealth laws, bilateral agreements are being negotiated so that projects that trigger the EPBC Act will be assessed under the laws of the relevant jurisdiction. The accreditation process is meant to ensure that national benchmarks are met. The first bilateral agreement under the EPBC Act was signed by the Commonwealth and Tasmania on 15 December 2000 and negotiations with other states are well advanced.

Several amendments have been proposed to the EPBC Act, including adding a greenhouse trigger (the seventh trigger in the Act) as well as amending the world heritage provisions. In early 2001, the Minister for the Environment, following advice from the Threatened Species Scientific Committee, listed land clearing as a key threatening process to biodiversity. Several further amendments have been proposed but it is yet to be seen if these are incorporated into the EPBC Act.

**Table 8:** Commentary on the strengths and weaknesses of the *Environment and Biodiversity Conservation Act 1999* from the Industry and Environmental Defenders Office (EDO)

Industry (Cochrane 1999)		Conservation (NSW EDO; Wells 1999)	
Criticisms	Questions as to the effectiveness of:	Criticisms	Questions as to the effectiveness of:
Possible duplication and delay involving bilateral arrangements and accreditation of assessment processes	Bioregional planning	Inadequate third party standing provisions	Bilateral agreements
Vagueness and wide breadth of triggers for 'national environmental significance' such as World Heritage properties, Ramsar wetlands and threatened species and communities	Conservation agreements	Climate change, vegetation clearance, land degradation, water allocation and forestry operations not identified as issues of 'national environmental significance'	
Potential for legal challenges through third party injunctions	Conservation zones	No ability for the public to trigger an impact assessment process	
Constraints on prior usage rights on reserves		Innovative provisions such as those relating to bioregional plans, critical habitat, invasive species and TAPs not made mandatory	
		Independent Commonwealth reserve management authority abolished (functions remain under the office of Director)	

commentaries on the EPBC Act by industry and conservation interests (Table 8) illustrate some key issues concerning the legislation that may determine the effectiveness of the Act.

Any particular provision of the EPBC Act will be viewed quite differently by different interest groups (Table 8). Other matters under the Act of relevance to future evaluation and reporting are: the functioning of the key advisory bodies (BDAC, Threatened Species Scientific Committee, Indigenous Advisory Committee), the treatment of biodiversity issues under impact assessment procedures (IAP) whether they are Commonwealth or accredited state or territory ones, and the listing and production of plans for threatened species communities and threatening processes.

### The National Strategy for the Conservation of Australia's Biodiversity

The major overarching policy at the national level is the NSCABD, finalised in 1996 by the Commonwealth and the states and territories after consultative development. The Strategy fulfils an obligation to develop a national strategy under the 1992 United Nations CBD. ANZECC (2001) reviewed the implementation of the Strategy. Such detailed reviews of major policies are crucially important to informing future policy and management but are not always carried out. The review of the Strategy forms an important basis for future monitoring of indicators that examines the response of government and society to the pressures on biodiversity. The *Implementation of the 1996 National Strategy for the Conservation of Australia's Biodiversity* box (page 40) presents the summary of progress against the Strategy's objectives in the review.

Although the review of the NSCABD (ANZECC 2001) indicates considerable progress in implementing the Strategy, several issues were identified that, while the subject of existing efforts, need to be advanced over the next few years:

- managing key threatening processes—vegetation clearance, invasive species and dryland salinity
- avoiding future threats—identification of components of biodiversity and key threatening processes, identification and inclusion in management of ethnobiological knowledge, improving integrated management approaches and bioregional planning, and raising public awareness of biodiversity.

## Implementation of the 1996 National Strategy for the Conservation of Australia's Biodiversity

The table summarises the findings of the ANZECC (2001) review of the implementation of the 1996 National Strategy. Opinions will differ among interest groups and

stakeholders particularly regarding the degree to which an objective is 'partially achieved' (see also discussions of specific issues and indicators).

