AUSTRALIAN NETWORK for PLANT CONSERVATION INC
GPO Box 1777 Canberra ACT 2601 Australia
ABN: 70 861 480 818
Telephone: (02) 6250 9509; Fax: (02) 6250 9528;Email: anpc@anpc.asn.au
Website: http://www.anpc.asn.au

To: *Threatened Species Conservation Act* Review Director,
Landscapes and Ecosystems Conservation Branch.
NSW Department of Environment, Climate Change and Water
tscact.review@environment.nsw.gov.au

Submission to the Review - Australian Network for Plant Conservation Inc. (ANPC)

The **Australian Network for Plant Conservation Inc**. (ANPC) is a national not-for-profit, non-government organisation of people and organisations involved in the conservation of native plant species and vegetation communities across Australia – see www.anpc.asn.au

Our members come from disparate sectors: science, policy, land management, community groups, the revegetation/restoration industry, and ecological consultancies. The ANPC specialises in information and expertise transfer between these areas, via courses and workshops, conferences, electronic and hardcopy bulletins, and expert-authored guidelines on key methods for plant conservation.

Our New South Wales membership is the largest in any State, and has a keen interest in the operations and effectiveness of the *Threatened Species Conservation Act*. The ANPC is glad of the opportunity to provide comment to the Statutory Review of the NSW *Threatened Species Conservation Act*.

Please direct questions or feedback on this submission to our National Office: ph 02 6250 9523, email anpc@anpc.asn.au

ANPC's responses to the questions posed in the Background Paper are as follows:

Q1: Are the objects of the TSC Act still relevant?

The ANPC strongly supports the current suite of Objects of the TSC, and urges their retention in full. They allow the identification and at least potentially the addressing of conservation issues at scales from ecosystems down to genotypes. The TSC Act remains among the most advanced legislation of its sort in Australia in this respect.

ANPC believes that the full scope of the TSC Act is widely misunderstood, in part because of its name. The first, but often overlooked Object of the Act is "to conserve biological diversity and promote ecologically sustainable development" – two linked-but-separate aims of enormous scope. The commitment to the conservation of "biological diversity" gives the Act an ambit far wider than just 'threatened species'. In particular it gives the Act the potential to be the legislative basis for a holistic approach to biodiversity conservation, not restricted to threatened species. Such an approach would imply a re-valuing of *all* the State's biodiversity assets and a commitment to detecting and remediating the causes of decline at various scales *before* species (or communities or genotypes) approach the point of meeting the criteria for Listing as 'Threatened'. The scale of resources required for this is of course not an immediate prospect, but this type of proactive conservation is undoubtedly the need for the future, as the effects of existing threatening processes deepen and as the new and uncertain problems

of climate change become discernible. In this sense the scope of the Act's Objects are entirely appropriate for future challenges as well as those of the present.

The current name of the Act, and the prominence of attention given in its operations to Threatened entities, are not inappropriate – they do reflect the current concerns of the public and the need to avoid or minimise extinction, and the ANPC supports this strongly. However they also perhaps, in the absence of much other legislation explicitly identified with biodiversity, inadvertently encourage a public misapprehension that threatened species are the be-all and end-all of conservation. This Review's own Background Paper unfortunately contributes to this conflation of 'Threatened entity' conservation with broader 'biodiversity conservation' – for example, the 'Threatened Species Conservation Framework' outlined on p3 of the background paper in fact equates to the State's conservation framework for biodiversity as a whole. The point is not purely academic – species and communities are still reaching threatened status because we are not valuing and protecting them well enough at a pre-threatened stage. Public perceptions and values are key to changing this situation, but so is legislative, political and operational leadership.

ANPC does not recommend any changes to the Act to address this issue as part of this Review, but the point should be considered in any future more substantive review processes that might augment the TSCA or envisage an omnibus Biodiversity Act. The title and objects of any new future Act covering this sort of ground should address the conservation of both threatened and non-threatened native biodiversity – a *Biodiversity and Threatened Species Conservation Act*.

Q2 Does the inclusion of ecologically sustainable development in the objects of the TSC Act assist in achieving the integration of economic and environmental considerations in decision-making processes under the Act?