### Summary of the ANZECC (2001) review of the implementation of the 1996 National Strategy

<b>1 Conservation of biodiversity across Australia</b>		
1.1	<b>Identification</b> (a) Identify important biological components (b) Identify threatening processes	Partially achieved Partially achieved
1.2	<b>Bioregional planning</b> Manage biodiversity on a regional basis using natural boundaries to facilitate the integration of conservation and production-oriented management	Partially achieved
1.3	<b>Management for conservation</b> Improve the standards of management and protection of Australia's biodiversity by encouraging the implementation of integrated management techniques	Partially achieved
1.4	<b>Protected areas</b> Establish and manage a CAR <sup>A</sup> system of protected areas	Partially achieved
1.5	<b>Conservation outside protected areas</b> Strengthen off-reserve conservation of biodiversity	Partially achieved
1.6	<b>Wildlife conservation</b> Ensure the maintenance of and where necessary strengthen existing arrangements to conserve Australia's native wildlife	Achieved but ongoing effort required
1.7	<b>Threatened biodiversity</b> Enable Australia's species and ecological communities threatened with extinction to survive and thrive in their natural habitats and to retain their genetic diversity and potential for evolutionary development and prevent additional species and ecological communities from becoming threatened	Partially achieved
1.8	<b>Biodiversity and Aboriginal and Torres Strait Islander peoples</b> Recognise and ensure the continuity of the contribution of the ethnobiological knowledge of Australia's Indigenous peoples to the conservation of Australia's biodiversity	Not achieved
1.9	<b>Ex situ conservation</b> To complement <i>in situ</i> measures establish and maintain facilities for <i>ex situ</i> research into and conservation of plants animals and microorganisms particularly those identified by action taken in accordance with Objective 1.1	Achieved <sup>B</sup>
<b>2 Integrating biodiversity conservation and natural resource management</b>		
2.1	<b>National integrated policies</b> Develop and implement national integrated policies for the ecologically sustainable use of biological resources	Partially achieved
2.2	<b>Agriculture and pastoralism</b> Achieve the conservation of biodiversity through the adoption of ecologically sustainable agricultural and pastoral management	Not achieved
2.3	<b>Fisheries</b> Achieve the conservation of biodiversity through the adoption of ecologically sustainable fisheries management practices	Not achieved
2.4	<b>Forestry</b> Achieve the conservation of biodiversity through the adoption of ecologically sustainable forestry management practices	Achieved <sup>B</sup>
2.5	<b>Water</b> Manage water resources in accordance with biodiversity conservation objectives and to satisfy economic, social and community needs	Partially achieved
2.6	<b>Tourism and recreation</b> Achieve the conservation of biodiversity through the adoption of ecologically sustainable practices for tourism and recreation	Partially achieved
2.7	<b>Utilisation of wildlife</b> Achieve the conservation of biodiversity through the adoption of ecologically sustainable wildlife management practices	Achieved

## Implementation of the 1996 National Strategy for the Conservation of Australia's Biodiversity (*continued*)

### Summary of the ANZECC (2001) review of the implementation of the 1996 National Strategy (*continued*)

2.8	<b>Access to genetic resources</b> Ensure that the social and economic benefits of the use of genetic material and products derived from Australia's biodiversity accrue to Australia	Partially achieved
<b>3 Managing threatening processes</b>		
3.1	<b>Threatening processes and activities</b> Monitor, regulate and minimise processes and categories of activities that have, or are likely to have, significant adverse effects on the conservation of biodiversity and be able to respond appropriately to emergency situations	Not achieved
3.2	<b>Clearing of native vegetation</b> Ensure effective measures are in place to retain and manage native vegetation including controls on clearing	Not achieved
3.3	<b>Alien species and GMOs</b> Control the introduction and spread of alien species and GMOs and manage the deliberate spread of native species outside their historically natural range	Partially achieved
3.4	<b>Pollution control</b> Minimise and control the effects of pollution on biodiversity	Partially achieved
3.5	<b>Fire</b> Reduce the adverse effects of altered fire regimes on biodiversity	Partially achieved
3.6	<b>Effects of climate change on biodiversity</b> Plan to minimise the potential effects of human-induced climate change on biodiversity	Not achieved
3.7	<b>Rehabilitation</b> Repair and rehabilitate areas to restore their biodiversity	Partially achieved
3.8	<b>Environmental assessment</b> Ensure that the potential effects of any projects programs and policies on biodiversity are assessed and reflected in planning processes with a view to minimising or avoiding such effects	Achieved <sup>B</sup>
<b>4 Improving our knowledge</b>		
4.1	<b>Knowledge and understanding</b> Provide the knowledge and understanding of Australia's biodiversity essential for its effective conservation and management	Partially achieved
<b>5 Involving the community</b>		
5.1	<b>Awareness and involvement</b> Increase public awareness of and involvement in conservation of biodiversity	Achieved <sup>B</sup>
5.2	<b>Formal education</b> Expand biodiversity studies in educational curricula	Achieved
<b>6 Australia's international role</b>		
6.1	<b>International agreements</b> Support and encourage the development of, and Australia's participation in, international agreements for the conservation of biodiversity	Achieved
6.2	<b>Overseas activities</b> Seek to ensure that the activities of Australians outside Australia are consistent with the conservation of biodiversity	Partially achieved
6.3	<b>International cooperation</b> Ensure continued and effective international cooperation in the conservation of biodiversity between governments or through relevant international governmental and NGOs	Achieved

<sup>A</sup> Comprehensiveness, adequacy and representativeness.

<sup>B</sup> Denotes significant issues dealt with in this Report where, in the judgment of the authors and on the basis of discussion in the Review, substantive debate is both likely and justified concerning the categorisation as 'achieved'.

Source: ANZECC (2001).

## Land clearing approval rates in New South Wales: 1998–2000

The clearing and removal of native vegetation in New South Wales is governed by the *Native Vegetation Conservation Act 1998* (NVC Act) in combination with the *Threatened Species Conservation Act 1995* and the environmental planning law, the *Environmental Planning and Assessment Act 1979*. The NVC Act has objects including the protection of 'native vegetation of high conservation value' and the prevention of 'inappropriate clearing of native vegetation'. These objects are to be achieved 'in accordance with the principles of ecologically sustainable development'.

The NVC Act provides a range of mechanisms for the preservation of native vegetation and for the approval of clearing. The general rule is that in order to clear native vegetation, the development consent must be sought and obtained from the Minister administering the NVC Act. 'Clearing' of native vegetation is defined extremely broadly. The likely effect of clearing on threatened species is assessed as part of the development consent process against a statutory eight-part test.

The NVC Act contains a mechanism for the making of regional vegetation management plans (RVMPs). These plans are intended to be the primary instruments for conservation and management of native vegetation. The rationale for regional planning is to take account of regional variations in vegetation and the specific issues that arise (e.g. clearance of 'woody weeds' in western New South Wales). As of October 2000, no RVMPs have been formally made, although some are at an advanced stage of preparation.

The total area of native vegetation for which approval to clear was granted between January 1998 and August 2000 was 208 360 ha with the largest total amount of clearing approved in the North Coast Central West and Far West regions of the State. To date, most applications to clear vegetation under the NVC Act have received approval. Of the 1525 applications conclusively determined as at October 2000, 91.6% of applications were granted consent with conditions. Only 2.16% of these applications were refused, 1.57% were rejected prior to formal assessment and 4.65% were withdrawn by the applicants.

However, some clearing may not proceed despite successful applications for consent. Further, the total area approved for clearing may be less than the area that landholders originally sought to clear. Departmental documents indicate that in practice all clearing approvals are granted conditionally (DLWC 2001a). These conditions generally require the retention and replanting of trees within the approved area to ensure, among other things, preservation of habitat, and protection against land degradation (DLWC 1999; DLWC 2001a, 2001b).

Although approvals to clear are made subject to conditions, the recent (2000) decision of the Land and Environment Court in *Carr v. Minister for Land and Water Conservation* (2000, p. 175) has thrown some doubt on the Department's approach. The decision overturned a

particular development consent on the grounds that specific conditions imposed on the consent to mitigate environmental effects of vegetation clearance had no valid basis in law.

The requirement of the NVC Act to seek consent to clear vegetation is subject to a range of exemptions. These exemptions include purposes ranging from 'private native forestry', 'minimal clearing' (i.e. clearing up to 2 ha per year) and clearing of regrowth less than ten years old. They also cover clearing in the Western Division of New South Wales, clearing on exempt land tenures (e.g. national parks, state forests and listed wetlands), clearing in exempt local government areas and forms of clearing authorised under other legislation (e.g. *Rural Fires Act 1997*). In total, there are at least 37 situations in which clearing may be exempt from the operation of the NVC Act. As the Act contains no notification mechanism for clearing under exemptions, the extent of such clearing is not known or included in statistics showing total vegetation cleared.

According to the Minister for Agriculture (2000):

Some of the exemptions are poorly defined and open to interpretation. There are also concerns about the cumulative impacts of the exemptions and how they are being monitored and complied with.

The ambiguity surrounding some of the exemptions is causing difficulties in relation to enforcement of the NVC Act (DLWC 2000). In response, a formal review of exemptions was announced in late August 2000. An internal document (DLWC 2000) reviewing the exemptions states:

The exemptions which were meant to act as short term transitional arrangements have become the most problematical part of the Act in terms of achieving compliance.

Further, it says: 'The exemptions appear to be the most significant cause of inappropriate clearing' (DLWC 2000).