The inclusion of '[promotion of] ecologically sustainable development' in the Objects of the Act is not inappropriate, and within the scope of the decision-making processes that are actually administered under the Act it probably does provide some assistance in achieving a degree of integration. However, in the absence of a heavy emphasis on the same goal (in so far as it relates to biodiversity) in the many other Acts that govern development activities in NSW, the TSC Act can hardly be expected to be an adequate vehicle for making ESD the dominant paradigm in the State, rather than a rare exception. In particular, other Acts that govern peri-urban land release, and the absence of land-use zoning in the main areas of primary production, are shaped by deeply entrenched historical practice – much of it antithetical to ESD.

An important feature of the TSC Act is the careful separation of the extinction-risk assessment process (as a strongly science-based and determinative – not advisory – mechanism), from the necessary but subsequent considerations about prioritisation resourcing, potential for conflict with other State, commercial or public needs, and general 'integration of economic and environmental considerations'. This separation (objective and determinative assessment upstream, implementation issues downstream) is a best-practice mechanism for NSW as compared to all other Australian jurisdictions.

Q3. At what steps in the listing process should public comment be sought?

The current process of nomination, followed by Preliminary Determination by the Scientific Committee, public comment, and then Final Determination, is very well geared to eliciting useful public and expert comment during the comment phase, especially given the frequent meetings and high volume of determinations produced by the NSW Scientific Committee. Nominations are of very variable quality and scope, even when (as is usually the case) they prove to be valid. Nominations themselves are not necessarily a good basis for eliciting external comment – too many people, who could be providing useful new information, have to spend their time within the comment period simply correcting errors of fact, interpretation, or perspective in the nomination. The current practice of an expert committee working up a Preliminary Determination, including as it does at least one round of consultations with people or agencies likely to have relevant information, results in a much higher quality document going to the public stage. This in turn elicits better quality feedback. The current means of advertising, and the current 2-month period of waiting fairly passively for public comment, cannot by themselves be relied upon to tap all the likely sources of information that contribute to a robust assessment and Final Determination.

Our scientific knowledge of biodiversity has many shortfalls, and much of what there is, is dispersed and poorly or not at all documented. Much of it is unpublished, and much valuable field and observational knowledge is held by non-scientists (landowners, community practitioners, enthusiasts, etc) or in the non-public sector (e.g. ecological consultants). The NSW Scientific Committee, through its statutory composition and through its 15 years of practice, is well suited for the task of locating and debriefing likely holders of such knowledge, working through knowledge networks that also have good regional community connections. The active phase of information-seeking by the Committee during the Preliminary phase, and a similar round during the Final drafting phase (which is also informed by the public submissions), is in general an excellent process. An area of exception however relates to traditional Aboriginal knowledge; practice and dialogue regarding this is not well developed in biodiversity conservation circles in NSW.

In general however the NSW process contrasts very favourably with, for example, the Commonwealth practice of calling for comment based on nominations that may be up to a year old by the time they are issued, and have quite often already been overtaken by the State process.

Q4. Are there opportunities to improve coordination and/or reduce duplication between the Commonwealth and NSW listing regimes?

It is good for Australia's national conservation effort that consideration is given at different levels of government to preventing extinctions and ensuring effective biodiversity conservation both at national level AND within the artificially bounded jurisdictions. Too much play is sometimes made of cases where (say) a species is listed as highly threatened in NSW and less so (or not at all) in adjacent jurisdiction/s. These cases do occur and the highly threatened status in NSW is in that sense artificial – but this is the necessary price we pay for a legislative commitment to preventing or minimising decline and extinction within the State. The great majority of cases do not fit this profile, and those that do, do not necessarily have to be prioritised for recovery actions or investment (although edge-of-range populations quite often are thought to be of greater evolutionary significance). So some discord between State and national lists on this basis is in our view acceptable.

ANPC's understanding is that NSW has now, later than most other States, established better liaison between the assessment and listing processes and committees in this State and those of the Commonwealth, and that 'catch-up' alignment of listings wherever feasible is now occurring. This is a positive development and should eventually result in the EPBC lists reflecting, much more adequately, the large number of listed NSW endemic species that are State-listed but not yet Commonwealth-listed.