It appears there has been little activity regarding formal enforcement of the Act. There have been no prosecutions formally commenced and only nine stop work orders issued since January 1998. By October 2000, 112 warning letters had been sent in response to a total of 471 alleged (but not proven) breaches of the Act. Some observers may conclude that this approach to enforcement may be undermining the effectiveness of the Act in deterring inappropriate and unauthorised vegetation clearance.

In conclusion, the effectiveness of the New South Wales regime for control of native vegetation clearance has been affected by problems of ambiguous exemptions, a willingness to approve most clearing applications and an apparent reluctance to prosecute serious breaches of the NVC Act.

Source: James Prest, Centre for Natural Resources Law and Policy, University of

## Albatross and bycatch policy

In 1995, data revealing an estimated take of 44 000 albatross annually through ensnarement on Japanese longlines set for tuna fisheries in the Southern Ocean gained considerable scientific political and public attention. Although applying to all seabirds, it was the threat in particular to vulnerable and endangered species such as the wandering, Amsterdam and northern royal albatross that led to the listing of longline fishing as a key threatening process under the Commonwealth government's [then] environmental legislation, the *Endangered Species Protection Act 1992*. The provisions of this Act have been retained under the new Commonwealth legislation, the EPBC Act. The original Schedule 3 listing triggered a requirement that a Threat Abatement Plan (TAP) for the incidental catch or bycatch of seabirds during oceanic longline fishing be created by Environment Australia. The TAP was to be a nationally coordinated action to alleviate the effect on seabirds of longline fishing in Australian waters.

Although statutorily required within a maximum of three years, the plan took slightly longer to complete. When released, its stated objective was to reduce seabird bycatch to below 0.05 seabirds per thousand hooks: a 90% reduction in bycatch. The TAP also maintained zero bycatch of seabirds in longline fisheries as an ultimate goal, especially endangered albatross and petrel species. The plan adopted two years ago is to be reviewed at the end of five years of operation.

Under the recommended TAP, a series of bycatch mitigation gear and method modifications have been required. These include the use of tori poles or bird

scaring devices, the thawing of bait or weighting of lines to increase the sink rate, a prohibition on the discharge of offal from vessels (in particular during setting and hauling), and the practice of night setting when the birds are, in general, less active. There has not been any dedicated measure of bycatch reduction levels since adoption of the TAP, which makes it difficult to evaluate the efficacy of the policy intervention.

Although anecdotal evidence suggests that these modifications have been broadly successful, unnecessary delay and interagency disagreements have hampered the process. Given the limited five-year life of the plan, these delays may prove to be a significant impediment to the successful reduction of longline seabird bycatch. One area where disagreement has proved problematic is that of the level of observer coverage necessary, and the source of funding, to support such a program. Initial studies suggested between 10 and 15% on-board observer coverage, which was costed at more than \$3.5 million over three years. Prolonged discussions in this regard have resulted in an interim agreement to trial ten underwater setting devices, gear technology which has been successful in reducing seabird bycatch in longline fisheries in other countries. The approximate \$560 000 cost of these trials will be apportioned at 40:60 between industry and government, respectively. In addition, Australia has also taken the lead in negotiating a regional albatross conservation agreement under the auspice of the United Nations Convention on the Conservation of Migratory Species of Wild Animals, which was signed in June, 2001.

Source: Dr Sali Bache, Centre for Maritime Policy, University of Wollongong.

Managing such key threatening processes and future threats will be critical if substantive improvements are to be made in biodiversity conservation in Australia.

## Monitoring and evaluating policy and law

Evaluating biodiversity policy is a challenging task with the vast array of biodiversity and biodiversity-related laws, policies and programs (Table 7). Evaluation can take several forms and operate at different resolutions. In this Report, the summary assessments of the application of vegetation clearance controls in New South Wales (see the *Land clearing approval rates in New South Wales: 1998–2000* box on page 42) and implementation of albatross and bycatch policy (see the *Albatross and bycatch policy* box) are evaluations at a finer level. However, such evaluations are time consuming, and unless they have been carried out independently, or the required data are kept in a suitable manner and are easily accessible, it is not possible to conduct evaluations specifically for SoE reporting.

It is unlikely that detailed policy evaluation can ever be part of a broad scale national SoE Report, but the need certainly exists. More difficult again is the evaluation of how well biodiversity issues are incorporated into other policy areas (e.g. transport, trade, regional development and taxation). Such evaluation is certainly outside the scope of SoE reporting and moreover is rarely undertaken in a detailed manner. Yet it is an important issue that governments should consider to ensure that indirect causes of biodiversity loss are attended to.