One area of discord between the two jurisdictional lists is in relation to the assessment, listing and caveats applied to ecological communities. There are several issues here:

- The Commonwealth TSSC tends to prefer 'higher-level' or aggregate listings as compared to those in NSW. This is an operational issue with pros and cons and we make no recommendation here.
- NSW does not (in the absence of a completed statewide vegetation typology, and the low level of state vegetation mapping at appropriate scale and with appropriate truthing) have a good information base for assessing the overlap between ecological communities recognised for planning and conservation purposes in NSW and those recognised in adjacent States. The completion of typology and the acceleration of mapping should be a priority for NSW (but does not require any change to the TSC Act).
- The Commonwealth applies a 'condition class' caveat to the applicability of its community listings. ANPC regards this as methodologically very problematic and would recommend – pending a more robust method - against any similar caveat being applied in NSW, whether through the TSC Act or through acceptance for management purposes of the Commonwealth condition classes.

Q5. Is the current way of identifying critical habitat or other important habitat efficient and effective?

Yes, although it has been rarely utilised.

Q6. Are the powers under the Act effective for improving recovery on a landscape basis?

The powers under the Act are effective for setting some of the preconditions for landscape-scale recovery (e.g. assessment and listing of threatened entities and identification of their associated habitats, and potentially listing of critical habitat; also the critically important delineation of Key Threatening Processes). These powers and others under the Act are not however going to ever be effective for landscape-scale recovery without other preconditions (some of which would be in the purview of other acts). The most basic of these preconditions is a greater level of investment in threat-process reduction – see under Q8 below.

Q7. Are there opportunities to improve the way recovery efforts for species, populations and ecological communities are prioritised?

The present review of the Priorities Action Statement for threatened species and communities is welcome, as PAS v1 was not a transparent or dynamic system that encouraged either the filling of knowledge gaps nor effective action by parties other than DECCW itself.

ANPC is however of the opinion that PAS as a database of potential actions has some inherent problems as compared with the now largely discontinued recovery plans. These relate to:

- Content: fragmentation of interdependent variables; an apparent acceptance of only one or two debriefs of experts as an adequate basis for identifying actions and priorities, rather than the collegiate, iterative and adaptive approach that is possible in recovery teams;
- Accessibility: absence of discursive explanations intelligible to non-specialists; lack of clear and promptly responsive mechanisms for public submission of new information and critiques;
- Lack of an electronic, publicly accessible reference library (PDFs) of available literature on threatened entities. Similarly, the DECCW Threatened Species Profiles webpages are very poorly referenced. The absence of these background resources makes external contributions and/or critiquing of proposed recovery priorities and actions very difficult.

These PAS shortfalls are not strictly a result of current provisions of the TSC Act, but they do result directly from the under-resourcing of the recovery team/recovery plan process by DECCW over many years, and from the amendments to the Act some years ago that removed the requirement for specific recovery plans.

ANPC is informally aware of the current process within DECCW of proposed prioritisation (document headed "Threatened Species Prioritisation Project - Draft Approach", November 2010) but has not yet had a chance to evaluate the method proposed. We feel that a methodology of this importance should be exposed to public and scientific critique.

Q8. Is the framework for addressing key threatening processes effective? What improvements could be made?

The TSC Act processes for listing of Key Threatening Processes are good, transparent within reason, and well-founded scientifically. However, being dependent on nominations (from the public, the DECCW, or from the resource-limited Scientific Committee itself), they are not as pro-active as would be desirable. As the Myrtle Rust case discussed below shows, threat contingency planning in NSW would benefit from a greater level of risk analysis.

Conservation in NSW and Australia generally also suffers from gross under-investment in threat prevention and reponse, coupled with a governmental mind-set that tends to see all threats as only 'manageable', not *eradicable*. Some threats can in fact be eliminated totally, at least on a local or regional basis, given sufficient investment and political will (e.g. feral camels, horses, and deer), but the present approach of ameliorative control measures almost always sees a steady increase in the overall impact of the threat over time (with only a few exceptions, like *Cactoblastis*) . The management-only response is usually determined by attitudes and outside the Act itself, and is usually resource-related but always without a real analysis of the long-term consequences of failure to eradicate.

A case in point is the continued toleration of the presence in NSW of the highly aggressive weed Kudzu in a very limited area of occurrence near Kyogle.

Greater attention needs to be paid by the Department to the risk of potentially catastrophic declines triggered by the arrival of pests and diseases new to Australia. The recent arrival of Myrtle Rust in NSW is a prime example. This disease is likely to be a threat to about 1,000 or more myrtaceous plant species in eastern Australia. While the details of the early response are somewhat obscure, there was an initial decision (April 2010) NOT to attempt to eradicate, and not to convene the scientific panel called for in the national contingency plan. It is our understanding (in the absence of any official account) that this was in part due to commercial considerations relating to the horticultural industry and perhaps international trade, but also because no department was prepared at first to put up a pot of money to cover the compensation costs of eradication. The combined effect of these decisions seems, to parties outside the process, to have led to a hiatus of 4-6 weeks during which the Rust was relatively free to spread on infected trade plants and perhaps by other means. To what degree this initial dysfunctional response contributed to the present spread to more than 50 sites, including three bushland sites, is unclear, but for a disease that was immediately identifiable as part of the Guava Rust complex, and hence the subject of three levels of national planning as a high-to-extreme risk, the apparent lack of adequate war-gaming of the response procedure is deplorable.

There are implications for the *TSC* Act from the Myrtle Rust arrival, and may be more as the degree of threat unfolds. There were three national level contingency plans for the arrival of Guava Rust complex (overall, Nursery Industry, and Plantation Timber Industry). While the overall plan has a biodiversity dimension, there was no specific national biodiversity contingency plan in place. This may have weakened the leverage of DECCW and interstate conservation agencies in the early stages of the response and contributed to the delays. It almost certainly also contributed to the (apparent) failure to adequately war-game the details of an eradication response.

RECOMMENDATION: That consideration be given to including a requirement in the TSC Act for a greater level of risk-scanning and contingency planning for the arrival (in Australia, or in NSW from other States) of very high risk-potential pathogens, pests, and weeds, with a view to strengthening the stake and leverage of biodiversity considerations, strengthening the arrival-prevention regime, and improving the promptness and effectiveness of post-arrival responses.

Q9. Should listings in different categories trigger different regulatory responses?

This is a vexed issue. Logic would suggest that the higher the extinction risk, the greater should be the level of protection afforded. However, given the strong dynamic for a growing percentage of native biodiversity to be assessed as listable as more information becomes available, and given the ever-growing pressures on non-listed biodiversity, there is some risk that trying to introduce a scale of regulatory response might simply result in greasing the process whereby sub-threatened becomes Vulnerable, Vulnerable becomes Endangered, and so on. It is hard to envisage a set of responses that are different enough at each level to be meaningful yet vigorous enough at the lowest listing category (Vulnerable) to still be an effective deterrent. ANPC does not have a hard and fast view on this, and some scaling of the regulatory response may be appropriate, but we would urge caution. Scaling of the *non-regulatory* response however would be highly advantageous, particularly on two fronts:

- Filling knowledge gaps for both threatened and near-threatened entities, and
- Devoting more conservation resources (in absolute not relative terms) to actions that prevent species becoming threatened. Threat-process reduction would be a prime example but is not the only one.

Both these measure are of course dependent on an improved resource base.

Q10. How should the TSC Act interact with state laws on land-use planning, development control and natural resource management?

As noted under Q1 above, the TSC Act mandates conservation of all (not just threatened) biodiversity, but this aspect of the Act is poorly developed and in any case cannot be expected to stand alone. There should however be an overriding requirement at the earliest possible stages of land-use and land-release planning for biodiversity considerations to be factored in and wherever possible given paramount interest. Extinction is not reversible. The State itself should cease, legally and attitudinally, to treat vacant and undisturbed land as near-valueless. An

actual value should be placed on it sufficient to deter the historical Australian tendency to place new developments on 'wild' land for extremely low cost, rather than pay rather more for land that has already been alienated from the natural or near-natural estate.

New discoveries in 'switched off' areas: Certain tenures in NSW are as we understand it, deemed to have the threatened species protection provisions of the TSC Act 'switched off' for any threatened species, populations or communities that were not previously documented but which are discovered in them during periods after the approval of Property Vegetation Plans or certification of Local Environment Plans. This seems to ANPC to be a very high risk arrangement given the number of new species yet to be described, particularly in taxonomically neglected groups like the fungi and invertebrates, and given also the paucity of targeted threatened species surveys in many parts of the State, the cryptic or seasonal nature of many threatened plants (e.g. many orchids), the absence of a comprehensive State typology for vegetation types, the dearth of good vegetation mapping in many areas, and the abbreviated nature of the property and LGA assessments that are required for PVP and LEP certification. As and if these forms of certification and TSCA exemption become widely taken up, the likelihood that threatened species or communities will be found on exempted tenures but without legal protection will in our view become very great. As a principle we would call for the reinstatement of the same levels of protection afforded in other cases, and the development of alternative forms of management guidance (regulation, incentive, compensation, or other) to resolve any genuine conflicts between planned use of the area and conservation of the threatened entity.

Q11. Does the '7-part test' operate effectively in practice? If you think that there should be changes to the test, what should they be?

ANPC has no specific comments at this stage.

Q12. What opportunities exist to improve interactions between NSW and Commonwealth legislation relating to threatened species protection.

The recently improved engagement between the listing processes and committees of NSW and the Commonwealth is to be applauded. The EPBC Act schedules have a long way to go to absorb all the federally-unlisted taxa and communities that are listed in NSW (many of them NSW endemics). Operations measures to speed this process up, so that the EPBC list increasingly becomes a true national list, would e useful, but this is probably more a matter for Commonwealth effort and does not in our view require amendment of the NSW Act.

Q13. Does the TSC Act provide adequate incentive for strategic planning?

No, neither for actions within the DECCW purview nor for the wider conservation effort. More to the point 'strategic' plans and measures are increasingly (not just in NSW) being defined only in terms of what is deemed to be financially and administratively achievable, not a more useful two stage process where those considerations are secondary and downstream from a consideration of what is necessary for a conservation to succeed in a particular scenario. The conflation of feasibility with need cripples both the original analysis of need before it is completed, prevents effective external critiques and resource mobilisation, and acts against adaptive management.

Q14. What opportunities exist to improve coordination of strategic processes under NSW and Commonwealth legislation?

The establishment of CMAs as part of a national NRMRO network was a welcome development. The resourcing of CMAs for biodiversity actions (always their fourth and lowest strategic priority) has been patchy. The segregation, in NSW, of responsibility for threatened species management between NPWS (on reserve) and CMAs (off reserve) has been a mixed experience. On balance it has possibly somewhat retarded the overall threatened species recovery effort but this likely to be the result of lack of resourcing and effective support mechanisms for both areas within DECCWprobably mainly because

Q15. Do you have comments on the operation of the BioBanking Scheme including how it engages with both landholders and developers?

Time available for this submission has precluded finalisation of comments on the Biobanking Scheme.

Q16. What are the most important things for future biodiversity strategies to focus on?

Threat arrival prevention, and threat process reduction (preferably with a higher degree of actual eradication) – see comments under Q8 above.

Q17. How can a Biodiversity Strategy empower others to act beyond the regulatory minimum established by the TSC Act?

Some level of seed funding for non-government organisations to enable the creation and operation of autonomous organisations on the model of the current Conservation Management networks, would be a great advantage. The post-2007 approach to open-grant funding taken by the Commonwealth has severely limited the ability of the community sector to engage and mobilise resources for species, site and landscape recovery.

Q18. Given the existence of various other advisory bodies, are the roles of the Biological Diversity Advisory Council and Social and Economic Advisory Council still relevant?

ANPC believes that reinstatement of a BDAC, along the lines of the pre-2005 model and charged with providing frank and wherever possible public advice and critique (and preferably with some funding attached to enable autonomous activity) would be highly desirable. Regarding the never-convened SEAC, we recognise the need for (probably multiple) forums to address these issues, provide advice, and encourage dialogue between interest groups, but we do not have a settled view as to whether a SEAC under the TSC Act is the best option for this. In our view other Acts and other Departments should be taking joint responsibility for these issues.

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